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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

Anthony Rocco Castelda,
Lawyer (Bar No. 28937).

Proceeding No. 13#00098

STIPULATION TO 16-MONTH
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 16-Month Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Joanne S. Abelson, Respondent's Counsel Kenneth S. Kagan and Respondent lawyer Anthony Rocco Castelda.

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

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

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on June 10,
5 1999.

6 **II. STIPULATED FACTS**

7 **Facts Regarding the Delano Representation**

8 2. In early February 2012, the Okanogan County Prosecutor charged Taryl Delano with
9 burglary, two counts of assault, and two counts of harassment. A public defender was
10 appointed to represent him.

11 3. In late February 2012, Mr. Delano's sister, Deborah Freeman, paid lawyer John
12 Sloan \$12,500 to represent Mr. Delano.

13 4. Mr. Sloan did not have a written fee agreement with Mr. Delano.

14 5. The funds were advance fees, which Mr. Sloan placed in his trust account.

15 6. Mr. Sloan told Mr. Delano that he would associate with Respondent and use him
16 when needed.

17 7. Both Respondent and Mr. Sloan signed a substitution for Mr. Delano's public
18 defender, which was filed on March 7, 2012.

19 8. On or about that same day, Mr. Sloan became seriously ill. He eventually resigned
20 from the Washington State Bar Association.

21 9. Following Mr. Sloan's illness, Respondent assumed the representation of Mr. Delano
22 and filed his own notice of appearance on March 15, 2012.

23 10. Respondent did not have a written fee agreement with Mr. Delano.

1 11. On April 2, 2012, Mr. Sloan's staff transferred \$10,000 from Mr. Sloan's trust
2 account to Respondent.

3 12. The funds were advance fees.

4 13. Without authorization, Respondent deposited the \$10,000 into his general account.

5 14. Respondent had not earned the \$10,000 when he deposited those funds into his
6 general account.

7 15. In fact, Respondent never earned the full \$10,000.

8 16. Respondent represented Mr. Delano until June 2012, at which time Mr. Delano fired
9 him and hired another lawyer who eventually resolved the case.

10 17. During Respondent's representation of Mr. Delano, he never told Mr. Delano in
11 writing how much money he had received from Mr. Sloan.

12 18. During Respondent's representation of Mr. Delano, he failed to send regular billing
13 statements to Mr. Delano.

14 19. After Respondent was terminated, he sent Mr. Delano an invoice for fees and
15 advance costs and refunded the balance of the \$10,000 he had received from Mr. Sloan
16 (approximately \$2,500).

17 20. The invoice that Respondent eventually sent to Mr. Delano had a number of errors
18 and discrepancies.

19 **Facts Regarding the ODC Grievance**

20 21. In February 2008, Respondent received a 60-day suspension for, among other things,
21 failing to deposit advance fees into a trust account. In that case he treated the advance fee as an
22 earned fee and deposited it into his general account, but he did not have a written fee agreement
23 with the client.

1 22. After his suspension, Respondent entered into fee agreements that mislabeled
2 advance fees as something other than advance fees.

3 23. As set forth below, the fee agreements Respondent employed were misleading,
4 ambiguous, and confusing.

5 **2009-2010**

6 24. During 2009-2010, Respondent used a fee agreement that called for a “guaranteed
7 earned fee” of an amount to be specified on a case-by-case basis. The fee agreement stated that
8 the “guaranteed earned fee” was “not a Flat Fee” but instead was an “Earned Retainer Fee” paid
9 to secure Respondent’s services. The fee agreement further provided that the client agreed that
10 the “guaranteed earned fee” would not be placed in trust but, rather, would be deposited into the
11 general account.

12 25. Notwithstanding this language, the fee agreement elsewhere describes an advance
13 fee arrangement in that Respondent’s services would be billed against the “guaranteed earned
14 fee” until that fee was exhausted, at which time the client would be billed hourly.

