

FILED

Jan 20, 2022

Disciplinary
Board

Docket # 003

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

MATTHEWERIK JOHNSON,

Lawyer (Bar No. 43808).

Proceeding No. 22#00004

ODC File Nos. 21-00278 and 21-00476

STIPULATION TO 15-MONTH
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 Henry Cruz, Respondent's counsel Kevin M. Bank, and Respondent lawyer Matthew Erik Johnson.

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, 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 June 20, 2011.

5 II. STIPULATED FACTS

6 2. On August 28, 2017, the United States Bankruptcy Court for the Western District of
7 Washington ordered Respondent to refund \$350 in legal fees to 28 clients for a total disgorgement
8 of \$10,150, based on Respondent's admitted pattern of failing to comply with bankruptcy rules
9 and procedures in those clients' cases, including:

- 10 a. failing to confirm that clients timely received credit counseling;
- 11 b. filing documents with unredacted Social Security numbers;
- 12 c. failing to accurately disclose fees received from clients;
- 13 d. failing to disclose all of the clients' assets and liabilities;
- 14 e. failing to file or timely file required documents; and
- 15 f. failing to timely provide required documents to the United States Trustee.

16 3. Respondent was also ordered to add the following disclosures to Respondent's website
17 after failing to include such disclosures as required by law: "We are a debt relief agency. We help
18 people file for bankruptcy relief under the Bankruptcy Code."

19 4. On February 28, 2018, Respondent filed a "Certificate of Service" with the court. The
20 Certificate of Service was signed by Lillian Miles and stated that Miles mailed the disgorgement
21 checks to 25 of the clients on February 27, 2018.

22 5. Miles's statement that Miles mailed the disgorgement checks was false. Miles never
23 mailed any of the disgorgement checks.

1 6. In April 2018, Respondent became aware that Miles never mailed any of the
2 disgorgement checks.

3 7. Respondent did not disclose the falsity in the Certificate of Service to the court.

4 8. Respondent did not make the disgorgement payments to 27 of the 28 clients.

5 9. On October 8, 2020, United States Trustee filed a motion to hold Respondent in
6 contempt of the August 28, 2017 order and for imposition of sanctions after discovering
7 Respondent's failure to comply with the order.

8 10. On October 29, 2020, the court issued a stipulated order holding Respondent in
9 contempt of the August 28, 2017 order and suspending Respondent from practicing in the United
10 States Bankruptcy Court for the Western District of Washington for a period of three years.

11 11. The court also ordered Respondent to tender payment of \$13,339 to a disbursing agent
12 for the disgorgement payments plus interest.

13 12. On November 9, 2020, the disbursing agent received a cashier's check from
14 Respondent in the amount of \$13,339.

15 13. On November 12, 2020, the disbursing agent mailed checks for the disgorgement
16 payments to the unpaid clients.

17 14. Checks mailed to 10 of the clients were returned as undeliverable, and checks mailed
18 to two of the clients never cleared.

19 15. The total amount of those unclaimed checks was \$5,484.

20 16. Those 12 clients have not received their funds.

21 **III. STIPULATION TO MISCONDUCT**

22 17. By failing to provide competent representation to clients in multiple bankruptcy
23 matters, Respondent violated RPC 1.1.

1 18. By failing to diligently represent clients in multiple bankruptcy matters, Respondent
2 violated RPC 1.3.

3 19. By failing to promptly disclose the false statement in the Certificate of Service to the
4 court after coming to know of its falsity, Respondent violated RPC 3.3(c).

5 20. By omitting the required disclosures from Respondent's website, Respondent violated
6 RPC 7.1.

7 **IV. PRIOR DISCIPLINE**

8 21. Respondent has no prior discipline.

9 **V. APPLICATION OF ABA STANDARDS**

10 22. The American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed.
11 & Feb. 1992 Supp.) that apply to this case are attached in Appendix A.

12 23. Respondent acted knowingly in violating RPC 1.1, 1.3, and 3.3(c).

13 24. Respondent acted negligently in violating RPC 7.1.

14 25. Respondent's conduct caused actual and potential injury to clients, including that
15 clients were deprived of their funds.

16 26. The presumptive sanction is reprimand under ABA Standard 7.3 for Respondent's
17 violation of RPC 7.1.

18 27. The presumptive sanction is suspension under ABA Standards 4.4, 4.5, and 6.2 for
19 Respondent's violations of RPC 1.1, 1.3, and 3.3(c).

20 28. The following aggravating factors apply under ABA Standard 9.22:

21 (b) dishonest or selfish motive;

22 (c) pattern of misconduct; and

23 (d) multiple offenses.

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

2 (a) absence of a prior disciplinary record;

3 (c) personal or emotional problems (see confidential addendum, attached as Appendix
4 B);

5 (k) imposition of other penalties or sanctions (disgorgement of \$13,339); and

6 (l) remorse.

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

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

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

15 VI. STIPULATED DISCIPLINE

16 33. The parties stipulate that Respondent shall receive a 15-month suspension.

17 VII. CONDITIONS OF REINSTATEMENT

18 34. Reinstatement from suspension is conditioned on payment of costs and expenses, as
19 provided below.

20 Practice Management Consultation

21 35. As a further condition of reinstatement from suspension, Respondent shall participate
22 in one 30-minute office management consultation with the Practice Management Advisor or their
23 designee. The Practice Management Advisor is currently Margeaux Green. Green can be reached

1 at margeauxg@wsba.org.

