

**FILED**

JUL 01 2015

DISCIPLINARY  
BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**MICHAEL J. DAVIS,**

Lawyer (Bar No. 25846).

Proceeding No. 14#00054

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Randy Beitel and Respondent lawyer Michael J. Davis.

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

DIA

1 more favorable or less favorable to him. Respondent chooses to resolve this proceeding now by  
2 entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time,  
3 expense attendant to further proceedings.

#### 4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on June 11,  
6 1996. Respondent was administratively suspended effective May 1, 2013 for failure to comply  
7 with the Mandatory Continuing Legal Education requirements and failing to pay his licensing  
8 fees. This administrative suspension remains in effect.

9 2. Respondent was placed on a four-month disciplinary suspension effective September  
10 10, 2013, with conditions for reinstatement. Respondent has not been reinstated from this disci-  
11 plinary suspension.

12 3. Nothing in this stipulation to suspension alters or affects the terms of the above-  
13 referenced suspensions.

#### 14 II. STIPULATED FACTS

##### 15 *Grievance of Ted Compton*

16 4. Ted Compton hired Respondent to pursue a claim against his former employer, for  
17 wrongful termination. They entered into a contingent fee agreement, and in March 2013, the  
18 case settled and Respondent received two checks for Mr. Compton. One check was in the form  
19 of a payroll check from the former employer, payable to Mr. Compton for \$8,250. The other  
20 was from the employer's insurance carrier, for \$8,250 in settlement of the claim, and was paya-  
21 ble to both Respondent and Mr. Compton. Respondent did not provide Mr. Compton with the  
22 payroll check that had been issued for him and did not deposit the other check into a trust ac-  
23 count. Respondent mislaid and eventually lost the two checks.

1           5. Respondent delayed responding to various requests from Mr. Compton who was ask-  
2 ing when he would receive his funds from the settlement. Respondent did not advise Mr.  
3 Compton when he was suspended on May 1, 2013, leaving Mr. Compton to find out about Re-  
4 spondent's suspension on his own. Respondent kept avoiding Mr. Compton's inquires as to  
5 when he would receive his funds with a series of vague responses which were less than forth-  
6 right. Respondent did not advise Mr. Compton that the checks were lost until August 30, 2013.

7           6. Because Respondent was suspended, the defendants would not deal with Respondent  
8 and Mr. Compton hired a new lawyer, who was able to get the two checks replaced. The new  
9 lawyer also negotiated with Respondent as to Respondent's fees. The new lawyer reduced the  
10 amount paid to Respondent by \$1,250. Mr. Compton paid \$200 to pay for the new lawyer's  
11 services, a loss for which Respondent has not compensated Mr. Compton.

12 ***Grievance of Jennifer and Keith Gravely***

13           7. Jennifer and Keith Gravely hired Respondent in June 2011 to represent Ms. Gravely  
14 in a professional licensing matter. The written fee agreement provided for an hourly fee, with  
15 an advance deposit of \$1,500 to be held in trust, and provided for monthly billings to be provid-  
16 ed to the Gravelys. Respondent did not, however, provide monthly billing statements to the  
17 Gravelys, prompting the Gravelys to request billing statements in February and March 2012.  
18 Respondent did not provide a billing statement until June 2012, at which time he billed for over  
19 \$6,000. The Gravelys were shocked by the size of the bill, and when they were unable to pay it,  
20 Respondent withdrew.

21           8. As the matter progressed, the Gravelys borrowed \$6,817.50 from a family member  
22 to pay Respondent's bill and get Respondent to continue the representation. Respondent re-  
23 ceived the \$6,817.50 check directly from the family member making the loan, and continued the

1 representation. Respondent did not, however cash the check. Some six months later, he learned  
2 from his bank that the check was too stale to be cashed. Respondent asked for the Gravelys'  
3 family member to reissue the check, but the family member was no longer willing to pay Re-  
4 spondent, and the Gravelys lost the benefit of the loan proceeds and Respondent did not get  
5 paid.

6 ***Grievance of John M. Nelson***

7 9. In July 2012, John M. Nelson hired Respondent to pursue an employment case  
8 against his employer, entering into a written agreement that provided for a \$190 hourly fee, with  
9 a \$1,500 fee advance to be held in trust, and that Respondent would provide Mr. Nelson with  
10 monthly billings statements detailing the fees and costs incurred. Respondent did not provide  
11 Mr. Nelson with the monthly billing statements.

