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AUG 01 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MICHAEL J. DAVIS,

Lawyer (Bar No. 25846).

Proceeding No. 13#00002

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 Randy Beitel, and Respondent lawyer Michael J. Davis, pro se.

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.

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on June 11,
3 1996.

4 **II. STIPULATED FACTS**

5 2. On September 1, 2009, the Disciplinary Board entered an order approving Re-
6 spondent's stipulation to two reprimands in Proceeding No. 09#00042. As provided by the
7 stipulation, the Disciplinary Board also ordered Respondent placed on a period of probation un-
8 der ELC 13.8 from September 1, 2009 to September 1, 2011.

9 *Failure to Timely Submit Records for Review.*

10 3. As a term of the probation, Respondent was required to fully cooperate with re-
11 examinations of his trust account records by submitting his trust account records to the WSBA
12 auditor at six-months intervals.

13 4. Respondent was required to submit his trust account records for the first six-month
14 period of probation, from September 1, 2009 through February 28, 2010, to the WSBA auditor
15 by March 31, 2010. Respondent did not submit to the WSBA auditor his trust account records
16 for the September 1, 2009 through February 28, 2010 period until on or about June 9, 2010.

17 5. Respondent was required to submit his trust account records for the second six-
18 month period of probation, from March 1, 2010 through August 31, 2010, to the WSBA auditor
19 by September 30, 2010. Respondent did not submit to the WSBA auditor his trust account rec-
20 ords for the March 1, 2010 through August 31, 2010 period until on or about October 5, 2011.

21 6. Respondent was required to submit his trust account records for the third six-month
22 period of probation, from September 1, 2010 through February 28, 2011, to the WSBA auditor
23 by March 31, 2011. Respondent did not submit to the WSBA auditor his trust account records
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1 for the September 1, 2010 through February 28, 2011 period until on or about October 5, 2011.

2 7. Respondent was required to submit his trust account records for the final six-month
3 period of probation, from March 1, 2011 through August 30, 2011, to the WSBA auditor by
4 September 30, 2011. Respondent did not submit to the WSBA auditor his trust account records
5 for the March 1, 2011 through July 31, 2011 period until on or about October 5, 2011. Re-
6 spondent did not submit to the WSBA auditor his trust account records for the month of August,
7 2011, until on or about January 14, 2012.

8 ***Failure to Maintain Adequate Records.***

9 8. As a term of his probation, during the period of September 1, 2009 to September 1,
10 2011, Respondent was required to maintain, on a contemporaneous basis, a trust account check
11 register and client ledgers showing all deposits and disbursements, identified by client.

12 9. From September 1, 2009 to July 2011, Respondent did not maintain on a contempo-
13 raneous basis a trust account check register and client ledgers showing all deposits and dis-
14 bursements, identified by client.

15 10. During the period of September 1, 2009 to September 1, 2011, Respondent made
16 disbursements from his trust account totaling \$4,725.45 without identifying in any trust account
17 records the client on whose behalf the disbursements were made.

18 ***Failure to Timely Remove Earned Fees From Trust Account.***

19 11. As a term of his probation, during the period of September 1, 2009 to September 1,
20 2011, Respondent was required to fully comply with RPC 1.15A and RPC 1.15B. This included
21 RPC 1.15A(h)(1) requiring Respondent to remove from his trust account funds belonging to Re-
22 spondent at the earliest reasonable time.

23 12. During the period of September 1, 2009 to September 1, 2011, Respondent failed to
24

1 remove from his trust account his earned fees at the earliest reasonable time. As of the August
2 31, 2011 end of the probation period, Respondent was holding in excess of \$60,000 in his trust
3 account that had been placed in trust more than a year prior to that point, a substantial portion of
4 which were earned fees.

5 ***Failure to Identify Ownership of Funds in Trust Account.***

6 13. As a term of his probation, Respondent was required to review the ownership of all
7 funds on deposit in his trust account as of September 1, 2009, and by no later than February 28,
8 2010, was required to have disbursed those funds of which the ownership could be identified,
9 and to have disposed of any funds whose ownership could not be identified under the proce-
10 dures of the Uniform Unclaimed Properties Act, RCW 63.29.

