

FILED
JAN 04 2016
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

SEAN ELLIOT NYBERG,
Lawyer (Bar No. 43797).

Proceeding No. 15#00041

STIPULATION TO A THREE-YEAR
SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to a Three-Year Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Sachia Stonefeld Powell and Respondent lawyer Sean Elliot Nyberg and his counsel, Phillip H. Ginsberg.

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

Stipulation to Discipline
Page 1

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

I. ADMISSION TO PRACTICE

1. Respondent was admitted to practice law in the State of Washington on June 9, 2011.

II. STIPULATED FACTS¹

2. Beginning in 2011, Respondent was employed by the law firm of O'Brien, Barton, Joe and Hopkins (the firm).

3. All clients that Respondent represented were clients of the firm, rather than his own clients.

4. Beginning in 2013, Respondent represented Jay Kipp, who was charged with Driving While Under the Influence (DUI).

5. Respondent charged Mr. Kipp a \$3500 flat fee for his services.

6. Mr. Kipp paid the firm \$500 at the beginning of the representation.

7. In July 2013, Mr. Kipp's mother paid the remaining \$3000 on his behalf. She wrote the \$3000 check out to Respondent, which Mr. Kipp provided directly to Respondent.

8. In August 2013, Respondent deposited the check into his personal account.

9. In August 2013, Respondent instructed the firm to write off Mr. Kipp's outstanding balance of \$3,792.27.

10. Beginning in late 2013, Respondent represented Brandon Walter, who was charged with DUI.

¹ Additional stipulated facts are contained in Appendix A, for which the parties request a protective order.

11. Respondent charged Mr. Walter a \$3500 flat fee for his services.
12. Respondent and Mr. Walter did not enter into a written fee agreement.
13. Mr. Walter paid \$500 at the time the representation commenced and his mother paid the additional \$3000 on his behalf at his arraignment in December 2013. Mr. Walter's mother made the \$3000 check out to Respondent and handed it to him directly.
14. On December 17, 2013, Respondent deposited the check into his personal account and withdrew the equivalent amount in cash.
15. According to Respondent, he put the cash in a dresser drawer.
16. [REDACTED]
17. During his absence, the firm discovered that Mr. Walter's funds were not given to the firm.
18. Managing partner John O'Brien met with Respondent when Respondent returned from treatment and inquired about the funds. Respondent told him that the retention of the funds was a misunderstanding, and stated that he still had Mr. Walter's money at his house.
19. Respondent did not provide Ms. Walter's money to the firm until after the grievance was filed in August 2014.
20. Mr. Nyberg's employment with the firm was terminated in April 2014.
21. In the summer of 2014, Mr. Kipp contacted Respondent to report that the firm was attempting to collect the additional \$3000+ from him.
22. In July 2014, Respondent returned the \$3000 to Mr. Kipp.

III. STIPULATION TO MISCONDUCT

23. By collecting and retaining fees from firm clients without providing the fees to

the firm, Respondent violated RPC 8.4(c).

24. By failing to deposit the fees in a trust account, Respondent violated RPC 1.15A(b)(2).

IV. PRIOR DISCIPLINE

25. Respondent has no prior discipline.

V. APPLICATION OF ABA STANDARDS

26. The following American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. & Feb. 1992 Supp.) apply to this case: ABA Standard 5.1 is most applicable to Respondent's misappropriation of funds belonging to the firm. ABA Standard 4.1 is most applicable to Respondent's duty to preserve client funds. ABA Standards 4.1 and 5.1 are attached to this Stipulation as Appendix B.

27. Respondent engaged in intentional conduct (regarding the firm's funds) involving dishonesty.

28. Respondent's conduct seriously adversely reflects on his fitness to practice.

29. Additionally, Respondent's conduct injured the firm and inconvenienced Mr. Kipp.

30. Respondent's failure to deposit advance fee payments into a trust account was at least negligent.

31. Respondent's failure to deposit the funds into a trust account put those client funds at risk.

32. The presumptive sanction for the violation of RPC 8.4(c) is disbarment.

33. The presumptive sanction for the violation of RPC 1.15A(b)(2) is reprimand.

34. Where there are multiple ethical violations, the "ultimate sanction imposed

should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.” In re Disciplinary Proceeding Against Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993) (quoting ABA Standards at 6).

35. The following aggravating factor applies under ABA Standard 9.22:

(b) dishonest or selfish motive.

36. The following mitigating factors apply under ABA Standard 9.32:

- (a) absence of a prior disciplinary record;
- (c) personal or emotional problems [see, Appendix A];
- (f) inexperience in the practice of law [admitted 2011]; and
- (l) remorse.

