

Oct 18 2018

Disciplinary Board

Docket # 016

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**ARTURO DAVID MENÉNDEZ,**  
Lawyer (Bar No. 43880).

Proceeding No. 17#00068

ODC File No(s). 16-00691

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 Natalea Skvir, Respondent’s Counsel Joel Evans Wright and Respondent lawyer Arturo David Menéndez.

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

1 outcome more favorable or less favorable to him. Respondent chooses to resolve this  
2 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
3 avoid the risk, time and expense attendant to further proceedings.

#### 4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on July 21,  
6 2011.

#### 7 II. STIPULATED FACTS

8 2. Respondent is a criminal defense attorney and the sole attorney in his law firm,  
9 The Menéndez Law Firm.

10 3. In 2015, O.S.H.<sup>1</sup> hired Respondent to recover \$61,000 the government had seized  
11 from him.

12 4. Respondent succeeded in recovering O.S.H.'s funds on or about February 10,  
13 2016.

14 5. Upon receiving the \$61,000 check from the government, Respondent deposited it  
15 in his IOLTA trust account at HomeStreet Bank, account ending in 8033.

16 6. On February 13, 2016, Respondent issued a \$59,000 check from his trust account  
17 to O.S.H.

18 7. Shortly thereafter, Respondent transferred the remaining \$2,000 of O.S.H.'s funds  
19 into his operating account at HomeStreet Bank as part of his fee for representing O.S.H.

20 8. On February 20, 2016, Respondent wrote a \$12,000 trust account check to his law  
21 firm and deposited it into another operating account he maintained at BECU.

22 9. Respondent used the \$12,000 for his own purposes.

23 <sup>1</sup> The client's initials are used to protect his privacy, since the client was not the grievant in this matter.

1 10. Respondent had intended to write the \$12,000 check from his HomeStreet  
2 operating account, not his trust account.

3 11. At the time Respondent wrote the \$12,000 check, his HomeStreet operating  
4 account balance was \$13,425 and would have covered a \$12,000 disbursement.

5 12. Respondent's \$12,000 disbursement from his trust account did not immediately  
6 cause an overdraft in the trust account because O.S.H. had not yet negotiated Respondent's  
7 \$59,000 check, leaving sufficient funds to cover the \$12,000 check.

8 13. Because the \$12,000 check did not cause an overdraft, Respondent did not  
9 immediately realize that he had written that check on the wrong account.

10 14. Respondent did not reconcile his trust account check register to his monthly bank  
11 statement for his trust account, nor reconcile his trust account check register balance to the total  
12 of his client ledgers, as required by RPC 1.15A(h)(6).

13 15. Because Respondent did not timely perform these reconciliations on a monthly  
14 basis, he remained unaware of his erroneous disbursement.

15 16. In mid-April 2016, Respondent's newly-hired business manager reconciled several  
16 months of trust account records and discovered the \$12,000 shortage in trust account funds.

17 17. At that time, Respondent's HomeStreet operating account no longer held sufficient  
18 funds to replenish the \$12,000 trust account disbursement made on February 20, 2016.

19 18. Respondent called O.S.H. and asked him to refrain from cashing the \$59,000 trust  
20 account check and to return it.

21 19. In its place, Respondent offered to send O.S.H. a check for \$47,000 and enter into  
22 an agreement to pay him the remaining \$12,000 as the funds became available.

23 20. O.S.H. did not agree to the proposal.  
24

1 21. O.S.H. attempted to deposit the \$59,000 check and it was returned for insufficient  
2 funds, prompting an April 26, 2016 overdraft notice to ODC.

3 22. Upon receiving the overdraft notice on April 28, 2016, ODC opened an  
4 investigation into Respondent's trust account and handling of client funds.

5 23. Respondent wrote O.S.H. a \$47,000 check from his trust account on April 28,  
6 2016, which O.S.H. cashed.

7 24. On July 6, 2016, Respondent issued a \$1,000 check to O.S.H., which O.S.H.  
8 cashed.

9 25. O.S.H. attempted to reach Respondent thereafter, without success, until May 2017,  
10 when Respondent called O.S.H. and asked him to come to his office and sign a plan for  
11 Respondent to repay O.S.H. O.S.H. declined to do so.

12 26. On September 15, 2017, Respondent sent O.S.H. checks for the \$11,000 he still  
13 owed him and 12% interest.

### 14 III. STIPULATION TO MISCONDUCT

15 27. By failing to hold \$12,000 of O.S.H.'s funds in his trust account, Respondent  
16 violated RPC 1.15A(c)(1).

17 28. By disbursing O.S.H.'s \$12,000 for his own use, Respondent violated RPC  
18 1.15A(h)(8).

19 29. By failing to promptly pay O.S.H. the funds that O.S.H. was entitled to receive,  
20 Respondent violated RPC 1.15A(f).

21 30. By failing to reconcile his trust account records on a monthly basis, Respondent  
22 violated RPC 1.15A(h)(6).

