

FILED

JAN 29 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES H. ROBINSON,

Lawyer (Bar No. 28282).

Proceeding No. 12#00012

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 Jonathan Burke and Respondent lawyer James H. Robinson.

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, expense, and publicity attendant to further proceedings.

ORIGINAL

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on October 28,
3 1998. Respondent is currently not practicing law and is suspended for failing to comply with
4 licensing requirements.

5 **II. STIPULATED FACTS**

6 2. In the Fall of 2008, DS, SK, DK, YA,¹ and DAK (hereafter collectively referred to
7 as "the Russian Clients") hired Respondent to represent them in connection with claims against
8 Bellevue Towers RPO, LLC (Bellevue Towers) and JP Morgan Chase Bank (Chase Bank). The
9 Russian Clients sought damages, including the return of earnest money payments, in connection
10 with their attempts to purchase of Bellevue Towers' condominiums.

11 3. Respondent had a "hybrid" fee arrangement with the Russian Clients providing that
12 each of the five Russian Clients paid Respondent \$2,000 initially for legal services. After
13 Respondent jointly billed \$10,000 total to the Russian Clients, he would calculate future fees on
14 a contingent fee basis.

15 4. On February 18, 2009, Respondent filed a lawsuit for the Russian Clients against
16 Bellevue Towers and Chase Bank.

17 5. After the Russian Clients hired Respondent, TF met with Respondent about
18 representing him in his dispute with Bellevue Towers. TF had signed a purchase and sales
19 agreement to buy a condominium at Bellevue Towers but eventually did not qualify for a loan.
20 He had paid Bellevue Towers approximately \$26,000 in earnest money and another
21 approximately \$10,000 for upgrades to the unit. He wanted these sums returned. The purchase
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24 ¹ Respondent actually represented YA and his spouse DA.

1 and sale agreement contained a mandatory arbitration and mediation clause.²

2 6. Respondent believed that there were legal and factual distinctions between the
3 claims of the Russian Clients and TF's claim.

4 7. Respondent agreed to represent TF on a contingent fee basis if TF paid \$2,000.
5 There are conflicting accounts regarding the terms of the fee agreement. According to
6 Respondent, under the verbal fee agreement, TF would pay \$2,000 as earned fees for services
7 already rendered to the Russian Clients and for meetings with TF.

8 8. Respondent's fee agreement with TF was unreasonable because at the time TF paid
9 the \$2,000 for legal services, TF had not received \$2,000 in legal services and the funds had not
10 been fully earned.

11 9. It was not reasonable for Respondent to charge TF for legal services already
12 provided to the Russian Clients, given dissimilarities in the claims. In addition, the \$2,000
13 should have been deposited into a trust account until Respondent demonstrated in writing he
14 had earned the \$2,000.

15 10. TF paid Respondent \$2,000 by check dated March 5, 2009. TF had no meetings
16 with Respondent after March 5, 2009.

17 11. Respondent provided no accounting to TF.

18 12. Respondent deposited the \$2,000 into his general account. At the time, Respondent
19 did not have a trust account.

20 13. On March 18, 2009, Respondent's bank account was garnished. The garnishment
21 effectively emptied his account, including the funds paid by TF.

22
23 ² The purchase and sale agreements signed by the Russian Clients also contained mandatory mediation
24 and arbitration clauses. However, it was Respondent's position that these terms did not apply because
the Russian Clients could not read or speak English well and the clause was unconscionable.

1 14. On May 5, 2009, Respondent received notice from the Association that he would be
2 suspended from practice if he did not, *inter alia*, complete his required MCLE credits by May
3 18, 2009.

4 15. Respondent did not complete the requisite number of MCLE credits.

5 16. On June 8, 2009, the Supreme Court entered an order suspending Respondent for
6 failure to comply with MCLE credits effective June 18, 2009.

7 17. At the time of Respondent's suspension, he had not pursued arbitration, mediation or
8 settlement of TF's claim.

