

FILED

Mar 14, 2023

**Disciplinary
Board**

Docket # 027

**DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION**

In re

DREW D. DALTON,
Lawyer (Bar No. 39306).

Proceeding No. 21#00029

STIPULATION TO 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 Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Erica Temple, Respondent's Counsel Gregor Hensrude and Respondent lawyer Drew D. Dalton.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, 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. Respondent further understands that a hearing and appeal could result in an outcome more favorable or less favorable to Respondent. Respondent chooses to resolve this

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
2 avoid the risk, time, and expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on November 1,
5 2007.

6 **II. STIPULATED FACTS**

7 2. In April 2012, Respondent began to represent Steven and Leticia Miller (the Millers)
8 in resolving a dispute with the Millers' mortgage holder, SunTrust.

9 3. Respondent requested \$500 to write a demand letter to SunTrust, which the Millers
10 paid. Respondent also entered into an oral fee agreement with the Millers (the 2012
11 Agreement). Respondent told the Millers that Respondent would take the case on a "70/30"
12 contingent fee basis.

13 4. Respondent did not tell the Millers about any other fees they would have to pay,
14 including hourly fees, any additional flat fee, or an additional contingent fee.

15 5. Respondent did not tell the Millers that they would be responsible for paying costs in
16 advance, except for a minimal amount for filing fees.

17 6. Respondent did not limit the scope of Respondent's representation.

18 7. Respondent thought that Respondent had provided a written fee agreement to the
19 Millers but was unable to produce one.

20 8. On April 16, 2012, Respondent sent SunTrust a demand letter on behalf of the Millers.

21 9. On May 21, 2012, Respondent received a letter back from SunTrust dated May 15,
22 2012.

23 10. In the letter, SunTrust offered the Millers a loan modification in exchange for a release

1 of all claims arising out of the dispute concerning their loan modification.

2 11. The letter described the modification as a permanent, fixed rate non-escrowed loan
3 with monthly payments in the amount of \$1,311.87.

4 12. The letter stated that the Millers would be responsible for the timely payment of the
5 real estate taxes and homeowners' insurance for their property.

6 13. The letter stated that the offer was open for 15 days.

7 14. Respondent did not send the Millers a copy of the May 15, 2012 letter from SunTrust.

8 15. Respondent did not adequately communicate with the Millers about the terms of
9 SunTrust's offer and associated risks and benefits. While Respondent provided elements of the
10 offer verbally, the Millers believe that did not adequately convey the offer.

11 16. Respondent did not accept the offer from SunTrust on behalf of the Millers before it
12 expired.

13 17. Respondent acted negligently in failing to adequately communicate with the Millers
14 about SunTrust's offer and deadline to respond to the offer.

15 18. SunTrust assigned its interest and DRRF II SPE, LLC (DRRF) eventually became the
16 holder of the Millers' mortgage note.

17 19. On September 4, 2012, DRRF filed suit to foreclose on the Millers' property in
18 Spokane County Superior Court No. 12-2-03495-2 (the SunTrust lawsuit).

19 20. SunTrust was a Third Party Defendant in the SunTrust Lawsuit.

20 21. The SunTrust lawsuit would have been avoided if the Millers had accepted SunTrust's
21 May 15, 2012 settlement offer.

22 22. On November 1, 2012, Respondent entered an appearance on behalf of the Millers in
23 the SunTrust lawsuit.

1 23. On November 12, 2012, Respondent filed an Amended Answer and Counterclaims on
2 behalf of the Millers in the SunTrust lawsuit (Answer).

3 24. On April 5, 2013, Respondent sent a written fee agreement to the Millers (new fee
4 agreement). As of that date, Respondent was aware that there was no written contingent fee
5 agreement signed by the Millers.

6 25. The new fee agreement was a mixed contingent fee and hourly fee agreement; there
7 was a 30 percent contingent fee, plus the new fee agreement added an hourly fee of \$350 per hour
8 for every hour worked. The new fee agreement required a deposit of \$10,000, which was to be
9 deposited into Respondent's trust account for fees and costs, and an additional \$10,000 "retainer"
10 if the SunTrust lawsuit proceeded to trial. The new fee agreement also stated that the Millers
11 would receive a monthly bill, and any amount owed was payable on receipt of the bill.

12 26. The terms of the new fee agreement were more favorable to Respondent than the 2012
13 Agreement.

14 27. The terms of the new fee agreement were not fair and reasonable.

