

FILED

May 23 2019

Disciplinary  
Board

Docket # 013

ORIGINAL

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**DIANE SWEET,**

Lawyer (Bar No. 35881).

Proceeding No. 18#00080

ODC File No. 18-01061

STIPULATION TO FOUR-MONTH  
SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Four-Month Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Jonathan Burke and Respondent lawyer Diane Sweet (Respondent).

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that she 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

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

#### 4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on November  
6 29, 2004.

#### 7 II. STIPULATED FACTS

8 2. On October 13, 2011, Respondent was assigned to represent Sandra Weller (Weller)  
9 as her public defender in a serious criminal matter.

10 3. On December 28, 2011, Respondent filed a motion to withdraw on the grounds that  
11 there was "an irremediable breakdown in attorney-client communication" and "irreconcilable  
12 differences over the management and direction of representation."

13 4. Respondent was allowed to withdraw and another lawyer was appointed to represent  
14 Weller.

15 5. In February 2013, a jury convicted Weller of various degrees of assault and unlawful  
16 imprisonment.

17 6. Weller has remained incarcerated since being convicted in February 2013.

18 7. In March 2013, Weller was sentenced to approximately 20 years in prison.

19 8. Weller appealed her conviction and sentence resulting in her case being remanded  
20 for resentencing.

21 9. On September 17, 2015, the superior court re-sentenced Weller to be incarcerated for  
22 approximately 20 years.

23 10. Weller filed another appeal of her conviction and sentence. The Court of Appeals

1 affirmed the conviction and sentence and issued a mandate on August 23, 2017.

2 11. The one-year period for Weller to file a personal restraint petition (PRP) under RCW  
3 10.73.090(1) was due to expire on August 23, 2018, one year after the Court of Appeals issued  
4 its mandate.

5 12. Respondent knew about the August 23, 2018 deadline for filing Weller's PRP under  
6 RCW 10.73.090(1).

7 13. On September 21, 2017, Respondent sent a letter to Weller offering to file a PRP on  
8 her behalf.

9 14. Respondent did not contact Weller after September 21, 2017, until she sent Weller a  
10 letter on March 6, 2018 that she had been researching Weller's case.

11 15. Respondent sent Weller a letter, dated March 14, 2018, stating that she had been  
12 performing research in Weller's case and that she was "willing to take on [Weller's] case but  
13 needed to be compensated from here forward."

14 16. Respondent's March 14, 2018 letter included a proposed fee agreement whereby she  
15 agreed to represent Weller at the "refundable" billing rate of \$50 per hour, and the requirement  
16 to pay an advance fee of \$2,000.

17 17. Weller signed and returned the fee agreement to Respondent.

18 18. On March 14, 2018, Weller sent Respondent a letter directing her to contact her  
19 parents to get the \$2,000 in advance fees for preparing the PRP.

20 19. On March 26, 2018, Respondent obtained a \$2,000 check, representing advance fees  
21 for legal services related to Weller's PRP, from Gerda Reinhardt (Reinhardt), Weller's elderly  
22 mother.

23 20. On March 27, 2018, Respondent deposited the \$2,000 check for advance fees into

1 her personal checking bank account prior to having earned the \$2,000. At the time, Respondent  
2 did not have a trust account or business bank account, and her savings account contained \$5.00.

3 21. During the following weeks, Respondent withdrew the \$2,000 of advance fees from  
4 her savings account in increments. Respondent commingled the \$2,000 with other funds that  
5 were deposited into her personal checking account during that period of time.

6 22. Respondent performed some legal research on Weller's case but did not maintain  
7 billing records for the time she spent on Weller's PRP, and never sent out any billing statements  
8 to Weller for services rendered.

9 23. Respondent sent a letter, dated March 29, 2018, to the administrator of the prison to  
10 schedule meetings with Weller on April 4, 2018 at 1:00 p.m. and April 5, 2018 at 9:00 a.m.

11 24. The administrator for the prison scheduled both meetings with Weller as requested in  
12 Respondent's March 29, 2018 letter.

13 25. When Respondent arrived at the prison on April 4, 2018, she was not allowed to  
14 meet with Weller because she failed to provide personal identifying information to prison  
15 officials that is required to be provided before anyone is allowed to meet with prisoners.

16 26. Respondent never met with Weller or conferred with Weller regarding the PRP.

17 27. Respondent never drafted Weller's PRP or any other supporting declarations or  
18 pleadings for Weller's PRP.

19 28. Respondent never provided Weller with information relating to the legal services she  
20 provided in connection with the PRP.

21 29. On April 26, 2018, Respondent was evicted from her residence and was homeless for  
22 a number of weeks. In August 2018, Respondent started renting a room located in Corvallis,  
23 Oregon.

1 30. After Respondent was paid, Weller, Reinhardt, and staff from the corrections facility  
2 at Weller's request, attempted to contact Respondent by telephone and email regarding the  
3 status of Weller's PRP, but were unsuccessful.

4 31. Respondent did not return the messages or emails from Weller, Reinhardt, and staff  
5 from the corrections facility.