15 **Client YG**

16 26. On August 28, 2009, YG signed the fee agreement described in ¶¶ 24-25 and paid
17 Respondent \$2,000 by credit card.

18 27. Respondent did not put the funds into a trust account.

19 28. The funds were not earned when Respondent received them.

20 29. The funds were fees and expenses paid in advance of performance of services.

21 30. The funds were not a retainer as defined in RPC 1.5(f)(1).

22 31. Respondent billed his hours against the funds.

23 32. In or after approximately May 2010, after the advance funds were exhausted,

1 Respondent continued to bill the client hourly.

2 **Client LF**

3 33. On April 28, 2010, LF signed the fee agreement described in ¶¶ 24-25 and paid
4 Respondent \$2,500.

5 34. Respondent did not put the funds into a trust account.

6 35. The funds were not earned when Respondent received them.

7 36. The funds were fees and expenses paid in advance of performance of services.

8 37. The funds were not a retainer as defined in RPC 1.5(f)(1).

9 38. Respondent billed his hours against the funds.

10 39. In or after approximately August 2010, after the advance funds were exhausted,
11 Respondent continued to bill the client hourly.

12 **Client LM**

13 40. On December 24, 2010, LM signed the fee agreement described in ¶¶ 24-25 above
14 and her mother paid the “guaranteed earned fee” of \$2,500 by credit card.

15 41. Respondent did not put the funds into a trust account.

16 42. The funds were not earned when Respondent received them.

17 43. The funds were fees and expenses paid in advance of performance of services.

18 44. The funds were not a retainer as defined in RPC 1.5(f)(1).

19 45. Respondent billed his hours against the funds.

20 46. In or after approximately February 2011, after the advance funds were exhausted,
21 Respondent continued to bill the client hourly.

22 **2011-2012**

23 47. During 2011 and 2012, and continuing to the present, Respondent used a fee

1 agreement that called for a “retainer fee” of an amount to be specified on a case-by-case basis.

2 48. The fee agreement stated that the “retainer fee” was “not a Flat Fee” but was paid to
3 secure Respondent’s services and “shall not be placed in the Attorney’s Trust Account (see RPC
4 1.5).” The fee agreement further states that the client agrees that the “Retainer Fee” does not
5 have to be deposited in trust and may be deposited directly into the general account, and, in all
6 capital letters: “NOTE, THIS IS NOT AN ADVANCE FEE DEPOSIT.”

7 49. Notwithstanding this language, the fee agreement elsewhere describes an advance
8 fee arrangement in that Respondent’s services would be billed against the “retainer fee” until
9 that fee was exhausted, at which time the client would be billed hourly.

10 **Client DS**

11 50. On December 8, 2011, DS signed the fee agreement described in ¶¶ 47-49 calling for
12 a “retainer fee” of \$2,000.

13 51. DS paid \$500 on December 8, 2011 and the remainder in \$500 installments on
14 January 20, 2012, February 29, 2012 and April 6, 2012.

15 52. Respondent did not put the funds into a trust account.

16 53. The funds were not earned when Respondent received them.

17 54. The funds were fees and expenses paid in advance of performance of services.

18 55. The funds were not a retainer as defined in RPC 1.5(f)(1).

19 56. Respondent billed his hours against the funds.

20 57. The funds still were not fully earned as of November 2013.

21 58. Respondent asserts that he withdrew at the conclusion of the case and refunded \$900
22 to the client.

23 //

1 **Client CB**

2 59. On April 4, 2012, CB signed the fee agreement described in ¶¶ 47-49 and paid
3 Respondent \$2,500.

4 60. Respondent did not put the funds into a trust account.

5 61. The funds were not earned when Respondent received them.

6 62. The funds were fees and expenses paid in advance of performance of services.

7 63. The funds were not a retainer as defined in RPC 1.5(f)(1).

8 64. Respondent billed his hours against the funds.

