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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

DERRON C. CALVIN,

Lawyer (Bar No. 27704).

Proceeding No. 16#00066

ODC File No. 15-01469

STIPULATION TO THREE-MONTH
SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Three-Month 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 Derron C. Calvin.

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

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1 avoid the risk, time, 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 December
4 11, 1997.

5 **II. STIPULATED FACTS**

6 2. Between January 1, 2014 and November 7, 2014, Respondent practiced primarily in
7 the area of bankruptcy.

8 3. A lawyer representing a debtor in bankruptcy must sign and file a Disclosure of
9 Compensation for Debtors.

10 4. In the Disclosure, the lawyer certifies that he or she is providing a complete
11 statement regarding payment for his or her services.

12 5. Between January 1, 2014 and November 7, 2014, Respondent filed 14 bankruptcy
13 cases in which he signed a Disclosure certifying that he received \$0 as payment for his services.

14 6. These statements were not true.

15 7. In each of the 14 cases, Respondent received \$625 as payment for his services.

16 8. A lawyer representing a debtor in bankruptcy must prepare and file the debtor's
17 Statement of Financial Affairs (SOFA).

18 9. Question 9 on the SOFA requires the debtor to disclose payments made for
19 bankruptcy services.

20 10. Between January 1, 2014 and November 7, 2014, Respondent prepared and filed
21 SOFAs in 23 matters in which he failed to disclose his fee in response to question 9.

22 11. Between January 1, 2014 and November 7, 2014, Respondent prepared and filed
23 SOFAs in five matters in which he failed to respond to questions (other than question 9)

1 accurately or failed to respond at all to questions in the SOFA.

2 12. The bankruptcy code prohibits a creditor from collecting on claims owed prior to the
3 bankruptcy filing absent authorization from the bankruptcy court under 11 USC §362(a).

4 13. If a lawyer receives only part of his fee prior to filing the bankruptcy petition, the
5 remaining, unpaid fees constitute a claim against the bankruptcy estate under 11 USC §101(5).

6 14. Additionally, debts arising before a bankruptcy filing may be discharged in
7 bankruptcy under 11 USC §727(b).

8 15. In eleven cases between January 1, 2014 and November 7, 2014, Respondent
9 received only part of his fees prior to filing the bankruptcies, but sought to collect on the unpaid
10 fees after the clients had filed for bankruptcy protection in these cases.

11 16. In these eleven cases, Respondent failed to explain to his clients that the fees he was
12 seeking to collect would be discharged in the bankruptcy.

13 17. Respondent states that he did not understand that his billing practice violated the
14 bankruptcy's automatic stay rule.

15 18. Although documents are filed with the bankruptcy court electronically, the local
16 rules require lawyers to maintain copies of pleadings with the original signatures in their files
17 for five years and to produce a copy upon request.

18 19. In December 2014, the bankruptcy trustee asked Respondent to produce copies of
19 pleadings filed in 24 cases he filed between January 1, 2014 and November 7, 2014.

20 20. Respondent was unable to produce the requested pleadings in these 24 cases.

21 21. As a result of his actions, Respondent was ordered to pay \$10,000 to the Clerk of the
22 Bankruptcy Court.

23 22. As a result of his actions, Respondent was ordered to refund \$625 in fees to each of

1 14 clients.

2 23. As a result of his actions, Respondent was prohibited from filing bankruptcy
3 petitions for a period of at least one year.

4 **III. STIPULATION TO MISCONDUCT**

5 24. By filing pleadings with the bankruptcy court that contained false information,
6 Respondent violated RPC 3.3(a) and RPC 8.4(d).

7 25. By failing to understand that his billing practice violated the bankruptcy's
8 automatic stay rule, Respondent violated RPC 1.1.

9 26. By failing to maintain and produce pleadings bearing his clients' original signatures,
10 Respondent violated RPC 8.4(d).

11 **IV. PRIOR DISCIPLINE**

12 27. Respondent has no prior discipline.

13 **V. APPLICATION OF ABA STANDARDS**

14 28. The following American Bar Association Standards for Imposing Lawyer Sanctions
15 (1991 ed. & Feb. 1992 Supp.) apply to this case:¹

- 16 • ABA Standard 6.1 for the violations of RPC 3.3(a) and 8.4(d)
17 • ABA Standard 4.5 for the violation of RPC 1.1

18 29. Respondent acted knowingly in filing pleadings with false information with the
19 bankruptcy court.

20 30. Respondent acted negligently in failing to understand the bankruptcy rules with
21 respect to billing and in failing to maintain the pleadings required by the bankruptcy rules.

22 31. Respondent's conduct harmed his clients and placed burdens on the court system.

23 ¹ Full copies of the pertinent ABA Standards are attached as Appendix A.

1 32. The presumptive sanctions are:

- 2 • Suspension under ABA Standard 6.12 for the misconduct in ¶ 24
- 3 • Reprimand under ABA Standard 4.53(a) for the misconduct in ¶ 25
- 4 • Reprimand under ABA Standard 6.13 for the misconduct in ¶ 26

5 33. The following aggravating factors apply under ABA Standard 9.22:

- 6 (c) a pattern of misconduct;
- 7 (d) multiple offenses; and
- 8 (i) substantial experience in the practice of law (admitted 1997).

9 34. The following mitigating factors apply under ABA Standard 9.32:

- 10 (a) absence of a prior disciplinary record;
- 11 (b) absence of a dishonest or selfish motive;
- 12 (k) imposition of other penalties or sanctions (¶ 23); and
- 13 (l) remorse.

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

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

18 VI. STIPULATED DISCIPLINE

19 37. The parties stipulate that Respondent shall receive a three-month suspension for his
20 conduct.

