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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

LORN WALBERG,

Lawyer (Bar No. 32730).

Proceeding No. 17#00005

ODC File No(s). 15-02179 and 16-00245

STIPULATION TO DISBARMENT

Following settlement conference conducted
under ELC 10.12(h)

14 Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following
15 a settlement conference conducted under ELC 10.12(h), the following Stipulation to Disbarment
16 is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar
17 Association (Association) through disciplinary counsel Sachia Stonefeld Powell and
18 Respondent lawyer Lorn Walberg.

19 Respondent understands that he is entitled under the ELC to a hearing, to present
20 exhibits and witnesses on his behalf, and to have a hearing officer determine the facts,
21 misconduct and sanction in this case. Respondent further understands that he is entitled under
22 the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the
23 Supreme Court. Respondent further understands that a hearing and appeal could result in an

24 Stipulation to Discipline
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OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
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1 outcome more favorable or less favorable to him. Respondent chooses to resolve this
2 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
3 avoid the risk, time, and expense attendant to further proceedings.

4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on October 24,
6 2002.

7 II. STIPULATED FACTS

8 FACTS REGARDING KATHLEEN KINDANOV

9 2. In or around June 2015, Kathleen Hindanov hired Respondent to assist her with a
10 real estate issue.

11 3. On June 11, 2015, Respondent sent Ms. Hindanov a fee agreement (agreement)
12 that stated Ms. Hindanov would pay Respondent a \$2,500 "non-contingent retainer."

13 4. The agreement was for "any and all services necessary to give the client the best
14 possible chance of success either at settlement or at trial."

15 5. The agreement also provided for a contingent fee of 30-37 percent, depending on
16 how and when the case was resolved.

17 6. On June 18, 2015, Ms. Hindanov signed the fee agreement and paid Respondent
18 \$2,500.

19 7. On June 30, 2015, Ms. Hindanov informed Respondent that she wanted to wait
20 until October 2015 to file a lawsuit because she was still discovering problems with her house
21 and wanted to make sure everything was documented.

22 8. On October 23, 2015, Ms. Hindanov informed Respondent that she would like to
23 go forward on the case and asked him to contact her.

1 9. Respondent did not contact Ms. Hindanov in response.

2 10. In or around late October 2015, Ms. Hindanov called Respondent multiple times.

3 11. Respondent did not respond to Ms. Hindanov's messages.

4 12. Ms. Hindanov's requests for information were reasonable.

5 13. Respondent's failure to respond to Ms. Hindanov's requests for information was
6 knowing.

7 14. Respondent's failure to respond to Ms. Hindanov's requests for information caused
8 injury to Ms. Hindanov.

9 15. Respondent did little or no work on Ms. Hindanov's case.

10 16. Ms. Hindanov requested a refund of the \$2,500 paid to Respondent.

11 17. Respondent did not refund Ms. Hindanov's fees.

12 18. Ms. Hindanov was injured by Respondent's conduct.

13 NON-COOPEATION (HINDANOV GREIVANCE)

14 19. On February 19, 2016, Ms. Hindanov filed a grievance against Respondent.

15 20. On February 23, 2016, ODC sent Respondent a copy of the grievance and
16 requested his response within 30 days.

17 21. Respondent did not respond to Ms. Hindanov's grievance.

18 22. On March 30, 2016, ODC sent Respondent a 10-day letter under ELC 5.3(h),
19 requesting his response by April 12, 2016.

20 23. Respondent did not respond to ODC's March 30, 2016 10-day letter by April 12,
21 2016.

22 24. On April 21, 2016, ODC issued a subpoena duces tecum under ELC 5.3(h), setting
23 Respondent's deposition for May 5, 2016.

1 25. On April 21, 2016, Respondent emailed ODC a short response to Ms. Hindanov's
2 grievance and the deposition was cancelled.

3 26. On April 21, 2016, under ELC 5.3(g), ODC requested that Respondent provide a
4 complete copy of his client file, including all financial records related to his representation of
5 Ms. Hindanov.

6 27. Respondent did not respond to ODC's April 21, 2016 request.