12 10. On May 6, 2013, the lawyer for Mr. Nelson's employer sent Respondent a letter  
13 making a counteroffer of settlement which offered \$12,000 in return for a full release if Mr.  
14 Nelson were to retire within 30 days of the May 6, 2013 letter. Although Mr. Nelson told the  
15 Respondent he wanted to see the letter, Respondent did not provide Mr. Nelson with a copy of  
16 the May 6, 2013 letter.

17 ***Grievance of Cynthia L. Molchan***

18 11. Cynthia L. Molchan hired Respondent to pursue a severance package from her em-  
19 ployer based on alleged violations of the Family Medical Leave Act, entering into a written  
20 "Litigation Retainer Agreement" on April 4, 2012 that called for an hourly fee of \$190, with an  
21 advance fee payment of \$1,500, which Ms. Molchan paid on April 6, 2012. The agreement  
22 provided that Respondent would provide Ms. Molchan with monthly billings detailing the fees  
23 and costs incurred. Ms. Molchan never received a monthly billing. Without the monthly

1 | billings detailing the fees and costs incurred, Ms. Molchan had no means to judge her potential  
2 | fee liabilities as the matter progressed or to use that ongoing information to make decisions  
3 | about the matter.

4 |         12. In April 2013, Ms. Molchan asked Respondent for an accounting of her original  
5 | \$1,500 fee advance. Respondent did not give a written accounting, but advised Ms. Molchan  
6 | that he expected his billings to be in the \$6,000 to \$7,000 range, which was the first notice Ms.  
7 | Molchan had that she was beyond the original \$1,500 advance fee payment.

8 |         13. Respondent submitted a settlement offer to the lawyer for Ms. Molchan's employer.  
9 | Prior to submitting the settlement offer, Respondent provided Ms. Molchan with a draft, and  
10 | Ms. Molchan let Respondent know that she believed he had made serious factual error as to the  
11 | basis of her claim. Respondent did not agree that this was an error and sent the claim as drafted  
12 | without reviewing the issue with Ms. Molchan.

13 |         14. Upon Respondent's suspension, Ms. Molchan requested the return of her file and a  
14 | refund of her original \$1,500 advance fee payment, but Respondent did not timely respond to  
15 | her e-mails or phone calls. Respondent provided his file to Ms. Molchan after Ms. Molchan  
16 | filed her grievance, and upon the intervention of an ODC investigator.

17 | ***Grievance of Teresa B. Mathis***

18 |         15. Teresa B. Mathis hired Respondent to represent her in an unemployment matter with  
19 | a written fee agreement for a flat fee of \$1,500. That fee agreement did not comply with the  
20 | provisions of RPC 1.5(f)(2), and as such the flat fee was required to be held in trust by Re-  
21 | spondent. Respondent did not deposit the flat fee into a trust account.

22 |         16. Following the unemployment representation, in January 2013, Respondent agreed to  
23 | pursue a damage action against the former employer under a fee agreement that provided for a

1 | \$190 hourly fee, an advance fee deposit, and a provision that Ms. Mathis would be receiving  
2 | monthly billings detailing the fees and costs incurred. Respondent did not, however, provide  
3 | such billing statements to Ms. Mathis.

4 | 17. Ms. Mathis gave Respondent a \$2,500 check for an advance fee deposit and a cost  
5 | deposit on the damage action in January 2013. In April 2013 she gave Respondent another ad-  
6 | vance fee deposit of \$2,500. Respondent did not deposit either advance deposit into a trust ac-  
7 | count.

8 | 18. When Ms. Mathis received an e-mail from Respondent advising her of his May 1,  
9 | 2013 suspension, she requested that Respondent provide her with proof of the actions he had  
10 | taken on her behalf, asking for proof that a lawsuit had been filed, for the records he had ob-  
11 | tained regarding her case, and for an accounting of the advance fees she had paid. Respondent  
12 | did not respond to these requests. Ms. Mathis hired a new lawyer, who sought to obtain the file  
13 | for Ms. Mathis from Respondent, with no success. Respondent did not provide any of these ma-  
14 | terials to Ms. Mathis or her new lawyer.