21 38. As a condition of reinstatement from suspension, Respondent must have

- 22 a) completed the 10 hours of CLE credits ordered by the bankruptcy court, and
- 23 b) begun to repay the restitution by making payments for at least four continuous

1 months and by being current on a payment plan.

2 39. Respondent will be subject to probation for a period of two years beginning when he
3 is reinstated to the practice of law.

4 40. The conditions of probation are set forth below. Respondent's compliance with these
5 conditions will be monitored by the Probation Administrator of the Office of Disciplinary
6 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
7 herein may be grounds for further disciplinary action under ELC 13.8(b).

8 41. During the period of probation, Respondent's practice will be supervised by a
9 practice monitor. The practice monitor must be a WSBA member with no record of public
10 discipline and who is not the subject of a pending public disciplinary proceeding.

11 42. The role of the practice monitor is to consult with and provide guidance to
12 Respondent regarding case management, office management, and avoiding violations of the
13 Rules of Professional Conduct, and to provide reports and information to the Probation
14 Administrator regarding Respondent's compliance with the terms of probation and the RPC.
15 The practice monitor does not represent the Respondent.

16 43. At the beginning of the probation period, the Probation Administrator will select a
17 lawyer to serve as practice monitor for the period of Respondent's probation.

18 44. Initial Challenge: If, within 15 days of the written notice of the selection of a
19 practice monitor, Respondent sends a written request to the Probation Administrator that
20 another practice monitor be selected, the Probation Administrator will select another practice
21 monitor. Respondent need not identify any basis for this initial request.

22 45. Subsequent Challenges: If, after selection of a second (or subsequent) practice
23 monitor, Respondent believes there is good cause why that individual should not serve as

1 practice monitor, Respondent may, within 15 days of notice of the selected practice monitor,
2 send a written request to the Probation Administrator asking that another practice monitor be
3 selected. That request must articulate good cause to support the request. If the Probation
4 Administrator agrees, another practice monitor will be selected. If the Probation Administrator
5 disagrees, the Office of Disciplinary Counsel will submit its proposed selection for practice
6 monitor to the Chair of the Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and
7 will also provide the Chair with the Respondent's written request that another practice monitor
8 be selected.

9 46. In the event the practice monitor is no longer able to perform his or her duties, the
10 Probation Administrator will select a new practice monitor at his or her discretion.

11 47. During the period of probation, Respondent must cooperate with the named practice
12 monitor. Respondent must meet with the practice monitor at least once per month. Respondent
13 must communicate with the practice monitor to schedule all required meetings.

14 48. The Respondent must bring to each meeting a current, complete written list of all
15 pending client legal matters being handled by the Respondent. The list must identify the current
16 status of each client matter and any problematic issues regarding each client matter. The list
17 may identify clients by using the client's initials rather than the client's name.

18 49. At each meeting, the practice monitor will discuss with Respondent practice issues
19 that have arisen or are anticipated. In light of the conduct giving rise to the imposition of
20 probation, ODC recommends that the practice monitor and Respondent discuss whether
21 Respondent is in communication with each client, whether Respondent has promptly billed each
22 client, whether Respondent's fee agreements are consistent with the RPC and bankruptcy rules
23 and are understandable to the client. Meetings may be in person or by telephone at the practice

1 monitor's discretion. The practice monitor uses discretion in determining the length of each
2 meeting.

3 50. The practice monitor will provide the Probation Administrator with quarterly written
4 reports regarding Respondent's compliance with probation terms and the RPC. Each report
5 must include the date of each meeting with Respondent, a brief synopsis of the discussion
6 topics, and a brief description of any concerns the practice monitor has regarding the
7 Respondent's compliance with the RPC. The report must be signed by the practice monitor.
8 Each report is due within 30 days of the completion of the quarter.

9 51. If the practice monitor believes that Respondent is not complying with any of his
10 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly meeting, the
11 practice monitor will promptly communicate that to the Probation Administrator.

12 52. Respondent must make payments totaling \$1,000 to the Washington State Bar
13 Association to defray the costs and expenses of administering the probation, as follows:

- 14 • \$250 due within 30 days of the start of the probation;
- 15 • \$250 due within 6 months of the start of the probation period;
- 16 • \$250 due within 12 months of the start of the probation period; and
- 17 • \$250 due within 18 months of the start of the probation period.

18 53. All payments should be provided to the Probation Administrator for processing.

19 VII. RESTITUTION

20 54. Respondent must pay the restitution ordered by the bankruptcy court or enter into a
21 payment plan with disciplinary counsel under ELC 13.7(b) to pay the restitution ordered by the
22 bankruptcy court. Reinstatement from suspension is contingent on his making restitution
23 payments as set forth in ¶ 38(b) of this stipulation.

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1 **VIII. COSTS AND EXPENSES**

2 55. In light of Respondent's willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,085
4 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
5 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
6 from suspension or disbarment is conditioned on payment of costs.

7 **IX. VOLUNTARY AGREEMENT**

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

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

15 **X. LIMITATIONS**

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

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

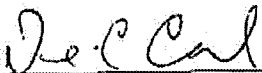
1 60. This Stipulation results from the consideration of various factors by both parties,
2 including the benefits to both by promptly resolving this matter without the time and expense of
3 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
4 such, approval of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

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


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

15 63. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
16 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
17 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
18 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 Derron C. Calvin, Bar No. 27704
5 Respondent

Dated: May 1, 2017

6 
7 Sachia Stonefeld Powell, Bar No. 21166
8 Disciplinary Counsel

Dated: May 2, 2017

9 RECEIVED

10 MAY 01 2017

11 WSBA OFFICE OF
12 DISCIPLINARY COUNSEL

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