9 18. On July 3, 2009, Respondent received the notice of suspension sent by the
10 Association via certified mail on June 9, 2009.

11 19. The notice of suspension received by Respondent included a list of duties on
12 suspension, including: the duty to notify all clients of the suspension within 10 days; the duty to
13 notify the opposing counsel of the suspension within 10 days; the duty to notify the court of the
14 inability to act in pending proceedings if a client does not substitute counsel within 10 days; and
15 the duty to file an affidavit of full compliance with Title 14 (duties upon suspension) within 25
16 days of suspension.

17 20. Respondent did not notify TF of his suspension.

18 21. Respondent did not timely notify the Russian Clients of his suspension.

19 22. Respondent did not notify the opposing counsel or the court of his suspension in
20 connection with the lawsuit by the Russian Clients against Bellevue Towers and Chase Bank.

21 23. Respondent did not file an affidavit of full compliance with Title 14 with the
22 Association.

23 24. TF tried to contact Respondent on numerous occasions after June 2009, but
24

1 Respondent's phone number was disconnected and the email address was inoperative.

2 25. TF eventually learned of Respondent's suspension and asked Respondent to provide
3 him a copy of his client file. Respondent's client file materials were missing. Respondent
4 emailed TF some documents and client information relating to Respondent's representation of
5 the Russian Clients.

6 26. TF ultimately hired a new lawyer who settled the matter with Bellevue Towers. The
7 terms of the settlement are confidential.

8 27. On February 1, 2011, TF filed a grievance against Respondent with the Association.

9 28. In April 2011, Respondent found a lawyer to represent some of the Russian Clients
10 in the pending lawsuit. The matter eventually settled. The terms of the settlement are
11 confidential.

12 III. STIPULATION TO MISCONDUCT

13 29. By charging unreasonable fees to TF, Respondent violated RPC 1.5(a).

14 30. By entering into a verbal contingent fee agreement with TR, Respondent violated
15 1.5(c).

16 31. By failing to deposit unearned fees into his trust account, Respondent violated RPC
17 1.15A(c).

18 32. By failing to notify TF of his suspension and by failing to timely notify the Russian
19 Clients of his suspension, Respondent violated RPC 8.4(l) (through ELC 14.1(c)(1)).

20 33. By failing to notify opposing counsel and the court of his suspension and inability to
21 represent the Russian Clients in their lawsuit, Respondent violated RPC 8.4(l) (through ELC
22 14.1(c)).

23 34. By failing to account to TF as to how he spent TF's \$2,000 fee, Respondent violated
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1 RPC 1.15A(e) (duty to account).

2 35. By failing to file an affidavit of compliance with the Association, Respondent
3 violated RPC 8.4(l) (violating ELC 4.3).

4 IV. PRIOR DISCIPLINE

5 36. Respondent has no prior discipline.

6 V. APPLICATION OF ABA STANDARDS

7 37. The following American Bar Association Standards for Imposing Lawyer Sanctions
8 (1991 ed. & Feb. 1992 Supp.) apply to this case.

9 38. ABA Standard 7.0 applies to Respondent's violations of RPC 1.5(a), RPC 1.5(c),
10 8.4(l), and RPC 1.15A(e):

11 7.0 Violations of Duties Owed as a Professional

12 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
13 conduct that is a violation of a duty owed as a professional with the intent to
14 obtain a benefit for the lawyer or another, and causes serious or potentially
15 serious injury to a client, the public, or the legal system.

16 7.2 **Suspension is generally appropriate when a lawyer knowingly
17 engages in conduct that is a violation of a duty owed as a professional and
18 causes injury or potential injury to a client, the public, or the legal system.**

19 7.3 **Reprimand is generally appropriate when a lawyer negligently
20 engages in conduct that is a violation of a duty owed as a professional and
21 causes injury or potential injury to a client, the public, or the legal system.**

22 7.4 Admonition is generally appropriate when a lawyer engages in an
23 isolated instance of negligence that is a violation of a duty owed as a
24 professional, and causes little or no actual or potential injury to a client, the
public, or the legal system.