15 | ***Grievance of Debra J. Lavergne***

16 | 19. In November 2012, Debra J. Lavergne hired Respondent to represent her in a lawsuit  
17 | brought by her landlord, paying an advance fee of \$835. Respondent did not deposit the ad-  
18 | vance into his trust account. Respondent did not cash or deposit the check into any account.

19 | 20. In November 2012, Respondent filed his notice of appearance and also sent a dis-  
20 | covery request to the plaintiff's lawyer. The plaintiff's lawyer provided Respondent with an  
21 | answer and response to the discovery on December 14, 2012. Respondent did not advise Ms.  
22 | Lavergne of this until a February 12, 2013 e-mail. In the interim, Ms. Lavergne had great diffi-  
23 | culty trying to reach Respondent to find out what was going on. On April 25, 2013 Respondent

1 told Ms. Lavergne that he had not cashed or deposited her November 2012 check. Respondent  
2 asked her to re-write another check for \$835 because he did not believe the bank would take the  
3 prior check because it was stale. Respondent gave Ms. Lavergne back her original check and  
4 she gave him a new check for \$835. Respondent neither deposited this new check into a trust  
5 account nor cashed or deposited the new check into any other account.

6 21. On April 25, 2013, Respondent agreed to file an answer and counterclaim for Ms.  
7 Lavergne. Respondent was suspended from the practice of law effective May 1, 2013. Re-  
8 spondent did not advise Ms. Lavergne of his suspension until on or about May 23, 2013. Re-  
9 spondent did not advise Ms. Lavergne that he had not filed the answer and counterclaim. Re-  
10 spondent did not advise Ms. Lavergne that a default motion was pending. Thereafter, Ms.  
11 Lavergne was not able to reach Respondent. Respondent failed to notify the opposing counsel  
12 and the court in the matter of his suspension, and on July 25, 2013, a default judgment was tak-  
13 en against Ms. Lavergne. Ms. Lavergne was not aware of the judgment until a garnishment was  
14 filed with her employer on September 21, 2013.

### 15 III. STIPULATION TO MISCONDUCT

16 22. By failing to deposit the funds of clients Compton and Lavergne to trust, Respondent  
17 violated RPC 1.15A(c).

18 23. By failing to provide written accountings of client funds and property to clients  
19 Gravely, and Mathis, Respondent violated RPC 1.15A(e).

20 24. By failing to safeguard the property of client Compton, Respondent violated RPC  
21 1.15A(c)(3).

22 25. By failing to promptly pay or deliver the client property to client Compton, Re-  
23 spondent violated RPC 1.15A(f).

1 26. By failing to keep clients Compton, Gravely, Nelson, Molchan, and Lavergne ad-  
2 vised on the status of their matters and failing to respond to the client's inquiries about their  
3 matters, Respondent violated RPC 1.4.

4 27. By failing to diligently pursue the matters of clients Gravely and Molchan, Respond-  
5 ent violated RPC 1.3.

6 28. By failing to provide the monthly billings required by his fee agreements with clients  
7 Gravely, Molchan, Mathis, and Lavergne, Respondent violated RPC 1.5 and RPC 1.4.

8 29. By failing to provide notice of his suspension as required by ELC 14.1 as to clients  
9 Compton and Lavergne, Respondent violated RPC 8.4(l).

10 30. By failing to provide client files upon suspension or withdrawal to clients Nelson,  
11 Molchan, Mathis and Lavergne, Respondent violated RPC 1.16(d).

#### 12 IV. PRIOR DISCIPLINE

13 31. Reprimanded November 18, 2009 for the following trust account violations in viola-  
14 tion of RPC 1.15A, RPC 1.15B and former RPC 1.14:

- 15 • Not keeping accurate client ledgers, deposit records of check registers making it not possi-  
16 ble to determine ownership of all funds in the trust account
- 17 • Commingling client funds and lawyer funds by not removing lawyer funds from the ac-  
18 count.

19 In addition to the reprimand, Respondent was placed on a two-year period of probation requir-  
20 ing periodic reviews of Respondent's trust account, a requirement that lawyer funds be removed  
21 from the trust account, and a requirement that Respondent comply with all provisions of RPC  
22 1.15A regarding trust accounts.