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

38. Based on the factors set forth above, the presumptive sanction should be mitigated to a suspension.

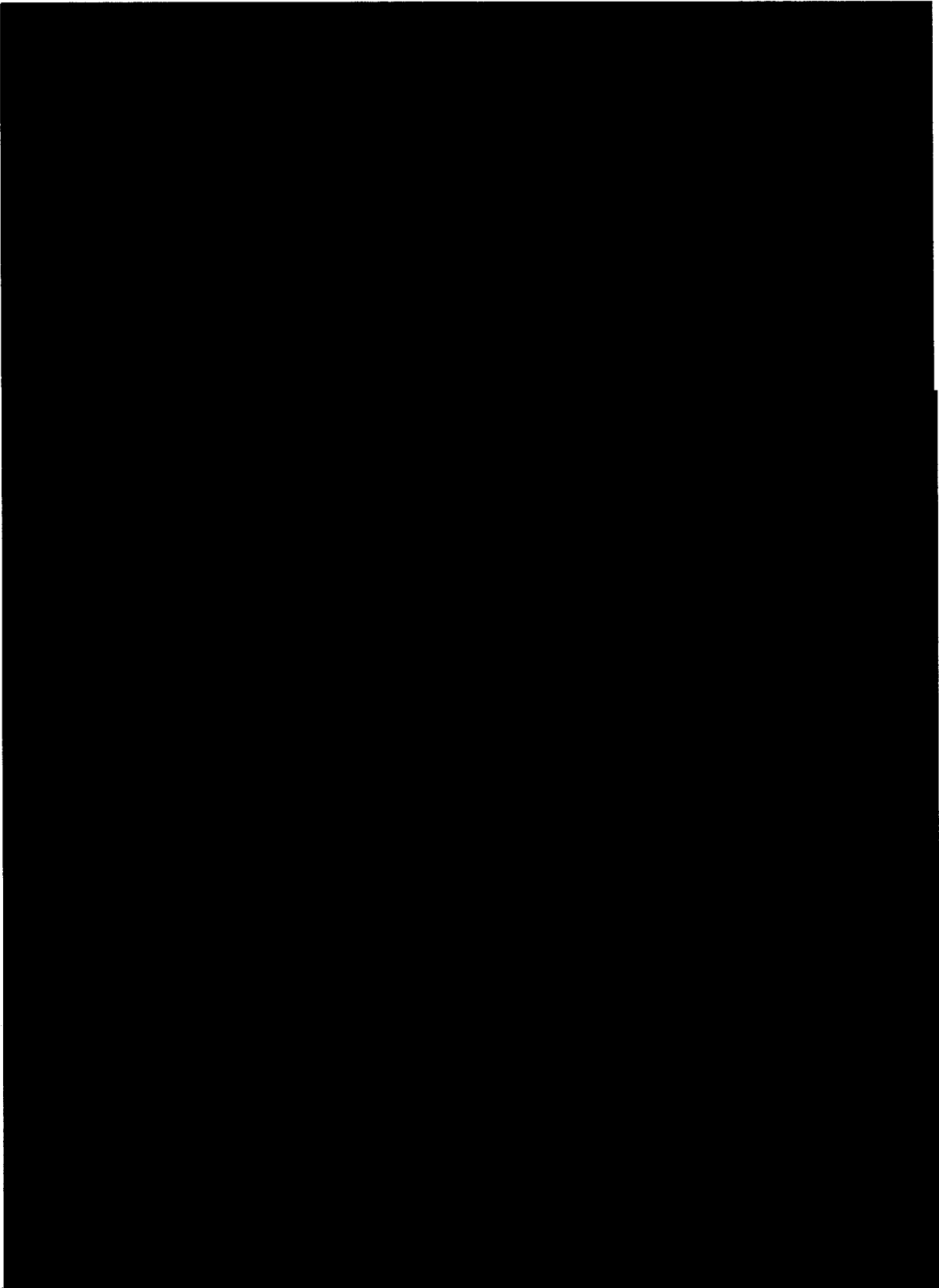
VI. STIPULATED DISCIPLINE

1. The parties stipulate that Respondent shall receive a three-year suspension for his conduct.

Stipulation to Discipline
Page 6

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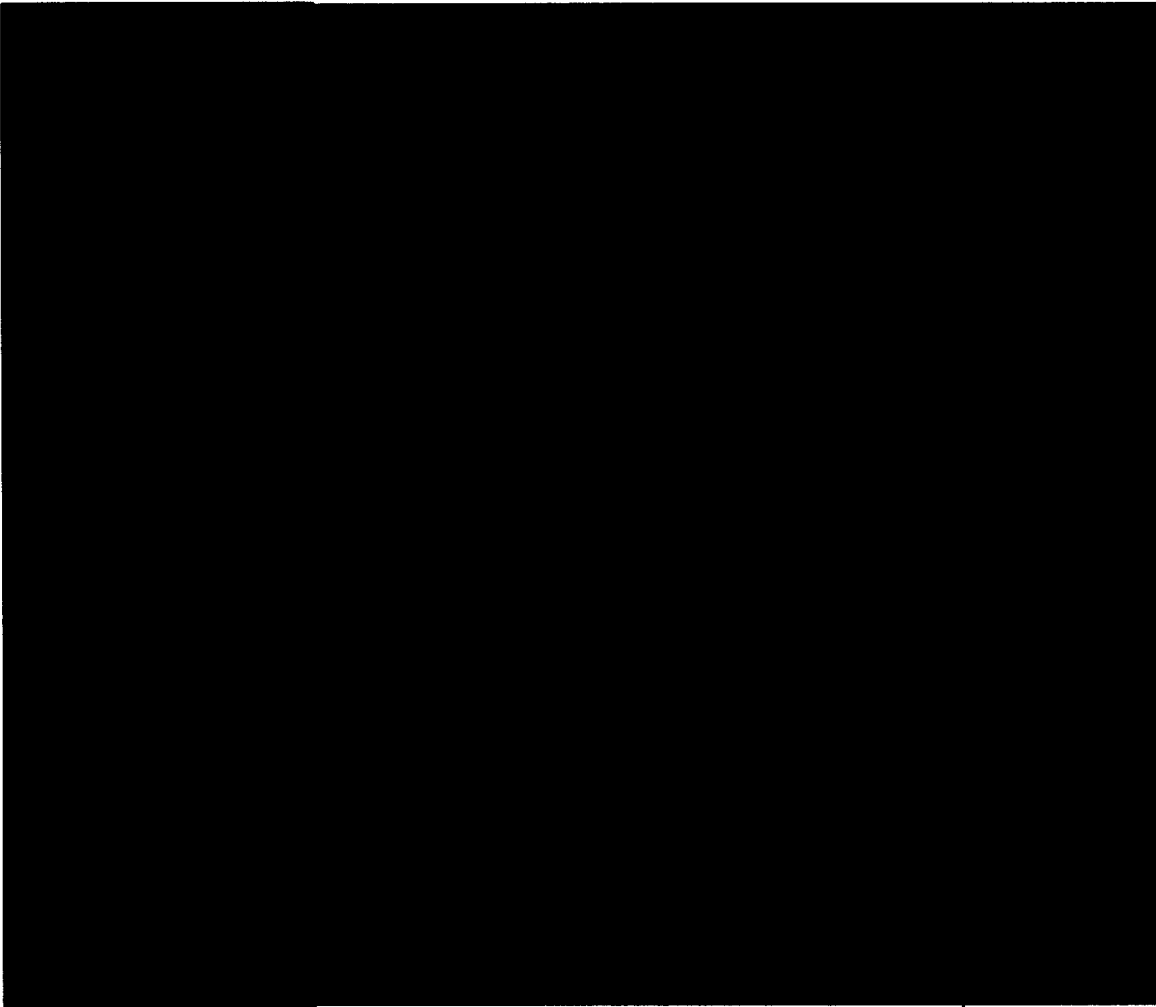
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Stipulation to Discipline
Page 7

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VII. RESTITUTION

39. No restitution is necessary in this matter.

VIII. COSTS AND EXPENSES

40. In light of Respondent's willingness to resolve this matter by stipulation at an early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1573.87 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 suspension is conditioned on payment of costs.

IX. VOLUNTARY AGREEMENT

Stipulation to Discipline
Page 8

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

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

X. LIMITATIONS

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

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

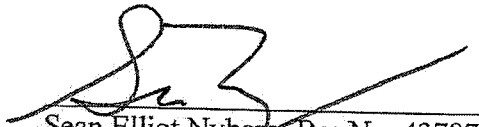
45. This Stipulation results from the consideration of various factors by both parties, including the benefits to both by promptly resolving this matter without the time and expense of hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As such, approval of this Stipulation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

46. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have available to it for consideration all documents that the parties agree to submit to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that form the record before the Board for its review become public information on approval of the Stipulation by the Board, unless disclosure is restricted by order or rule of law.


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

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

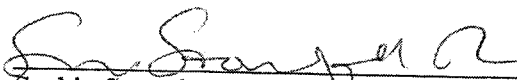
WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to Discipline as set forth above.


Sean Elliot Nyberg, Bar No. 43797
Respondent

Dated: 10/1/15


Phillip H. Ginsberg, Bar No. 164
Counsel for Respondent

Dated: 10/1/15


Sachia Stonefeld Powell, Bar No. 21166
Disciplinary Counsel

Dated: 10/5/15