

FILED
JAN 23 2018
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

WILLIAM ROBERT BRENDGARD,

Lawyer (Bar No. 21254).

Proceeding No. 16#00090

ODC File No(s). 15-00779

STIPULATION TO SUSPENSION
FOLLOWING SETTLEMENT
CONFERENCE CONDUCTED UNDER
ELC 10.12(h)

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Natalea Skvir and Respondent lawyer William Robert Brendgard.

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

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1 Supreme Court. Respondent further understands that a hearing and appeal could result in an
2 outcome more favorable or less favorable to him. Respondent chooses to resolve this
3 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
4 avoid the risk, time, expense and publicity attendant to further proceedings.

5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on November
7 14, 1991. By order of the Supreme Court, Respondent's license to practice law was suspended
8 for one year effective March 23, 2015, and has not been reinstated.

9 II. STIPULATED FACTS

10 2. In or around October 2014, Respondent and Tracey Carroll met to discuss her intent
11 to divorce her husband.

12 3. At that time, Ms. Carroll was not yet ready to proceed.

13 4. On November 20, 2014, Respondent signed a Stipulation agreeing to a one-year
14 suspension followed by two years of probation in another disciplinary matter.

15 5. The Disciplinary Board approved the Stipulation on January 30, 2015.

16 6. On February 9, 2015, the Washington Supreme Court notified Respondent that it
17 had received the Stipulation and would circulate it for review and entry of an order.

18 7. At the beginning of February 2015, Respondent met with Ms. Carroll to begin work
19 on her case.

20 8. On February 16, 2015, Respondent and Ms. Carroll signed a fee agreement.

21 9. The fee agreement provided for a \$1,000 flat fee for Respondent's "advice and
22 representation in dissolution of marriage with children, real estate and retirement plans."

23 10. Under the fee agreement, Respondent agreed to provide the following legal

1 services:

- 2 • Send a letter and follow up with husband for him receiving papers and
3 responding. Negotiating with him for up to 30 days.
- 4 • File case with court the clerk, obtain a case number, send copies to client;
- 5 • Prepare documents:
 - 6 ○ Court's confidential information form, case cover sheet, state
7 certificate
 - 8 ○ Petition (or response to petition) for dissolution of marriage
9 with property and debt exhibits and language to divide
10 retirement accounts
 - 11 ○ Summons, Acceptance of Service, Joinder by Respondent
 - 12 ○ Parenting Plan proposed
 - 13 ○ Order of Child Support and worksheet
 - 14 ○ Quit Claim Deed and real estate excise tax exempt form, but
15 not including county recording costs, est. \$73.00. Research
16 legal description from the county assessor
 - 17 ○ Qualified Domestic Relations Orders-Lawyer will: Contact
18 Oregon Employers-Laborers Union. Request QDRO
19 information for 401(k) and for Defined Benefit Pension.
20 Review account statements. Draft a QDRO for pension rights.
21 Send draft to plan for approval. We will try to have as few
22 QDROs as possible to equalize the retirements.
 - 23 ○ Non-QDRO Retirements are: Washington State DRS doesn't
24 use a QDRO but has a required paragraph for the decree.
Individual Retirement Accounts are divided simply by a
rollover within your IRA plan.

11. The fee agreement specifically excluded court hearings, motions, and preparation of
16 final documents.

17 12. Ms. Carroll paid Respondent the \$1,000 fee.

18 13. Respondent did not inform Ms. Carroll of his expected suspension and its possible
19 effect on his ability to complete his work on her case.

20 14. Had Ms. Carroll known of Respondent's expected suspension, she would not have
21 hired him.

22 15. Respondent drafted many, but not all, of the documents contemplated by the fee
23 agreement.

1 16. On February 25, 2015, Respondent sent drafts of some documents to Scott
2 Matthews, Mr. Carroll's counsel.

3 17. On March 16, 2015, the Supreme Court issued and served on Respondent an Order
4 approving Respondent's Stipulation and suspending him from the practice of law for one year,
5 effective March 23, 2015.

6 18. On March 16, 2015, Disciplinary Counsel sent Respondent a letter informing him
7 that ELC 14.1(c) required him to, within 10 days of the effective date of his suspension, "notify
8 all clients of his suspension and inability to further represent them." The letter also informed
9 Respondent that, within 25 days of his suspension, he must "file an affidavit with this office in
10 compliance with ELC 14.3, showing full compliance with the provisions of ELC Title 14."
11 Respondent was advised to carefully read ELC 14, a copy of which was enclosed with the
12 letter.

13 19. On March 19, 2015, Respondent called Mr. Matthews to inform him he might be
14 withdrawing from the case, but did not disclose the reason.

