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FILED

Aug 8, 2024

Disciplinary  
Board

Docket # 002

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

Proceeding No. 24#00047

**KEVIN THOMAS HELENIUS,**

ODC File No. 23-00658

Lawyer (Bar No. 11064)

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), 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 Francisco Rodriguez and Respondent lawyer Kevin Thomas Helenius.

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 October  
5 24, 1980.

6 **II. STIPULATED FACTS**

7 2. Respondent is a bankruptcy lawyer representing consumer debtors.

8 3. On January 17, 2022, JunRulan Conde met with Respondent's paralegal and  
9 signed a fee agreement providing that Respondent would represent Conde in a Chapter 7  
10 bankruptcy in exchange for a flat fee of \$1,500. Conde also agreed to pay \$335 for the bankruptcy  
11 filing fee.

12 4. The fee agreement described these payments as a "non-refundable retainer  
13 of \$1835" even though a portion of this "retainer" was designated as payment for the filing fee.  
14 The agreement required payments of \$200 per month beginning on February 10, 2022, and  
15 indicated that payment of the full \$1,835 was required before Respondent would take any action  
16 on Conde's behalf. The fee agreement did not specify whether payments would be placed into a  
17 trust account and did not address Conde's right to terminate the client-lawyer relationship or  
18 Conde's right to a refund if the agreed upon legal services were not provided. Respondent did not  
19 sign the agreement.

20 5. Conde paid \$1,400 to the paralegal in cash installment payments for the  
21 representation. These payments were not deposited into a trust account. The funds had not been  
22 been earned at the time they were received.

1       6. During Respondent's representation of Conde, Respondent relied heavily on  
2 Respondent's paralegal, who handled the client intake process for Respondent and was the  
3 primary point of contact for Respondent's clients.

4       7. Respondent and Respondent's paralegal rarely saw each other as Respondent  
5 worked from home. The paralegal had complete autonomy in accepting new clients and preparing  
6 their cases for filing. Respondent did not supervise the paralegal's work in any meaningful way.  
7 Respondent generally had no pre-filing contact with clients.

8       8. Once the client's case was ready for filing and the client had paid in full, the  
9 paralegal handed the case off to Respondent. Respondent typically had no knowledge of a given  
10 client until this hand-off occurred.

11       9. In July 2022, Respondent's paralegal unexpectedly retired without notice. No one  
12 notified Conde. Thereafter, Conde repeatedly tried to reach the paralegal by phone without  
13 success. Because Conde had not finished making payments under the fee agreement, the paralegal  
14 had not yet handed the case off to Respondent.

15       10. In approximately November 2022, Conde was finally able to speak with the  
16 paralegal and obtained Respondent's phone number. The paralegal wrote Conde a personal check  
17 in the amount of \$400 as a partial refund.

18       11. Conde subsequently left phone messages for Respondent without receiving any  
19 response.

20       12. Conde eventually tracked down a home address for Respondent, and on April 25,  
21 2023, sent Respondent a letter via certified mail. In the letter, Conde described hiring Respondent  
22 through the paralegal, making payments over time, and Conde's efforts to contact Respondent.  
23 Conde requested contact from Respondent, and if Respondent was no longer representing Conde,

1 a refund. Conde also requested Respondent's advice regarding a creditor lawsuit that had been  
2 filed against Conde. Conde included proof of payments to the paralegal with the letter.

3 13. Respondent did not respond to Conde's letter because Respondent did not believe  
4 Conde was Respondent's client. Respondent did not follow up with the paralegal or Conde to  
5 ascertain whether Conde was, in fact, a client.

6 14. To date, Respondent has not terminated the representation, contacted Conde, or  
7 issued any refund to Conde.

8 15. Respondent has no record of receiving funds from Conde. When Respondent's  
9 paralegal received cash payments from a client, the paralegal typically deposited the cash in the  
10 paralegal's personal bank account and then wrote a check to Respondent which the paralegal  
11 would deposit into Respondent's IOLTA account.

12 16. From November 2016 to present, Respondent has not maintained a check register  
13 or equivalent for Respondent's trust account; nor has Respondent kept individual client ledgers.  
14 Respondent has not performed monthly reconciliations of trust account transactions or retained  
15 copies of fee agreements.

### 16 **III. STIPULATION TO MISCONDUCT**

17 17. By failing to make reasonable efforts to supervise Respondent's paralegal,  
18 Respondent violated RPC 5.3(b).

19 18. By failing to keep Conde reasonably informed about the status of Conde's matter  
20 and failing to respond to Conde's reasonable requests for information, Respondent violated  
21 RPC 1.4(a).

22 19. By failing to provide Conde with the agreed upon legal services and failing to  
23 refund unearned fees after the representation ended, Respondent violated RPC 1.5(a).

1        20. By failing to deposit cash payments for fees that had not yet been earned and cash  
2 payments for costs that had not yet been incurred into a trust account, Respondent violated  
3 RPC 1.15A(c)(2).

4        21. By failing to maintain a check register containing the information required by the  
5 RPC and failing to perform the required reconciliations, Respondent violated RPC 1.15B(a)(1)  
6 and RPC 1.15A(h)(6).

7        22. By failing to maintain client ledgers, Respondent violated RPC 1.15B(a)(2).

8        23. By failing to retain copies of fee agreements, Respondent violated RPC  
9 1.15B(a)(3) and RPC 1.15B(a)(9).

#### 10                   **IV. PRIOR DISCIPLINE**

11        24. Respondent has no prior discipline.

