

FILED

NOV 14 2012

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

CHRISTOPHER D. SCHWINDT,

Lawyer (Bar No. 31963).

Proceeding No. 12#00052

STIPULATION TO A TWO-YEAR
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 Francesca D'Angelo and Respondent lawyer Christopher Dobbs Schwindt.

This stipulation encompasses Formal Proceeding No. 12#00052 and the grievances filed by Gregory C. Haase, WSBA file No. 11-02183; Virginia A. Bottello, WSBA file No. 12-00072; Chris Oatman, WSBA file No 12-00415; and Harold J. Beard, Jr., WSBA file No. 12-00423.

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 these cases. Respondent further understands that he is entitled

W

007

1 | under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain
2 | cases, the Supreme Court. Respondent further understands that a hearing and appeal could
3 | result in an outcome more favorable or less favorable to him. Respondent chooses to resolve
4 | these matters now by entering into the following stipulation to facts, misconduct, and sanction
5 | to avoid the risk, time, and expense attendant to further proceedings.

6 | I. ADMISSION TO PRACTICE

7 | 1. Respondent was admitted to practice law in the State of Washington on November
8 | 29, 2001.

9 | II. STIPULATED FACTS

10 | 2. In November 2007, Respondent was a capital partner in eLIFE Financial, Inc.
11 | ("Elife"), a financial consulting and software company.

12 | 3. In 2008, Elife began experiencing serious financial problems.

13 | 4. Respondent twice loaned \$25,000 to Elife's president, Isaac Voss, at high rates of
14 | interest.

15 | 5. In August 2008, at least one of the loans, plus substantial interest, remained unpaid.

16 | 6. In September 2008, Respondent prepared the legal documents to incorporate Elife
17 | Legal Network (ELN), a mortgage modification company.

18 | 7. Respondent believed that a portion of the fees paid to ELN by its mortgage
19 | modification clients would be paid to Elife to help it remain in business, and protect the value
20 | of his and the other partners' investment with Elife.

21 | 8. Respondent also believed that a portion of the fees paid to ELN by its mortgage
22 | modification clients would be paid to Elife to pay Respondent back the loan that he had made to
23 | Elife's president. However, no loan payments were ever made to Respondent by ELN, Elife or
24 |

65

1 | its principals.

2 | 9. Respondent acted as outside general counsel for ELN, creating all of the internal
3 | corporate documents, including the contracts between the clients and ELN.

4 | 10. The term "legal network" was prominent in ELN's communications, advertisements
5 | and contracts with clients.

6 | 11. In October 2008, ELN began accepting mortgage modification clients.

7 | 12. Clients were given a written "Iron-Clad Money Back Guarantee" if the client was
8 | unsuccessful in obtaining a loan modification.

9 | 13. Each client signed an agreement with ELN which promised that ELN would, among
10 | other things, "prepare and package for each client an efficient and effective compilation of
11 | appropriate documents and analyses of the Client's financial, debt and indicated loan
12 | modification scenarios."

13 | 14. Clients were generally charged \$4,500, some or all of which was paid up front, the
14 | rest paid over time.

15 | 15. Each client was presented with a separate legal services agreement with a law firm.
16 | In many cases, the firm was Respondent's firm. Most, if not all, signed the agreement.

17 | 16. In each case, a non-lawyer employee of ELN presented Respondent's legal services
18 | agreement with the ELN agreement.

19 | 17. Initially, the legal services agreement charged the client a fixed legal fee of \$500.
20 | Under this legal services agreement, Respondent was primarily responsible for reviewing the
21 | file, contacting the lender, negotiating and finalizing acceptance of the loan modification and
22 | reviewing the loan modification documents received from the lender.

23 | 18. In November, 2008, Respondent created a superseding legal services agreement. All
24 |

LS

1 existing clients were required to sign it if they wanted Respondent to perform legal services.

2 19. Under the terms of the superseding agreement, the negotiation for the modifications
3 were delegated to the non-lawyer employees of ELN.

4 20. Although the superseding agreement resulted in lowering the fee that Respondent
5 would be paid from \$500 to \$100 as a result of the work now being performed by ELN, the
6 clients had still paid the \$500 as part of the fee that they paid to ELN. The clients were not
7 given a refund of the difference in fees paid or any other consideration for the much-reduced
8 scope of legal services.