6 32. In late June 2018, Weller filed a police report claiming that Respondent had stolen  
7 the \$2,000 paid by Reinhardt. When Respondent was interviewed by the police, she stated that  
8 she would provide a completed PRP by mid-July 2018.

9 33. On August 10, 2018, Respondent sent a letter to Weller stating that she was "broke"  
10 and needed another \$1,000 to "complete" the memorandum and declaration to support the PRP.

11 34. Weller responded by sending a letter to Respondent, dated August 20, 2018, stating  
12 that she had previously terminated her and requesting that Respondent provide her with any  
13 documents that Weller had regarding her PRP prior to the filing deadline.

14 35. Respondent did not respond to Weller's August 20, 2018 letter.

15 36. Weller did not gain any benefit for legal services provided by Respondent because  
16 Respondent did not provide Weller with any information prior to the PRP's filing deadline.

17 37. Weller prepared and filed the PRP *pro se* without the assistance of Respondent  
18 before the deadline expired.

19 38. The PRP filed by Weller *pro se* was poorly written and poorly organized.

20 39. During the period from March 27, 2018 through August 10, 2018, Respondent  
21 experienced personal problems that impacted her ability to diligently handle Weller's PRP.  
22  
23

1 **III. STIPULATION TO MISCONDUCT**

2 40. By failing to deposit and hold advance fees in trust, Respondent violated RPC  
3 1.15A(c).

4 41. By failing to reasonably communicate with Weller regarding the representation and  
5 fees, Respondent violated RPC 1.4(a), and RPC 1.4(b).

6 42. By failing to diligently represent Weller and make reasonable efforts to pursue  
7 Weller's PRP, Respondent violated RPC 1.3.

8 43. By failing to promptly provide information and the client file to Weller after being  
9 terminated, Respondent violated RPC 1.16(d).

10 **IV. PRIOR DISCIPLINE**

11 44. Respondent has no prior discipline.

12 **V. APPLICATION OF ABA STANDARDS**

13 45. The following American Bar Association Standards for Imposing Lawyer Sanctions  
14 (1991 ed. & Feb. 1992 Supp.) apply to this case.

15 46. ABA Standard 4.1 applies to Respondent's failure to comply with the trust account  
16 rules. It provides as follows:

17 **4.1 Failure to Preserve the Client's Property**

18 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client  
19 property and causes injury or potential injury to a client.

20 **4.12 Suspension is generally appropriate when a lawyer knows or should know  
21 that he is dealing improperly with client property and causes injury or potential  
22 injury to a client.**

23 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with  
24 client property and causes injury or potential injury to a client.

25 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with  
26 client property and causes little or no actual or potential injury to a client.

1  
2 47. Respondent knew or should have known that the \$2,000 advance fee had to be  
3 deposited into an IOLTA account and that none of the funds could be withdrawn unless and  
4 until her client Weller was given sufficient notice and the opportunity to object to the  
5 disbursement.

6 48. Respondent's conduct resulted in actual and potential harm to Weller.

7 49. Suspension is the presumptive sanction for Respondent's misconduct under ABA  
8 Standard 4.12.

9 50. ABA Standard 4.4 applies to Respondent's failure to diligently represent and  
10 communicate with Weller. It provides as follows:

11 **4.4 Lack of Diligence**

12 4.41 Disbarment is generally appropriate when:

- 13 (a) a lawyer abandons the practice and causes serious or potentially  
14 serious injury to a client; or  
15 (b) a lawyer knowingly fails to perform services for a client and causes  
16 serious or potentially serious injury to a client; or  
17 (c) a lawyer engages in a pattern of neglect with respect to client  
18 matters and causes serious or potentially serious injury to a client.

19 4.42 **Suspension is generally appropriate when:**

- 20 (a) **a lawyer knowingly fails to perform services for a client and**  
21 **causes injury or potential injury to a client, or**  
22 (b) a lawyer engages in a pattern of neglect and causes injury or  
23 potential injury to a client.

24 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.

51. Respondent knowingly failed to communicate with Weller and knowingly failed to  
provide her with information about the legal services she performed for Weller.

1 52. Respondent's conduct resulted in actual harm and potential harm to Weller who filed  
2 her own PRP.

3 53. Suspension is the presumptive sanction for Respondent's misconduct under ABA  
4 Standard 4.42(a).

5 54. The following aggravating factor applies under ABA Standard 9.22

6 (d) Multiple offenses; and

7 (i) Substantial experience in the practice of law (Respondent has been licensed for 15  
8 years).

9 55. The following mitigating factors apply under ABA Standard 9.32:

10 (a) Absence of a prior disciplinary record;

11 (b) Personal or emotional problems [During material times, Respondent was  
12 experiencing health and/or mental health issues, which are identified in the  
Confidential Attachment to Stipulation to Suspension, attached hereto as Exhibit 1]<sup>1</sup>;

13 (e) Cooperative attitude toward proceedings; and

14 (f) Remorse.

15 56. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
16 at an early stage of the proceedings.