9 65. In or after approximately October 2012, after the advance funds were exhausted,
10 Respondent continued to bill the client hourly.

11 **Client LL**

12 66. On April 4, 2012, LL's wife, SL, signed the fee agreement described in ¶¶ 47-49 and
13 paid Respondent \$2,000.

14 67. Respondent did not put the funds into a trust account.

15 68. The funds were not earned when Respondent received them.

16 69. The funds were fees and expenses paid in advance of performance of services.

17 70. The funds were not a retainer as defined in RPC 1.5(f)(1).

18 71. Respondent billed his hours against the funds.

19 72. In or after approximately September 2012, after the advance funds were exhausted,
20 Respondent continued to bill the client hourly.

21 73. On December 31, 2012, SL and LL signed another fee agreement, with the same
22 language described in ¶¶ 47-49, for a different matter.

23 74. On or about January 9, 2013, they paid Respondent \$2,500.

1 75. Respondent did not put the funds into a trust account.

2 76. The funds were not earned when Respondent received them.

3 77. Respondent billed his hours against the funds.

4 78. In or after approximately August 2013, after the advance funds were exhausted,
5 Respondent continued to bill the client hourly.

6 **III. STIPULATION TO MISCONDUCT**

7 79. By depositing the \$10,000 advance fee he received from Mr. Sloan on behalf of Mr.
8 Delano into his general account before it was earned, Respondent violated RPC 1.15A(b) and
9 RPC 1.15A(c)(2).

10 80. By failing to promptly notify Mr. Delano in writing that he received \$10,000 on his
11 behalf from Mr. Sloan, Respondent violated RPC 1.15A(d).

12 81. By failing to provide Mr. Delano regular billing statements as the work progressed,
13 Respondent violated RPC 1.4(a), RPC 1.4(b), and RPC 1.5(b).

14 82. By depositing the advance fees he received from clients YG, LF, LM, DS, CB, and
15 LL into his general account before the fees were earned, Respondent violated RPC 1.5(f),
16 1.15A(b) and RPC 1.15A(c)(2).

17 83. By entering into fee agreements that did not clearly advise the clients as to the basis
18 of the fee, Respondent violated RPC 1.4(b) and 1.5(b).

19 **IV. PRIOR DISCIPLINE**

20 84. Respondent has the following prior discipline:

- 21
- 22 • 60-day suspension in 2008 for failing to deposit an advance fee into a trust
23 account and failing to maintain unearned fees in trust (former RPC 1.14(a)),
unilaterally treating an advance fee as a nonrefundable fee without the client's
24 consent (former RPC 1.5(b), 1.7(b), 1.8(a)), and by failing to promptly provide
an accounting of advance fees and failing to promptly refund the unearned
portion of a fee (former RPC 1.5(a), 1.14(b)(3) and (4), and 1.15(d))

- Reprimand in 2011 for based on a conflict of interest (RPC 1.7)

V. APPLICATION OF ABA STANDARDS

85. The following American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) apply to this case:¹

- ABA Standard 4.1 applies to the misconduct in ¶¶ 79, 80, and 82
- ABA Standard 4.4 applies to the misconduct in ¶¶ 81 and 83

86. Respondent acted knowingly.

87. In the Delano matter, Mr. Delano and Ms. Freeman, who paid the fees, were potentially injured because the funds were not protected and by the irregular billing practices.

88. With respect to the ODC grievance, the clients potentially were injured because they entered into a confusing fee agreement and their funds were not protected.

89. The presumptive sanction is suspension.

90. The following aggravating factors apply under ABA Standard 9.22:

- (a) prior disciplinary offenses (see ¶ 84);
- (c) pattern of misconduct;
- (d) multiple offenses;
- (i) substantial experience in the practice of law [admitted 1999].

91. The following mitigating factor under ABA Standard 9.32 applies:

- (l) remorse.

