

FILED

Aug 25, 2023

Disciplinary
Board

Docket # 022

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES T. HENDRY,

Lawyer (Bar No. 37411).

Proceeding No. 22#00056

STIPULATION TO A 30-DAY
SUSPENSION

Following settlement conference conducted
under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to a 30-day suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Disciplinary Counsel Nate Blanchard, and Respondent lawyer James T. Hendry, *pro se*.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent is entitled under the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Supreme Court.

1 Respondent further understands that a hearing and appeal could result in an outcome more
2 favorable or less favorable to Respondent. Respondent chooses to resolve this proceeding now
3 by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time,
4 and expense attendant to further proceedings.

5 I. ADMISSION TO PRACTICE

6 1. Respondent James T. Hendry (“Respondent”) was admitted to the practice of law in
7 the State of Washington on May 24, 2006.

8 II. STIPULATED FACTS

9 2. On March 8, 2019, Robert Malphrus and Respondent signed a written fee agreement
10 wherein Respondent agreed to represent Malphrus in a parenting plan action for a \$5,000 initial
11 fee, plus any costs.

12 3. According to the fee agreement, this fee was “earned on receipt and represents up to
13 14 hours of attorney’s legal efforts.”

14 4. According to the fee agreement, any work after that would be billed at \$350 per hour.

15 5. According to the fee agreement, if Respondent exceeded 14 hours of work, then
16 Respondent would bill Malphrus for the additional work at an hourly rate.

17 6. The fee Respondent charged to Malphrus was an advanced fee and Respondent was
18 required to place the fee paid into an Interest on Lawyer’s Trust Account (IOLTA) account trust
19 under RPC 1.15A.

20 7. Malphrus gave Respondent Check #180, dated March 8, 2019, for \$2,500.

21 8. Respondent did not deposit Check #180 into Respondent’s IOLTA account.

22 9. Malphrus gave Respondent Check #6270, dated March 22, 2019, in the amount of
23 \$3,000.

1 10. Respondent did not deposit Check #6270 into an IOLTA account.

2 11. Respondent never provided Malphrus with an invoice for legal services.

3 12. At the beginning of the representation, Malphrus provided Respondent with the
4 current address for KC, the mother of their child.

5 13. Around April 2019, Malphrus informed Respondent that KC moved.

6 14. Respondent drafted the Petition for a Parenting Plan and Child Support and related
7 documents.

8 15. On May 28, 2019, Respondent sent the pleadings to KC at KC's former address, with
9 a cover letter requesting that KC return an Acceptance of Service Form, but KC did not do so.

10 16. On June 3, 2019, Respondent filed the pleadings in Snohomish County Superior Court
11 No. 19-3-01273-31.

12 17. On November 11, 2019, Respondent received an email from Malphrus reminding
13 Respondent that KC had moved and providing KC's new address.

14 18. On January 6, 2020, the court issued an order directing the parties to file proof of
15 service.

16 19. Respondent did not file proof of service.

17 20. On February 28, 2020, the court issued an order finding that there was no proof of
18 service filed and dismissed the case without prejudice.

19 21. Respondent did not notify Malphrus that the case had been dismissed.

20 22. Beginning in March 2020, Malphrus sent Respondent emails asking about the status
21 of the case, and eventually asking for a refund because of a lack of progress and communication
22 from Respondent.

23 23. Respondent did not promptly refund the unearned fees.

1 24. Respondent did not provide Malphrus a refund at the end of representation.

2 25. Respondent refunded Malphrus \$5,500 on April 19, 2023.

3 **III. STIPULATION TO MISCONDUCT**

4 26. By failing to reasonably communicate with Malphrus regarding the status and/or
5 dismissal of the case, Respondent violated RPC 1.4(a) and RPC 1.4(b).

6 27. By failing to take reasonable action to have the pleadings served and by failing to
7 diligently represent Malphrus, Respondent violated RPC 1.3 and RPC 3.2.

8 28. By failing to deposit and hold Malphrus's advanced fees in an IOLTA account until
9 earned and invoiced, Respondent violated RPC 1.15A(c) and RPC 1.15A(h)(3).

10 29. By failing to promptly refund unearned fees, Respondent violated RPC 1.15A(f).

11 **IV. APPLICATION OF ABA STANDARDS**

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

14 31. ABA Standard 4.4 is most applicable to violations of RPC 1.3 and RPC 1.4:

15 4.41 Disbarment is generally appropriate when:

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

21 4.42 Suspension is generally appropriate when:

- 22 (a) a lawyer knowingly fails to perform services for a client and
causes injury or potential injury to a client, or
23 (b) a lawyer engages in a pattern of neglect and causes injury or
24 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.

