

FILED

MAY 16 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

WILLIAM ROBERT

BRENDGARD,

Lawyer (Bar No. 21254).

Proceeding No. 11#00049

STIPULATION TO NINE-MONTH
SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to nine-month suspension is entered into by 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 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, and expense attendant to further proceedings.

I. ADMISSION TO PRACTICE

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

II. STIPULATED FACTS

2. Respondent is a sole practitioner with an office in Vancouver, Washington and has, at all times relevant to this matter, maintained an IOLTA trust account at Bank of America.

Non-cooperation

3. On January 14, 2010, the Association received notice from the Bank of America that there was an overdraft in the amount of \$14.33 in Respondent's trust account on January 12, 2010.

4. On January 21, 2010, the Association's Audit Manager sent Respondent a copy of the overdraft notice and asked him to provide a complete explanation of the overdraft, with supporting documentation.

5. Respondent did not reply.

6. On February 23, 2010, Disciplinary Counsel sent Respondent another letter, by certified mail, requesting his response within ten days and warning that a failure to respond would subject him to being subpoenaed for deposition.

7. Respondent did not reply.

8. Between January 19, 2010 and March 3, 2010, the Association received 31 additional overdraft notices regarding Respondent's trust account.

9. On March 15, 2010, Disciplinary Counsel issued a subpoena duces tecum requiring Respondent to appear for deposition at the Association's offices and to bring specified records

for his trust account.

10. On April 8, 2010, Respondent appeared for deposition and produced some, but not all of the records listed in the subpoena.

11. Respondent did not produce all of the subpoenaed documents until June 4, 2010.

12. On August 4, 2010, Disciplinary Counsel requested that Respondent answer several specific written questions about his trust account records and transactions.

13. Respondent did not reply to this request.

14. On September 8, 2010, Disciplinary Counsel sent Respondent another letter, by certified mail, directing him to provide a response to the inquiries in the August 4, 2010 letter within ten days and warning that a failure to respond would subject him to being subpoenaed for deposition.

15. Respondent did not reply.

16. On October 4, 2010, Disciplinary Counsel issued a subpoena duces tecum requiring Respondent to appear for deposition at the Association's offices on October 27, 2010 and to bring records responsive to Disciplinary Counsel's August 4, 2010 letter.

17. On October 27, 2010, Respondent appeared for deposition and produced some, but not all of the subpoenaed documents.

18. The subpoena required Respondent to produce his trust account records for January and February 2009, but Respondent has never produced those records.

19. The subpoena also required Respondent to produce the "client file notes" he claimed to use to maintain track of his clients' fee balances in his trust account, but Respondent has never produced those records.

Trust account records

20. On April 8, 2010, Respondent produced a handwritten (manual) check register.

21. Respondent's manual trust account check register covered the period of March 1, 2009 to February 28, 2010, but it failed to indicate the date, payor and/or the payee for some transactions, and included no running balance for the account. He also produced an electronic check register but it did not include every transaction,

22. Respondent did not maintain contemporaneous client ledgers for this time period.

23. Respondent did not reconcile his monthly trust account bank statements with his check register during this period and could not reconcile his check register with his client ledgers because he did not maintain them.

24. Respondent did not keep all of his monthly bank statements for this period.

25. During the time period May 1, 2009 through January 31, 2010, Respondent disbursed more funds from his trust account on behalf of clients than those clients had on deposit.

26. Although Respondent's poor recordkeeping made it impossible to definitively determine exactly how much money he should have had in his trust account and to whom those funds belonged, as of January 10, 2010, the overall shortage in client balances appeared to be \$359.33, and he deposited \$365 of his own funds to cover the deficiency.

Advance fees

27. During the period February 2009 through February 2010, Respondent used fee agreements that provided for advance fee deposits to be applied to invoices billed at an hourly rate.

28. Respondent did not deposit funds received for such advance fee deposits into his

trust account.

Dimmitt representation

29. In February 2010, Robby Dimmitt hired Respondent to represent him in seeking a modification of a parenting plan and/or obtaining custody of his child.

30. On February 15, 2010, Mr. Dimmitt gave Respondent a check for \$600 as an advance fee to be billed against at an hourly rate.

31. Respondent did not deposit Mr. Dimmitt's \$600 check to his trust account.

32. From the summer of 2010 to December 2010, Respondent did not communicate with Mr. Dimmitt and did not provide him with any copies of court papers filed on his behalf.

III. STIPULATION TO MISCONDUCT

33. By failing to enter all transactions into his trust account check register, Respondent violated RPC 1.15B(a)(1).

34. By failing to enter the date of each trust account transaction into the check register, Respondent violated RPC 1.15B(a)(1)(ii).