9 21. The superseding agreement limited Respondent's duties to reviewing the client's
10 loan modification file as prepared by ELN and/or its affiliates upon request and "drafting" two
11 letters to the lender.

12 22. At the time the superseding agreement was presented to the clients, Respondent's
13 intent was only to review the file summary and sign a form letter that he had previously drafted,
14 and which was generated by ELN on his letterhead.

15 23. Respondent did not disclose in either agreement that his review would not involve
16 making any determination about whether a loan modification was in the client's best interests as
17 opposed to other avenues for relief.

18 24. Respondent did not disclose that no lawyer would be determining whether a loan
19 modification was the correct course of action for the client.

20 25. Respondent did not disclose that he was the general counsel for ELN and Elife, that
21 he was a capital partner in Elife, or that the funds paid by the clients to ELN would be diverted
22 to Elife, thereby benefiting Respondent's ownership interest in Elife.

23 26. Respondent did not disclose that he had an outstanding loan with Mr. Voss and that
24

1 the loan was intended to be repaid by Elife with funds gained from ELN, thereby benefiting
2 Respondent.

3 27. Respondent did not explain that there was a significant risk that Respondent's
4 representation could be materially limited by his responsibilities to Elife and/or to himself.

5 28. Over the next 5 months, approximately 287 clients hired ELN and Respondent.

6 29. In each case Respondent sent a form letter, which was copied to the clients, which
7 stated, "This firm has been retained to represent the above-named client(s)." It went on to state,
8 "We have reason to believe that the loan terms may have been misrepresented at the time of
9 application and further obscured and/or modified prior to signing."

10 30. Each letter requested documents pertaining to the loan.

11 31. Any documents sent by the lender were sent directly to ELN.

12 32. Once ELN received the documents, an "expert witness" generated a summary report
13 analyzing the loan and proposing a loan modification.

14 33. "Expert Witness" was a general term used to describe ELN personnel, mostly loan
15 professionals and mortgage brokers, who were involved in the process of preparing paperwork
16 to support the client's request that the loan should be modified. They were not lawyers, nor had
17 any of them been qualified as an expert witness in a judicial proceeding.

18 34. Pursuant to his view of the limited scope engagement, Respondent did not contribute
19 to the loan analysis and never advised a client of any alternate course that they could have
20 taken, such as a short sale or bankruptcy.

21 35. After the report was generated, ELN printed one of two form cover letters to send to
22 the lender. The letter was sent with a summary report prepared by ELN.

23 36. These letters were printed on Respondent's letterhead, which Respondent signed in
24

1 batches of about 20-40, spending a few minutes on each one.

2 37. This letter reiterated that Mr. Schwindt's firm had been retained to represent the
3 borrower. The letter was sent with a summary report prepared by ELN.

4 38. Respondent performed no further legal work after the second letter was sent.

5 39. In every case, non-lawyer ELN employees were responsible for negotiating and
6 completing the loan modification.

7 40. By April 10, 2009, ELN stopped taking new clients, not yet having modified any
8 loans. ELN informed clients that it would continue to work on open files.

9 41. Many ELN clients demanded refunds, which ELN could not make.

10 42. After ELN stopped accepting new clients, Respondent agreed to represent some
11 ELN clients for a discounted fee with the requirement that each client sign a release form before
12 he would take their case.

13 43. The release agreement, drafted by Respondent, purported to release the clients from
14 any further obligation to pay in exchange for releasing ELN from any refund obligation
15 regarding ELN services or Respondent's firm.

16 44. The release agreement forever released ELN and its attorneys from the client's
17 claims, "past, present and future."

18 45. Respondent did not disclose ELN's relationship to Elife, Respondent's stake in Elife,
19 or the fact that he was ELN's attorney.

20 46. Respondent did not inform the clients that they had potential claims against
21 Respondent beyond the refund of fees.

22 47. While the agreement required the client to acknowledge having either received
23 independent legal advice or having an adequate opportunity to seek independent legal advice,
24

1 the clients were not advised of the desirability of seeking independent counsel and no client was
2 actually represented by independent counsel.

