

FILED

Aug 24 2020

Disciplinary
Board

Docket # 003

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

DAVID A. JAKEMAN,

Lawyer (Bar No. 39332).

Proceeding No. 20#00034

ODC File No. 19-01196

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Henry Cruz and Respondent lawyer David A. Jakeman.

Respondent understands that he is entitled under the ELC to a hearing, to present exhibits and witnesses on his behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that he 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 him. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time,

1 and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on November 6,
4 2007.

5 **II. STIPULATED FACTS**

6 2. On May 21, 2015, Daniela Avalos signed a fee agreement with Mr. Jakeman's law
7 firm, Beacon Immigration, to prepare two immigration applications on behalf of her husband,
8 Benito Sanchez Valladares, and represent him in those matters.

9 3. The terms of the fee agreement provided for a \$2500 nonrefundable "retainer fee" and
10 an additional \$2500 flat fee, for a total of \$5000. Although the "retainer fee" portion of the
11 agreement, as drafted, was purportedly to secure the availability of the lawyers at Beacon
12 Immigration, Respondent intended the "retainer fee" to compensate the specified legal services
13 provided in the flat fee portion of the agreement so that, in actuality, Ms. Avalos signed a \$5000
14 flat fee agreement.

15 4. Ms. Avalos paid the full amount of \$5000 at the time the contract was executed.

16 5. Respondent's firm performed little work on the applications and never completed
17 them.

18 6. In February 2016, Ms. Avalos canceled the contract and requested a refund because
19 she and Mr. Sanchez Valladares had separated.

20 7. On March 15, 2016, Respondent's firm informed Ms. Avalos that the firm could not
21 issue her a refund without a signed consent from Mr. Sanchez Valladares.

22 8. On September 30, 2016, Ms. Avalos and Mr. Sanchez Valladares divorced. The court
23 awarded Ms. Avalos the legal fees held by Respondent's firm.

1 9. Between May and August 2019, Ms. Avalos communicated with Respondent on
2 multiple occasions requesting a refund, but Respondent did not provide a substantive response.

3 10. On August 22, 2019, Ms. Avalos informed Respondent that she was considering filing
4 a bar grievance.

5 11. On that same date, Respondent offered Ms. Avalos a refund of \$3500. Respondent
6 also offered to refund her an additional \$500 “if she were to decide to not file a [bar] complaint.”

7 12. Ms. Avalos rejected Respondent’s offer.

8 13. On August 26, 2019, Ms. Avalos filed a bar grievance against Respondent for his
9 failure to refund the unearned fees.

10 14. On August 31, 2019, Respondent informed Ms. Avalos that he would only refund her
11 the \$2500 flat fee, because he considered the \$2500 “retainer” as “not refundable.”

12 15. In September 2019, Respondent refunded Ms. Avalos \$2500.

13 III. STIPULATION TO MISCONDUCT

14 16. By making an agreement for, charging, and collecting a nonrefundable “retainer fee”
15 where the fee was not a true retainer and was not otherwise earned, and by failing to refund
16 unearned fees after he was terminated, Respondent violated RPC 1.5(a) and RPC 1.16(d).

17 17. By offering to pay Ms. Avalos an additional \$500 if she did not file a Bar grievance,
18 Respondent violated RPC 8.4(d).

19 IV. PRIOR DISCIPLINE

20 18. Respondent has no prior discipline.

21 V. APPLICATION OF ABA STANDARDS

22 19. The following American Bar Association Standards for Imposing Lawyer Sanctions
23 (1991 ed. & Feb. 1992 Supp.) apply to this case:

1 **7.0 Violations of Duties Owed as a Professional**

2 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
3 that is a violation of a duty owed as a professional with the intent to obtain a benefit
4 for the lawyer or another, and causes serious or potentially serious injury to a
5 client, the public, or the legal system.

6 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
7 that is a violation of a duty owed as a professional and causes injury or potential
8 injury to a client, the public, or the legal system.

9 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
10 that is a violation of a duty owed as a professional and causes injury or potential
11 injury to a client, the public, or the legal system.

12 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
13 of negligence that is a violation of a duty owed as a professional, and causes little
14 or no actual or potential injury to a client, the public, or the legal system.

15 20. Respondent's conduct was knowing.

16 21. Ms. Avalos suffered actual injury because she lost the use of her funds. The public
17 suffered potential injury because Respondent's misconduct could have gone undetected.