7 28. On May 24, 2016, ODC sent Respondent a 10-day letter by email and US mail,
8 requiring his response by June 6, 2016.

9 29. Respondent did not respond to ODC's May 4, 2016 10-day letter.

10 30. On June 8, 2016, ODC issued a subpoena duces tecum requiring Respondent to
11 attend a deposition on June 28, 2016 and to bring the following:

12 Your complete file and whatever documents may be in your possession or
13 control relating to your representation of Kathleen Hindanov, and all financial
14 records, including trust account and client ledgers, cancelled checks, and bank
statements relating to funds received in connection with your representation of
Kathleen Hindanov.

15 31. ODC agreed that Respondent could appear by phone for the deposition based on
16 Respondent's representation that he was out of the state.

17 32. On June 28, 2016, Respondent appeared by phone for his deposition but did not
18 provide any of the subpoenaed documents.

19 33. At the start of the deposition, Respondent testified he was in a hotel room at the
20 Hampton Inn and Suites in Coeur D'Alene, Idaho.

21 34. In response to ODC's request for the address of the hotel, Respondent unilaterally
22 terminated the deposition by disconnecting the call.

1 35. Respondent acted knowingly in failing to respond to Ms. Hindanov's grievance
2 and in terminating his deposition.

3 36. The lawyer discipline system was injured in that Respondent's conduct impeded
4 ODCs investigation of this matter.

5 FACTS REGARDING WATERS GRIEVANCE

6 37. In or around July 15, 2015, Lynette Waters and Jason Klimp contacted Respondent
7 to assist them with an IRS lien based on Mr. Klimp's failure to pay employment taxes for a
8 number of years.

9 38. Mr. Klimp also had a lien for unpaid property taxes on a Tennessee property.

10 39. Ms. Waters and Mr. Klimp hired Respondent to negotiate the IRS debt and resolve
11 the state tax issue.

12 40. On July 14, 2015, Ms. Waters and Mr. Klimp signed a fee agreement with
13 Respondent stating that the legal services to be provide were:

- 14 a. Best effort to identify and remove, rescind, or reduce the Client's tax
15 liens, presently believed to be with one or more counties in the state of
16 Tennessee, a county in Washington, and no more than one federal.
(attorney agrees to use best, highest, and good faith efforts).
17 b. All necessary phone correspondence, email or other communications to
18 effect execution of same.
19 c. Necessary research and preparation of statute, codes and case law, if
20 applicable.
21 d. This agreement does not under any circumstances, contemplate, time in,
22 or preparation for, court, arbitration and mediation.

23 41. On or about July 17, 2015, Ms. Waters paid Respondent \$2,500.

24 42. After July 17, 2015, Ms. Waters attempted to contact Respondent several times but
did not receive a response.

43. On or about August 9, 2015, Ms. Waters and Mr. Klimp emailed Respondent and
stated "we have been trying to contact you for some time now with no response. Can you

1 please contact us and give us an update on what you are waiting on; or what kind of contacts
2 you made with the IRS. Thanks.”

3 44. On September 1, 2015, Respondent responded with an email stating that his assistant
4 would contact Ms. Waters soon.

5 45. No one from Respondent’s office contacted Ms. Waters or Mr. Klimp.

6 46. On October 6, 2015, Ms. Waters sent Respondent an email stating that she hadn’t
7 heard from anyone in his office. In the email, Ms. Waters stated that if he had not been working
8 on her case, she would like a refund.

9 47. On October 14, 2015, Respondent responded to Ms. Waters, promising to get back to
10 her in a couple of days.

11 48. Respondent did not further respond to Ms. Waters’s request for information or a
12 refund.

13 49. Ms. Waters’s and Mr. Klimp’s requests for information were reasonable.

14 50. Respondent’s failure to respond to Ms. Waters’s and Mr. Klimp’s requests for
15 information was knowing.

16 51. Respondent’s failure to respond to Ms. Waters’s and Mr. Klimp’s requests for
17 information caused injury to Ms. Waters and Mr. Klimp.

18 52. On December 10, 2015, Ms. Waters and Mr. Klimp emailed Respondent again,
19 requesting a refund.

