

FILED

OCT 03 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SELINA ASTRA DAVIS,

Lawyer (Bar No. 37738).

Proceeding No. 13#00113

STIPULATION TO 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 Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Natalea Skvir and Respondent lawyer Selina Astra Davis.

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 outcome more favorable or less favorable to her. Respondent chooses to resolve this proceeding

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1 now by entering into the following stipulation to facts, misconduct and sanction to avoid the
2 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 August
5 31, 2006 and has been on interim suspension under ELC 7.2(a)(3) since October 9, 2013.

6 **II. STIPULATED FACTS**

7 2. In 2011, Respondent maintained a bankruptcy law practice in Olympia under the
8 name Selina Davis d.b.a. Olympia Consumer Law.

9 3. In approximately November 2011, Respondent moved her practice and residence
10 to Portland, Oregon.

11 4. Between March 2011 and February 2012, four individuals or couples hired and
12 paid Respondent to handle their bankruptcy cases: Kim and Allen Crites, Josh Barrak, Deborah
13 and Ray Mocerri, and Rodney Franklin.

14 5. As detailed below, Respondent did not file bankruptcy petitions for these clients.

15 6. In or around March 2011, the Criteses paid Respondent \$800 to represent them
16 in their bankruptcy case, and were to pay her an additional \$1,000 when their petition was ready
17 to be filed. In the meantime, they submitted materials that Respondent needed to prepare the
18 necessary paperwork. Later in 2011, Respondent informed the Criteses that she was moving her
19 practice, but wanted to continue the representation, and they agreed. By April 2012, the
20 Criteses had submitted most of the materials Respondent needed but had increasing difficulty
21 reaching her. Finally, in July 2012, Respondent e-mailed a letter stating she had to withdraw
22 from their case immediately due to medical conditions that severely affected her ability to
23 represent them effectively, and that she owed them a refund of their \$800 fee but could not

1 repay them until she was healthy enough to return to full-time work. To date, she has not
2 refunded any portion of the \$800.

3 7. In May or June 2011, Josh Barrak paid Respondent \$1,600 to represent him in a
4 Chapter 7 bankruptcy. In October 2011, Respondent notified Barrak that she was moving her
5 practice to Portland, Oregon and wanted to finalize cases. Barrak informed her it was unlikely
6 he could provide the documentation needed by the end of November. He opted to delay filing
7 and instead asked Respondent to provide an accounting of her fees to date. Despite several
8 more written requests for an accounting and a refund, Respondent provided neither, although
9 she acknowledged Barrak would be entitled to a refund.

10 8. In August 2011, the Moceris paid Respondent \$700 to represent them in
11 bankruptcy proceedings. In or around early November 2011, *original page as signed* ~~Respondent~~ *typo* at she
12 was moving to Portland. During the winter, they remained in close communication until April
13 2012, when Respondent advised them she was winding down her practice. Thereafter, the
14 Moceris sent many e-mails that went unanswered, but Respondent wrote on June 4, 2012 that
15 she was still working on their case and would be in touch in the next few days. They never
16 heard from her again.

17 9. In late January 2012, Rodney Franklin hired Respondent to represent him in a
18 Chapter 7 bankruptcy proceeding. Franklin completed payment of the fee of \$750 and provided
19 the necessary documentation by March 30, 2012. On or about April 20, 2012, Respondent sent
20 Franklin an e-mail giving him new contact information and stating she was "winding down" her
21 practice. Franklin e-mailed Respondent a termination notice on May 2, 2012, followed by a
22 letter requesting return of his file and a refund of his entire fee. Respondent did not reply.

23 10. Although Respondent contracted with these grievants to represent them in filing

1 for bankruptcy and obtaining relief from the court, she filed no bankruptcy petitions on their
2 behalf.

3 11. In each of the four cases, Respondent did not accomplish the client's stated
4 objectives and did not establish her entitlement to any of the fees she had received.

5 12. Towards the end of her representation of these clients, they contacted
6 Respondent seeking information on the status of their cases and the refund of their fees, but
7 Respondent's communication with them ebbed and, in some cases, ceased entirely.

8 13. When her representation of these clients was terminated, Respondent
9 acknowledged that she owed these clients refunds of their fees, but, with the exception of
10 Franklin, she was unable to repay them when requested to do so, due to personal circumstances.
11 She refunded Franklin \$300 of the \$750 he had paid her. She did not give the clients an account
12 of any work done on these cases that would establish her entitlement to the fees they had paid.

13 14. When ODC transmitted copies of each of the four grievances to Respondent and
14 directed her to furnish a timely response, she failed to do so, with the exception of a letter on
15 September 25, 2012 in which she responded to the Franklin grievance and provided information
16 concerning her medical and psychological conditions at the time, to explain her conduct and
17 mitigating circumstances. When sent reminders that her response was required under the ELC
18 or she would be required to testify at deposition, she still did not respond. When subpoenaed to
19 appear for deposition and produce records relating to these clients, Respondent did not appear or
20 produce any materials.

21 15. On October 9, 2013, the Washington Supreme Court entered an Order for
22 Respondent's immediate interim suspension from practice pursuant to ELC 7.2(a)(3) due to her
23 failure to cooperate with ODC's investigations of these four grievances.

1 **III. STIPULATION TO MISCONDUCT**

2 16. By failing to timely file a bankruptcy petition on behalf of the Moceris,
3 Respondent violated RPC 1.3.

