

**FILED**

DEC 09 2013

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**ALEXANDER WILLIAM GAMBREL,**

Lawyer (Bar No. 24018).

Proceeding No. 13#00019

STIPULATION TO ONE YEAR  
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 and Respondent lawyer Alexander William Gambrel.

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 4,

*DM*

1 1994. Respondent is currently suspended, as further described in paragraph 20.

2 **II. STIPULATED FACTS**

3 2. George McKeon and Respondent have had a close, personal relationship for many  
4 years that predates the events described in this Stipulation.

5 3. In 2005, McKeon sold his house. As part of the sale, he took a promissory note  
6 secured by a deed of trust on the property. The buyer defaulted on the note and McKeon hired  
7 Respondent to collect the money he was owed.

8 4. In August 2005, the parties reached a settlement of the case.

9 5. In October 2005, the buyer paid McKeon \$56,000 in settlement. McKeon asked  
10 Respondent to hold the funds in his IOLTA account for him. McKeon was living in subsidized  
11 housing and did not want to hold the funds as it would increase his rent.

12 6. Respondent agreed and deposited the funds into his IOLTA account.

13 7. Respondent continued to represent McKeon on several unrelated matters and had an  
14 ongoing attorney-client relationship with McKeon.

15 8. On October 11, 2005, Respondent withdrew \$3,000 from the McKeon funds on  
16 deposit in his IOLTA account as payment of fees Respondent had earned doing work for  
17 McKeon.

18 9. During October 2005, McKeon discussed with Respondent whether Respondent  
19 would be interested in borrowing money from him from the remaining McKeon funds on  
20 deposit in Respondent's IOLTA account.

21 10. Respondent agreed to the loans and agreed to pay McKeon 12% interest.

22 11. McKeon is knowledgeable about investments and agreed to the loan because 12%  
23 interest was a greater return on the money than he could get anywhere else.

1 12. Respondent and McKeon had been friends for many years. Respondent had  
2 generally discussed his financial situation with McKeon, and McKeon was generally aware of  
3 Respondent's financial situation. McKeon was not aware of the extent of Respondent's  
4 financial straits or the degree of risk that he might not be repaid.

5 13. Respondent read former Rule of Professional Conduct 1.8 to McKeon which relates  
6 to business transactions between a lawyer and client. However, Respondent did not give  
7 McKeon a reasonable opportunity to seek the advice of independent counsel in the transaction.<sup>1</sup>

8 14. Respondent executed a promissory note for \$5,000 plus 12% interest and delivered  
9 the note to McKeon. The note was due on October 19, 2006 and was unsecured.

10 15. Respondent withdrew \$5,000 from McKeon's funds on deposit in Respondent's  
11 IOLTA account.

12 16. Between October 2005 and May 2006, McKeon agreed to lend Respondent an  
13 additional \$20,000. In each case, Respondent executed promissory notes bearing interest at the  
14 rate of 12% per year. In each case, the loans were unsecured.

15 17. In August 2007, Respondent was injured in an automobile accident in which he was  
16 a passenger. The accident aggravated a prior injury. As a result, Respondent was not able to  
17 work.

18 18. Just prior to the accident, Respondent had entered into a three year lease for law  
19 office space and had taken on other financial obligations..

20 \_\_\_\_\_  
21 <sup>1</sup> Unlike the current version of RPC 1.8, the version of RPC 1.8 in effect at the time of the transaction did  
not require written consent to a conflict. It read as follows:

22 A lawyer who is representing a client in a matter (a) Shall not enter into a business transaction with a  
23 client...unless: (1) The transaction and terms on which the lawyer acquires the interest are fair and  
reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which  
24 can be reasonably understood by the client; (2) The client is given a reasonable opportunity to seek the  
advice of independent counsel in the transaction; and (3) The client consents thereto.

1 19. Because Respondent was not able to work, his financial situation deteriorated.

2 20. Respondent borrowed the following amounts:

3 Date of Note	Amount	Due Date
4 October 19, 2005	\$5,000	October 19, 2006
November 28, 2005	\$3,000	November 28, 2006
5 January 9, 2006	\$2,000	January 9, 2007
January 23, 2006	\$5,000	January 23, 2007
6 April 17, 2006	\$2,500	April 17, 2007
May 2006	\$7,500	May 2007
7 Total:	\$25,000	

8 21. Respondent has made the following payments to Mr. McKeon on the promissory

9 notes:

10 Date of Payment	Amount of Payment
11 June 16, 2006	\$ 800
12 October 25, 2006	\$2,000
February 1, 2007	\$ 500
13 April 20, 2007	\$ 300
August 21, 2007	\$ 300
14 November 28, 2007	\$ 300
April 16, 2008	\$ 400
15 June 23, 2008	\$ 400
16 Total Payments:	\$5,000

17 22. Respondent has not made a payment on any of the loans since June 23, 2008.

### 18 III. STIPULATION TO MISCONDUCT

19 23. By borrowing \$25,000 on an unsecured basis from McKeon and by not giving  
20 McKeon a reasonable opportunity to seek the advice of independent counsel in the transaction  
21 and not giving complete information on the financial risk McKeon was taking, Respondent  
22 violated former RPC 1.8(a).

