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DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

WILLIAM R. BRENDGARD,

Lawyer (Bar No. 21254).

Proceeding No. 14#00039

STIPULATION TO SUSPENSION

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).

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

Stipulation to Discipline
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1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, expense and publicity attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on November
5 14, 1991.

6 **II. STIPULATED FACTS**

7 2. Gregorio Sicard (Dr. Sicard) contacted Respondent in or around late March 2013 to
8 discuss the advisability of executing a prenuptial agreement prior to his planned October 11,
9 2013 marriage.

10 3. On April 2, 2013, Respondent signed a Stipulation to Nine-Month Suspension to
11 resolve a disciplinary proceeding then pending against him.

12 4. On May 14, 2013, the Association's Disciplinary Board entered an Order approving
13 the Stipulation and a copy of the Order was served on Respondent by the Disciplinary Board
14 Clerk on the same day.

15 5. On May 22, 2013 the Stipulation was forwarded to the Washington Supreme Court
16 for review and entry of an order.

17 6. Dr. Sicard met with Respondent on May 17, 2013 and hired him to prepare a
18 prenuptial agreement.

19 7. On May 29, 2013, the Supreme Court notified Respondent that the Stipulation was
20 being circulated to the Court for review.

21 8. Respondent was aware that his license was about to be suspended.

22 9. Respondent did not inform Dr. Sicard of the possibility that his license to practice
23 would be suspended in the near future, which could preclude his ability to complete the task for

1 | which Dr. Sicard hired him.

2 | 10. Respondent agreed to perform the work for a \$750 "flat fee" in two installments.

3 | 11. There was no written fee agreement between Respondent and Dr. Sicard.

4 | 12. Dr. Sicard paid Respondent \$350 on or about May 31, 2013.

5 | 13. Respondent did not deposit Dr. Sicard's \$350 fee payment into a trust account.

6 | 14. On or about June 1, 2013, Respondent e-mailed Dr. Sicard a rough draft of the
7 | prenuptial agreement. As of this date, Respondent had performed approximately 4 hours of
8 | legal work.

9 | 15. Not having heard from Dr. Sicard, on or about June 20, 2013, Respondent sent him
10 | an e-mail asking whether he had received the draft and had any questions.

11 | 16. Dr. Sicard did not reply until July 8, 2013, when he sent Respondent a text message
12 | asking him to suggest some lawyers his fiancée could consult to review the agreement.

13 | 17. Respondent did not respond to Dr. Sicard's July 8, 2013 text message.

14 | 18. On July 23, 2013, the Washington Supreme Court issued an Order suspending
15 | Respondent's license to practice law for nine months, effective July 30, 2013.

16 | 19. Under former¹ Rule 14.1 of the Rules for Enforcement of Lawyer Conduct (ELC),
17 | Respondent was required to notify every client, within ten days of the effective date of his
18 | suspension, that he was unable to act as the client's lawyer and the reason therefor, and advise
19 | the client to seek legal advice elsewhere.

20 | 20. Respondent did not timely inform Dr. Sicard of his suspension, as required.

21 | 21. Respondent did not refund any portion of Dr. Sicard's \$350 fee.

22 | 22. On or about August 26, 2013, Respondent provided ODC an affidavit attesting to his

23 | ¹ ELC 14.1 has since been amended, effective January 1, 2014.

1 compliance with ELC Title 14 and stating he had provided all his clients written notice of his
2 suspension.

3 23. Between June 20, 2013 and September 17, 2013, Respondent did not contact Dr.
4 Sicard.

5 24. On September 17, 2013, Dr. Sicard e-mailed Respondent to inquire about finalizing
6 the prenuptial agreement.

7 25. Thereafter, Dr. Sicard learned on his own that Respondent was suspended from
8 practice.

9 26. On September 19, 2013, Respondent e-mailed Dr. Sicard, informing him that he
10 would be unable to finish the prenuptial agreement because he had a "temporary license
11 restriction from the state bar due to [his] failure to comply with recordkeeping rules for lawyer
12 trust accounts."