20 53. On December 11, 2015, Respondent emailed Ms. Waters stating that he would
21 contact his billing and accounting department to see if she was due a refund.

22 54. Ms. Waters again requested an invoice, and stated that she had contacted the IRS and
23 state treasury and learned that Respondent had not contacted them.

1 55. On December 12, 2015, Respondent wrote to Ms. Waters stating:

2 The last thing I would say is that don't google or call. You aren't talking to the
3 same departments or people I am and they likely have no record of my back
4 channeling and speaking to the prosecuting attorneys for the IRS, not a desk
5 jockey. You can call the 800 number, that's not who I am calling. You can call
6 and say their operator number etc.

7 I call on his cell phone and say "Scotty (senior prosecuting attorney for the IRS)
8 how's it going? We haven't had drinks since Atlanta back in 11 brother when we
9 taught that seminar together on the "new reality of retirement planning." May
10 take a moment but shit could disappear, because the people I talk to have pull.
11 Just saying. Still your choice.

12 56. Respondent's statements implied that he had the ability to improperly influence a
13 senior prosecuting attorney with the IRS.

14 57. These statements were false.

15 58. Respondent's statement that he had spoken to the prosecuting attorneys for the IRS
16 was false.

17 59. Respondent's false statements to Ms. Waters were knowing.

18 60. Respondent made these statements with the intent to deceive his clients and to
19 benefit himself by discouraging Ms. Waters and Mr. Klimp from taking any action adverse to
20 his interests.

21 61. Ms. Waters and Mr. Klimp were injured by Respondent's conduct.

22 62. Later the same day, Ms. Waters emailed Respondent and again requested an invoice.

23 63. Later, on December 15, 2015, Respondent responded by email, stating that Mr.
24 Waters and Mr. Klimp owed him another \$5,000, that he suspected that Mr. Klimp would go to
Tennessee prison, and that while he was not obligated to report a past crime, Mr. Klimp should
be "very careful going forward."

64. In the same email, Respondent told Mr. Klimp to feel free to sue him but that Mr.

1 Klimp “very well may find [him]self incarcerated for a long period.”

2 65. Respondent knew that his statements were false, misleading, and deceitful.

3 66. Respondent made these statements with the intent to deceive and intimidate his
4 clients, and to benefit himself by discouraging Ms. Waters and Mr. Klimp from suing him.

5 67. Mr. Klimp and Ms. Waters were injured by Respondent’s conduct.

6 68. Respondent never contacted the State of Tennessee Treasurer’s Office or the IRS on
7 behalf of Ms. Waters and Mr. Klimp.

8 69. Respondent’s failure to perform services for Ms. Waters and Mr. Klimp was
9 knowing.

10 70. Ms. Waters and Mr. Klimp were injured by Respondent’s conduct.

11 71. Respondent never refunded any money to Ms. Waters and Mr. Klimp.

12 72. Ms. Waters and Mr. Klimp were injured by Respondent’s conduct.

13 NON-COOPERATION (WATERS GRIEVANCE)

14 73. On December 10, 2015, Ms. Waters filed a grievance against Respondent.

15 74. On December 14, 2015, ODC requested Respondent’s written response to Ms.
16 Waters’ grievance.

17 75. Respondent did not provide a written response.

18 76. On January 20, 2016, ODC sent Respondent a 10-day letter requiring his written
19 response to Ms. Waters’ grievance by February 2, 2016.

20 77. Respondent did not respond to ODC’s January 20, 2016 letter,

21 78. On February 8, 2016, ODC issued a subpoena duces tecum setting Respondent’s
22 deposition for February 24, 2016.

1 79. On February 19, 2016, Respondent sent ODC an email responding to Ms. Waters's
2 grievance and the deposition was cancelled.

3 80. On August 12, 2016, ODC sent Respondent a request for documents related to his
4 representation of Ms. Waters and/or Mr. Klimp.

5 81. Respondent did not respond to ODC's August 12, 2016 letter.

6 82. On September 13, 2016, ODC sent Respondent a 10-day letter requesting that he
7 provide the information by September 26, 2016.

8 83. Respondent did not provide any information in response to the letter.