15 28. Respondent also stated in an accompanying email, "I also need to get a \$10,000
16 retainer to get your file moving. I think we have a good case but at this point I need funds to push
17 the case."

18 29. Respondent did not advise the Millers in writing that they had the right to refuse
19 Respondent's attempt to change their fee agreement.

20 30. Respondent did not advise the Millers in writing to seek the advice of independent
21 counsel about whether to accept the new fee agreement.

22 31. Steven Miller informed Respondent that the Millers did not have \$10,000 to pay
23 Respondent and that charging them the \$10,000 conflicted with the 2012 Agreement.

1 32. The Millers did not sign the new fee agreement or agree to the new terms. Respondent
2 continued their representation anyway.

3 33. On or about April 5, 2013, Respondent told the Millers that Respondent had hired two
4 expert witnesses to work on the SunTrust lawsuit.

5 34. Respondent told the Millers that the experts were necessary to win the Millers' case.

6 35. Respondent told the Millers that both experts had already started work and needed to
7 be paid.

8 36. On April 9, 2013, Respondent also wrote to Steven Miller:

9 It's coming off to us that you want no risk in this litigation. Unfortunately, that's
10 just not the case. Despite my original percentage agreement with you, I cannot
continue to operate without spending money.

11 37. On April 10, 2013, Steven Miller and Respondent met, along with the experts
12 Respondent had identified.

13 38. At the April 10, 2013 meeting, Respondent provided the Millers a proposed fee
14 agreement that required that the Millers make a payment of \$55,000 for costs.

15 39. During the meeting, Miller offered to pay Respondent and the experts identified by
16 Respondent a 50% contingent fee if they were willing to work on that basis.

17 40. Respondent and the Millers did not reach an agreement regarding the payment of costs
18 as proposed by Respondent during the April 10, 2013 meeting, either during or after the meeting.

19 41. In an email dated April 11, 2013, Steven Miller told Respondent that Respondent
20 needed to conform to their 30 percent contingent fee agreement as agreed in 2012.

21 42. On the same date, Respondent responded to Miller, writing:

22 We are taking a cash payment. And the 50/50 at this time is off the table. Please
23 be aware, if this goes to litigation, there may be an escalation clause to 40% 60
days before trial. that is standard in all contingent agreements.

1 43. Respondent had not discussed escalation with the Millers when Respondent and the
2 Millers originally agreed to the 2012 Agreement.

3 44. Respondent did not advise the Millers in writing to seek the advice of independent
4 counsel about these additional proposed changes to the 2012 Agreement.

5 45. The proposed new fee structure terms were not fair and reasonable to the Millers.

6 46. The terms of the proposed new fee structure were more favorable to Respondent than
7 the 2012 Agreement.

8 47. Respondent did not advise the Millers in writing that they had the right to refuse
9 changes the 2012 Agreement.

10 48. Steven Miller sent Respondent an email on May 9, 2013.

11 49. In the May 9, 2013 email, Steven Miller pointed out that none of the new proposed
12 terms had been brought up in the original meeting between the Millers and Respondent when the
13 70/30 agreement was made.

14 50. Responding via email on the same date, Respondent wrote:

15 I have not changed the contingency. Our agreement was a third and 40 percent if
16 trial... I do not pay any costs without some commitment from the client. With
17 money now available we can make a demand that gets you the best possible
18 leverage. I want to work this out, but I feel like you want me to take all the financial
19 risk. That cant work. I'm over 15000 into this file. I have not charged a dime till
20 settlement... I dont have the money to front you the costs... If you want, I can
21 drop the experts, get half or a third as much. I don't think you want that...

19 51. The Millers did not agree to the new fee agreement, and Respondent continued the
20 representation anyway.

21 52. On May 22, 2013, Respondent received \$5,000 from the Millers.

22 53. In July 2013, SunTrust moved for summary judgment on all of the Millers'
23 counterclaims.

1 54. The court found in favor of SunTrust and denied the Millers' counterclaims.

2 55. After that, Respondent spoke to the Millers and told them that they would either have
3 to leave their home or file an appeal.

4 56. Respondent told the Millers that Respondent needed an additional \$10,000 to handle
5 the appeal.

6 57. On October 18, 2013, Respondent filed a notice of appeal for the Millers in Court of
7 Appeals No. 320111.

8 58. In March 2014, Respondent received \$3,000 from the Millers for the appeal brief.

9 59. In August 2014, DRRF moved for summary judgment.

10 60. In September 2014, Spokane County Superior Court granted the motion for summary
11 judgment and entered a judgment in favor of DRRF in the amount of \$513,626.91.