15 20. From February 2015 through March 26, 2015, Ms. Carroll repeatedly called
16 Respondent to find out what was happening in her case. She left voice mail messages for
17 Respondent that were not returned promptly.

18 21. On March 22, 2015, Mr. Matthews sent Respondent a written settlement offer.

19 22. On March 23, 2015, Respondent forwarded Mr. Matthews's settlement offer to Ms.
20 Carroll, but did not discuss it with her.

21 23. Respondent did not file Ms. Carroll's case with the court.

22 24. On March 26, 2015, Respondent telephoned Ms. Carroll and told her he was no
23 longer able to represent her and referred her to another lawyer. Respondent states that he told

1 Ms. Carroll of a “licensing issue.”

2 25. Ms. Carroll states that Respondent told her only that he was no longer able to
3 represent her because of a “personal situation.” Respondent did not expressly inform Ms.
4 Carroll that he was unable to represent her because of a “disciplinary suspension.”

5 26. Shortly after their March 26, 2015 telephone conversation, Ms. Carroll contacted
6 the Association about filing a bar complaint and states that she learned for the first time that
7 Respondent had been suspended from practicing law.

8 27. On April 21, 2015, Respondent executed an unsworn document titled “Affidavit of
9 Compliance Pursuant to ELC Rule 14.3” and he submitted it to ODC that same day.

10 28. In his “Affidavit of Compliance,” Respondent knowingly stated that he had
11 “complied with ELC Rule 14 by notifying all clients who had pending matters, within 10 days
12 of license suspension,” and attached a list indicating that he had so notified Ms. Carroll on
13 March 26, 2015. This created a knowing misapprehension that he had notified Ms. Carroll of
14 his suspension in full compliance with ELC 14.1(c).

15 29. Ms. Carroll filed a grievance against Respondent on April 28, 2015.

16 30. After receiving a copy of Ms. Carroll’s grievance, Respondent offered to refund
17 \$200 to Ms. Carroll.

18 31. Ms. Carroll requested a full refund of her \$1,000 fee payment because Respondent
19 did not complete the representation before he was suspended and her new lawyer told her he
20 was unable to use Respondent’s documents and would need to start over.

21 **III. STIPULATION TO MISCONDUCT**

22 32. By failing to keep Ms. Carroll reasonably informed about the status of the matter, to
23 promptly comply with reasonable requests for information, and to explain matters to the extent

1 reasonably necessary for Ms. Carroll to make informed decisions regarding the representation,
2 Respondent violated RPC 1.4.

3 33. By failing to notify Ms. Carroll of his disciplinary suspension as required by ELC
4 14.1, Respondent violated RPC 8.4(I).

5 34. By failing to promptly refund Ms. Carroll's fee when he was unable to complete the
6 services he had agreed to perform, Respondent violated RPC 1.5(a) and RPC 1.16(d).

7 35. By failing to disclose a fact in his "Affidavit of Compliance" necessary to correct a
8 misapprehension known by Respondent to have arisen, Respondent violated RPC 8.1(b).

9 **IV. PRIOR DISCIPLINE**

10 36. In 2003, Respondent received a reprimand for failing to deposit a client's advance
11 fee into trust, to file the client's dissolution petition, to keep his client reasonably informed
12 about the status of her matter, and to return an unearned advance fee to the client.

13 37. In 2004, Respondent received a reprimand for failing to abide by his client's
14 decisions concerning the objectives of the representation, to act with reasonable diligence and
15 promptness in representing the client, to keep the client reasonably informed about the status of
16 her matter and promptly comply with reasonable requests for information, and to make
17 reasonable efforts to expedite litigation consistent with his client's interests.

18 38. On July 30, 2013, Respondent was suspended for a period of nine months for
19 misconduct in two consolidated cases. In the first, Respondent failed to comply with the rules
20 for handling client funds and maintaining complete, contemporaneous and accurate trust
21 account records (RPC 1.15A and 1.15B) and he failed to cooperate in ODC's investigation of
22 his trust account. In the second, Respondent received an advance fee of \$600 from a client in
23 February 2010 to modify a parenting plan or obtain custody of the client's child, but

1 Respondent failed to deposit the fee in his trust account. In addition, during the second half of
2 that year, Respondent did not communicate with the client or provide him copies of court
3 papers filed on his behalf.

4 39. On March 23, 2015, Respondent was suspended for one year for (a) failing to
5 advise a client in 2013 that he (Respondent) had executed a stipulation to receive a nine-month
6 disciplinary suspension (see paragraph 38, above), that the stipulation was awaiting approval
7 by the Disciplinary Board and the Supreme Court, and that it might affect his ability to
8 complete the work the client had hired and paid him to perform (preparation of a prenuptial
9 agreement); (b) failing to deposit the client's advance fee into trust and to refund it when he
10 had not performed (and could no longer perform, while suspended) work that benefited the
11 client; and (c) subsequently failing to notify the client that he was suspended from practice on
12 July 30, 2013 and could not represent the client in finalizing the prenuptial agreement.