9 84. On September 27, 2016, ODC issued a subpoena duces tecum setting Respondent's
10 deposition for October 11, 2016. The subpoena required that Respondent appear and provide
11 documents related to his representation of Ms. Waters and/or Mr. Klimp.

12 85. On October 11, 2016, Respondent did not personally appear for the deposition.
13 Testimony was taken by phone.

14 86. Respondent did not produce any documents in response to the subpoena.

15 87. The deposition was re-set to October 27, 2016 to allow Respondent to personally
16 appear.

17 88. Respondent acted knowingly in failing to timely respond to Ms. Waters's grievance
18 and in failing to timely produce documents requested by ODC.

19 89. The lawyer discipline system was injured in that Respondent's conduct impeded
20 ODC's investigation of this matter.

21 90. At the October 27, 2016 deposition, Respondent testified the majority of the work
22 performed on behalf of Ms. Waters and Mr. Klimp had been done by his assistant. Respondent
23

1 testified that his assistant had contacted the state of Tennessee to request records at his direction
2 and had written letters to Tennessee on behalf of Ms. Waters and Mr. Klimp.

3 91. Respondent's testimony was false. Respondent's assistant had done no work for Ms.
4 Waters and Mr. Klimp.

5 92. Respondent gave false testimony at his October 27, 2016 deposition intentionally.

6 93. Respondent's false testimony seriously adversely reflects on Respondent's fitness to
7 practice law.

8 FALSE STATEMENTS REGARDING RESPONDENT'S IOLTA TRUST ACCOUNT

9 94. In April 2015 and April 2016, Respondent certified under penalty of perjury that
10 neither he nor his firm maintained an IOLTA account or trust account for the deposit of client
11 funds received in connection with representation undertaken using his Washington license.
12 Respondent's certifications were made on his bar renewal application with Washington State
13 Bar Association

14 95. Respondent's certifications were false.

15 96. From February 2015 to September 30, 2016 Respondent maintained an IOLTA trust
16 account with Wells Fargo ending in 1895.

17 97. Respondent's false certification to the Washington State Bar Association was
18 knowing.

19 98. Respondent's false certification to the Washington State Bar Association seriously
20 adversely reflects on Respondent's fitness to practice law.

21 99. At his October 11, 2016 deposition, Respondent testified that he kept a trust account
22 at Wells Fargo and that he had disclosed the account to the Association when renewing his bar
23 license.

1 112. By violating the duties imposed under ELC 1.5, ELC 5.3 and ELC 5.5 with respect
2 to the Waters grievance, Respondent violated RPC 8.4(I).

3 113. By making false, misleading, and deceitful statements at his deposition,
4 Respondent violated RPC 8.1(a), RPC 8.4(c) and RPC 8.4(d).

5 114. By making false certifications in his bar renewal applications, Respondent violated
6 RPC 8.4(c) and RPC 8.4(I) (by violating ELC 15.5).

7 IV. PRIOR DISCIPLINE

8 115. Respondent has no prior discipline.

9 V. APPLICATION OF ABA STANDARDS

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

12 117. The applicable ABA Standard for Respondent's failure to refund client funds
13 (RPC 1.5(a), RPC 1.15A(f), and RPC 1.16(d)) is Standard 4.1:

14 4.1 Failure to Preserve the Client's Property

15 4.11 **Disbarment** is generally appropriate when a lawyer knowingly converts
client property and causes injury or potential injury to a client.

16 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.

17 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.

18 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.

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21 118. The applicable ABA Standard for Respondent's neglect of client matters (RPC
22 1.3) and failure to communicate with clients (RPC 1.4) is Standard 4.4:
23

1 7.4 **Admonition** is generally appropriate when a lawyer engages in an
2 isolated instance of negligence that is a violation of a duty owed as a
3 professional, and causes little or no actual or potential injury to a client,
4 the public, or the legal system.

5 120. Respondent acted knowingly in failing to refund the clients' fees and acted with
6 the intent to benefit himself. The clients were injured in that they have been deprived of their
7 funds.

8 121. Respondent acted at least negligently in failing to communicate with the clients.
9 The clients were injured in that they suffered stress and aggravation when they could not get
10 information regarding their case.

