

FILED

Jul 15, 2022

Disciplinary
Board

Docket # 024

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

DANIEL C. GORDY,
Lawyer (Bar No. 18917).

Proceeding No. 20#00035

ODC File No(s). 17-01417, 19-00875

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 managing disciplinary counsel Kathy Jo Blake, Respondent's Counsel Jeffrey T. Kestle, and Respondent lawyer Daniel C. Gordy.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are 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 them. Respondent chooses to resolve this proceeding

1 now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,
2 time, 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 16,
5 1989.

6 **II. STIPULATED FACTS**

7 ODC Grievance

8 2. Respondent maintained two IOLTA accounts at Bank of America ending in 9409
9 and 9175.

10 3. On August 31, 2017, Bank of America reported an overdraft in Respondent's Trust
11 Account ending in 9409.

12 4. The notice of overdraft stated that check #1930 in the amount of \$31,911.44 was
13 presented for payment on August 29, 2017, caused an overdraft in the amount of \$27,323.03, and
14 was not honored.

15 5. On November 3, 2017, Bank of America reported an overdraft in Respondent's
16 trust account ending in 9175.

17 6. The overdraft stated that a check in the amount of \$7,100 was presented for
18 payment on November 1, 2017, caused an overdraft in the amount of \$5,690.74, and was not
19 honored.

20 7. On November 7, 2017, Bank of America reported an overdraft in Respondent's
21 trust account ending in 9175.

22 8. The overdraft stated that a check drawn on the account in the amount of \$3,255.56
23 was presented for payment on November 3, 2017, caused an overdraft in the amount of \$1,846.30,

1 and was not honored.

2 9. On September 8, 2017, ODC sent Respondent a Request for Response (R4R)
3 asking Respondent to provide an explanation of the August 31, 2017 overdraft and certain bank
4 and trust records.

5 10. On October 11, 2017, Respondent submitted a response, but did not provide a
6 checkbook register, client ledgers, or documentation demonstrating that Respondent reconciled
7 the checkbook register, bank statements, and client ledgers.

8 11. ODC's Audit Manager conducted an examination of Respondent's trust account
9 and bank records for the period December 31, 2016, through June 30, 2018.

10 12. During the audit period, Respondent did not maintain complete and/or accurate
11 client ledgers or check registers.

12 13. During the audit period, Respondent did not reconcile check registers to a
13 combined total of client ledgers.

14 14. During August 2017, Respondent made three disbursements from account 9409
15 on behalf of clients whose funds had been deposited into account 9175.

16 15. Disbursing funds from account 9409 for clients whose funds were held in account
17 9175 caused the August 2017 overdraft in account 9409.

18 16. After the overdraft, Respondent transferred \$34,253.00 from account 9175 to
19 cover the three disbursements, leaving new balance of \$6,930.70 in account 9409.

20 17. Respondent identified \$3,307.23 of the \$6,930.70 in account 9409 as expenses due
21 to him that he failed to remove from trust.

22 18. Respondent maintained over \$3,000 of Respondent's own funds in account 9409
23 between at least January 31, 2014, and August 17, 2017.

1 19. Respondent could not identify the ownership of the remaining \$3,622.85 in
2 account 9409.

3 20. The two November 2017 overdrafts in account 9175 occurred because Respondent
4 did not have enough funds in the account to cover disbursements from that account.

5 21. One of the November 2017 overdrafts of account 9175 occurred when there was
6 not enough funds to cover check #2827 written on behalf of N.S. to Anthem for \$3,255.56.

7 22. The check was dishonored.

8 23. As of June 2, 2018, Respondent had not reissued the funds to Anthem or disbursed
9 the funds to N.S.

10 Facts Regarding Counts 7 and 8 – Nielsen Grievance

11 24. On March 19, 2016, Eric Nielsen (“Nielsen”) was involved in a motor vehicle
12 accident.

13 25. The other driver was Renee McKinney (“McKinney”).

14 26. Nielsen’s car was damaged and Nielsen was injured.

15 27. McKinney was at fault and was cited by the Washington State Patrol.

16 28. Respondent and Nielsen entered into a contingent fee agreement whereby
17 Respondent would receive 33 percent of any funds recovered on Nielsen’s behalf.

18 29. In August 2016, Respondent settled the property damage portion of Nielsen’s
19 claim and transmitted a check to Nielson.

20 30. Respondent was unable to settle the personal injury portion of Nielsen’s claim and
21 on May 18, 2018, Respondent filed a complaint for damages against McKinney on Nielsen’s
22 behalf, Pierce County Superior Court No. 18-2-08187-0.

23 31. The court entered a scheduling order setting deadlines for filing certain notices,

1 such as confirmation of joinder of the parties.