3 III. STIPULATION TO MISCONDUCT

4 48. By not fully informing his ELN clients about the nature of his representation and by
5 failing to tell them that they would not be receiving any independent legal advice regarding their
6 loan modification and by failing to inform his ELN clients of his personal relationship to ELN,
7 Respondent violated RPC 8.4(c) (prohibiting a lawyer from engaging in conduct involving
8 dishonesty, fraud, deceit, or misrepresentation).

9 49. By failing to obtain his clients' informed consent by not adequately explaining that
10 he would not be giving a legal review of the client's loan modification file, and that he would
11 not be drafting new or individually tailored letters, but merely signing a pre-printed form letter
12 that he had previously drafted, Respondent violated RPC 1.2 (stating that a lawyer may limit the
13 scope of his representation if the limitation is reasonable under the circumstances and the client
14 gives informed consent) and RPC 1.4(b) (requiring a lawyer to explain a matter to the extent
15 reasonably necessary to permit the client to make informed decisions regarding the
16 representation).

17 50. By requiring existing clients to sign a superseding fee agreement which significantly
18 limited the scope of his services without any consideration for such an agreement, without
19 advising his clients in writing of the desirability of seeking independent legal counsel and
20 without obtaining his clients' informed written consent to his role in the transaction, Respondent
21 violated RPC 1.8(a) (prohibiting business transactions with a client unless certain conditions are
22 met).

23 51. By assisting non-lawyers in the unauthorized practice of law, Respondent violated
24

1 RPC 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in which he is not
2 licensed or assisting others in doing so).

3 52. By entering into a continuing business relationship with a mortgage modification
4 company where he would receive a set legal fee for each client, without first obtaining informed
5 consent from his clients to the fact that he had a personal financial interest in ELN and Elife,
6 Respondent violated RPC 1.7(a)(2) and RPC 1.7(b)(4) (prohibiting a lawyer from representing a
7 client where there is a significant risk that the representation will be materially limited by the
8 lawyer's responsibilities to another client or by a personal interest of the lawyer, without
9 gaining each client's informed written consent).

10 53. By requiring that ELN clients sign a release agreement releasing ELN from all
11 claims as a condition of representing them, without the clients being represented by independent
12 counsel and without advising the client in writing of the desirability of seeking the advice of
13 independent legal counsel, Respondent violated RPC1.8(h)(1) (prohibiting a lawyer from
14 making an agreement prospectively limiting the lawyer's liability for malpractice unless the
15 client is independently represented in making the agreement) and RPC 1.8(h)(2) (prohibiting a
16 lawyer from settling a potential claim of the client unless the person is advised in writing of the
17 desirability of seeking independent legal counsel).

18 IV. PRIOR DISCIPLINE

19 54. Respondent has no prior discipline.

20 V. APPLICATION OF ABA STANDARDS

21 55. The following American Bar Association Standards for Imposing Lawyer Sanctions
22 (1991 ed. & Feb. 1992 Supp.) apply to this case:

23 56. ABA Standard 4.3 applies to the duty to avoid conflicts of interest. This Standard
24

1 provides:

2 4.31 Disbarment is generally appropriate when a lawyer, without the informed
3 consent of client(s):

4 (a) engages in representation of a client knowing that the lawyer's
5 interests are adverse to the client's with the intent to benefit the
6 lawyer or another, and causes serious or potentially serious injury to
7 the client; or

8 (b) simultaneously represents clients that the lawyer knows have adverse
9 interests with the intent to benefit the lawyer or another, and causes
10 serious or potentially serious injury to a client; or

11 (c) represents a client in a matter substantially related to a matter in
12 which the interests of a present or former client are materially
13 adverse, and knowingly uses information relating to the
14 representation of a client with the intent to benefit the lawyer or
15 another, and causes serious or potentially serious injury to a client.

16 4.32 **Suspension is generally appropriate when a lawyer knows of a
17 conflict of interest and does not fully disclose to a client the possible
18 effect of that conflict, and causes injury or potential injury to a client.**

19 4.33 Reprimand is generally appropriate when a lawyer is negligent in
20 determining whether the representation of a client may be materially
21 affected by the lawyer's own interests, or whether the representation will
22 adversely affect another client, and causes injury or potential injury to a
23 client.

24 4.34 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in determining whether the representation
of a client may be materially affected by the lawyer's own interests, or
whether the representation will adversely affect another client, and causes
little or no actual or potential injury to a client.