1 32. Respondent acted knowingly in failing to reasonably communicate with Malphrus
2 regarding the status of the case, causing injury and potential injury to Malphrus. The presumptive
3 sanction under ABA Standard 4.4 is suspension.

4 33. Respondent also acted knowingly in failing to take reasonable action to have the
5 pleadings served, causing injury and potential injury to Malphrus. The presumptive sanction
6 under ABA Standard 4.4 is suspension.

7 34. ABA Standard 6.2 is most applicable to violations of RPC 3.2:

8 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court
9 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
10 serious injury or potentially serious injury to a party or causes serious or
11 potentially serious interference with a legal proceeding.

12 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
13 violating a court order or rule, and causes injury or potential injury to a client or a
14 party, or causes interference or potential interference with a legal proceeding.

15 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with
16 a court order or rule, and causes injury or potential injury to a client or other party,
17 or causes interference or potential interference with a legal proceeding.

18 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance
19 of negligence in complying with a court order or rule, and causes little or no actual
20 or potential injury to a party, or causes little or no actual or potential interference
21 with a legal proceeding.

22 35. Respondent acted knowingly in failing to diligently represent Malphrus, causing
23 injury and potential injury to the Malphrus. The presumptive sanction under ABA Standard 6.2
24 is suspension.

36. ABA Standard 4.1 is most applicable to violations of RPC 1.15A:

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

1 client property and causes little or no actual or potential injury to a client.

2 37. Respondent acted knowingly in failing to deposit and/or hold Malphrus's advanced
3 fees in an IOLTA account until earned and/or invoiced, causing injury and potential injury to
4 Malphrus. The presumptive sanction under ABA Standard 4.1 is suspension.

5 38. Respondent also acted knowingly in failing to promptly refund Malphrus's unearned
6 fees at the time representation ended, causing injury and potential injury to Malphrus. The
7 presumptive sanction under ABA Standard 4.1 is suspension.

8 39. The following aggravating factors identified in ABA Standard 9.22 apply:

9 (i) substantial experience in the practice of law [Hendry was admitted to practice in
10 2006];

11 40. The following mitigating factor identified in ABA Standard 9.32 apply:

12 (a) absence of a prior disciplinary record; and

13 (l) remorse.

14 41. On balance the aggravating and mitigating factors suggest a departure from the
15 presumptive sanction.

16 V. STIPULATED DISCIPLINE

17 42. The parties stipulate that Respondent shall receive a 30-day suspension.

18 VI. CONDITIONS OF REINSTATEMENT

19 43. Reinstatement from suspension is conditioned on payment of costs and expenses, as
20 provided below.

21 VII. RESTITUTION

22 44. Because Respondent has refunded all money paid by Malphrus, an order of restitution
23 is not necessary.

1 **VIII. COSTS AND EXPENSES**

2 45. Respondent shall pay attorney fees and administrative costs of \$1781.10 in accordance
3 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs
4 are not paid within 30 days of approval of this stipulation. Reinstatement from suspension is
5 conditioned on payment of costs.

6 **IX. CONDITIONS OF PROBATION**

7 46. Respondent shall be subject to probation for a period of up to two years beginning on
8 the date Respondent is reinstated to the practice of law.

9 47. The conditions of probation are set forth below. Respondent’s compliance with these
10 conditions will be monitored by the Probation Administrator of the Office of Disciplinary Counsel
11 (“Probation Administrator”). Failure to comply with a condition of probation listed herein may
12 be grounds for further disciplinary action under ELC 13.8(b).

13 **Practice Monitor**

- 14 a) During the period of probation, Respondent’s practice will be supervised by a practice
15 monitor. The practice monitor must be a WSBA member with no record of public
16 discipline and who is not the subject of a pending public disciplinary proceeding.
- 17 b) The role of the practice monitor is to consult with and provide guidance to Respondent
18 regarding case management, office management, and avoiding violations of the Rules
19 of Professional Conduct, and to provide reports and information to the Probation
20 Administrator regarding Respondent’s compliance with the terms of probation and
21 the RPC. The practice monitor does not represent the Respondent.
- 22 c) At the beginning of the probation period, the Probation Administrator will select a
23 lawyer to serve as practice monitor for the period of Respondent’s probation.

