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FILED

MAY 17 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

**NOURA SAMIRA ELISE
YUNKER,**

Lawyer (Bar No. 25835).

Proceeding No. 13# 00038

STIPULATION TO 60-DAY SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to 60-day Suspension is entered into by the Washington State Bar Association (Association), through disciplinary counsel Sachia Stonefeld Powell, Respondent lawyer Noura Samira Elise Yunker, and Respondent's counsel, Christopher Ray Hardman.

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct, and sanction in this case. Respondent further understands that she 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 her. Respondent chooses to resolve this proceeding

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

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on June 4,
5 1996.

6 **II. STIPULATED FACTS**

7 2. John Quaranta was involved in a business dispute with Randy Krantz and Dale
8 Martin, who owned DTI Sports, Inc. Mr. Quaranta sued DTI in small claims court and obtained
9 a \$3,500 award. DTI then filed an action against Mr. Quaranta in Pierce County Superior
10 Court. DTI Sports, Inc. v. John P. Quaranta, Pierce County Superior Court Civil Case 09-2-
11 11934-7.

12 3. In April 2010, John Quaranta hired Respondent to represent him in the Superior
13 Court action. Mr. Quaranta had been representing himself in the litigation and had filed an
14 answer and counterclaim.

15 4. On April 7, 2010, Mr. Quaranta signed a fee agreement with Respondent. The
16 agreement provided that Mr. Quaranta would pay for all costs incurred in the case and pay
17 Respondent a "retainer" of \$1,000 per month, earned upon receipt, to secure Respondent's
18 availability.

19 5. In addition, the agreement provided that Respondent would earn a contingent fee of
20 28% of any settlement before trial, or 33% of any settlement or judgment if the case were
21 resolved after going to trial.

1 6. Finally, the agreement provided that if Mr. Quaranta terminated the representation,
2 he would pay Respondent for her services performed prior to discharge at a rate of \$135 per
3 hour.

4 7. Mr. Quaranta paid Respondent at least \$6,250 for her retainer and costs.

5 8. Respondent placed the retainers, which were earned upon receipt pursuant to the fee
6 agreement, in her trust account before transferring them to a general account later on the same
7 day.

8 9. Although Mr. Quaranta had alleged breach of contract against Mr. Krantz and Mr.
9 Martin, Respondent did not know, and never determined, whether Mr. Quaranta's lease was
10 with DTI or with Mr. Krantz and/or Mr. Martin individually.

11 10. Respondent told Mr. Quaranta that she would amend the counterclaim, which had
12 listed only DTI as a party, to name Mr. Krantz and Mr. Martin as parties individually.
13 Respondent also told counsel for DTI, Robert Cohon, that she intended to amend the
14 counterclaim, and he made repeated requests that she do so.

15 11. Respondent never amended the counterclaim.

16 12. On August 12, 2010, Mr. Cohon sent a set of interrogatories to Respondent. On
17 September 23, 2010, Mr. Cohon filed a motion to compel Mr. Quaranta's response because he
18 had not received one. On September 29, 2010, Respondent transmitted the second set of
19 interrogatories to Mr. Quaranta for the first time. Mr. Quaranta provided his answers and
20 Respondent returned them to Mr. Cohon on October 13, 2010.

21 13. The Confirmation of Joinder of Parties, Claims, and Defenses was due on July 27,
22 2010. Under Pierce County Local Rule 19, Mr. Cohon was to file the Confirmation on behalf of
23 all parties. For two months, Mr. Cohon sought unsuccessfully to confer with Respondent
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1 regarding the Confirmation as required by the local rule. On November 12, 2010, Mr. Cohon
2 filed a Confirmation of Joinder without Respondent's input.

3 14. On November 12, 2010, Respondent filed her own Confirmation of Joinder. In it,
4 she informed the court that she planned to join two additional parties, Randy Krantz and Dale
5 Martin, to raise four new affirmative defenses, and to allege several new counterclaims, upon
6 the Court's approval.

7 15. On December 15, 2010, she informed the court that she had a "physiological
8 impediment that hampers [her] ability to respond within anticipated time limits, among other
9 things."

10 16. On that day, Respondent also told Mr. Cohon that she had "ADHD" and that it
11 "affects how [she] perceive[s] time and many other things."

12 17. On December 16, 2010, Respondent emailed her list to Mr. Cohon, two days after
13 the deadline set by the case schedule. Her hard copy arrived by mail on December 20, 2010.