13 V. APPLICATION OF ABA STANDARDS

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

16 ***8.0 Prior Discipline Orders***

17 Absent aggravating or mitigating circumstances, upon application of the factors
18 set out in Standard 3.0, the following sanctions are generally appropriate in cases
19 involving prior discipline.

18 8.1 Disbarment is generally appropriate when a lawyer:

19 (a) intentionally or knowingly violates the terms of a prior disciplinary order
20 and such violation causes injury or potential injury to a client, the public, the
21 legal system, or the profession; or

20 (b) has been suspended for the same or similar misconduct, and intentionally
21 or knowingly engages in further similar acts of misconduct that cause injury or
22 potential injury to a client, the public, the legal system, or the profession.

22 8.2 Suspension is generally appropriate when a lawyer has been reprimanded
23 for the same or similar misconduct and engages in further similar acts of
24 misconduct that cause injury or potential injury to a client, the public, the legal
25 system, or the profession.

24 8.3 Reprimand is generally appropriate when a lawyer:

1 (a) negligently violates the terms of a prior disciplinary order and such
2 violation causes injury or potential injury to a client, the public, the legal system,
or the profession; or

3 (b) has received an admonition for the same or similar misconduct and
engages in further similar acts of misconduct that cause injury or potential injury
4 to a client, the public, the legal system, or the profession.

5 An admonition is generally not an appropriate sanction when a lawyer violates
the terms of a prior disciplinary order or when a lawyer has engaged in the same
or similar misconduct in the past.

6 41. Because Respondent was suspended in 2015 for failing to promptly inform a client
7 of his suspension and failing to communicate adequately with a client, and was suspended in
8 2013 for failing to refund an unearned fee, and he has knowingly engaged in further similar
9 acts of misconduct that have caused injury to his client, the legal system, and the profession,
10 the presumptive sanction is disbarment.

11 42. ABA Standard 4.4 is most applicable to the duty to act with diligence and
12 communicate with a client. It states:

13 ***4.4 Lack of Diligence***

14 Absent aggravating or mitigating circumstances, upon application of the factors
set out in Standard 3.0, the following sanctions are generally appropriate in cases
15 involving a failure to act with reasonable diligence and promptness in
representing a client:

16 4.41 Disbarment is generally appropriate when:

17 (a) a lawyer abandons the practice and causes serious or potentially serious
injury to a client; or

18 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or

19 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

20 4.42 Suspension is generally appropriate when:

21 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or

22 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.

23 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.

24 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

1 actual or potential injury to a client.

2 43. Standard 7.0 is most applicable to keeping an unreasonable fee, failing to return
3 unearned funds and failing to comply with duties upon suspension. It states:

4 ***7.0 Violations of Duties Owed as a Professional***

5 Absent aggravating or mitigating circumstances, upon application of the factors
6 set out in Standard 3.0, the following sanctions are generally appropriate in cases
7 involving false or misleading communication about the lawyer or the lawyer's
8 services, improper communication of fields of practice, improper solicitation of
9 professional employment from a prospective client, unreasonable or improper
10 fees, unauthorized practice of law, improper withdrawal from representation, or
11 failure to report professional misconduct.

12 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
13 conduct that is a violation of a duty owed as a professional with the intent to
14 obtain a benefit for the lawyer or another, and causes serious or potentially
15 serious injury to a client, the public, or the legal system.

16 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
17 conduct that is a violation of a duty owed as a professional and causes injury or
18 potential injury to a client, the public, or the legal system.

19 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
20 conduct that is a violation of a duty owed as a professional and causes injury or
21 potential injury to a client, the public, or the legal system.

22 7.4 Admonition is generally appropriate when a lawyer engages in an
23 isolated instance of negligence that is a violation of a duty owed as a
24 professional, and causes little or no actual or potential injury to a client, the
public, or the legal system.

44. Respondent acted knowingly in failing to inform Ms. Carroll of his expected
suspension, in failing to communicate adequately with Ms. Carroll during the representation, in
failing to inform her that he was no longer able to represent her due to a disciplinary
suspension, and in failing to promptly refund any of his fee. Ms. Carroll was injured by a
delay in the filing and resolution of her dissolution case, by the necessity of starting over again
with another lawyer, and by having to pay additional legal fees. The legal profession and
public were also injured by Respondent's repeated failure to conform his conduct to court rules
and professional norms. The presumptive sanction is suspension.