23 32. Reprimanded November 18, 2009 for failing to make trust account records available



1 for a disciplinary investigation until a subpoena was issued to obtain the records by deposition,  
2 in violation of ELC 5.3(e), ELC 1.5, and RPC 8.4(l).

3 33. Reprimanded December 11, 2012 for failing to review a draft complaint with a cli-  
4 ent, failing to finalize and file the complaint on behalf of the client, and failing to respond to the  
5 client's inquiries about the status of the matter and failing to advise the client that Respondent  
6 was not available to complete the matter, in violation of RPC 1.3 and RPC 1.4.

7 34. Suspended September 3, 2013 for Four Months for misconduct during the two-year  
8 period of probation ordered November 18, 2009, consisting of:

- 9 • Failing to make records available to the auditor for review in violation of RPC 8.4(l) by  
10 violating ELC 13.8(b) and ELC 1.5.
- 11 • Failing to maintain a trust account check register in violation of RPC 8.4(l) by violating  
12 ELC 13.8(b) and ELC 1.5 and/or RPC 1.15A(h)(2) by violating RPC 1.15B(a)(1).
- 13 • Failing to maintain trust account client ledgers in violation of RPC 8.4(l) by violating ELC  
14 13.8(b) and ELC 1.5 and/or RPC 1.15A(h)(2) by violating RPC 1.15B(a)(2).
- 15 • Failing to remove Respondent's own funds from the trust account in violation of RPC  
16 8.4(l) by violating ELC 13.8(b) and ELC 1.5 and/or RPC 1.15A(h)(1)(ii).
- 17 • Failing to identify the ownership of all funds in his trust account and to disburse funds to  
18 clients or under RCW 63.29, in violation of RPC 8.4(l) by violating ELC 13.8(b) and ELC  
19 1.5 and/or RPC 1.15A(f).
- 20 • Failing to take action when checks on the trust account were not presented for payment, in  
21 violation of RPC 8.4(l) by violating ELC 13.8(b) and ELC 1.5 and/or RPC 1.15A(f).
- 22 • Failing to prepare contemporaneous monthly reconciliations of the trust account, in viola-  
23 tion of RPC 8.4(l) by violating ELC 13.8(b) and ELC 1.5 and/or RPC 1.15A(h)(6) .

1 **V. APPLICATION OF ABA STANDARDS**

2 35. The following American Bar Association Standards for Imposing Lawyer Sanctions  
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 **Trust Account Violations:** Grievances of Compton, Gravely, Mathis, and Lavergne. ABA  
5 Standard 4.12 [Suspension] is most applicable to the trust account violations as the mental state  
6 was at least the 'should have known' standard, given the prior discipline for trust account viola-  
7 tions, and there was potential injury to the clients:

8 **4.1 Failure to Preserve the Client's Property**

9 Absent aggravating or mitigating circumstances, upon application of the factors  
10 set out in 3.0, the following sanctions are generally appropriate in cases involv-  
11 ing the failure to preserve client property:

12 4.11 Disbarment is generally appropriate when a lawyer knowingly converts  
13 client property and causes injury or potential injury to a client.

14 **4.12 Suspension is generally appropriate when a lawyer knows or should  
15 know that he is dealing improperly with client property and causes injury or  
16 potential injury to a client.**

17 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing  
18 with client property and causes injury or potential injury to a client.

19 4.14 Admonition is generally appropriate when a lawyer is negligent in deal-  
20 ing with client property and causes little or no actual or potential injury to a cli-  
21 ent.

22 **Lack of Diligence / Failure to Communicate:** Grievances of Compton, Gravely, Nelson,  
23 Molchan, Mathis, and Lavergne. ABA Standards 4.42(b) [Suspension] most applicable to Re-  
24 spondent's lack of diligence and failure to communicate given the pattern of neglect and the in-  
jury to clients:

25 **4.4 Lack of Diligence**

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

29 4.41 Disbarment is generally appropriate when:

30 (a) a lawyer abandons the practice and causes serious or potentially serious  
31 injury to a client; or

32 (b) a lawyer knowingly fails to perform services for a client and causes seri-  
33 ous or potentially serious injury to a client; or

1 (c) a lawyer engages in a pattern of neglect with respect to client matters and  
2 causes serious or potentially serious injury to a client.