92. It is a mitigating factor that Respondent has agreed to resolve this matter at an early stage of the proceedings.

93. On balance, the aggravating factors, particularly Respondent's prior misconduct, justify a suspension longer than the presumptive six-month suspension.

¹ The full ABA Standards applicable to this case are attached as Appendix A.

1 **VI. STIPULATED DISCIPLINE**

2 94. The parties stipulate that Respondent shall be suspended from the practice of law for
3 16 months.

4 95. Respondent will be subject to probation for a period of two years commencing upon
5 Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his
6 trust account practices, and shall comply with the specific probation terms set forth below:

- 7 a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC
8 1.15B, and shall carefully review the current version of the publication, Managing
Client Trust Accounts: Rules, Regulations, and Common Sense.
- 9 b) For all client matters, Respondent shall have a written fee agreement signed by the
10 client, which agreements are to be maintained for least seven years (see RPC
1.15B(a)(3)).
- 11 c) On reinstatement, Respondent will form a new PLLC and set up his own, separate
trust account.
- 12 d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
13 account records for the time period to be reviewed by ODC's audit staff and
disciplinary counsel for compliance with the RPC:
- 14 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
15 commencement of probation, Respondent shall provide the trust account
16 records from the date of his/her reinstatement to the end of the third full
month.
- 17 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
commencement of probation, Respondent shall provide the trust account
18 records from the end of the previously provided quarter through the end of
month six.
- 19 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
commencement of probation, Respondent shall provide the trust account
20 records from the end of the previously provided quarter through the end of
month nine.
- 21 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
22 the commencement of probation, Respondent shall provide the trust
23 account records from the end of the previously provided quarter through
the end of month twelve.

1 v) Months 13– 15. By no later than the 30th day of the sixteenth month after
2 the commencement of probation, Respondent shall provide the trust
3 account records from the end of the previously provided quarter through
4 the end of month fifteen.

5 vi) Months 16 – 18. By no later than the 30th day of the nineteenth month after
6 the commencement of probation, Respondent shall provide the trust
7 account records from the end of the previously provided quarter through
8 the end of month eighteen.

9 vii) Months 19 – 21. By no later than the 30th day of the twenty-second month
10 after the commencement of probation, Respondent shall provide the trust
11 account records from the end of the previously provided quarter through
12 the end of month twenty-one.

13 The trust account records Respondent provides to ODC for each quarterly review of
14 his separate trust account will include: (a) a complete checkbook register for his/her
15 trust account covering the period being reviewed, (b) complete individual client
16 ledger records for any client with funds in Respondent's trust account during all or
17 part of the period being reviewed, as well as for Respondent's own funds in the
18 account (if any), (c) copies of all trust-account bank statements, deposit slips, and
19 cancelled checks covering the period being reviewed, (d) copies of all trust account
20 client ledger reconciliations for the period being reviewed, and (e) copies of
21 reconciliations of Respondent's trust account check register covering the period
22 being reviewed. The ODC's Audit Manager or designee will review Respondent's
23 trust account records for each period.

24 e) On the same quarterly time schedule set forth in the preceding paragraph,
Respondent will provide ODC's Audit Manager or designee with copies of any and
all fee agreements entered into within the time period at issue.

f) The ODC's Audit Manager or designee may request additional financial or client
records if needed to verify Respondent's compliance with RPC 1.15A and/or 1.15B.
Within twenty days of a request from ODC's Audit Manager or designee for
additional records needed to verify Respondent's compliance with RPC 1.15A
and/or RPC 1.15B, Respondent will provide ODC's Audit Manager or designee the
additional records requested.

g) Respondent will reimburse the Association for time spent by ODC's Audit Manager
or designee in reviewing and reporting on Respondent's records to determine
his/her compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.
Respondent will make payment within thirty days of each written invoice setting
forth the auditor's time and payment due.

h) During the period of probation, Respondent's practice shall be supervised by a
practice monitor. The practice monitor must be a WSBA member with no record of

1 public discipline and who is not the subject of a pending public disciplinary
2 proceeding.