1 **IV. PRIOR DISCIPLINE**

2 31. Respondent has no history of discipline.

3 **V. APPLICATION OF ABA STANDARDS**

4 32. The following American Bar Association Standards for Imposing Lawyer Sanctions  
5 (1991 ed. & Feb. 1992 Supp.) apply to this case:

6 **4.1 *Failure to Preserve the Client's Property***

7 Absent aggravating or mitigating circumstances, upon application of the factors  
8 set out in 3.0, the following sanctions are generally appropriate in cases  
involving the failure to preserve client property:

9 4.11 Disbarment is generally appropriate when a lawyer knowingly converts  
client property and causes injury or potential injury to a client.

10 4.12 Suspension is generally appropriate when a lawyer knows or should  
11 know that he is dealing improperly with client property and causes injury or  
potential injury to a client.

12 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.

13 4.14 Admonition is generally appropriate when a lawyer is negligent in  
14 dealing with client property and causes little or no actual or potential injury to a  
client.

15  
16 33. Respondent's February 20, 2016 disbursement of \$12,000 from his trust account was  
17 negligent.

18 34. Respondent used these funds for his own purposes.

19 35. Respondent knowingly failed to restore the funds to his trust account and knowingly  
20 failed to promptly deliver the funds to O.S.H. that O.S.H was entitled to receive.

21 36. O.S.H. was injured insofar as he was denied access to his funds for 17 months.

22 37. The presumptive sanction is suspension.

23 38. The following aggravating factor applies under ABA Standard 9.22(d): multiple  
24 offenses.

1 39. The following mitigating factors apply under ABA Standard 9.32:

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

3 (l) remorse.

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

6 41. The aggravating and mitigating factors do not warrant deviation from the  
7 presumptive sanction of suspension, but warrant a suspension of three months.

8 **VI. STIPULATED DISCIPLINE**

9 42. The parties stipulate that Respondent shall receive a three-month suspension for his  
10 conduct.

11 43. As a condition of reinstatement from suspension, Respondent must complete the  
12 following steps to disburse any funds that are owed to clients or third parties and to receive  
13 additional education on how to handle client funds in compliance with the Washington Supreme  
14 Court's RPC 1.15A and RPC 1.15B:

15 a) For the time frame starting six months prior to the effective date of the suspension  
16 up to the date Respondent seeks reinstatement, Respondent must provide to ODC,  
17 for each trust account open during any portion of that time frame, copies of the  
18 following:

- 19 • any and all bank statements,
- 20 • copies of any and all deposited items,
- 21 • copies of any and all records of disbursements,
- 22 • a complete and accurate check register identifying every transaction,
- 23 • complete and accurate client ledgers identifying every transaction  
24 attributable to a client,
- monthly reconciliations between the check register and the bank  
statement,
- monthly reconciliations between the check register and the client  
ledgers, and
- if the Respondent maintains trust-account records in QuickBooks,  
provide an electronic copy of the file with the trust-account records.

- 1 b) Respondent must carefully review the WSBA publication Managing Client Trust  
2 Accounts: Rules, Regulations, and Common Sense, and provide disciplinary  
3 counsel with a signed certification that he has done so.  
4  
5 c) Respondent must complete a WSBA continuing legal education course on managing  
6 client trust accounts for at least 1.5 credits, and provide disciplinary counsel with  
7 documentation showing that he has done so.  
8  
9 d) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide  
10 the required documentation to disciplinary counsel at least 30 days prior to seeking  
11 certification of compliance with reinstatement provisions.

12 44. Respondent will be subject to probation for a period of two years commencing upon  
13 Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of his  
14 trust account practices, and must comply with the specific probation terms set forth below:

- 15 e) Respondent shall carefully review and fully comply with RPC 1.15A and RPC  
16 1.15B.  
17  
18 f) For all client matters, Respondent shall have a written fee agreement signed by the  
19 client, which agreements are to be maintained for least seven years (see RPC  
20 1.15B(a)(3)).  
21  
22 g) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and  
23 Review Report," Respondent shall review the trust-account records detailed on the  
24 form report, review the completed report, and sign and date the completed report.  
25  
26 h) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-  
27 account records for the time period to be reviewed by ODC's audit staff and  
28 disciplinary counsel for compliance with the RPC:  
29  
30 i) Months 1 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the  
31 commencement of probation, Respondent shall provide the trust account  
32 records from the date of commencement of probation to the end of the third  
33 full month.  
34  
35 ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the  
36 commencement of probation, Respondent shall provide the trust account  
37 records from the end of the previously provided quarter through the end of  
38 month six.  
39  
40 iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the  
41 commencement of probation, Respondent shall provide the trust account  
42 records from the end of the previously provided quarter through the end of  
43 month nine.