1 **IV. PRIOR DISCIPLINE**

2 24. Respondent was suspended in June 2011 for two years for conduct involving failing  
3 to act diligently in a client matter, failing to communicate, failing to safeguard client property,  
4 withholding client funds, trust account irregularities, failing to expedite litigation, and failing to  
5 cooperate with a grievance investigation.

6 25. Respondent was suspended in June 2013 for six months for conduct involving failing  
7 to act diligently, failing to communicate, failing to expedite litigation, and failing to return his  
8 client's file.

9 **V. APPLICATION OF ABA STANDARDS**

10 26. The American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed.  
11 & Feb. 1992 Supp.) apply to this case. ABA Standards 4.32, a copy of which is attached, is  
12 most applicable to Respondent's conflict of interest, in violation of former RPC 1.8.

13 27. Respondent acted knowingly when he failed to give McKeon the opportunity to seek  
14 independent legal counsel before entering into the loan transactions with Respondent.

15 28. Respondent's conduct resulted in potential injury to Mr. McKeon as he was not  
16 given an opportunity to consult with a lawyer about the terms of the loans; specifically whether  
17 the loans should have been secured. Had the loans been secured, McKeon could have had  
18 additional sources of recovery when Respondent did not timely repay the loans.

19 29. The presumptive sanction is suspension.

20 30. The following aggravating factors apply under ABA Standards Section 9.22:

- 21 (a) prior disciplinary offenses [Respondent received a two year suspension in  
22 2011 and a six month suspension in June 2013];  
23 (c) a pattern of misconduct;  
24 (i) substantial experience in the practice of law [Respondent was licensed to  
practice law in Washington in 1994].

1 31. The following mitigating factors identified under ABA Standards Section 9.32  
2 apply:

- 3 (c) personal or emotional problems- [Respondent suffered serious injuries in  
4 two automobile accidents. As a result, he has had continuing  
5 complications that have affected his health and his overall functioning];  
6 (l) remorse.

7 32. An additional mitigating factor is Respondent's agreement to resolve this matter at  
8 an early stage of the proceedings.

9 33. On balance the aggravating factors outweigh the mitigating factors.

#### 10 VI. STIPULATED DISCIPLINE

11 34. The parties stipulate that Respondent shall receive a one year suspension for his  
12 conduct, which shall begin when his current suspension ends or when the Supreme Court  
13 approves this stipulation, whichever is later.

#### 14 VII. RESTITUTION

15 35. Respondent shall pay restitution to George McKeon in the amount of \$20,000, plus  
16 interest at the rate of 12% from the date Respondent received the funds. Respondent cannot be  
17 reinstated until he makes full restitution to McKeon.

#### 18 VIII. COSTS AND EXPENSES

19 36. Respondent shall pay costs and expenses of \$1,070 in accordance with ELC 13.9(i).  
20 The Association will seek a money judgment under ELC 13.9(1) if these costs and expenses are  
21 not paid within 30 days of approval of this stipulation. Respondent's reinstatement from  
22 suspension is conditioned on payment of costs.

#### 23 IX. VOLUNTARY AGREEMENT

24 37. 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

1 this Stipulation voluntarily, and that no promises or threats have been made by the Association,  
2 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except  
3 as provided herein.

#### 4 X. LIMITATIONS

5 38. This Stipulation is a compromise agreement intended to resolve this matter in  
6 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
7 expenditure of additional resources by the Respondent and the Association. Both the  
8 Respondent lawyer and the Association acknowledge that the result after further proceedings in  
9 this matter might differ from the result agreed to herein.

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

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


20 41. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
21 Board shall have available to it for consideration all documents that the parties agree to submit  
22 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
23 form the record before the Board for its review become public information on approval of the  
24

1 Stipulation by the Board, unless disclosure is restricted by order or rule of law. Under ELC  
2 3.1(b), all documents that form the record before the Hearing Officer for his or her review  
3 become public information on approval of the Stipulation by the Hearing Officer, unless  
4 disclosure is restricted by order or rule of law.

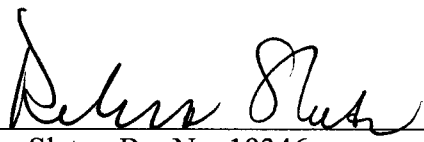
5 42. If this Stipulation is approved by the Hearing Officer, Disciplinary Board, and  
6 Supreme Court, it will be followed by the disciplinary action agreed to in this Stipulation. All  
7 notices required in the Rules for Enforcement of Lawyer Conduct will be made.

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

12  
13 WHEREFORE the undersigned being fully advised, adopt, and agree to this Stipulation  
14 to Discipline as set forth above.

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16 \_\_\_\_\_  
Alexander W. Gambrel, Bar No. 24018  
Respondent

15 Dated: 9/8/2013

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19 \_\_\_\_\_  
Debra Slater, Bar No. 18346  
Disciplinary Counsel

19 Dated: 9/23/13