14 18. On December 23, 2010, the court heard argument on Mr. Cohon's motion to strike
15 Respondent's Confirmation of Joinder. Respondent did not tell Mr. Quaranta about the
16 December 23 hearing, despite his request to be present at all hearings. At the hearing, Mr.
17 Cohon orally moved for the exclusion of the defendant's witnesses and exhibits due to the late
18 service.

19 19. On December 23, 2010 the court orally granted Mr. Cohon's motions, struck
20 Respondent's Confirmation of Joinder, excluded the defendant's witnesses and exhibits, and
21 took Mr. Cohon's fee request under advisement. The court did not issue a written order at that
22 time.

23 20. On January 7, 2011 the court issued a written order on the December 23rd hearing.
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1 The written order precluded Respondent from calling any witnesses or introducing any exhibits
2 at trial.

3 21. Respondent did not immediately tell Mr. Quaranta about the court's ruling.

4 22. January 15, 2011, three days prior to the January 18 trial date, Respondent told Mr.
5 Quaranta that his presence may not be required at the trial.

6 23. At the trial on January 18, 2011, Mr. Quaranta was not present. Respondent moved
7 for a short continuance, to allow Mr. Quaranta to finalize his affairs in Arizona and return for
8 the trial. The Court denied Respondent's motion. Even if he had been present, Respondent
9 could not prove her case with Mr. Quaranta's testimony as she intended because Mr. Quaranta
10 was among the excluded witnesses.

11 24. Respondent believed she could use the plaintiff's exhibits and witnesses to prove her
12 case. Respondent had intended to offer the deposition and small claims testimony of Mr.
13 Quaranta, Mr. Martin, and Mr. Krantz and the cross-examination testimony of Mr. Krantz and
14 Mr. Martin.

15 25. At trial, Mr. Cohon moved to dismiss the defendant's counterclaims with prejudice
16 and volunteered to withdraw the plaintiff's claims without prejudice.

17 26. The court found that the defense could not meet its burden of proof on the
18 counterclaims, citing the fact that the defense had no witnesses or evidence to prove its case.
19 Consequently, the court dismissed the plaintiff's case without prejudice and dismissed the
20 defendant's counterclaims with prejudice. The court also denied Respondent's motion for a
21 continuance.

22 27. After the dismissal, Respondent was prepared to file a motion for reconsideration of
23 the January 7 order. She communicated with Mr. Cohon regarding the motion and sent him a
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1 copy of the motion and a note for the motion docket. However, Respondent never filed or
2 argued her motion.

3 28. Respondent advised Mr. Quaranta to appeal the court's decision, but advised him to
4 hire another attorney to handle or consult on appellate issues.

5 29. On February 12, 2011, Mr. Quaranta terminated the representation.

6 30. In a February 15, 2011, email, Respondent explained to Mr. Quaranta that she had a
7 worsening medical condition that affected her reasoning, error-recognition, and memory
8 abilities. She acknowledged that the condition would reduce her ability to effectively serve her
9 clients, including Mr. Quaranta.

10 31. Mr. Quaranta subsequently demanded a refund of all the money he had paid. He
11 also requested a copy of his file. To date, he has not received a refund or a copy of his file.

12 III. STIPULATION TO MISCONDUCT

13 32. By failing to familiarize herself with the Pierce County Local Rules on Confirmation
14 of Joinder, failing to consult with Mr. Cohon regarding the filing of that document and
15 improperly filing her own, failing to ensure she had exhibits and witnesses to present at trial,
16 and erroneously believing she could put on a successful defense without evidence, Respondent
17 violated RPC 1.1.

18 33. By failing to timely send Mr. Quaranta the interrogatories, and failing to timely serve
19 her list of exhibits and witnesses, Respondent violated RPC 1.3.

20 34. By failing to timely inform Mr. Quaranta that his witnesses and exhibits had been
21 excluded, and failing to inform him of all hearings, Respondent violated RPC 1.4.

22 35. By failing to refund at least part of the fees paid by Mr. Quaranta, given that he was
23 denied the opportunity to present his case in court through no fault of his own, Respondent
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1 | violated RPC 1.5(a) and RPC 1.16(d).

2 | 36. By placing retainers, which were earned upon receipt and were not the property of
3 | the client, in her trust account, Respondent violated RPC 1.15A(h)(1).

4 | 37. By continuing to represent Mr. Quaranta while she suffered from a physiological
5 | condition that affected her reasoning, error-recognition, and memory abilities and inhibited her
6 | ability to effectively serve her clients, Respondent violated RPC 1.16(a)(2).

7 | **IV. PRIOR DISCIPLINE**

8 | 38. Respondent has no prior discipline.

