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FILED

MAY 14 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SCOTT R. PETERSON,
Lawyer (Bar No. 22923).

Proceeding No. 12#00054

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel Debra Slater, Respondent lawyer Scott R. Peterson, and Respondent's counsel Stephen Smith.

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

1 | avoid the risk, time, and expense attendant to further proceedings.

2 | **I. ADMISSION TO PRACTICE**

3 | 1. Respondent was admitted to practice law in the State of Washington on November 2,
4 | 1993.

5 | **II. STIPULATED FACTS**

6 | 2. Respondent represented Tye Barringer in an unlawful detainer action that was
7 | brought by Mr. Barringer's landlord, James Row, in Snohomish County Superior Court, case
8 | No. 08-2-01799-9. Lawyer Evan Loeffler represented Mr. Row.

9 | 3. On January 14, 2008, the court entered an order of default, judgment, and order for
10 | writ of restitution in favor of Mr. Row. The judgment included \$49 for process server fees.
11 | Because the process server had not registered with the county auditor, as required by RCW
12 | 18.180.010 *et seq*, Mr. Row was not entitled to collect service of process costs.

13 | 4. Respondent filed a motion to set aside the default judgment.

14 | 5. At a May 8, 2008, hearing before Commissioner Brudvik, Respondent stated that
15 | he had personally delivered his reply to Mr. Loeffler's office the day before the hearing.

16 | 6. In fact, Respondent had not personally delivered the documents to Mr. Loeffler's
17 | office. His statement to Commissioner Brudvik that he had done so was false. Respondent
18 | subsequently admitted, in person and in an email to Mr. Loeffler, that he had made a false
19 | statement to Commissioner Brudvik.

20 | 7. Respondent's motion to set aside the default was denied and Mr. Row was
21 | awarded \$1,802.50 in attorney fees.

22 | 8. When Respondent told Mr. Loeffler that Mr. Row was not entitled to recover the
23 | process server fee, Mr. Loeffler agreed to reduce the judgment by the amount of the process
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1 server fee.

2 9. Nevertheless, on January 14, 2009, Respondent sued Mr. Loeffler personally in
3 United States District Court for the Western District of Washington.

4 10. The class action lawsuit alleged Fair Debt Collection Practices Act and Consumer
5 Protection Act violations., based primarily on the \$49 process server charge.

6 11. In June 2009, the court dismissed the lawsuit, stating that plaintiff's federal court
7 lawsuit was an attempt to re-litigate the state court case.

8 12. On July 6, 2009, Respondent filed a second motion in state court to set aside the
9 default judgment, offering no explanation for the delay. The court found that the motion was
10 clearly time barred by CR 60(b)(1).

11 13. The Court also found that Respondent's motion was frivolous, and awarded Mr.
12 Row attorney fees.

13 14. Respondent appealed. The Court of Appeals awarded Mr. Loeffler \$8,163.64 in
14 attorney fees and \$281.18 in costs for Respondent's frivolous appeal.

15 15. On September 18, 2009, Respondent filed another lawsuit against Mr. Loeffler in
16 Snohomish County Superior Court, Dalquist v. Estate of Williams, et al, on behalf of his client,
17 Martin Moore, against whom a default judgment had been entered in an unlawful detainer
18 action.

19 16. Respondent filed the Dalquist matter as a class action lawsuit, again challenging
20 the process server fee.

21 17. Class action certification was never sought.

22 18. Respondent had no basis in fact or law for making Mr. Loeffler a party.

23 19. On March 16, 2010, the Court granted summary judgment for Mr. Loeffler and
24

1 found Respondent's complaint was devoid of merit and frivolous.

2 20. The Court imposed CR 11 sanctions against Respondent and awarded Mr. Loeffler
3 attorney fees and costs in the amount of \$8,875.85.

4 21. The \$8,875.85 was to be paid to Mr. Loeffler within 30 days of the date the order
5 was entered. Respondent did not pay Mr. Loeffler within 30 days, but later paid Mr. Loeffler as
6 ordered.