11 122. Respondent acted knowingly in failing to respond to the grievances and in failing
12 to appear for his depositions and terminating the deposition early. There is injury to the lawyer
13 discipline system as a whole, which depends on lawyers' cooperation to function properly.
14 Given the limited resources available to investigate allegations of lawyer misconduct, "such
15 investigations depend upon the cooperation of attorneys." In re Disciplinary Proceeding
16 Against McMurray, 99 Wn.2d 920, 930, 655 P.2d 1352 (1983). In this case, Mr. Walberg
17 continued recalcitrance impeded ODC's investigations of the matters and required expenditure
18 of the costs of three depositions.

19 123. Respondent also acted knowingly in threatening Mr. Klimp with incarceration,
20 and by implying to Ms. Waters and/or Mr. Klimp that he had a close relationship with IRS
21 prosecutors and could make their case "disappear." Respondent did so with the intent to benefit
22 himself by discouraging Ms. Waters from firing him. Ms. Waters and Mr. Klimp were injured
23 or potentially injured.

24 124. Respondent acted knowingly in making a false statement in his bar license
 renewal forms and in falsely testifying at his deposition. He did so with the intent to benefit

1 himself by avoiding oversight of his trust account by the Office of Disciplinary Counsel and to
2 hinder the investigation of his misconduct. The lawyer discipline system is harmed when a
3 lawyer is untruthful in his dealings with the Association.

4 125. The presumptive sanction is disbarment.

5 126. The following aggravating factors apply under ABA Standard 9.22:

- 6 (b) dishonest or selfish motive;
7 (d) multiple offenses;
8 (g) refusal to acknowledge wrongful nature of conduct;
9 (i) substantial experience in the practice of law [since 2002].

10 127. The following mitigating factor applies under ABA Standard 9.32:

- 11 (a) absence of a prior disciplinary record.

12 128. It is an additional mitigating factor that Respondent has agreed to resolve this
13 matter at an early stage of the proceedings.

14 129. On balance the aggravating and mitigating factors do not require a departure
15 from the presumptive sanction.

16 **VI. STIPULATED DISCIPLINE**

17 130. The parties stipulate that Respondent shall be disbarred for his conduct.

18 **VII. RESTITUTION**

19 131. Respondent will pay restitution in the amount of \$2500 to Kathleen Hindanov,
20 with interest accruing at 12% per annum beginning on January 1, 2018.

21 132. Respondent will pay restitution in the amount of \$2500 to Lynette Waters/Jason
22 Klimp, with interest accruing at 12% per annum beginning on January 1, 2018.

23 133. Reinstatement from disbarment is conditioned on payment of restitution.

1 **VIII. COSTS AND EXPENSES**

2 134. In light of Respondent's willingness to resolve this matter by stipulation at an
3 early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of
4 \$500 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
5 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

6 135. Reinstatement from disbarment is conditioned on payment of costs.

7 **IX. VOLUNTARY AGREEMENT**

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

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

15 **X. LIMITATIONS**

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

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

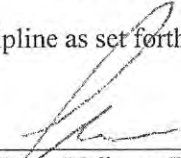
1 140. This Stipulation results from the consideration of various factors by both parties,
2 including the benefits to both by promptly resolving this matter without the time and expense of
3 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
4 such, approval of this Stipulation will not constitute precedent in determining the appropriate
5 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
6 subsequent proceedings against Respondent to the same extent as any other approved
7 Stipulation.

8 141. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely
9 on the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record
10 before the Board for its review become public information on approval of the Stipulation by the
11 Board, unless disclosure is restricted by order or rule of law.

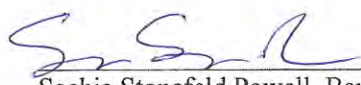
12 142. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it
13 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
14 the Rules for Enforcement of Lawyer Conduct will be made.

15 143. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,
16 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
17 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
18 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.

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Lorn Walberg, Bar No. 32730
Respondent

Dated: 12/2/17

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Sachia Stonefeld Powell, Bar No. 21166
Disciplinary Counsel

Dated: 12/5/17

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