11 14. As of September 1, 2009, Respondent's trust account included \$2,110.67 of which
12 the ownership had not been identified. As of the September 1, 2011 end of the probation peri-
13 od, those same \$2,110.67 of unidentified funds still remained in Respondent's account. Re-
14 spondent neither identified the ownership of those funds nor disposed of the funds under RCW
15 63.29 during the September 1, 2009 through September 1, 2011 probation period.

16 ***Failure to Pay or Deliver Client/Third Party Funds.***

17 15. As a term of his probation, during the period of September 1, 2009 to September 1,
18 2011, Respondent was required to fully comply with RPC 1.15A and RPC 1.15B. This included
19 RPC 1.15A(f) requiring that Respondent promptly pay or deliver to the client or third person the
20 funds to which the client or third person is entitled.

21 16. Checks drawn on Respondent's trust account totaling \$720.47 have been outstand-
22 ing since October 7, 2010. Respondent has made no attempt to contact the payees to determine
23 whether the checks should be reissued, or whether the funds should be treated as unclaimed
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1 | property under RCW 63.29.

2 | ***Failure to Perform Monthly Reconciliations.***

3 | 17. As a term of his probation, during the period of September 1, 2009, to September 1,
4 | 2011, Respondent was required on a contemporaneous monthly basis to reconcile his trust ac-
5 | count check register to the bank statement, and to then reconcile the reconciled bank balance to
6 | the sum of the client ledgers. Respondent prepared no monthly reconciliations prior to July
7 | 2011.

8 | **III. STIPULATION TO MISCONDUCT**

9 | 18. By failing to make his trust account records available for review by the WSBA au-
10 | ditor as required by the terms of his probation, Respondent violated RPC 8.4(l) by violating
11 | ELC 13.8(b) and ELC 1.5.

12 | 19. By failing to maintain a trust account check register on a contemporaneous basis
13 | showing all deposits and disbursements identified by client, as required by the terms of his pro-
14 | bation, Respondent violated RPC 8.4(l) by violating ELC 13.8(b) and ELC 1.5, and/or violated
15 | RPC 1.15A(h)(2) by violating RPC 1.15B(a)(1).

16 | 20. By failing to maintain trust account client ledgers on a contemporaneous basis show-
17 | ing all deposits and disbursements, as required by the terms of his probation, Respondent violat-
18 | ed RPC 8.4(l) by violating ELC 13.8(b) and ELC 1.5, and/or violated RPC 1.15A(h)(2) by vio-
19 | lating RPC 1.15B(a)(2).

20 | 21. By failing to remove his own funds from this trust account at the earliest reasonable
21 | time, as required by the terms of his probation, Respondent violated RPC 8.4(l) by violating
22 | ELC 13.8(b) and ELC 1.5, and/or violated RPC 1.15A(h)(1)(ii).

1 22. By failing to identify the ownership of all funds in his trust account and disburse
2 those funds that could be identified by client and dispose of unidentified funds in his trust ac-
3 count under RCW 63.29, as required by the terms of his probation, Respondent violated RPC
4 8.4(l) by violating ELC 13.8(b) and ELC 1.5, and/or violated RPC 1.15A(f).

5 23. By failing to take action when checks on his trust account were not presented for
6 payment, as required by the terms of his probation, Respondent violated RPC 8.4(l) by violating
7 ELC 13.8(b) and ELC 1.5, and/or violated RPC 1.15A(f).

8 24. By failing to prepare contemporaneous monthly reconciliations of his trust account
9 records, as required by the terms of his probation, Respondent violated RPC 8.4(l) by violating
10 ELC 13.8(b) and ELC 1.5, and/or violated RPC 1.15A(h)(6).

11 **IV. PRIOR DISCIPLINE**

12 25. Respondent received an admonition in 2008 for failing to return a client file. Re-
13 spondent received two reprimands and was placed on probation for two years in 2009 for failing
14 to comply with his duties as to the his trust account practices and records. Respondent received
15 a reprimand in 2012 for conduct in 2010 related to lack of diligence and failure communicate
16 with a client.

17 **V. APPLICATION OF ABA STANDARDS**

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

20 8.0 Prior Discipline Orders

21 8.1 Disbarment is generally appropriate when a lawyer:

22 (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

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

1 8.2 Suspension is generally appropriate when a lawyer has been reprimanded for
2 the same or similar misconduct and engages in further similar acts of mis-
conduct that cause injury or potential injury to a client, the public, the legal
system, or the profession.