45. The following aggravating factors apply under ABA Standard 9.22:

- 1 (a) prior disciplinary offenses: see paragraphs 36-39, above;
2 (c) a pattern of misconduct: see (a) above;
3 (d) multiple offenses; and
4 (i) substantial experience in the practice of law: Respondent was
5 admitted in 1991.

6 46. The following mitigating factor applies under ABA Standard 9.32:

- 7 (b) absence of a dishonest motive: Respondent did not have a
8 dishonest motive in accepting the representation of Ms. Carroll; and
9 (l) remorse: as evidenced by Respondent's agreement to write a letter
10 of apology to Ms. Carroll.

11 47. It is a mitigating factor that Respondent has agreed to resolve this matter at an early
12 stage of the proceedings. It is also a mitigating factor that Respondent has agreed to pay
13 restitution to Ms. Carroll by refunding her entire fee within five days of signing this
14 Stipulation. See paragraph 53.

15 48. Based on the factors set forth above, the presumptive sanction should be mitigated
16 to a 30-month suspension.

17 **VI. STIPULATED DISCIPLINE**

18 49. The parties stipulate that Respondent shall receive a 30-month suspension for his
19 conduct.

20 50. Respondent will be subject to probation for a period of two years starting on the
21 date when Respondent is reinstated to the practice of law.

22 51. The conditions of probation are set forth below. Respondent's compliance with
23 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary
24 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
25 herein may be grounds for further disciplinary action under ELC 13.8(b).

26 52. Practice Monitor

- 1 a) During the period of probation, Respondent's practice will be supervised by a
2 practice monitor. The practice monitor must be a WSBA member with no record of
3 public discipline and who is not the subject of a pending public disciplinary
4 proceeding.
- 5 b) The role of the practice monitor is to consult with and provide guidance to
6 Respondent regarding case management, office management, and avoiding
7 violations of the Rules of Professional Conduct, and to provide reports and
8 information to the Probation Administrator regarding Respondent's compliance
9 with the terms of probation and the RPC. The practice monitor does not represent
10 the Respondent.
- 11 c) At the beginning of the probation period, the Probation Administrator will select a
12 lawyer to serve as practice monitor for the period of Respondent's probation.
- 13 i) Initial Challenge: If, within 15 days of the written notice of the
14 selection of a practice monitor, Respondent sends a written request to the
15 Probation Administrator that another practice monitor be selected, the
16 Probation Administrator will select another practice monitor. Respondent
17 need not identify any basis for this initial request.
- 18 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
19 practice monitor, Respondent believes there is good cause why that
20 individual should not serve as practice monitor, Respondent may, within 15
21 days of notice of the selected practice monitor, send a written request to the
22 Probation Administrator asking that another practice monitor be selected.
23 That request must articulate good cause to support the request. If the
24 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
pending client legal matters being handled by the Respondent. The list must
identify the current status of each client matter and any problematic issues regarding
each client matter. The list may identify clients by using the client's initials rather
than the client's name.

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

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

VII. RESTITUTION

53. As a condition precedent to disciplinary counsel's signature on this Stipulation,
Respondent shall provide proof to ODC, within five calendar days of signing this Stipulation,
that he has paid \$1,000 to Tracey Carroll, accompanied by a letter of apology.

1 **VIII. COSTS AND EXPENSES**

2 54. In light of Respondent’s willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay reduced costs and expenses of \$1,000 in
4 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
5 if these costs and expenses are not paid within 30 days of approval of this stipulation.

6 55. Reinstatement from suspension is conditioned on payment of costs and expenses.

7 **IX. VOLUNTARY AGREEMENT**

8 56. Respondent states that prior to entering into this Stipulation he has consulted or has
9 had an opportunity to consult independent legal counsel regarding this Stipulation, that
10 Respondent is entering into this Stipulation voluntarily, and that no promises or threats have
11 been made by ODC, the Association, nor by any representative thereof, to induce the
12 Respondent to enter into this Stipulation except as provided herein.

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

15 **X. LIMITATIONS**

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

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

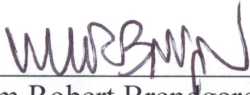
1 60. This Stipulation results from the consideration of various factors by both parties,
2 including the benefits to both by promptly resolving this matter without the time and expense
3 of hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review.
4 As such, approval of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

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

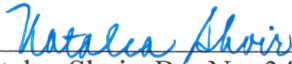
12 62. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
13 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
14 Rules for Enforcement of Lawyer Conduct will be made.

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

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

3 
4 _____
5 William Robert Brendgard, Bar No. 21254
6 Respondent

Dated: 11/29/2017

7 
8 _____
9 Natalea Skvir, Bar No. 34335
10 Disciplinary Counsel

Dated: 12-4-17