12 61. The court also entered an order foreclosing on other property the Millers owned.
13 Enforcement was stayed pending the outcome of the appeal in the Court of Appeals.

14 62. On March 5, 2015, the Court of Appeals issued an unpublished opinion, SunTrust
15 Mortgage Inc. v. Miller, 186 Wn. App. 1015 (2015). The court affirmed the trial court's grant of
16 summary judgment in the SunTrust lawsuit.

17 63. On June 4, 2015, Respondent withdrew from representing the Millers.

18 64. On June 29, 2015, the Millers filed a malpractice suit against Respondent, Miller v.
19 Dalton, Spokane County Superior Court No. 15-2-02547-8 (the malpractice lawsuit).

20 65. The Millers asserted claims of negligence, violation of Washington's Consumer
21 Protection Act (CPA), and breach of fiduciary duty, stemming from Respondent's failure to
22 communicate SunTrust's offer and changes to the fee agreement.

23 66. On December 16, 2016, a jury found in favor of the Millers in the malpractice lawsuit.

1 67. The jury found that Respondent breached the standard of care expected from
2 Washington lawyers and breached Respondent's fiduciary duty to the Millers.

3 68. The jury awarded the Millers a judgment in the amount of \$503,557.00.

4 69. Respondent appealed.

5 70. On September 18, 2018, the Court of Appeals issued an unpublished opinion, Miller
6 v. Dalton, 5 Wn. App. 1019 (2018).

7 71. The court granted each party partial relief and remanded the malpractice lawsuit for a
8 new trial consistent with its opinion.

9 72. Respondent and the Millers eventually settled the malpractice lawsuit.

10 73. In May 2019, Respondent sent the Millers a check representing a refund of fees that
11 the Millers paid to Respondent.

12 III. STIPULATION TO MISCONDUCT

13 74. By agreeing to represent the Millers on a contingent fee basis, without a written
14 contingent fee agreement signed by the Millers, and by failing to clearly notify the Millers of the
15 expenses for which they would be liable, Respondent violated RPC 1.5(c).

16 75. By failing to communicate SunTrust's settlement offer to the Millers in a way that
17 allowed them to understand fully and completely understand the offer and the advantages and
18 disadvantages of accepting the offer, and by failing to respond promptly to SunTrust's settlement
19 offer, Respondent violated RPC 1.3 and RPC 1.4(a) and (b).

20 76. By attempting to modify the 2012 Agreement with the Millers without meeting the
21 requirements of RPC 1.8(a), Respondent violated RPC 8.4(a), RPC 1.8(a), and RPC 1.7.

22 IV. PRIOR DISCIPLINE

23 77. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 78. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 79. ABA Standard 7.0 is most applicable to violations of RPC 1.5:

- 5 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
6 conduct that is a violation of a duty owed as a professional with the intent
7 to obtain a benefit for the lawyer or another, and causes serious or
8 potentially serious injury to a client, the public, or the legal system.
9 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
10 conduct that is a violation of a duty owed as a professional and causes
11 injury or potential injury to a client, the public, or the legal system.
12 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
13 conduct that is a violation of a duty owed as a professional and causes
14 injury or potential injury to a client, the public, or the legal system.
15 7.4 Admonition is generally appropriate when a lawyer engages in an isolated
16 instance of negligence that is a violation of a duty owed as a professional,
17 and causes little or no actual or potential injury to a client, the public, or
18 the legal system.

19 80. Respondent acted knowingly in failing to have a written contingent fee agreement
20 signed by the Millers, causing injury and potential injury to the Millers. The presumptive sanction
21 under ABA Standard 7.0 is suspension.

22 81. ABA Standard 4.4 is most applicable to violations of RPC 1.3 and RPC 1.4:

- 23 4.41 Disbarment is generally appropriate when:
24 (a) a lawyer abandons the practice and causes serious or potentially
serious injury to a client; or
(b) a lawyer knowingly fails to perform services for a client and
causes serious or potentially serious injury to a client; or
(c) a lawyer engages in a pattern of neglect with respect to client
matters and causes serious or potentially serious injury to a client.
4.42 Suspension is generally appropriate when:
(a) a lawyer knowingly fails to perform services for a client and
causes injury or potential injury to a client, or
(b) a lawyer engages in a pattern of neglect and causes injury or
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.

1 4.44 Admonition is generally appropriate when a lawyer is negligent and does
2 not act with reasonable diligence in representing a client, and causes little
or no actual or potential injury to a client.