9 | **V. APPLICATION OF ABA STANDARDS**

10 | 39. The following American Bar Association Standards for Imposing Lawyer Sanctions
11 | (1991 ed. & Feb. 1992 Supp.) apply to this case: Standards 4.1 (Failure to Preserve the Client's
12 | Property), Standards 4.4 (Lack of Diligence), Standards 4.5 (Lack of Competence), Standards
13 | 7.0 (Violation of Duties Owed as a Professional). Complete copies of the applicable Standards
14 | are attached to this Stipulation as an Appendix.

15 | 40. Respondent acted at least negligently when she failed to act competently, failed to
16 | act diligently, failed to communicate and failed to withdraw. Respondent knew or should have
17 | known she was improperly placing her property in her trust account. She acted knowingly in
18 | not refunding any of Mr. Quaranta's fee.

19 | 41. Respondent caused actual injury to Mr. Quaranta, who was denied his day in court
20 | because of Respondent's conduct.

21 | 42. The presumptive sanction for the misconduct identified in ¶¶ 35-36 is suspension
22 | under ABA Standards Section 4.12.

23 | 43. The presumptive sanction for the misconduct identified in ¶¶ 33-34 is a reprimand
24 |

1 under ABA Standards Section 4.43.

2 44. The presumptive sanction for the misconduct identified in ¶ 32 is a reprimand under
3 ABA Standards Section 4.53.

4 45. The presumptive sanction for the misconduct identified in ¶ 37 is a reprimand under
5 ABA Standards Section 7.3.

6 46. Where there are multiple ethical violations, the “ultimate sanction imposed should at
7 least be consistent with the sanction for the most serious instance of misconduct among a
8 number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854,
9 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

10 47. The following aggravating factors apply under ABA Standards Section 9.22:

- 11 (d) multiple offenses; and
12 (i) substantial experience in the practice of law [admitted 1996].

13 48. The following mitigating factors apply under ABA Standards Section 9.32:

- 14 (a) absence of a prior disciplinary record;
15 (b) absence of a dishonest or selfish motive;
16 (c) personal and emotional problems;
17 (e) full and free disclosure to disciplinary board or cooperative attitude toward
18 proceedings; and
19 (l) remorse.

20 49. It is an additional mitigating factor that Respondent has agreed to resolve this matter
21 at an early stage of the proceedings.

22 50. On balance the aggravating and mitigating do not require a departure from the
23 presumptive sanction, but warrant a suspension less than six months. See, In re Disciplinary
24 Proceeding of Halverson, 140 Wn.2d 475, 998 P.2d 833 (2000).

VI. STIPULATED DISCIPLINE

51. Respondent shall receive a 60-day suspension.

1 52. Reinstatement shall be conditioned on the payment of costs (Section VIII below),
2 and the completion of a fitness-to-practice evaluation, as described in Section IX below and a
3 finding that Respondent is fit to practice law.

4 53. Following the 60-day suspension, Respondent shall be placed on probation for two
5 years, subject to the conditions listed in Section IX below. Successful completion of the two
6 year probation shall be conditioned on the payment of restitution, and compliance with the
7 conditions of probation as set forth herein.

8 **VII. RESTITUTION**

9 54. Respondent shall pay restitution in the amount of \$6,250 to Mr. Quaranta at the rate
10 of \$250. per month until payment is made in full, consistent with the terms of probation.

11 **VIII. COSTS AND EXPENSES**

12 55. Respondent shall pay attorney fees and administrative costs of \$500 in accordance
13 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
14 costs are not paid within 30 days of approval of this stipulation.

15 **IX. PROBATION**

16 56. The parties stipulate that Respondent shall be suspended from the practice of law
17 for 60 days.

18 57. Before Respondent is eligible for reinstatement she shall, at least 30 days prior to a
19 request for reinstatement, undergo an independent examination by a licensed clinical
20 psychologist or psychiatrist to be approved by disciplinary counsel. Respondent shall execute
21 all the necessary releases to permit this evaluator to obtain all necessary treatment records and
22 make a report to disciplinary counsel addressing the following issues:
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- 1 • Whether Respondent has recovered from any issues identified by the evaluator as
- 2 influencing Respondent's performance as a lawyer;
- 3 • Whether Respondent's condition has been sufficiently stabilized such that she is
- 4 currently fit to practice law.
- 5 • If the evaluator concludes that Respondent is not currently fit to practice law, the
- 6 report shall recommend a course of treatment necessary to enable Respondent to
- 7 return to the practice of law.