35. By failing to list in the check register the payor from whom the trust account funds were deposited and the payee to whom the trust account funds were disbursed, Respondent violated RPC 1.15B(a)(1)(iv).

36. By failing to maintain a running balance in his trust account check register, Respondent violated RPC 1.15B(a)(1)(v).

37. By failing to maintain individual client ledgers for clients who had funds in his trust account, Respondent violated RPC 1.15B(a)(2).

38. By failing to keep copies of trust account records including bank statements, cancelled checks and deposit slips for seven years, Respondent violated RPC 1.15B(a)(7).

39. By failing to reconcile his check register to the bank statements, and client ledger balances to the reconciled check register balance each month, Respondent violated RPC 1.15A(h)(6).

40. By disbursing, on behalf of clients, more funds from the trust account than those clients had on deposit in the account, Respondent violated RPC 1.15A(h)(8).

41. By failing to deposit advance fee deposits into his trust account, Respondent violated RPC 1.15A(c)(2).

42. By failing to respond to Disciplinary Counsel's requests for an explanation of the overdraft and by failing to answer written questions propounded by Disciplinary Counsel and by failing to produce documents under subpoena, as required by ELC 5.3(e), Respondent violated RPC 8.4(l).

43. By failing to deposit Mr. Dimmitt's advance fee into his trust account, Respondent violated RPC 1.15A(c)(2).

44. By failing to communicate with his client, Respondent violated RPC 1.4(a).

IV. PRIOR DISCIPLINE

45. On July 15, 2003, Respondent was reprimanded for a lack of diligence, failing to keep his client informed of the status of her matter, failing to deposit client funds into his trust account and failing to return unearned fees in a dissolution matter.

46. On November 19, 2004, Respondent was reprimanded for failing to abide by a client's decisions concerning the objectives of representation; failing to act with reasonable diligence and promptness in representing the client; failing to keep his client reasonably informed about the status of her matter and to promptly comply with reasonable requests for information; and failing to make reasonable efforts to expedite litigation consistent with the

interests of the client in a post-dissolution matter.

V. APPLICATION OF ABA STANDARDS

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

48. ABA Standard 4.1 applies to a lawyer's failure to handle client funds properly. It provides:

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.

49. Because Respondent previously received a reprimand for his failure to deposit client funds into his trust account, he knew or should have known that a failure to deposit his clients' advance fee payments into his trust account as described herein violated the Rules of Professional Conduct.

50. Respondent's failure to properly document transactions in his trust account was at least negligent.

51. Respondent's failure to put advance fees into his trust account and properly account for them caused actual harm to clients whose funds were unprotected and undocumented.

52. Respondent also injured clients whose funds were deposited into his trust account but were improperly invaded on behalf of other clients.

53. Respondent's misconduct caused potential injury to clients who might not be able to recover unearned fees because they were not deposited, accounted for, or maintained in a trust

account. His deficient recordkeeping also caused potential injury by diminishing public confidence in the legal profession.

54. The appropriate sanction under Standard 4.12 is suspension.

55. ABA Standard 7.0 applies to Respondent's failure to cooperate with a disciplinary investigation. It provides:

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

7.2 Suspension is generally appropriate when a lawyer knowingly 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.

7.3 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.

56. Respondent knowingly failed to cooperate with the investigation.

57. Respondent's non-cooperation caused actual and potential harm to the Office of Disciplinary Counsel in that it consumed limited resources and significantly increased investigation costs. In re Disciplinary Proceeding Against Poole, 164 Wn.2d. 710, 731, 193 P.3d 1064 (2008) ("Respondent was not entitled to ignore or avoid WSBA's requests for production of information that it could reasonably request," id. at 732; one year suspension imposed.).

58. The presumptive sanction under Standard 7.2 is suspension.

59. ABA Standard 4.4 is most applicable to Respondent's failure to communicate with his client, Mr. Dimmitt. It provides:

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.

60. Respondent's non-communication was negligent.

61. Mr. Dimmitt was actually harmed by Respondent's misconduct insofar as Respondent's failure to communicate left him unaware of the status of his case, the parenting plan governing Mr. Dimmitt's relationship with his child was out of date, he was no longer acting in conformance with it, and it needed to be modified to fit the current circumstances of the parties.