39. Respondent knowingly violated RPC 1.5(a) and RPC 8.4(l) resulting in injury and
potential injury to TF.

40. Suspension is the presumptive sanction for Respondent's violations of RPC 1.5(a)

1 and RPC 8.4(l).

2 41. Respondent negligently violated RPC 1.5(c) and RPC 1.15A(e) resulting in potential
3 injury to TF.

4 42. Reprimand is the presumptive sanction for Respondent's violations of RPC 1.5(c)
5 and RPC 1.15A(e).

6 43. ABA Standard 4.1 applies to Respondent's violation of RPC 1.15A(c):

7 **4.1 Failure to Preserve the Client's Property**

8 4.11 Disbarment is generally appropriate when a lawyer knowingly converts
9 client property and causes injury or potential injury to a client.

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

13 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing
14 with client property and causes injury or potential injury to a client.

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

18 44. Respondent knew or should have known that he was improperly handling TF's
19 \$2,000 payment by not depositing the funds into a trust account. This resulted in injury to TF
20 because the funds were garnished.

21 45. The presumptive sanction is suspension.

22 46. The following aggravating factor applies under ABA Standards Section 9.22:

23 (c) Multiple offenses [Respondent engaged in multiple offenses].

24 47. The following mitigating factors apply under ABA Standards Section 9.32:

(a) Absence of prior discipline;

(b) Personal or emotional problems [During materials times, Respondent was

1 experiencing personal and emotional issues, including depression, relating to
2 a contentious marital dissolution and unemployment]; and

3 (c) Inexperience in the practice of law; [Since being admitted to practice,
4 Respondent has had minimal experience in practicing law].

5 48. On balance the aggravating and mitigating factors do not require a departure from
6 the presumptive sanction of suspension.

7 VI. STIPULATED DISCIPLINE

8 49. The parties agree to a six month suspension. Reinstatement shall be conditioned
9 upon payment of costs and restitution.

10 VII. RESTITUTION

11 50. The parties dispute the value of work performed for TF. To resolve the matter, the
12 parties agree that Respondent shall pay \$1,000 in restitution to TF in accordance with ELC 13.7.
13 Reinstatement from suspension is conditioned on payment of restitution to TF or, to the extent
14 applicable, to Lawyers Fund for Client Protection.

15 VIII. COSTS AND EXPENSES

16 51. 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
18 \$977.79, representing \$500 in attorney fees and \$477.79 in expenses, in accordance with ELC
19 13.9(i). The Association will seek a money judgment under ELC 13.9(i) if these costs are not
20 paid within 30 days of approval of this stipulation. Reinstatement from suspension is
21 conditioned on payment of costs.

22 IX. VOLUNTARY AGREEMENT

23 52. Respondent states that prior to entering into this Stipulation he had an opportunity to
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1 | consult independent legal counsel regarding this Stipulation, that Respondent is entering into
2 | this Stipulation voluntarily, and that no promises or threats have been made by the Association,
3 | nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
4 | as provided herein.

5 | X. LIMITATIONS

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

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

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


21 | 56. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
22 | Board shall have available to it for consideration all documents that the parties agree to submit
23 | to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
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1 form the record before the Board for its review become public information on approval of the
2 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

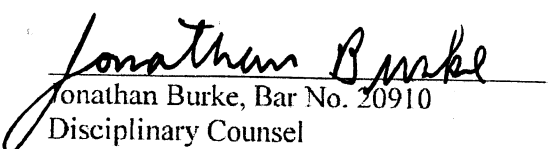
3 57. If this Stipulation is approved by the Disciplinary Board and the Supreme Court, it
4 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
5 the Rules for Enforcement of Lawyer Conduct will be made.

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

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

12 
13 James H. Robinson, Bar No. 28282
14 Respondent

Dated: 12/3/12

15 
16 Jonathan Burke, Bar No. 20910
Disciplinary Counsel

Dated: 12/6/12