2 32. On May 22, 2018, Respondent filed an Amended Complaint.

3 33. On June 14, 2018, Respondent filed a confirmation of service indicating that
4 Respondent had not yet served McKinney with the Complaint.

5 34. The confirmation indicated that Respondent expected service to be completed by
6 August 13, 2018.

7 35. Respondent never completed service on McKinney.

8 36. On September 19, 2018, the court sent Respondent a letter noting that the
9 confirmation of joinder of parties was due on September 14, 2018, had not been filed and giving
10 notice that sanctions could be imposed.

11 37. Respondent did not respond or file anything and did not advise Nielsen of any
12 issues with the case.

13 38. On May 20, 2019, the court dismissed Nielsen's case against McKinney because
14 no one appeared on the trial date of May 16, 2019.

15 39. On May 19, 2019, the statute of limitations on Nielsen's claim passed.

16 40. Respondent did not file anything or take any actions on Nielsen's behalf between
17 June 14, 2019, when he filed the confirmation of service and May 20, 2019, when the court
18 dismissed the case.

19 III. STIPULATION TO MISCONDUCT

20 41. By failing to maintain checkbook registers for clients that included all required
21 transaction information, by failing to maintain client ledgers, and by failing to reconcile the trust
22 account checkbook registers to the total of all client ledgers Respondent violated RPC
23 1.15B(a)(1), 1.15B(a)(2), and 1.15A(h)(6).

1 42. By maintaining an unreasonable amount of personal funds in trust, Respondent
2 violated RPC 1.15A(h)(1).

3 43. By failing to hold client funds in trust that Respondent should have been holding,
4 Respondent violated RPC 1.15A(c)(1).

5 44. By failing to promptly pay trust funds to clients or third persons entitled to receive
6 them, Respondent violated RPC 1.15A(f).

7 45. By failing to complete service on the defendant, by failing to meet court deadlines,
8 by failing to respond to court notices of lapses, and by failing to appear on the scheduled trial
9 date, Respondent violated RPC 1.3, and RPC 3.2.

10 **IV. PRIOR DISCIPLINE**

11 46. Respondent has no prior discipline.

12 **V. APPLICATION OF ABA STANDARDS**

13 47. The following American Bar Association Standards for Imposing Lawyer Sanctions
14 (1991 ed. & Feb. 1992 Supp.) apply to this case:

15 ABA Standard 4.1 is most applicable to the duty to deal properly with client property.

16 4.1 *Failure to Preserve the Client's Property*

17 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
18 property and causes injury or potential injury to a client.

18 4.12 Suspension is generally appropriate when a lawyer knows or should know that he
19 is dealing improperly with client property and causes injury or potential injury to
20 a client.

19 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with
20 client property and causes injury or potential injury to a client.

20 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with
21 client property and causes little or no actual or potential injury to a client

22 ABA Standard 4.4 is most applicable in cases involving failure to act with reasonable
23 diligence and promptness in representing a client.

1 **4.4 Lack of Diligence**

2 4.41 Disbarment is generally appropriate when:

3 (a) a lawyer abandons the practice and causes serious or potentially serious
4 injury to a client; or (b) a lawyer knowingly fails to perform services for a client
5 and causes serious or potentially serious injury to a client; or (c) a lawyer
6 engages in a pattern of neglect with respect to client matters and causes serious
7 or potentially serious injury to a client.

8 4.42 Suspension is generally appropriate when:

9 (a) a lawyer knowingly fails to perform services for a client and causes injury or
10 potential injury to a client, or (b) a lawyer engages in a pattern of neglect and
11 causes injury or potential injury to a client.

12 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act
13 with reasonable diligence in representing a client, and causes injury or potential
14 injury to a client.

15 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
16 with reasonable diligence in representing a client, and causes little or no actual or
17 potential injury to a client.

18 ABA Standard 6.2 is most applicable in cases involving failure to expedite litigation.

19 **6.2 Abuse of the Legal Process**

20 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court
21 order or rule with the intent to obtain a benefit for the lawyer or another, and
22 causes serious injury or potentially serious injury to a party or causes serious or
23 potentially serious interference with a legal proceeding.

24 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
 violating a court order or rule, and causes injury or potential injury to a client or
 a party, or causes interference or potential interference with a legal proceeding.

 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply
 with a court order or rule, and causes injury or potential injury to a client or other
 party, or causes interference or potential interference with a legal proceeding.

 6.24 Admonition is generally appropriate when a lawyer engages in an isolated
 instance of negligence in complying with a court order or rule, and causes little
 or no actual or potential injury to a party, or causes little or no actual or potential
 interference with a legal proceeding.