1 i) Initial Challenge: If, within 15 days of the written notice of the selection of
2 a practice monitor, Respondent sends a written request to the Probation
3 Administrator that another practice monitor be selected, the Probation
4 Administrator will select another practice monitor. Respondent need not
5 identify any basis for this initial request.

6 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
7 practice monitor, Respondent believes there is good cause why that individual
8 should not serve as practice monitor, Respondent may, within 15 days of
9 notice of the selected practice monitor, send a written request to the Probation
10 Administrator asking that another practice monitor be selected. That request
11 must articulate good cause to support the request. If the Probation
12 Administrator agrees, another practice monitor will be selected. If the
13 Probation Administrator disagrees, the Office of Disciplinary Counsel will
14 submit its proposed selection for practice monitor to the Chair of the
15 Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will also
16 provide the Chair with the Respondent's written request that another practice
17 monitor be selected.

18 d) In the event the practice monitor is no longer able to perform the practice monitor's
19 duties, the Probation Administrator will select a new practice monitor at the Probation
20 Administrator's discretion.

21 e) During the period of probation, Respondent must cooperate with the named practice
22 monitor. Respondent must meet with the practice monitor at least once per month.
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1 Respondent must communicate with the practice monitor to schedule all required
2 meetings.

3 f) The Respondent must bring to each meeting a current, complete written list of all
4 pending client legal matters being handled by the Respondent. The list must identify
5 the current status of each client matter and any problematic issues regarding each
6 client matter. The list may identify clients by using the client's initials rather than the
7 client's name.

8 g) At each meeting, the practice monitor will discuss with Respondent practice issues
9 that have arisen or are anticipated. In light of the conduct giving rise to the imposition
10 of probation, ODC recommends that the practice monitor and Respondent discuss
11 whether (1) Respondent is diligently making progress on each client matter, (2)
12 whether Respondent is in communication with each client, (3) whether Respondent
13 has promptly billed each client, and (4) whether Respondent's fee agreements are
14 consistent with the RPC and are understandable to the client. Meetings may be in
15 person or by telephone at the practice monitor's discretion. The practice monitor uses
16 discretion in determining the length of each meeting.

17 h) The practice monitor will provide the Probation Administrator with quarterly written
18 reports regarding Respondent's compliance with probation terms and the RPC. Each
19 report must include the date of each meeting with Respondent, a brief synopsis of the
20 discussion topics, and a brief description of any concerns the practice monitor has
21 regarding the Respondent's compliance with the RPC. The report must be signed by
22 the practice monitor. Each report is due within 30 days of the completion of the
23 quarter.

1 i) After the practice monitor and Respondent have met for a minimum period of 12
2 months, the practice monitor may consider whether the Respondent's good faith
3 compliance with the terms of probation warrant an early termination of the
4 monitoring period. The practice monitor may then make a recommendation to the
5 Probation Monitor to end the probation period. The Probation Monitor and ODC,
6 may, in their discretion, end the probation period upon recommendation of the
7 practice monitor.

8 j) If the practice monitor believes that Respondent is not complying with any of
9 Respondent's ethical duties under the RPC or if Respondent fails to schedule or attend
10 a monthly meeting, the practice monitor will promptly communicate that to the
11 Probation Administrator.

12 k) Respondent must make payments totaling \$1,000 to the Washington State Bar
13 Association to defray the costs and expenses of administering the probation, as
14 follows:

- 15 i) \$250 due within 30 days of the start of the probation;
- 16 ii) \$250 due within 6 months of the start of the probation period;
- 17 iii) \$250 due within 12 months of the start of the probation period; and
- 18 iv) \$250 due within 18 months of the start of the probation period.

19 All payments should be provided to the Probation Administrator for processing.

20 X. VOLUNTARY AGREEMENT

21 48. Respondent states that prior to entering into this Stipulation, Respondent has had the
22 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is
23 entering into this Stipulation voluntarily, and that no promises or threats have been made by ODC,

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

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

5 XI. LIMITATIONS

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

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

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

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

1 54. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
2 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
3 Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in addition
4 to Washington, Respondent also is admitted to practice law in the following jurisdictions, whether
5 current status is active, inactive, or suspended: Oregon.

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

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

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15 _____
James T. Hendry, Respondent
WSBA Bar No. 37411

Date: **May 11, 2023**

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18 _____
Nate Blanchard, Disciplinary Counsel
WSBA Bar No. 58620

Date: May 11, 2023