3 **4.42 Suspension is generally appropriate when:**

4 (a) a lawyer knowingly fails to perform services for a client and causes inju-  
5 ry or potential injury to a client, or

6 (b) **a lawyer engages in a pattern of neglect and causes injury or poten-  
7 tial injury to a client.**

8 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act  
9 with reasonable diligence in representing a client, and causes injury or potential  
10 injury to a client.

11 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act  
12 with reasonable diligence in representing a client, and causes little or no actual or  
13 potential injury to a client.

14 **Fee and Billing Violations:** Grievances of Gravely, Molchan, and Mathis and Lavergne.

15 ABA Standards 7.2 [Suspension] is most applicable to the Gravely matter given the repeated  
16 requests for itemized billings, with client injury, and ABA Standard 7.3 [Reprimand] is most  
17 applicable to the Compton, Nelson, Molchan and Mathis matters for the negligent failure to  
18 provide the billing statements the fee agreements required, with potential injury:

19 **7.0 Violations of Duties Owed as a Professional**

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

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in con-  
duct 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 in-  
stance 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.

1 **Failure to Provide File Violations:** Grievances of Nelson, Molchan, Mathis, and Lavergne.

2 ABA Standards 7.2 [Suspension] is most applicable to Respondent's failure to provide file ma-  
3 terials given repeated requests for file materials evidencing knowing conduct, and at least poten-  
4 tial injury:

5 ***7.0 Violations of Duties Owed as a Professional***

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

9 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in con-  
10 duct 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.

11 **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.**

12 7.3 Reprimand is generally appropriate when a lawyer negligently engages in con-  
13 duct that is a violation of a duty owed as a professional and causes injury or po-  
tential injury to a client, the public, or the legal system.

14 7.4 Admonition is generally appropriate when a lawyer engages in an isolated in-  
15 stance 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.

16 **Failure to Give Notice of Suspension:** Grievances of Compton and Lavergne. ABA Stand-

17 ards 7.3 [Reprimand] is most applicable to Respondent's failure to provide adequate notice of  
18 his suspensions given the likely negligent failure but injury to clients left in the dark:

19 ***7.0 Violations of Duties Owed as a Professional***

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

23 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in con-  
24 duct 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

1 to a client, the public, or the legal system.

2 7.2 Suspension is generally appropriate when a lawyer knowingly engages in con-  
3 duct that is a violation of a duty owed as a professional and causes injury or po-  
4 tential injury to a client, the public, or the legal system.

5 7.3 **Reprimand is generally appropriate when a lawyer negligently engages in**  
6 **conduct that is a violation of a duty owed as a professional and causes injury**  
7 **or potential injury to a client, the public, or the legal system.**

8 7.4 Admonition is generally appropriate when a lawyer engages in an isolated in-  
9 stance of negligence that is a violation of a duty owed as a professional, and  
10 causes little or no actual or potential injury to a client, the public, or the legal  
11 system.

12 36. The presumptive sanction is Suspension.

13 37. The following aggravating factors apply under ABA Standard 9.22:

14 (a) Prior disciplinary offenses:

- 15 • Reprimand in 2009 for failure to keep adequate trust account records
- 16 • Reprimand in 2009 for failure to cooperate with disciplinary investigation
- 17 • Reprimand in 2012 for lack of diligence and failure to communicate
- 18 • Four-month suspension in 2013 for failing to comply with terms of proba-  
19 tion;

20 (c) A pattern of misconduct;

21 (d) Multiple offenses;

22 (i) Substantial experience in the practice of law (admitted to practice in 1996);

23 38. The following mitigating factor applies under ABA Standard 9.32:

24 (c) Personal or emotional problems (During the time of this misconduct, Re-  
spondent was helping with the care of his ill parents. Respondent also states  
that he suffers from what he believes to be a conflict avoidance disorder and  
attention deficit disorder. Although these disorders have not been diagnosed  
by a professional, Respondent states that he is intent on obtaining a profes-  
sional evaluation and any recommended treatment).

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

3 40. On balance the aggravating and mitigating factors do not require a departure from  
4 the presumptive sanction of suspension, but do warrant a suspension of two years.

#### 5 VI. STIPULATED DISCIPLINE

6 41. The parties stipulate that Respondent shall be suspended under ELC 13.3 for two  
7 years for his conduct.