3 8.3 Reprimand is generally appropriate when a lawyer:

4 (a) negligently violates the terms of a prior disciplinary order and such vio-
lation causes injury or potential injury to a client, the public, the legal sys-
tem, or the profession; or

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

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

9 27. Respondent was previously reprimanded for the same misconduct that Respondent
10 failed to correct as ordered to do during the period of probation. There is injury to the legal sys-
tem and the profession in that the prior probation conditions failed to bring Respondent's con-
11 duct up to the standard necessary to properly safeguard client funds. The presumptive sanction
12 is a suspension under Standard 8.2.

13 28. The following aggravating factors apply under ABA Standards § 9.22:

14 (a) prior disciplinary offenses (see paragraph 25 above);

15 (c) a pattern of misconduct;

16 (d) multiple offenses; and

17 (i) substantial experience in the practice of law [admitted in 1996].

18 29. The following mitigating factors apply under ABA Standards § 9.32:

19 (b) absence of a dishonest or selfish motive;

20 (c) personal or emotional problems (Respondent was dealing with providing care
21 for a seriously ill relative during part of the probation period); and

22 (f) remorse.
23
24

1 30. It is an additional mitigating factor that Respondent has agreed to resolve this matter
2 at an early stage of the proceedings.

3 31. Based on the factors set forth above, the presumptive sanction of a six-month sus-
4 pension should be mitigated to a four-month suspension.

5 VI. STIPULATED DISCIPLINE

6 32. The parties stipulate that Respondent will receive a four-month suspension.

7 33. As a condition of reinstatement from suspension, Respondent shall complete the
8 following steps to determine whether any funds are owed to clients, third parties or himself:

9 • Respondent shall reconstruct¹ his trust account records for the time period of
10 September 1, 2009 to September 1, 2011 in compliance with the requirements of RPC 1.15A
11 and RPC 1.15B, using all available client records and financial records to assist in the identifica-
12 tion of funds received and disbursed. Respondent shall do so at his own expense. Respondent
13 shall not be eligible for a certification of completion of specific conditions of suspension under
14 ELC 13.3(b)(1)(B) unless Respondent provides the complete reconstructed trust-account rec-
15 ords to the Association at least 30 days prior to seeking certification of completion. Respondent
16 shall promptly provide additional records and information to the Association if requested to fa-
17 cilitate the Association's assessment of the completeness and accuracy of the reconstruction.²

18
19
20 ¹ "Reconstruction" involves the preparation, for all funds put into and removed from the trust account,
21 of complete and accurate client ledgers, check register, reconciliations between the check register bal-
ances and the balances of the bank statements, and reconciliations between the check register balances
and the combined total of all the client ledger balances.

22 ² Respondent acknowledges and agrees that if information in reconstructed trust account records or in
23 other information or records provided to the Association under paragraph 33 reveals any acts of miscon-
duct not specifically identified in this Stipulation, the Association may investigate and/or prosecute such
24 additional misconduct to the extent otherwise authorized by the ELC.

1 • The reconstruction may, or may not, reveal that one or more clients have not re-
2 ceived all funds to which they are entitled. If the reconstructed trust-account records for the
3 time period of September 1, 2009 to September 1, 2011 indicate that any client is owed funds,
4 then Respondent shall provide each client, in writing, with a complete updated accounting of his
5 receipt and disbursement of their funds and promptly disburse to the client or third party any
6 funds to which they are entitled. The accounting shall identify the source, date and amount of
7 all funds received, and the recipient, purpose, date and amount of all funds disbursed. Respond-
8 ent shall not be eligible for a certification of completion of specific conditions of suspension
9 under ELC 13.3(b)(1)(B) unless Respondent provides the Association with proof that he has
10 done so, and with copies of the accountings, and any disbursements of funds at least 30 days
11 prior to seeking certification of completion.

12 • Respondent will promptly remove from his trust account any funds identified by
13 the reconstructed trust account records for the period of September 1, 2009 to September 1,
14 2011 as being his earned fees or reimbursements for advanced costs, and resolve the status of
15 any outstanding checks.