3 82. Respondent acted negligently in failing to adequately communicate SunTrust's
4 settlement offer to the Millers and by failing to timely accept or reject SunTrust's settlement offer.
5 There was injury to the Millers as they were unable to agree to a modification with SunTrust
6 because they were not fully aware of SunTrust's offer and associated deadline. The presumptive
7 sanction under ABA Standard 4.4 is reprimand.

8 83. ABA Standard 4.3 is most applicable to violations of RPC 1.7 and RPC 1.8.

9 4.31 Disbarment is generally appropriate when a lawyer, without the informed
10 consent of client(s):

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

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

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

20 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of
21 interest and does not fully disclose to a client the possible effect of that
22 conflict, and causes injury or potential injury to a client.

23 4.33 Reprimand is generally appropriate when a lawyer is negligent in
24 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 injury or potential injury to a
client.

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.

84. Respondent acted knowingly when Respondent attempted to have the Millers

1 renegotiate the fee agreement without first obtaining their informed consent, confirmed in writing.
2 There was potential injury to the Millers. The presumptive sanction under ABA Standard 4.3 is
3 suspension.

4 85. The following aggravating factor applies under ABA Standard 9.22:

5 (d) multiple offenses.

6 86. The following mitigating factors apply under ABA Standard 9.32:

7 (a) absence of a prior disciplinary record;

8 (f) inexperience in the practice of law (at the time the misconduct began, Respondent
9 had been admitted to practice in Washington for less than five years);

10 (g) character or reputation;

11 (l) remorse.

12 87. A significant mitigating factor is the contribution this stipulation makes to the efficient
13 and effective operation of the lawyer discipline system considering the effect the COVID-19
14 public health emergency has had on disciplinary resources and the orderly processing of
15 disciplinary matters.

16 88. On balance the aggravating and mitigating factors do not require a departure from the
17 presumptive sanction, though the mitigating factors do indicate a relatively short period of
18 suspension is appropriate.

19 VI. STIPULATED DISCIPLINE

20 89. The parties stipulate that Respondent shall receive a 60-day suspension.

21 VII. CONDITIONS OF REINSTATEMENT

22 90. Reinstatement from suspension is conditioned on payment of costs and expenses, as
23 provided below.

1 **VIII. CONDITIONS OF PROBATION**

2 91. Respondent will be subject to probation for a period of one year beginning when
3 Respondent is reinstated to the practice of law and shall comply with the specific probation terms
4 set forth below:

- 5 a) Respondent agrees to a telephone consultation with an ethics consultant approved
6 by the Probation Administrator regarding fee agreements and conflicts of interest.
7 The consultation shall occur during the suspension or within 60 days of
8 reinstatement. Within two weeks of this consultation, Respondent shall provide
9 proof to the Probation Administrator of the meeting in the form of a written
10 statement that includes the date, time, and a brief summary of the consultation.
- 11 b) Respondent agrees to pay all costs in connection with the ethics consultation.
- 12 c) For all client matters, Respondent agrees to have a written fee agreement signed
13 by the client. Agreements must be maintained for at least seven years (see RPC
14 1.15B(a)(3)).

15 92. Respondent’s compliance with these conditions shall be monitored by the Probation
16 Administrator of the Office of Disciplinary Counsel (“Probation Administrator”). Failure to
17 comply with a condition of probation listed herein may be grounds for further disciplinary action
18 under ELC 13.8(b).

19 **IX. RESTITUTION**

20 93. Because Respondent has already refunded all fees paid by the Millers, an order of
21 restitution is not appropriate.

22 **X. COSTS AND EXPENSES**

23 94. In light of Respondent’s willingness to resolve this matter by stipulation at an early
24 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000
in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from

1 suspension is conditioned on payment of costs.

2 **XI. VOLUNTARY AGREEMENT**

3 95. Respondent states that prior to entering into this Stipulation Respondent has consulted
4 independent legal counsel regarding this Stipulation, that Respondent is entering into this
5 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
6 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
7 as provided herein.

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

10 **XII. LIMITATIONS**

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

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

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

1 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.

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


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

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

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


17 
Drew Dalton (Feb 8, 2023 13:18 PST)
Drew D. Dalton, Bar No. 39306
Respondent

Dated: Feb 8, 2023

18 

Gregor Hensrude, Bar No. 45918
Counsel for Respondent

Dated: Feb 8, 2023

19 

Erica Temple, Bar No. 28458
Senior Disciplinary Counsel

Dated: Feb 9, 2023