13 27. Respondent's belated notice left Dr. Sicard too little time to find substitute counsel
14 in order to finalize an agreement, and the couple married without executing a prenuptial
15 agreement.

16 III. STIPULATION TO MISCONDUCT

17 28. By failing to inform Dr. Sicard in advance of his likely suspension and the effect it
18 might have on his ability to complete the work he had agreed to perform, and by failing to
19 respond to Dr. Sicard's July 8, 2013 communication, Respondent violated RPC 1.4.

20 29. By failing to refund the \$350 he had received for work which ultimately did not
21 benefit Dr. Sicard, Respondent violated RPC 1.5(a).

22 30. By failing to place Dr. Sicard's flat fee payment into trust in the absence of a fee
23 agreement complying with RPC 1.5(f)(2), Respondent violated RPC 1.15A(c)(2).

1 31. By failing to promptly notify Dr. Sicard of his suspension from the practice of law,
2 and his inability to act as his lawyer in finalizing the prenuptial agreement, Respondent violated
3 former ELC 14.1(c)(1).

4 IV. PRIOR DISCIPLINE

5 32. In 2003, Respondent was reprimanded for a lack of diligence, failing to keep his
6 client informed of the status of her matter, failing to deposit client funds into his trust account,
7 and failing to return unearned fees in a dissolution matter.

8 33. In 2004, Respondent was reprimanded for failing to abide by a client's decisions
9 concerning the objectives of the representation, failing to act with reasonable diligence and
10 promptness in representing the client, failing to keep his client reasonably informed about the
11 status of her matter and promptly comply with reasonable requests for information, and failing
12 to make reasonable efforts to expedite litigation consistent with the interests of the client in a
13 post-dissolution matter.

14 34. In 2013, Respondent received a nine-month suspension for trust account
15 irregularities, including a failure to deposit advance fees into his trust account, charging a flat
16 fee without using a written fee agreement that complied with RPC 1.5(f)(2) and poor
17 recordkeeping, and for his failure to communicate adequately with a client.

18 V. APPLICATION OF ABA STANDARDS²

19 35. The following American Bar Association Standards for Imposing Lawyer Sanctions
20 (1991 ed. & Feb. 1992 Supp.) apply to this case:

21 36. ABA Standard 4.1 is most applicable to the duty to handle client funds properly.

22 37. Respondent's conduct in failing to deposit Dr. Sicard's funds into his trust account

23 ² Copies of the relevant ABA Standards are appended to this Stipulation.

1 was knowing.

2 38. Dr. Sicard was harmed because he paid Respondent for work that could not be
3 completed as agreed, and he received no refund.

4 39. The presumptive sanction is suspension.

5 40. ABA Standard 4.4 is most applicable to the duty to communicate adequately with a
6 client.

7 41. Respondent acted negligently.

8 42. Dr. Sicard was harmed because he was unaware, until three weeks before his
9 wedding, of the need to find other counsel to complete work on his prenuptial agreement, he
10 was unable to hire other counsel, and the prenuptial agreement was not finalized or signed.

11 43. The presumptive sanction is reprimand.

12 44. ABA Standard 6.2 is most applicable to Respondent's failure to notify Dr. Sicard of
13 his suspension.

14 45. Respondent acted negligently.

15 46. Dr. Sicard was harmed because he was unaware, until three weeks before his
16 wedding, of the need to find other counsel to complete work on his prenuptial agreement, he
17 was unable to hire other counsel, and the prenuptial agreement was not finalized or signed.

18 47. The presumptive sanction is reprimand.

19 48. ABA Standard 7.0 is most applicable to Respondent's conduct relating to his fee.

20 49. The presumptive sanction is reprimand.

21 50. ABA Standard 8.0 applies to engaging in the same or similar misconduct for which
22 one has previously received discipline.

23 51. The presumptive sanction is at least suspension.