8 42. As a further condition of reinstatement, Respondent shall, at least 30 days prior to a  
9 request for reinstatement, undergo an independent examination by a licensed mental health pro-  
10 fessional to be approved by disciplinary counsel. Respondent shall execute all the necessary  
11 releases to permit this evaluator to obtain all necessary treatment records and make a report to  
12 disciplinary counsel addressing the issue of whether Respondent suffers from conflict avoidance  
13 disorder, attention deficit disorder or any other mental health condition that renders him unfit to  
14 practice law.

15 43. If the evaluator concludes that Respondent is not currently fit to practice law, the re-  
16 port shall recommend a course of treatment necessary to enable Respondent to return to the  
17 practice of law.

18 44. Respondent agrees to execute any necessary releases to allow disciplinary counsel  
19 and the evaluator full access to all health and treatment records and reports.

20 45. If the evaluator concludes that Respondent is not currently fit to practice law, Re-  
21 spondent (or Respondent's counsel, if Respondent is then represented) and disciplinary counsel  
22 shall meet to discuss the evaluator's report and what steps can be taken to address the evaluator's  
23 concerns. If Respondent and disciplinary counsel cannot reach an agreement, both parties shall

1 present written materials and arguments to the Disciplinary Board. The Disciplinary Board  
2 shall decide whether and the conditions under which Respondent shall return to the active prac-  
3 tice of law.

4 46. Respondent will be subject to probation for a period of two years beginning when  
5 Respondent is reinstated to the practice of law and shall comply with the specific probation  
6 terms set forth below:

7 a) **Mental Health Treatment:** Upon approval of this stipulation, Respondent will  
8 maintain a therapeutic relationship with a licensed mental health provider, on a  
9 frequency recommended by the mental health provider and pursue such course of  
10 treatment as may be recommended by the mental health provider. During the peri-  
11 od of probation, Respondent will follow any treatment recommendations made by  
12 the mental health professional referenced in paragraph 42. Respondent is to be re-  
13 sponsible for all charges of the mental health provider.

14 b) **Practice Monitor:** During the period of probation, Respondent's practice shall be  
15 supervised by a practice monitor as follows:

16 i) The practice monitor must be a WSBA member with no record of public dis-  
17 cipline and who is not the subject of a pending public disciplinary proceeding.

18 ii) No later than 30 days after probation begins, Respondent shall provide to the  
19 Probation Administrator, in writing, the name and contact information of a  
20 proposed practice monitor, who must be approved by the Probation Adminis-  
21 trator. If Respondent fails to propose a practice monitor, or if the Probation  
22 Administrator does not approve the proposed practice monitor, the Probation  
23 Administrator will request that a practice monitor be appointed by the Chair of

1 the Disciplinary Board. See ELC 13.8(a)(2). Respondent shall cooperate with  
2 the appointed practice monitor.

3 iii) During the period of probation, Respondent shall meet with the practice moni-  
4 tor at least once per month. At each meeting, the practice monitor will discuss  
5 with Respondent, the status of each client matter, Respondent's communica-  
6 tion with each client, upcoming deadlines, and Respondent's intended course  
7 of action. Meetings may be in person or by telephone at the practice monitor's  
8 discretion.

9 iv) The practice monitor will provide the Probation Administrator with quarterly  
10 reports regarding Respondent's performance on probation.

11 v) If the practice monitor believes that Respondent is not complying with any of  
12 his ethical duties under the RPC or if Respondent fails to attend a monthly  
13 meeting, the practice monitor shall promptly report that to the Probation Ad-  
14 ministrator.

15 vi) Respondent shall be responsible for paying any and all fees, costs and/or ex-  
16 penses charged by the practice monitor for supervision.

17 b) **LOMAP.** Respondent shall participate in the Association's Law Office Manage-  
18 ment Assistance Program ("LOMAP").