7 22. On April 15, 2010, Respondent filed an appeal of the trial court decision in the
8 Dalquist case. On January 25, 2011, Respondent filed a Motion to Dismiss the appeal, which
9 the court granted.

10 III. STIPULATION TO MISCONDUCT

11 23. By making a statement to Commissioner Brudvik that was not true, Respondent
12 violated RPC 8.4(c) (misrepresentation).

13 24. By filing one or more frivolous lawsuits or motions, Respondent violated RPC 3.1
14 and RPC 8.4(d).

15 IV. PRIOR DISCIPLINE

16 25. Respondent has no prior discipline.

17 V. APPLICATION OF ABA STANDARDS

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

20 27. ABA Standard 6.12 applies to Respondent's violation of RPC 8.4(c):

21 6.12 **Suspension** is generally appropriate when a lawyer knows that
22 false statements or documents are being submitted to the court or that
23 material information is improperly being withheld, and takes no remedial
24 action, and causes injury or potential injury to a party to the legal
proceeding, or causes an adverse or potentially adverse effect on the legal
proceeding.

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2 28. Respondent should have known that the statement he made to Commissioner
3 Brudvik that he had personally delivered the documents to Mr. Loeffler was not true. There
4 was injury to Mr. Loeffler as the court relied on Respondent's statement that Mr. Loeffler had
5 received the documents and went forward with the hearing. Mr. Loeffler was injured in that he
6 did not have the opportunity to review the documents before the hearing and was therefore at a
7 disadvantage at the hearing.

8 29. The presumptive sanction is suspension.

9 30. ABA Standard 6.2 applies to Respondent's violation of RPC 3.1 and RPC 8.4(d).

10 6.22 **Suspension** is generally appropriate when a lawyer knows that he or she
11 is violating a court order or rule, and causes injury or potential injury to a
12 client or a party, or causes interference or potential interference with a
13 legal proceeding.

14 31. Respondent knew that the motions he filed to vacate the default judgments and the
15 lawsuits he filed against Mr. Loeffler had no basis in law or fact and were frivolous. These
16 frivolous proceedings consumed court time and interfered with the legal system. There was also
17 serious injury to Mr. Row, Mr. Loeffler's client, as he had to pay Mr. Loeffler to appear and
18 defend him at the hearings. Mr. Loeffler was also injured in that he had to hire a lawyer to
19 represent him in the frivolous lawsuits that were filed against him by Respondent.

20 32. The presumptive sanction is suspension.

21 33. The following aggravating factors apply under ABA Standards Section 9.22:

22 (d) multiple offenses;
23 (i) substantial experience in the practice of law [Respondent was
24 admitted to practice in Washington in 1993].

25 34. The following mitigating factor applies under ABA Standards Section 9.32:

(a) absence of a prior disciplinary record.

1 35. On balance, the aggravating and mitigating do not require a departure from the
2 presumptive sanction.

3 **VI. STIPULATED DISCIPLINE**

4 36. The parties stipulate to an 18 month suspension.

5 **VII. RESTITUTION**

6 37. An order of restitution is not appropriate in this case.

7 **VIII. COSTS AND EXPENSES**

8 38. In light of Respondent's willingness to resolve this matter by stipulation at an early
9 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of
10 \$1,083.45 in accordance with ELC 13.9(i). The Association will seek a money judgment under
11 ELC13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

12 39. Respondent's reinstatement from suspension is conditioned on payment in full of
13 costs and expenses in the amount of \$1,083.45.

14 **IX. VOLUNTARY AGREEMENT**

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

20 **X. LIMITATIONS**

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

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

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

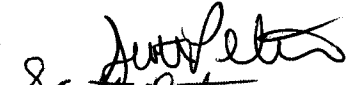
13 44. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
14 Board shall have available to it for consideration all documents that the parties agree to submit
15 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
16 form the record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

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

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

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

5 
6 Scott Peterson

Dated: March 13, 2013

7 Scott R. Peterson, Bar No. 22923
8 Respondent

9 _____ Dated: _____
10 Stephen Smith, Bar No. 15414
11 Counsel for Respondent

12 _____ Dated: _____
13 Debra Slater, Bar No. 18346
14 Disciplinary Counsel