1 52. The following aggravating factors apply under ABA Standard 9.22:

2 (a) prior disciplinary offenses (see paragraphs 32-34, *supra*);

3 (c) a pattern of misconduct (see paragraphs 32-34, *supra*);

4 (d) multiple offenses; and

5 (i) substantial experience in the practice of law: Respondent was admitted in
6 1991.

7 53. No mitigating factors apply under ABA Standard 9.32.

8 54. It is a mitigating factor that Respondent has agreed to resolve this matter at an early
9 stage of the proceedings.

10 55. On balance, the aggravating and mitigating factors do not require a departure from
11 the presumptive sanction of suspension, but do require a suspension of greater length.

12 **VI. STIPULATED DISCIPLINE**

13 56. The parties stipulate that Respondent shall receive a one-year suspension for his
14 conduct.

15 57. Respondent will be subject to probation for a period of two years, commencing upon
16 Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his
17 trust account practices, and shall comply with the specific probation terms set forth below:

18 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
19 1.15B, and shall carefully review the current version of the publication, Managing
Client Trust Accounts: Rules, Regulations, and Common Sense.

20 b) For all client matters, Respondent shall have a written fee agreement signed by the
21 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).

22 c) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
23 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:

- 1 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
2 commencement of probation, Respondent shall provide the trust account
3 records from the date of his/her reinstatement to the end of the third full
4 month.
- 5 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
6 commencement of probation, Respondent shall provide the trust account
7 records from the end of the previously provided quarter through the end of
8 month six.
- 9 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
10 commencement of probation, Respondent shall provide the trust account
11 records from the end of the previously provided quarter through the end of
12 month nine.
- 13 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
14 the commencement of probation, Respondent shall provide the trust
15 account records from the end of the previously provided quarter through
16 the end of month twelve.
- 17 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
18 the commencement of probation, Respondent shall provide the trust
19 account records from the end of the previously provided quarter through
20 the end of month fifteen.
- 21 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
22 the commencement of probation, Respondent shall provide the trust
23 account records from the end of the previously provided quarter through
24 the end of month eighteen.
- vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
after the commencement of probation, Respondent shall provide the trust
account records from the end of the previously provided quarter through
the end of month twenty-one.

The trust account records Respondent provides to ODC for each quarterly review of his trust account will include: (a) a complete checkbook register for his trust account covering the period being reviewed, (b) complete individual client ledger records for any client with funds in Respondent's trust account during all or part of the period being reviewed, as well as for Respondent's own funds in the account (if any), (c) copies of all trust-account bank statements, deposit slips, and cancelled checks covering the period being reviewed, (d) copies of all trust account client ledger reconciliations for the period being reviewed, and (e) copies of reconciliations of Respondent's trust account check register covering the period being reviewed. The ODC's Audit Manager or designee will review Respondent's trust account records for each period.

- 1 d) On the same quarterly time schedule set forth in the preceding paragraph,
2 Respondent will provide ODC's Audit Manager or designee with copies of any and
3 all fee agreements entered into within the time period at issue.
- 4 e) The ODC's Audit Manager or designee may request additional financial or client
5 records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
6 Within twenty days of a request from ODC's Audit Manager or designee for
7 additional records needed to verify Respondent's compliance with RPC 1.15A
8 and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
9 additional records requested.
- 10 f) Respondent will reimburse the Association for time spent by ODC's Audit Manager
11 or designee in reviewing and reporting on Respondent's records to determine
12 his/her compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
13 Respondent will make payment within thirty days of each written invoice setting
14 forth the auditor's time and payment due.

15 58. During the two years of probation, Respondent shall be supervised by an active
16 Washington lawyer to serve as a practice monitor to be approved by ODC. The practice
17 monitor will be required to meet with Respondent every three months to review all active files
18 on his caseload to determine that the matters are being appropriately handled, and to provide
19 summary reports to ODC. Respondent will be responsible for paying any charges of the
20 practice monitor.