19 i) Respondent shall meet with a LOMAP Practice Management Advisor ("LO-  
20 MAP Advisor") to discuss and implement procedures intended to improve Re-  
21 spondent's practice. Disciplinary Counsel suggests the consultation focuses  
22 on client communications, trust account maintenance and calendaring.  
23



- 1 ii) The initial meeting with the LOMAP Advisor will take place at Respondent's  
2 office. Respondent shall contact the LOMAP Advisor to schedule the meeting  
3 within 30 days of the commencement of probation. The initial meeting shall  
4 take place no later than 180 days from the commencement of probation. The  
5 LOMAP Advisors can be reached at: 206-733-5914 or lomap@wsba.org.
- 6 iii) Respondent shall complete the LOMAP Self-Audit Checklist, to be provided  
7 by the LOMAP Advisor, prior to the initial meeting with the LOMAP Advi-  
8 sor.
- 9 iv) The LOMAP Advisor may establish deadlines by which Respondent must  
10 comply with recommendations made by the LOMAP Advisor and for follow-  
11 up communication. Respondent shall strictly comply with these deadlines.  
12 Follow-up communication may be in person or by email, regular mail, or tele-  
13 phone, at the sole discretion of the LOMAP Advisor.
- 14 v) Respondent shall respond promptly to all inquiries from the LOMAP Advisor  
15 and the Probation Administrator regarding Respondent's compliance with the  
16 LOMAP requirements described herein.
- 17 vi) The LOMAP Advisor may respond to inquiries from the Probation Adminis-  
18 trator regarding Respondent's compliance with these conditions.
- 19 vii) The LOMAP Advisor will promptly notify the Probation Administrator if Re-  
20 spondent fails to comply with any LOMAP requirements or conditions.
- 21 viii) Respondent shall pay all costs for LOMAP services, except travel time and  
22 cost, subject to a cap of 15 hours at a rate not to exceed \$95.00 per hour.

23 **c) CLEs**

1 i) During the probationary period, Respondent shall complete a minimum of 10  
2 credit hours of continuing legal education courses, at Respondent's own ex-  
3 pense, in the areas of client communication, office organization, practice man-  
4 agement, time management, caseload management, trust accounting, or billing  
5 practices.

6 ii) Respondent shall provide evidence of attendance at such courses to the Proba-  
7 tion Administrator no later than 30 days after the conclusion of the course.  
8 Proof of attendance shall include the program brochure, evidence of payment,  
9 and a written statement that includes the date and time of attendance.

#### 10 **VII. RESTITUTION**

11 47. Respondent agrees to pay Restitution under ELC 13.8 to former client Ted Compton  
12 in the amount of \$200, the amount by which Mr. Compton's recovery from the settlement was  
13 reduced to pay for the services of his new lawyer. Payment of such restitution is a condition of  
14 reinstatement under ELC 13.3(b).

#### 15 **VIII. COSTS AND EXPENSES**

16 48. In light of Respondent's willingness to resolve this matter by stipulation at an early  
17 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000  
18 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC  
19 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement  
20 from suspension is conditioned on payment of costs.

#### 21 **IX. VOLUNTARY AGREEMENT**

22 49. Respondent states that prior to entering into this Stipulation he had an opportunity to  
23 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 ODC, the Asso-  
2 ciation, nor by any representative thereof, to induce the Respondent to enter into this Stipulation  
3 except as provided herein.

4 50. Once fully executed, this stipulation is a contract governed by the legal principles  
5 applicable to contracts, and may not be unilaterally revoked or modified by either party.

#### 6 X. LIMITATIONS

7 51. This Stipulation is a compromise agreement intended to resolve this matter in ac-  
8 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-  
9 penditure of additional resources by the Respondent and ODC. Both the Respondent lawyer  
10 and ODC acknowledge that the result after further proceedings in this matter might differ from  
11 the result agreed to herein.

12 52. This Stipulation is not binding upon ODC or the respondent as a statement of all ex-  
13 isting facts relating to the professional conduct of the respondent lawyer, and any additional ex-  
14 isting facts may be proven in any subsequent disciplinary proceedings.

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

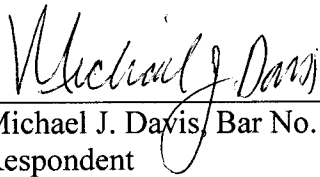
22 54. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
23 Board shall have available to it for consideration all documents that the parties agree to submit

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


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

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

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

13   
14 Michael J. Davis, Bar No. 25846  
15 Respondent

Dated: 4-23-15

16   
17 Randy Beitel, Bar No. 7177  
18 Managing Disciplinary Counsel

Dated: 4/23/15