- 1           iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth month after  
2           the commencement of probation, Respondent shall provide the trust  
3           account records from the end of the previously provided quarter through  
4           the end of month twelve.
- 5           v) Months 13– 15. By no later than the 30<sup>th</sup> day of the sixteenth month after  
6           the commencement of probation, Respondent shall provide the trust  
7           account records from the end of the previously provided quarter through  
8           the end of month fifteen.
- 9           vi) Months 16 – 18. By no later than the 30<sup>th</sup> day of the nineteenth month after  
10           the commencement of probation, Respondent shall provide the trust  
11           account records from the end of the previously provided quarter through  
12           the end of month eighteen.
- 13           vii) Months 19 – 21. By no later than the 30<sup>th</sup> day of the twenty-second month  
14           after the commencement of probation, Respondent shall provide the trust  
15           account records from the end of the previously provided quarter through  
16           the end of month twenty-one.

17           The trust account records Respondent provides to ODC for each quarterly review of  
18           his trust account will include: (a) copies of each completed “Monthly  
19           Reconciliation and Review Report” referenced in sub-paragraph(c) above, (b) a  
20           complete checkbook register for his trust account covering the period being  
21           reviewed, (c) complete individual client ledger records for any client with funds in  
22           Respondent’s trust account during all or part of the period being reviewed, as well  
23           as for Respondent’s own funds in the account (if any), and (d) copies of all trust-  
24           account bank statements, deposit slips, and cancelled checks covering the period  
          being reviewed. The ODC’s Audit Manager or designee will review Respondent’s  
          trust account records for each period.

- 1           i) On the same quarterly time schedule set forth in the preceding paragraph,  
2           Respondent will provide ODC’s Audit Manager or designee with copies of any and  
3           all fee agreements entered into within the time period at issue.
- 4           j) The ODC’s Audit Manager or designee may request additional financial or client  
5           records if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B.  
6           Within twenty days of a request from ODC’s Audit Manager or designee for  
7           additional records needed to verify Respondent’s compliance with RPC 1.15A  
8           and/or RPC 1.15B, Respondent will provide ODC’s Audit Manager or designee the  
9           additional records requested.
- 10           k) Respondent will reimburse the Association for time spent by ODC’s Audit Manager  
11           or designee in reviewing and reporting on Respondent’s records to determine his  
12           compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour.  
13           Respondent will make payment within thirty days of each written invoice setting  
14           forth the auditor’s time and payment due.



1 **VII. RESTITUTION**

2 45. Because Respondent has paid O.S.H. the remainder of the funds to which he was  
3 entitled, with 12% interest, no restitution is required.

4 **VIII. COSTS AND EXPENSES**

5 46. In light of Respondent's willingness to resolve this matter by stipulation at an early  
6 stage of the proceedings, Respondent shall pay attorney fees, administrative costs, and expenses  
7 of \$1,197.16 in accordance with ELC 13.9(i). The Association will seek a money judgment  
8 under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.  
9 Reinstatement from suspension is conditioned on payment of costs and expenses or being in  
10 compliance with a periodic payment plan executed with disciplinary counsel.

11 **IX. VOLUNTARY AGREEMENT**

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

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

19 **X. LIMITATIONS**

20 49. This Stipulation is a compromise agreement intended to resolve this matter in  
21 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
22 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer  
23 and ODC acknowledge that the result after further proceedings in this matter might differ from  
24

1 the result agreed to herein.

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

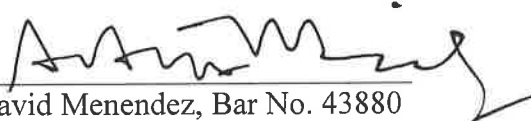
5 51. This Stipulation results from the consideration of various factors by both parties,  
6 including the benefits to both by promptly resolving this matter without the time and expense of  
7 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
8 such, approval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

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

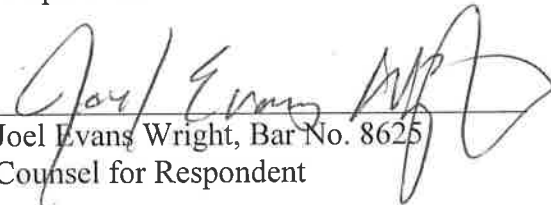
16 53. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will  
17 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the  
18 Rules for Enforcement of Lawyer Conduct will be made.

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

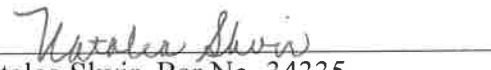
1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
2 to Discipline as set forth above.

3   
4 \_\_\_\_\_  
5 Arturo David Menendez, Bar No. 43880  
6 Respondent

Dated: 9/21/18

7   
8 \_\_\_\_\_  
9 Joel Evans Wright, Bar No. 8625  
10 Counsel for Respondent

Dated: 9/21/18

11   
12 \_\_\_\_\_  
13 Natalea Skvir, Bar No. 34335  
14 Disciplinary Counsel

Dated: 9/21/18