62. The presumptive sanction under Standard 4.43 is reprimand.

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

- a) prior disciplinary offenses;
- b) dishonest or selfish motive;
- c) a pattern of misconduct: (i) Respondent was disciplined twice for failure to keep his clients informed about the status of their matters, and he failed to do so in Mr. Dimmitt's case as well; and (ii) despite his previous discipline for failing to deposit advance fees into trust, the records he produced in this matter showed

that Respondent repeatedly failed to deposit into his trust account fees that the RPC required him to treat as advance fees;

d) multiple offenses; and

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

64. No mitigating factor enumerated in Standard 9.32 is applicable. However, Respondent's agreement to resolve this matter without the necessity of a hearing is a mitigating factor.

65. On balance, the predominance of aggravating factors warrants a suspension greater than the usual minimum of six months. See In re Disciplinary Proceeding Against Cohen, 140 Wn.2d 323, 339, 67 P.3d 1086 (2003).

VI. STIPULATED DISCIPLINE

66. The parties stipulate that Respondent will be suspended from the practice of law for nine months, to be followed by two years of probation after his reinstatement.

67. Reinstatement from suspension shall be conditioned upon Respondent's payment of costs as set forth below.

68. During the two-year probationary period following his reinstatement, Respondent shall comply with the requirements set forth in paragraphs 69 through 83.

69. All advance fees must be placed in a client trust account in compliance with RPC 1.15A unless the Respondent and the client have signed a written flat fee agreement that complies with RPC 1.5(f)(2), in which case the fee may be placed in a business account or personal account for which appropriate records are maintained.

70. Respondent shall carefully review and fully comply with RPC 1.15A and RPC

1.15B, and shall carefully review the Association's publication, "Managing Client Trust Accounts: Rules, Regulations, and Common Sense."

71. On a quarterly basis, Respondent shall provide the Association's audit staff with all trust account records for the time period to be reviewed by the Association's audit staff and disciplinary counsel for compliance with the RPC, as set forth in paragraphs 72 through 82.

72. Months 1 – 3. By no later than the 30th day of the fourth month after Respondent's reinstatement, Respondent shall provide the trust account records from the date of his reinstatement to the end of the third full month.

73. Months 4 – 6. By no later than the 30th day of the seventh month after Respondent's reinstatement, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month six.

74. Months 7 – 9. By no later than the 30th day of the tenth month after Respondent's reinstatement, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month nine.

75. Months 10 – 12. By no later than the 30th day of the thirteenth month after Respondent's reinstatement, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month twelve.

76. Months 13 – 15. By no later than the 30th day of the sixteenth month after Respondent's reinstatement, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month fifteen.

77. Months 16 – 18. By no later than the 30th day of the nineteenth month after Respondent's reinstatement, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month eighteen.

78. Months 19 – 21. By no later than the 30th day of the twenty-second month after Respondent's reinstatement, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month twenty-one.

79. The trust account records Respondent provides to the Association 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. On the same quarterly time schedule set forth in paragraphs 70 through 78, Respondent will provide the Association's Audit Manager or designee with copies of any and all fee agreements entered into within the time period at issue.

80. The Association's Audit Manager or designee may request additional financial or client records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B. Within twenty days of a request from the Association's Audit Manager or designee for additional records needed to verify Respondent's compliance with RPC 1.15A and/or RPC 1.15B, Respondent will provide the Association's Audit Manager or designee the additional records requested.

81. The Association's Audit Manager or designee will review Respondent's trust account records for each period.

82. Respondent will comply with any recommendations made by the Association's

Audit Manager or designee.

83. Respondent will reimburse the Washington State Bar Association for time spent by the Association's Audit Manager or designee in reviewing and reporting on Respondent's records to determine his compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour. Respondent will make payment within thirty days of each written invoice setting forth the auditor's time and payment due.

VII. RESTITUTION

84. An order of restitution is not warranted in this matter.

VIII. COSTS AND EXPENSES

85. In light of Respondent's willingness to resolve this matter by stipulation without the necessity of a hearing, 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 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from suspension is conditioned on payment of costs.

IX. VOLUNTARY AGREEMENT

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

X. LIMITATIONS

87. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the

expenditure of additional resources by the Respondent and the Association. Both the Respondent lawyer and the Association acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

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

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

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

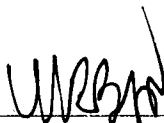
91. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will be followed by the disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement of Lawyer Conduct will be made.

92. To allow Respondent to wind down his practice in a predictable and orderly fashion, the parties agree to jointly ask the Supreme Court to start the suspension no earlier than July 1,

2013.


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

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



William Robert Brendgard, Bar No. 21254
Respondent

Dated: 4/2/13



Natalea Skvir, Bar No. 34335
Disciplinary Counsel

Dated: 4/3/13