21 VII. RESTITUTION

22 59. Prior to reinstatement, Respondent shall be required to pay \$350 restitution, plus
23 interest at the maximum rate permitted under RCW 19.52.020, to Dr. Sicard.

24 60. Reinstatement from suspension is conditioned on payment of restitution.

VIII. COSTS AND EXPENSES

61. In light of Respondent's willingness to resolve this matter by stipulation at an early
stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000
in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC

1 13.9(I) if these costs are not paid within 30 days of approval of this stipulation.

2 62. Reinstatement from suspension is conditioned upon payment of costs.

3 **IX. VOLUNTARY AGREEMENT**

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

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

11 **X. LIMITATIONS**

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

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

20 67. This Stipulation results from the consideration of various factors by both parties,
21 including the benefits to both by promptly resolving this matter without the time and expense of
22 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
23 such, approval of this Stipulation will not constitute precedent in determining the appropriate

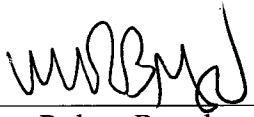
1 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
2 subsequent proceedings against Respondent to the same extent as any other approved
3 Stipulation.

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

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

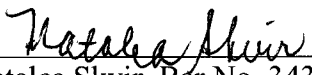
12 70. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
13 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
14 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
15 proceeding,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

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

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19 William Robert Brendgard, Bar No. 21254
Respondent

Dated: 11/20/2014

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22 Natalea Skvir, Bar No. 34335
Disciplinary Counsel

Dated: 11/20/14

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2 **APPENDIX TO STIPULATION TO SUSPENSION**

3 **American Bar Association Standards for Imposing Lawyer Sanctions**
4 **(1991 ed. & Feb. 1992 Supp.) (excerpts)**

5 **4.1 *Failure to Preserve the Client's Property***

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

- 9 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property
10 and causes injury or potential injury to a client.
11 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is
12 dealing improperly with client property and causes injury or potential injury to a client.
13 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client
14 property and causes injury or potential injury to a client.
15 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client
16 property and causes little or no actual or potential injury to a client.

17 **4.4 *Lack of Diligence***

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

- 21 4.41 Disbarment is generally appropriate when:
22 (a) a lawyer abandons the practice and causes serious or potentially serious injury to
23 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.
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.

25 **6.2 *Abuse of the Legal Process***

26 Absent aggravating or mitigating circumstances, upon application of the factors set out in
27 Standard 3.0, the following sanctions are generally appropriate in cases involving failure to expedite
28 litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal
29 except for an open refusal based on an assertion that no valid obligation exists:

- 30 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or

1 rule with the intent to obtain a benefit for the lawyer or another, and causes serious
2 injury or potentially serious injury to a party or causes serious or potentially serious
interference with a legal proceeding.

3 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a
4 court order or rule, and causes injury or potential injury to a client or a party, or causes
interference or potential interference with a legal proceeding.

5 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a
6 court order or rule, and causes injury or potential injury to a client or other party, or
causes interference or potential interference with a legal proceeding.

7 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance of
8 negligence in complying with a court order or rule, and causes little or no actual or
9 potential injury to a party, or causes little or no actual or potential interference with a
10 legal proceeding.

7.0 *Violations of Duties Owed as a Professional*

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

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

21 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is
22 a violation of a duty owed as a professional and causes injury or potential injury to a
23 client, the public, or the legal system.

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

8.0 *Prior Discipline Orders*

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 prior discipline.

8.1 Disbarment is generally appropriate when a lawyer:

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

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

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

8.3 Reprimand is generally appropriate when a lawyer:

(a) negligently violates the terms of a prior disciplinary order and such violation

1 causes injury or potential injury to a client, the public, the legal system, or the
2 profession; or

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

6 8.4 An admonition is generally not an appropriate sanction when a lawyer violates the terms
7 of a prior disciplinary order or when a lawyer has engaged in the same or similar
8 misconduct in the past.
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