17 57. A six months is the accepted minimum term of suspension.

18 58. Based on the factors set forth above, the presumptive sanction should be mitigated to  
19 a four-month suspension.

## 20 VI. STIPULATED DISCIPLINE

21 59. The parties stipulate that Respondent shall receive a four-month suspension for her  
22 conduct.

23 \_\_\_\_\_  
<sup>1</sup> The Confidential Attachment to Stipulation to Suspension will be filed under seal.



1 60. Respondent's reinstatement to practice is conditioned upon a successful fitness to  
2 practice examination by a health and/or mental health professional acceptable to disciplinary  
3 counsel. The fitness to practice statement must be received within 30 days of the date  
4 Respondent seeks reinstatement. The evaluator will be provided with the Confidential  
5 Attachment to Stipulation to Suspension.

6 61. Respondent shall pay all expenses associated with the examination.

7 62. Respondent shall execute all necessary releases to permit the evaluator and  
8 disciplinary counsel to obtain full access to all pertinent health care and treatment records for  
9 the applicable time period, and to permit the evaluator to report to disciplinary counsel  
10 regarding Respondent's fitness to practice law.

11 63. If the evaluator concludes that Respondent is not currently fit to practice law, the  
12 report shall recommend a course of treatment to enable Respondent to return to the practice of  
13 law.

14 64. If the evaluator concludes that Respondent is not currently fit to practice law,  
15 Respondent and disciplinary counsel shall discuss the evaluator's report and what steps can be  
16 taken to address the evaluator's concerns. If Respondent and disciplinary counsel cannot reach  
17 an agreement, the parties may present written materials to the Chair of the Disciplinary Board  
18 under ELC 13.3(b)(2).

## 19 VII. PROBATION

20 65. Upon reinstatement, Respondent will be subject to probation for a one-year period  
21 and shall comply with the specific probation terms set forth below.

22 66. During the one-year probation period, Respondent will participate and maintain  
23 treatment with a health and/or mental health professional acceptable to ODC's Probation

1 Administrator. The health and/or mental health professional will be provided with the  
2 Confidential Attachment to Stipulation to Reprimand (Exhibit 1). Respondent will follow the  
3 treatment recommended by the health and/or mental health professional and see the health  
4 and/or mental health professional as often as required by the health and/or mental health  
5 professional.

6 67. Respondent shall have the health and/or mental health professional submit quarterly  
7 reports to ODC's Probation Administrator demonstrating compliance with the terms of  
8 probation and fitness to practice. These reports will be due within two weeks of the end of each  
9 calendar quarter.

10 68. Respondent shall be solely responsible for the compensation of the mental health  
11 professional.

#### 12 **VIII. RESTITUTION**

13 69. Respondent shall pay restitution of \$2,000 to Gerda Reinhardt and/or the Client  
14 Protection Fund, if applicable. Reinstatement is conditioned on full payment of restitution  
15 and/or compliance with ELC 13.7.

#### 16 **IX. COSTS AND EXPENSES**

17 70. In light of Respondent's willingness to resolve this matter by stipulation at an early  
18 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$500 in  
19 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)  
20 if these costs are not paid within 30 days of final approval of this stipulation. Reinstatement  
21 from suspension is conditioned on payment of costs and compliance with ELC 13.9(i).

#### 22 **X. VOLUNTARY AGREEMENT**

23 71. Respondent states that prior to entering into this Stipulation she had an opportunity

1 to 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 ODC, the  
3 Association, nor by any representative thereof, to induce the Respondent to enter into this  
4 Stipulation except as provided herein.

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

### 7 XI. 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 the Respondent and ODC. Both the Respondent lawyer  
11 and ODC acknowledge that the result after further proceedings in this matter might differ from  
12 the result agreed to herein.

13 74. This Stipulation is not binding upon ODC or the Respondent as a statement of all  
14 existing facts relating to the professional conduct of the respondent lawyer, and any additional  
15 existing 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 ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on

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

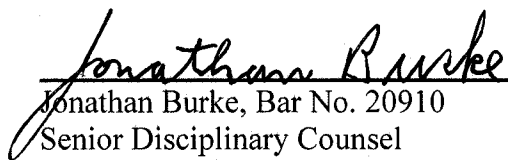
4 77. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will  
5 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the  
6 Rules for Enforcement of Lawyer Conduct will be made.

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

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

13  
14 \_\_\_\_\_  
Diane Sweet, Bar No. 35881  
Respondent

Dated: \_\_\_\_\_

15  
16   
Jonathan Burke, Bar No. 20910  
Senior Disciplinary Counsel

Dated: 4/1/19

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

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

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8 Stipulation will have no force or effect, and neither it nor the fact of its execution will be  
9 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
10 proceeding, or in any civil or criminal action.

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

13 Diane Sweet

14 Diane Sweet, Bar No. 35881  
15 Respondent

Dated: 4/1/19

16 \_\_\_\_\_  
17 Jonathan Burke, Bar No. 20910  
18 Senior Disciplinary Counsel

Dated: \_\_\_\_\_