8 58. Respondent agrees to execute any necessary releases to allow disciplinary counsel
9 and the evaluator full access to all health and treatment records and reports.

10 59. If the evaluator concludes that Respondent is not currently fit to practice law,
11 Respondent (or Respondent's counsel, if Respondent is then represented) and disciplinary
12 counsel shall meet to discuss the evaluator's report and what steps can be taken to address the
13 evaluator's concerns. If Respondent and disciplinary counsel cannot reach an agreement, both
14 parties shall present written materials and arguments to the Disciplinary Board. The
15 Disciplinary Board shall decide whether and the conditions under which Respondent shall
16 return to the active practice of law.

17 60. Following her reinstatement to the active practice of law, Respondent shall be on
18 probation under ELC 13.8 for a period of two years. During that period she shall obtain
19 treatment from a mental health treatment provider who shall be approved by the Association,
20 and shall comply with any treatment recommendations from that treatment provider and arising
21 out of the evaluation process described in ¶ 58, above.

22 61. The approved mental health treatment provider shall provide quarterly status reports
23 to the Association during the two-year probationary period.


1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved
4 Stipulation.

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

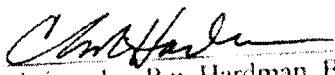
10 69. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
11 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
12 Rules for Enforcement of Lawyer Conduct will be made.

13 70. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
14 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
15 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
16 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 Noura Samira Eltse Yunker, Bar No. 25835
5 Respondent

Dated: March 28, 2013

6 
7 Christopher Ray Hardman, Bar No. 21237
8 Counsel for Respondent

Dated: MARCH 28, 2013

9 
10 Sachia Stonefeld Powell, Bar No. 21166
11 Disciplinary Counsel

Dated: 3/29/13

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1 Appendix

2 **4.1 Failure to Preserve the Client's Property**

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

6 4.11 **Disbarment** is generally appropriate when a lawyer knowingly converts
7 client property and causes injury or potential injury to a client.

8 4.12 **Suspension** is generally appropriate when a lawyer knows or should know
9 that he is dealing improperly with client property and causes injury or
10 potential injury to a client.

11 4.13 **Reprimand** is generally appropriate when a lawyer is negligent in dealing
12 with client property and causes injury or potential injury to a client.

13 4.14 **Admonition** is generally appropriate when a lawyer is negligent in dealing
14 with client property and causes little or no actual or potential injury to a
15 client.

16 **4.4 Lack of Diligence**

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

21 4.41 **Disbarment** is generally appropriate when:

22 (a) a lawyer abandons the practice and causes serious or potentially
23 serious injury to 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.

4.5 Lack of Competence

 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 failure to provide competent representation to a client:

- 1 4.51 **Disbarment** is generally appropriate when a lawyer's course of conduct
2 demonstrates that the lawyer does not understand the most fundamental
3 legal doctrines or procedures, and the lawyer's conduct causes injury or
4 potential injury to a client.
- 5 4.52 **Suspension** is generally appropriate when a lawyer engages in an area of
6 practice in which the lawyer knows he or she is not competent, and causes
7 injury or potential injury to a client.
- 8 4.53 **Reprimand** is generally appropriate when a lawyer:
9 (a) demonstrates failure to understand relevant legal doctrines or
10 procedures and causes injury or potential injury to a client; or
11 (b) is negligent in determining whether he or she is competent to handle a
12 legal matter and causes injury or potential injury to a client.
- 13 4.54 **Admonition** is generally appropriate when a lawyer engages in an isolated
14 instance of negligence in determining whether he or she is competent to
15 handle a legal matter, and causes little or no actual or potential injury to a
16 client.

17 **7.0 Violations of Duties Owed as a Professional**

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

- 25 7.1 **Disbarment** is generally appropriate when a lawyer knowingly engages in
26 conduct that is a violation of a duty owed as a professional with the intent
27 to obtain a benefit for the lawyer or another, and causes serious or
28 potentially serious injury to a client, the public, or the legal system.
- 29 7.2 **Suspension** is generally appropriate when a lawyer knowingly engages in
30 conduct that is a violation of a duty owed as a professional and causes
31 injury or potential injury to a client, the public, or the legal system.
- 32 7.3 **Reprimand** is generally appropriate when a lawyer negligently engages in
33 conduct that is a violation of a duty owed as a professional and causes
34 injury or potential injury to a client, the public, or the legal system.
- 35 7.4 **Admonition** is generally appropriate when a lawyer engages in an isolated
36 instance of negligence that is a violation of a duty owed as a professional,
37 and causes little or no actual or potential injury to a client, the public, or
38 the legal system.