48. Respondent, at a minimum, should have known that trust funds in Respondent's
care were not being properly managed. Clients and third parties were injured because they were
not timely paid funds to which they were entitled and funds were not held in trust. Respondent's
comingling of Respondent's own funds in the trust account also caused potential harm to clients

1 and third parties with funds in trust because comingling a lawyer's own funds in trust opens up
2 the trust account to Respondent's creditors.

3 49. The presumptive sanction is a suspension under ABA Standard 4.12.

4 50. Respondent acted negligently when Respondent failed to diligently prosecute
5 Nielsen's case.

6 51. Respondent's conduct caused actual injury because Nielsen lost their day in court
7 and had to sue Respondent in order to obtain a recovery.

8 52. The presumptive sanction is a reprimand under ABA Standards 4.23 and 6.23.

9 53. When multiple ethical violations are found, the "ultimate sanction imposed should
10 at least be consistent with the sanction for the most serious instance of misconduct among a
11 number of violations." In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

12 54. The following aggravating factors apply under ABA Standard 9.22:

- 13 (c) a pattern of misconduct;
14 (d) multiple offenses; and
15 (i) substantial experience in the practice of law [Respondent was admitted to the
16 practice of law in Washington on November 16, 1989].

17 55. The following mitigating factors apply under ABA Standard 9.32:

- 18 (a) absence of a prior disciplinary record;
19 (b) absence of a dishonest or selfish motive; and
20 (c) personal or emotional problems [Respondent had a family health crisis that
21 affected him].

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

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

1 of disciplinary matters.

2 58. On balance the aggravating and mitigating factors do not require a departure from
3 the presumptive sanction of suspension but do justify a suspension of less than six months.

4 **VI. STIPULATED DISCIPLINE**

5 59. The parties stipulate that Respondent shall receive a three-month suspension for
6 his conduct.

7 60. As a condition of reinstatement from suspension, Respondent must complete the
8 following steps to disburse any funds that are owed to clients or third parties and to receive
9 additional education on how to handle client funds in compliance with RPC 1.15A and RPC 1.15B
10 of the Washington Supreme Court’s Rules of Professional Conduct:

11 a) For each of the clients listed below¹, Respondent must provide ODC with complete
12 documentary evidence demonstrating either that the client or third party is not entitled
13 to a return of any of the amount listed or that Respondent has provided the client or
14 third party with a complete accounting of funds and returned to the client or third
15 party any unearned amounts and/or any amounts to which Respondent cannot
16 establish entitlement.

B***y	\$500
D.G.	\$5,892.15
K****h	\$100
K.L	\$309.59
M.P	\$1,749.36
R***h	\$0.92
H.S.	\$1,738.65
N.S.	\$3,255.58

17
18
19 b) Funds in trust not identified to a client. As of July 30, 2018, Respondent’s trust
20 accounts held \$3,622.85 not identified to any specific client. Respondent must
21 provide ODC with complete documentary evidence and explanation demonstrating
22 that he has taken all reasonable steps to identify the ownership of the funds and 1)
23 deliver the funds to the appropriate parties and 2) provide the client with a complete
24 accounting of funds. If after taking reasonable steps, Respondent cannot identify the
ownership of the funds or locate the owner of the funds, Respondent should treat the

¹ This list of clients and amounts is based on the QuickBooks Balance Sheet dated June 21, 2018.

1 funds as unclaimed property under the Uniform Unclaimed Property Act, RCW
2 63.29. Respondent will provide ODC with documentation establishing that the funds
3 have been delivered, are no longer owed, or have been remitted to the Department of
4 Revenue pursuant to RCW 63.29.

5 c) For the time frame of July 1, 2018, up through the date of submission to ODC for
6 consideration of reinstatement, Respondent must provide to ODC, for each trust
7 account open during any portion of that time frame, copies of the following:

- 8 • any and all bank statements,
- 9 • copies of any and all deposited items,
- 10 • copies of any and all records of disbursements,
- 11 • a complete and accurate check register identifying every transaction,
- 12 • complete and accurate client ledgers identifying every transaction
13 attributable to a client,
- 14 • monthly reconciliations between the check register and the bank
15 statement,
- 16 • monthly reconciliations between the check register and the client ledgers,
17 and
- 18 • if the Respondent maintains trust-account records in QuickBooks,
19 provide an electronic copy of the file with the trust-account records.

20 d) Respondent must carefully review the WSBA publication Managing Client Trust
21 Accounts: Rules, Regulations, and Common Sense, and provide disciplinary counsel
22 with a signed certification that he has done so.