- 3 i) No later than 30 days after probation begins, Respondent shall provide to the
4 Probation Administrator, in writing, the name and contact information of a proposed
5 practice monitor, who must be approved by the Probation Administrator. If
6 Respondent fails to propose a practice monitor, or if the Probation Administrator
7 does not approve the proposed practice monitor, the Probation Administrator will
8 request that a practice monitor be appointed by the Chair of the Disciplinary Board.
9 *See* ELC 13.8(a)(2). Respondent shall cooperate with the appointed practice
10 monitor.
- 11 j) Respondent shall provide the practice monitor with a list of his current clients and
12 ascertain that the practice monitor does not have a conflict of interest.
- 13 k) The practice monitor must agree to be bound by the requirements of RPC 1.6,
14 prohibiting disclosure of client confidences and secrets, to the same extent as
15 Respondent and his staff.
- 16 l) During the period of probation, Respondent shall meet with the practice monitor at
17 least once every month. At each meeting, the practice monitor will discuss and
18 review Respondent's office procedures and practices to assure that Respondent and
19 his staff are complying with the RPC. If necessary, the practice monitor will review
20 individual client files to determine if appropriate procedures are being instituted and
21 followed.
- 22 m) The practice monitor will review and approve all Respondent's fee agreements.
- 23 n) If the practice monitor believes that Respondent is not complying with any of his
24 ethical duties under the RPC or if Respondent fails to attend a bi-monthly meeting,
the practice monitor shall promptly report that to the Probation Administrator.
- o) Respondent shall be responsible for paying any and all fees, costs and/or expenses
charged by the practice monitor for supervision.

18 VII. RESTITUTION

19 96. No restitution is required under this stipulation as no outstanding funds are due the
20 clients.

21 VIII. COSTS AND EXPENSES

22 97. 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 of \$1,000 in accordance with ELC

1 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs are not
2 paid within 30 days of approval of this stipulation. Reinstatement from suspension is
3 conditioned on payment of costs.

4 **IX. VOLUNTARY AGREEMENT**

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

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

12 **X. LIMITATIONS**

13 100. This Stipulation is a compromise agreement intended to resolve this matter in
14 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
15 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
16 and ODC acknowledge that the result after further proceedings in this matter might differ from
17 the result agreed to herein.

18 101. This Stipulation is not binding upon ODC or the respondent as a statement of all
19 existing facts relating to the professional conduct of the respondent lawyer, and any additional
20 existing facts may be proven in any subsequent disciplinary proceedings.

21 102. This Stipulation results from the consideration of various factors by both parties,
22 including the benefits to both by promptly resolving this matter without the time and expense of
23 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As

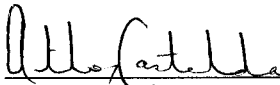
1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved
4 Stipulation.

5 103. 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.

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

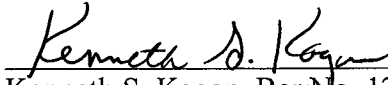
13 105. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,
14 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
15 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
16 proceeding, 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 

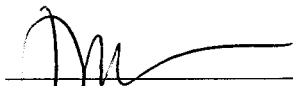
4 Anthony Rocco Castelda, Bar No. 28937
5 Respondent

Dated: 1/13/15

6 

7 Kenneth S. Kagan, Bar No. 12983
8 Counsel for Respondent

Dated: 1/13/15

9 

10 Joanne S. Abelson, Bar No. 24877
11 Managing Disciplinary Counsel

Dated: 1/13/15

APPENDIX A

SELECTED ABA STANDARDS

ABA Standard 4.1 -- Failure to Preserve the Client's Property

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

ABA Standard 4.4 -- Lack of Diligence

- 4.41 Disbarment is generally appropriate when:
 - (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (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.