#### 12                   **V. APPLICATION OF ABA STANDARDS**

13        25. The following American Bar Association Standards for Imposing Lawyer  
14 Sanctions (1991 ed. & Feb. 1992 Supp.) apply to this case and are attached as Appendix A to this  
15 stipulation: ABA Standard 4.1, ABA Standard 4.4, and ABA Standard 7.0.

16        26. Respondent acted knowingly in failing to adequately supervise Respondent's  
17 paralegal and failing to communicate with Conde. Respondent thereby caused injury to Conde,  
18 whose bankruptcy filing was delayed and who was deprived of the opportunity to make informed  
19 decisions about the representation.

20        27. The presumptive sanction for this misconduct under ABA Standard 4.42(a) and  
21 ABA Standard 7.2. is suspension.

22        28. Respondent also acted knowingly in failing to return unearned fees to Conde and  
23 thereby caused financial injury to Conde.

29. The presumptive sanction for this misconduct under ABA Standard 7.2 is suspension.

30. Respondent should have known that Respondent was mishandling client funds. In doing so, Respondent caused potential injury to clients whose funds were not properly safeguarded in a trust account. Furthermore, Respondent knew that Respondent was not maintaining required trust account records, causing potential injury to clients whose funds were not appropriately accounted for.

31. The presumptive sanction for this misconduct under ABA Standard 4.12 is suspension.

32. The following aggravating factors apply under ABA Standard 9.22:

- (d) multiple offenses;
- (i) substantial experience in the practice of law (licensed in Washington since 1980); and
- (j) indifference to making restitution.

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

- (a) absence of a prior disciplinary record; and
- (l) remorse.

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

35. On balance the aggravating and mitigating factors do not require a departure from the presumptive sanction.

## **VI. STIPULATED DISCIPLINE**

36. The parties stipulate that Respondent shall 90-day suspension.

## **VII. CONDITIONS OF REINSTATEMENT**

37. Reinstatement from suspension is conditioned on payment of restitution, costs, and expenses, plus any accrued interest, as provided below.

## **VIII. CONDITIONS OF PROBATION**

38. Respondent will be subject to probation for a period of one year commencing upon Respondent's reinstatement to the practice of law, with periodic reviews under ELC 13.8 of Respondent's trust account practices, and must comply with the specific probation terms set forth below:

- a) Respondent shall carefully review and fully comply with RPC 1.15A and RPC 1.15B and shall carefully review the current version of the publication, Managing Client Trust Accounts: Rules, Regulations, and Common Sense.
- b) For all client matters, Respondent shall have a written fee agreement signed by the client, which agreements are to be maintained for least seven years (see RPC 1.15B(a)(3)).
- c) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and Review Report," Respondent shall review the trust-account records detailed on the form report, review the completed report, and sign and date the completed report.
- d) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-account records for the time period to be reviewed by ODC's audit staff and disciplinary counsel for compliance with the RPC:
  - i) Months 1 – 3. By no later than the 30<sup>th</sup> day of the fourth month after the commencement of probation, Respondent shall provide the trust account records from the date of commencement of probation to the end of the third full month.
  - ii) Months 4 – 6. By no later than the 30<sup>th</sup> day of the seventh month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month six.
  - iii) Months 7 – 9. By no later than the 30<sup>th</sup> day of the tenth month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month nine.

iv) Months 10 – 12. By no later than the 30<sup>th</sup> day of the thirteenth month after the commencement of probation, Respondent shall provide the trust account records from the end of the previously provided quarter through the end of month twelve.

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

39. Failure to comply with a condition of probation listed herein may be grounds for further disciplinary action under ELC 13.8(b).

## IX. RESTITUTION

40. Respondent shall pay restitution in the amount of \$800 plus interest to JunRulan Conde. Restitution shall bear interest at the maximum rate permitted under RCW 19.52.020 calculated from May 1, 2023, to the date on which repayment is made. Reinstatement from suspension is conditioned on payment of restitution and any accumulated interest.

## X. COSTS AND EXPENSES

41. 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 \$1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these fees and costs are not paid within 30 days of approval of this stipulation. ReinstateMENT from suspension is conditioned on payment of fees and costs plus any accumulated interest.

## **XI. VOLUNTARY AGREEMENT**

42. Respondent states that prior to entering into this Stipulation Respondent had an opportunity to consult 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.

43. 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.

## XII. LIMITATIONS

44. 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 and ODC acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

45. 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, and any additional existing facts may be proven in any subsequent disciplinary proceedings.

46. 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.

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

5       48. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it  
6 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in  
7 the Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in  
8 addition to Washington, Respondent also is not admitted to practice law in the any other  
9 jurisdictions, regardless of whether Respondent's current status is active, inactive, or suspended.

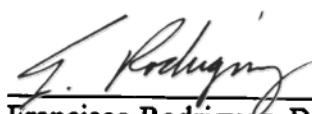
10       49. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,  
11 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be  
12 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
13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

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

16       

17       Kevin Thomas Helenius, Bar No. 11064  
18       Respondent

19       Dated: 7/12/24

20       

21       Francisco Rodriguez, Bar No. 22881  
22       Senior Disciplinary Counsel

23       Dated: 07/12/2024

RELEVANT ABA STANDARDS

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

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

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 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.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

**4.4 Lack of Diligence**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in 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
  - (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.

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

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

- 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 obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 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 potential injury to a client, the public, or the legal system.
- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in 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.
- 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 professional, and causes little or no actual or potential injury to a client, the public, or the legal system.