23 e) Respondent must complete the WSBA continuing legal education course entitled,
24 “Managing Client Trust Accounts” (October 2014), or an equivalent 1.5 credits on
managing trust accounts in Washington State, and provide disciplinary counsel with
documentation showing that he/she has done so.

f) To be eligible for reinstatement under ELC 13.3(b)(1)(B), Respondent must provide
the required documentation to disciplinary counsel at least 30 days prior to seeking
certification of compliance with reinstatement provisions.

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

g) 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.

- 1 h) For all client matters, Respondent shall have a written fee agreement signed by the
2 client, which agreements are to be maintained for least seven years (see RPC
3 1.15B(a)(3)).
- 4 i) On a monthly basis, using ODC's form report entitled "Monthly Reconciliation and
5 Review Report," Respondent shall review the trust-account records detailed on the
6 form report, review the completed report, and sign and date the completed report.
- 7 j) On a quarterly basis, Respondent shall provide ODC's audit staff with all trust-
8 account records for the time period to be reviewed by ODC's audit staff and
9 disciplinary counsel for compliance with the RPC:
- 10 i) Months 1 – 3. By no later than the 30th day of the fourth month after the
11 commencement of probation, Respondent shall provide the trust account
12 records from the date of commencement of probation to the end of the third
13 full month.
- 14 ii) Months 4 – 6. By no later than the 30th day of the seventh month after the
15 commencement of probation, Respondent shall provide the trust account
16 records from the end of the previously provided quarter through the end of
17 month six.
- 18 iii) Months 7 – 9. By no later than the 30th day of the tenth month after the
19 commencement of probation, Respondent shall provide the trust account
20 records from the end of the previously provided quarter through the end of
21 month nine.
- 22 iv) Months 10 – 12. By no later than the 30th day of the thirteenth month after
23 the commencement of probation, Respondent shall provide the trust account
24 records from the end of the previously provided quarter through the end of
month twelve.
- v) Months 13 – 15. By no later than the 30th day of the sixteenth 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 fifteen.
- vi) Months 16 – 18. By no later than the 30th day of the nineteenth 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 eighteen.
- vii) Months 19 – 21. By no later than the 30th day of the twenty-second 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 twenty-one.

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

6 k) On the same quarterly time schedule set forth in the preceding paragraph, Respondent
7 will provide ODC’s Audit Manager or designee with copies of any and all fee
8 agreements entered into within the time period at issue.

8 l) ODC’s Audit Manager or designee may request additional financial or client records
9 if needed to verify Respondent’s compliance with RPC 1.15A and/or 1.15B. Within
10 twenty days of a request from ODC’s Audit Manager or designee for additional
11 records needed to verify Respondent’s compliance with RPC 1.15A and/or RPC
12 1.15B, Respondent will provide ODC’s Audit Manager or designee the additional
13 records requested.

11 m) Respondent will reimburse the Association for time spent by ODC’s Audit Manager
12 or designee in reviewing and reporting on Respondent’s records to determine his/her
13 compliance with RPC 1.15A and RPC 1.15B, at the rate of \$85 per hour. Respondent
14 will make payment within thirty days of each written invoice setting forth the
15 auditor’s time and payment due.

14 VII. RESTITUTION

15 62. No restitution is required. Respondent’s insurance carrier settled the malpractice
16 claim with Nielsen.

17 VIII. COSTS AND EXPENSES

18 63. In light of Respondent’s willingness to resolve this matter by stipulation at an early
19 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,052.10
20 (\$52.10 in actual costs and \$1,000 in reduced ELC 13.9(c) costs) in accordance with ELC 13.9(i).
21 The Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within
22 30 days of approval of this stipulation. Reinstatement from suspension or disbarment is
23 conditioned on payment of costs.

1 **IX. VOLUNTARY AGREEMENT**

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

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

9 **X. LIMITATIONS**

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

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

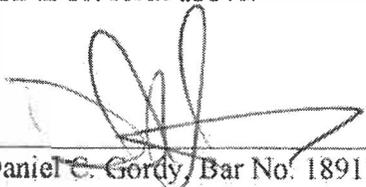
18 68. This Stipulation results from the consideration of various factors by both parties,
19 including the benefits to both by promptly resolving this matter without the time and expense of
20 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
21 such, approval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

1 69. 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

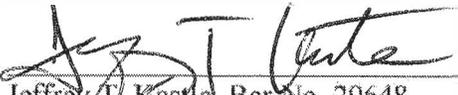
5 70. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it
6 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
7 the Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in
8 addition to Washington,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

11 71. 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.

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

3
4 
5 Daniel C. Gordy, Bar No. 18917
Respondent

Dated: 5/25/22

6
7 
8 Jeffrey D. Kestle, Bar No. 29648
Counsel for Respondent

Dated: 5/23/22

9
10 
11 Kathy Jo Blake, Bar No. 29235
12 Managing Disciplinary Counsel

Dated: June 10, 2022