57. ABA Standard 4.6 applies to misrepresentations made to a client. This Standard

provides:

4.61 Disbarment is generally appropriate when a lawyer knowingly deceives a
client with the intent to benefit the lawyer or another, and causes serious
injury or potential serious injury to a client.

4.62 **Suspension is generally appropriate when a lawyer knowingly
deceives a client, and causes injury or potential injury to the client.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

4.63 Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

4.64 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

58. ABA Standard 7.0 applies to lawyers assisting in the unauthorized practice of law and fee sharing with non-lawyers. This Standard provides:

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct 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 instance 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.

59. Respondent acted knowingly.

60. Respondent caused actual injury to the numerous financially distressed clients who lost their money.

61. The presumptive sanction is suspension.

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

(d) multiple offenses.

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

CS

1 (a) absence of a prior disciplinary record.

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

4 65. On balance, the aggravating and mitigating factors do not require a departure from
5 the presumptive sanction but may be relevant to the length of the suspension.

6 **VI. STIPULATED DISCIPLINE**

7 66. The parties stipulate that Respondent shall receive a two-year suspension.
8 Reinstatement is conditioned on payment of restitution as set forth in the following paragraph.

9 **VII. RESTITUTION**

10 67. Respondent shall reimburse legal fees in the amount of \$100 to Gregory C. Haase,
11 Virginia A. Bottello, Chris Oatman, and Harold J. Beard, Jr.

12 68. In addition, Respondent shall reimburse legal fees in the amount of \$100 to either
13 Jay Mead or Erin Lommen.

14 69. In addition, Respondent shall make reasonable efforts to refund legal fees to his
15 other ELN clients who did not receive a loan modification through ELN or Respondent as
16 follows:

17 a) Respondent shall make reasonable efforts to ascertain each ELN client's current
18 email and postal address. As part of this effort, Respondent shall contact former
19 ELN owners/representatives Isaac Voss, James Dunn, Daniel Friess and Joe
20 Bertrand to obtain this information.

21 b) Respondent will write an email, or first class letter if no email address is
22 available, to each of his ELN clients. If Respondent is unable to ascertain a
23 client's current address, Respondent will send a first class letter to the client's
24

1 last known address.

- 2 c) The letter will inform the clients that if they did not obtain a loan modification
3 they are entitled to a refund of the legal fees specified in the legal services
4 agreement that they signed with his firm and that they can receive this refund by
5 contacting Respondent in writing. The letter shall indicate that this refund is part
6 of a stipulation with the Washington State Bar Association.
- 7 d) Respondent shall pay the refund within 30 days of the client's written request.
- 8 e) In all instances in which Respondent receives forwarding information, he will
9 send the email or letter to the forwarding addresses as well.
- 10 f) Respondent will keep a complete record of emails and letters sent, all responses
11 received and all payments made. This record will subject to review by the
12 Association, within ten days of a request by the Association, for a period of
13 three years.
- 14 g) Prior to reinstatement, Respondent will certify in writing the number of emails
15 sent, the number of responses received, and the number of any additional
16 requests or demands that he received in addition to the email/letter process.

17 70. Reinstatement from suspension is conditioned on compliance with the requirements
18 of this paragraph.

19 VIII. COSTS AND EXPENSES

20 71. Respondent shall pay costs in the amount of \$2,064.50 and expenses in the amount
21 of \$1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment under
22 ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.
23 Reinstatement from suspension is conditioned on payment of costs.

1 IX. VOLUNTARY AGREEMENT

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

7 X. LIMITATIONS

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

13 74. This Stipulation is not binding upon the Association or Respondent as a statement of
14 all existing facts relating to the professional conduct of Respondent, and any additional existing
15 facts may be proven in any subsequent disciplinary proceedings.

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


23 76. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
24

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

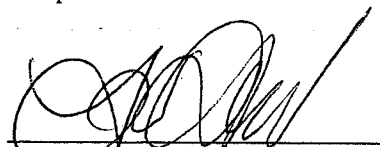
5 77. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
6 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
7 Rules for Enforcement of Lawyer Conduct will be made.

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

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

14 
15 _____
16 Christopher Dobbs Schwindt, Bar No. 31963
17 Respondent

Dated: 8/13/12

18 
19 _____
20 Francesca D'Angelo, Bar No. 22979
21 Disciplinary Counsel

Dated: 8/17/12