4 17. By failing to respond to inquiries from Barrak, the Criteses and the Moceris
5 concerning the status of their cases, and by failing to provide an accounting of her entitlement to
6 their fees when asked, Respondent violated RPC 1.4.

7 18. Because she did not accomplish the objective for which Franklin, Barrak, the
8 Criteses and the Moceris hired her, or establish her entitlement to any of the fees they had paid
9 her, Respondent's retention of those fees violated RPC 1.5(a) and RPC 1.16(d).

10 19. By failing to cooperate fully with ODC's investigations of the grievances these
11 clients filed against her, Respondent violated RPC 8.4(l).

12 **IV. PRIOR DISCIPLINE**

13 20. Respondent has not previously been the subject of discipline.

14 **V. APPLICATION OF ABA STANDARDS**

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

17 22. ABA Standard 4.4 applies to Respondent's failure to perform the work for which
18 Franklin and the Moceris hired her, and to her failure to communicate with all four clients. It
19 provides:

20 4.4 Lack of Diligence

21 Absent aggravating or mitigating circumstances, upon application of the factors
22 set out in Standard 3.0, the following sanctions are generally appropriate in cases
23 involving a failure to act with reasonable diligence and promptness in
24 representing a client:

4.41 Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

1 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or

2 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

3 4.42 Suspension is generally appropriate when:

4 (a) a lawyer knowingly fails to perform services for a client and causes
injury or potential injury to a client, or

5 (b) a lawyer engages in a pattern of neglect and causes injury or potential
injury to a client.

6 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.

7 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
8 actual or potential injury to a client.

9 23. Respondent was aware that she had a duty to perform these services and to
10 communicate with these clients.

11 24. Clients were injured and/or potentially injured by Respondent's failure to
12 complete the work she was hired to do and to timely respond to their communications.

13 25. The presumptive sanction is suspension under ABA Standard 4.42.

14 26. ABA Standard 7.0 applies to Respondent's failure to fully refund the fees these
15 clients paid her and to cooperate with ODC's investigations of their grievances. It provides:

16 7.0 Violations of Duties Owed as a Professional

17 Absent aggravating or mitigating circumstances, upon application of the factors
set out in Standard 3.0, the following sanctions are generally appropriate in cases
18 involving false or misleading communication about the lawyer or the lawyer's
services, improper communication of fields of practice, improper solicitation of
19 professional employment from a prospective client, unreasonable or improper
fees, unauthorized practice of law, improper withdrawal from representation, or
failure to report professional misconduct.

20 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
21 obtain a benefit for the lawyer or another, and causes serious or potentially
serious injury to a client, the public, or the legal system.

22 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
23 potential injury to a client, the public, or the legal system.

24 7.3 Reprimand is generally appropriate when a lawyer negligently engages in

1 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.

2 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
3 professional, and causes little or no actual or potential injury to a client, the
public, or the legal system.

4 27. Respondent knew that she had a duty to refund unearned fees to these clients and
5 to cooperate with ODC's investigations.

6 28. Franklin, Barrak, the Criteses and the Moceris were injured by Respondent's
7 failure to refund the fees they paid her. These clients and the legal system were injured by
8 Respondent's failure to cooperate fully in ODC's investigation of these grievances.

9 29. The presumptive sanction is suspension under ABA Standard 7.2.

10 30. The following aggravating factors apply under ABA Standard 9.22:

- 11 (c) a pattern of misconduct; and
12 (d) multiple offenses.

13 31. The following mitigating factors apply under ABA Standard 9.32:

- 14 (a) absence of a prior disciplinary record;
15 (b) absence of a dishonest or selfish motive;
16 (c) personal or emotional problems (see attached Respondent's
Affidavit re: Mitigating Circumstances, attached hereto as a confidential
document to be filed under seal); and
17 (d) remorse.

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

19 33. Based on the factors set forth above, the presumptive sanction should be
20 mitigated to a six-month suspension.

21 VI. STIPULATED DISCIPLINE

22 34. The parties stipulate that Respondent shall receive a six-month suspension for her
23 conduct.

1 **VIII. COSTS AND EXPENSES**

2 40. 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 41. Reinstatement from suspension is conditioned on payment of costs.

7 **IX. VOLUNTARY AGREEMENT**

8 42. Respondent states that prior to entering into this Stipulation she has 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 43. 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 44. 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 45. 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.

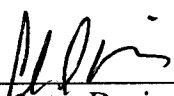
1 46. This Stipulation results from the consideration of various factors by both parties,
2 including the benefits to both by promptly resolving this matter without the time and expense of
3 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
4 such, approval of 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 47. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
9 Board shall have available to it for consideration all documents that the parties agree to submit
10 to the Disciplinary Board, and all public documents. With the exception of Respondent's
11 Affidavit re: Mitigating Circumstances, which is a confidential document and filed under seal,
12 under ELC 3.1(b), all documents that form the record before the Board for its review become
13 public information on approval of the Stipulation by the Board, unless disclosure is restricted by
14 order or rule of law.

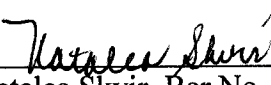
15 48. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it
16 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
17 the Rules for Enforcement of Lawyer Conduct will be made.

18 49. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,
19 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be
20 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
21 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 _____
5 Selina Astra Davis, Bar No. 37738
6 Respondent

Dated: 7/16/14

7 
8 _____
9 Natalea Skvir, Bar No. 34335
10 Disciplinary Counsel

Dated: 7-16-14