16 • As to the \$2,110.67 which is referenced in paragraph 14 above, Respondent will
17 not be eligible for certification of completion of specific conditions of suspension under ELC
18 13.3(b)(1)(B) unless Respondent provides proof that he has either identified the ownership of
19 the funds and disbursed the funds to the identified owners or has submitted the funds to the
20 State of Washington under the Uniform Unclaimed Property Act, RCW 63.29.

21 34. Reinstatement is to be followed by a two-year period of probation under ELC 13.8
22 during which there will be periodic reviews of Respondent's trust account practices, with Re-
23 spondent to comply with the specific probation terms set forth below:
24

1 (a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B, and
2 shall carefully review the Association's publication, Managing Client Trust Accounts: Rules,
3 Regulations, and Common Sense.

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

6 (c) On a semi-annual basis, Respondent shall provide the Association's audit staff with all
7 trust-account records for the time period which will be reviewed by the Association's audit staff
8 and/or disciplinary counsel for compliance with the RPC:

9 Months 1 – 6. By no later than the 30th day of the seventh month after Respondent's rein-
10 statement, Respondent shall provide the trust account records from the date of his reinstate-
11 ment to the end of the sixth full month.

12 Months 7 – 12. By no later than the 30th day of the thirteenth month after Respondent's re-
13 instatement, Respondent shall provide the trust account records from the end of the previ-
14 ously provided quarter through the end of month twelve.

15 Months 13– 18. By no later than the 30th day of the nineteenth month after Respondent's
16 reinstatement, Respondent shall provide the trust account records from the end of the previ-
17 ously provided quarter through the end of month eighteen.

18 Months 19 – 24. By no later than the 30th day of the twenty-fifth month after Respondent's
19 reinstatement, Respondent shall provide the trust account records from the end of the previ-
20 ously provided quarter through the end of month twenty-four.

21 (d) The trust account records Respondent provides to the Association for each semi-annual re-
22 view of his trust account will include:

- 23 • a complete checkbook register for his trust account covering the period being reviewed;

- 1 • complete individual client ledger records for any client with funds in Respondent's trust
- 2 account during all or part of the period being reviewed, as well as for Respondent's own
- 3 funds in the account (if any);
- 4 • copies of all trust-account bank statements, deposit slips, and cancelled checks covering
- 5 the period being reviewed;
- 6 • copies of all trust account client ledger reconciliations for the period being reviewed;
- 7 • copies of reconciliations of Respondent's trust account check register covering the peri-
- 8 od being reviewed; and
- 9 • Copies of any and all fee agreements entered into within the time period at issue.

10 (e) The Association's Audit Manager or designee may request additional financial or client rec-
11 ords if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B. Within twen-
12 ty days of a request from the Association's Audit Manager or designee for additional records
13 needed to verify Respondent's compliance with RPC 1.15A and/or RPC 1.15B, Respondent will
14 promptly provide the Association's Audit Manager or designee the additional records requested.

15 (f) Respondent will reimburse the Washington State Bar Association for time spent by the As-
16 sociation's Audit Manager or designee in reviewing and reporting on Respondent's records to
17 determine his compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour, to the
18 extent that the time spent to review a given six month's records exceeds three hours. Respond-
19 ent will make payment within thirty days of each written invoice setting forth the auditor's time
20 and payment due.

21 VII. COSTS AND EXPENSES

22 35. In light of Respondent's willingness to resolve this matter by stipulation at an early
23 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,500

1 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
2 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Under ELC
3 13.3(b), reinstatement is conditioned on payment of these costs.

4 **VIII. VOLUNTARY AGREEMENT**

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

10 **IX. LIMITATIONS**

11 37. This Stipulation is a compromise agreement intended to resolve this matter in ac-
12 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
13 penditure of additional resources by the Respondent and the Association. Both the Respondent
14 lawyer and the Association acknowledge that the result after further proceedings in this matter
15 might differ from the result agreed to herein.

16 38. This Stipulation is not binding upon the Association or the respondent as a statement
17 of all existing facts relating to the professional conduct of the respondent lawyer, and any addi-
18 tional existing facts may be proven in any subsequent disciplinary proceedings.

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

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

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

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

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

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18 Michael J. Davis

19 Michael J. Davis, Bar No. 25846
20 Respondent

Dated: 5/3/2013

21 

22 Randy Beigel, Bar No. 7177
23 Senior Disciplinary Counsel

Dated: 5/8/13