18 22. The presumptive sanction is suspension.

19 23. The following aggravating factors apply under ABA Standard 9.22:

20 (d) multiple offenses;

21 (i) substantial experience in the practice of law [admitted in 2007].

22 24. The following mitigating factors apply under ABA Standard 9.32:

23 (a) absence of a prior disciplinary record;

24 (c) personal or emotional problems [see Confidential Attachment A];

25 (l) remorse.

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

28 26. Based on the factors set forth above, the presumptive sanction should be mitigated to
29 a reprimand.

1 **VI. STIPULATED DISCIPLINE**

2 27. The parties stipulate that Respondent shall receive two reprimands, one for each
3 violation.

4 **VII. CONDITIONS OF PROBATION**

5 28. Respondent will be subject to probation for a period of two years beginning when this
6 stipulation receives final approval and shall comply with the specific probation conditions set
7 forth below.

8 29. Respondent's compliance with these conditions will be monitored by the Probation
9 Administrator of the Office of Disciplinary Counsel ("Probation Administrator"). Failure to
10 comply with a condition of probation listed herein may be grounds for further disciplinary action
11 under ELC 13.8(b).

12 **Ethics School**

13 30. Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or by
14 obtaining the recorded product, and pay registration costs of \$150 plus applicable sales tax.
15 Respondent will receive all applicable approved CLE credits for time in attendance at the Ethics
16 School.

17 31. Attendance at Ethics School is in addition to and shall not fulfill any continuing legal
18 education (CLE) requirements set out in this stipulation.

19 32. Respondent shall contact the Ethics School Administrator, currently Thea Jennings, at
20 (206) 733-5985 or theaj@wsba.org, by January 1, 2021 to confirm enrollment in Ethics School
21 and related logistics.

22 33. Respondent shall complete the ethics school requirement by February 1, 2021.

23 34. Respondent shall provide evidence of completion of ethics school to the Probation

1 Administrator no later than 30 days after the conclusion of the course. Proof of attendance shall
2 include the program brochure, evidence of payment, and a written statement that includes the date
3 and time of attendance.

4 35. The Ethics School administrator may respond to inquiries from the Probation
5 Administrator regarding Respondent's compliance with these conditions.

6 **Ethics Consultation**

7 36. Respondent agrees to a telephonic ethics consultation, for up to two hours, with Art
8 Lachman regarding the conduct giving rise to this grievance and how to conform his fee
9 agreement to the RPC, including RPC 1.5(f). Respondent shall provide the recommended
10 revisions to his fee agreement to Mr. Lachman for review. The consultation shall occur by
11 October 1, 2020.

12 37. Within two weeks of this consultation, Respondent shall provide proof to the
13 Probation Administrator of the meeting(s) in the form of a written statement that includes the
14 date, time, and a brief summary of the consultation, including how he has revised his fee
15 agreement to ensure its compliance with the RPC.

16 38. Mr. Lachman charges \$275/hour. Respondent agrees to pay all costs in connection
17 with the ethics consultation.

18 **VIII. RESTITUTION**

19 39. Respondent shall pay restitution of \$2000 to Ms. Avalos. Payments may be made in
20 bi-monthly installments of \$500 each by November 1, 2020, January 1, 2021, March 1, 2021, and
21 May 1, 2021.

22 **IX. COSTS AND EXPENSES**

23 40. In light of Respondent's willingness to resolve this matter by stipulation at an early

1 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
2 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if
3 these costs are not paid within 30 days of approval of this stipulation.

4 **X. VOLUNTARY AGREEMENT**

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

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

12 **XI. LIMITATIONS**

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

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

21 45. This Stipulation results from the consideration of various factors by both parties,
22 including the benefits to both by promptly resolving this matter without the time and expense of
23 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As


1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.

4 46. Under ELC 3.1(b), all documents that form the record before the Chief Hearing
5 Officer for his or her review become public information on approval of the Stipulation by the
6 Chief Hearing Officer, unless disclosure is restricted by order or rule of law.

7 47. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by the
8 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
9 of Lawyer Conduct will be made. Respondent represents that he is not admitted to practice law
10 in any other jurisdiction.

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

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

17 
18 _____
19 David A. Jakeman, Bar No. 39332
20 Respondent

Dated: 8/21/2020

21 
22 _____
23 Henry Cruz, Bar No. 38799
24 Disciplinary Counsel

Dated: 08/21/2020