2 36. Respondent understands that the Practice Management Advisor may establish dates
3 by which Respondent must comply with recommendations made and for follow-up
4 communication. Respondent agrees to strictly comply with these dates. These subsequent contacts
5 may be in person, email, or telephone, at the sole discretion of the Practice Management Advisor.

6 VIII. CONDITIONS OF PROBATION

7 37. Respondent will be subject to probation for a period of two years beginning when
8 Respondent is reinstated to the practice of law and shall comply with the specific probation terms
9 set forth below.

10 38. Respondent's compliance with these conditions shall be monitored by the Probation
11 Administrator of the Office of Disciplinary Counsel ("Probation Administrator"). Failure to
12 comply with a condition of probation listed herein may be grounds for further disciplinary action
13 under ELC 13.8(b).

14 Ethics School

15 39. Respondent shall attend Ethics School by webinar (approximately 7.5 hours), or by
16 obtaining the recorded product, and to pay registration costs of \$150 plus applicable sales tax.
17 Respondent will receive all applicable approved CLE credits for time in attendance at the Ethics
18 School.

19 40. Respondent shall contact the Ethics School Administrator, currently Chris Chang, at
20 (206) 727-8328 or chrisc@wsba.org, within the first 15 days of probation to confirm enrollment
21 in Ethics School and related logistics.

22 41. Respondent shall complete the ethics school requirement within the first 60 days of
23 probation.

1 42. Respondent shall provide evidence of completion of ethics school to the Probation
2 Administrator no later than 30 days after the conclusion of the course. Proof of attendance shall
3 include the program brochure, evidence of payment, and a written statement that includes the date
4 and time of attendance.

5 43. Respondent may contact the Ethics School administrator directly to enroll in Ethics
6 School, and administrative communications, e.g. regarding registration, payment, program
7 content and schedule, and CLE credits, may be sent directly to Respondent.

8 44. The Ethics School administrator may respond to inquiries from the Probation
9 Administrator regarding Respondent's compliance with these conditions.

10 Practice Monitor

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

14 46. Respondent agrees to pay all costs in connection with the practice monitor.

15 47. The role of the practice monitor is to consult with and provide guidance to Respondent
16 regarding case management, office management, and avoiding violations of the Rules of
17 Professional Conduct, and to provide reports and information to the Probation Administrator
18 regarding Respondent's compliance with the terms of probation and the RPC. The practice
19 monitor does not represent the Respondent.

20 48. At the beginning of the probation period, the Probation Administrator will select a
21 lawyer to serve as practice monitor for the period of Respondent's probation.

22 a) Initial Challenge: If, within 15 days of the written notice of the selection of a
23 practice monitor, Respondent sends a written request to the Probation
Administrator that another practice monitor be selected, the Probation

1 Administrator will select another practice monitor. Respondent need not identify
2 any basis for this initial request.

3 b) Subsequent Challenges: If, after selection of a second (or subsequent) practice
4 monitor, Respondent believes there is good cause why that individual should not
5 serve as practice monitor, Respondent may, within 15 days of notice of the
6 selected practice monitor, send a written request to the Probation Administrator
7 asking that another practice monitor be selected. That request must articulate
8 good cause to support the request. If the Probation Administrator agrees, another
9 practice monitor will be selected. If the Probation Administrator disagrees, the
10 Office of Disciplinary Counsel will submit its proposed selection for practice
11 monitor to the Chair of the Disciplinary Board for appointment pursuant to ELC
12 13.8(a)(2), and will also provide the Chair with the Respondent's written request
13 that another practice monitor be selected.

14 49. In the event the practice monitor is no longer able to perform their duties, the Probation
15 Administrator will select a new practice monitor at their discretion.

16 50. During the period of probation, Respondent must cooperate with the named practice
17 monitor. Respondent must meet with the practice monitor, either in person or by video
18 conference, at least once per month. Respondent must communicate with the practice monitor to
19 schedule all required meetings.

20 51. Respondent must bring to each meeting, or provide to the practice monitor in advance
21 if meeting by video conference, a current, complete written list of all pending client legal matters
22 being handled by Respondent. The list must identify the current status of each client matter and
23 any problematic issues regarding each client matter. The list may identify clients by using the
24 client's initials rather than the client's name.

52. At each meeting, the practice monitor will discuss with Respondent practice issues
that have arisen or are anticipated. In light of the conduct giving rise to the imposition of
probation, ODC recommends that the practice monitor and Respondent discuss: whether
Respondent is diligently making progress on each client matter, whether Respondent is in
communication with each client, whether Respondent has promptly billed each client, whether

1 Respondent's fee agreements are consistent with the RPC and are understandable to the client,
2 whether Respondent needs to consider withdrawing from any client matters, and whether
3 Respondent's business website is in compliance with the RPC. Meetings may be in person or by
4 telephone at the practice monitor's discretion. The practice monitor uses discretion in
5 determining the length of each meeting.

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

12 54. If the practice monitor believes that Respondent is not complying with any of their
13 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly meeting, the
14 practice monitor will promptly communicate that to the Probation Administrator.

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

- 17 a) \$250 due within 30 days of the start of the probation;
- 18 b) \$250 due within 6 months of the start of the probation period;
- 19 c) \$250 due within 12 months of the start of the probation period; and
- 20 d) \$250 due within 18 months of the start of the probation period.

21 56. All payments should be provided to the Probation Administrator for processing.

22 IX. RESTITUTION

23 57. Restitution is not required under this stipulation.

1 **X. COSTS AND EXPENSES**

2 58. 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 \$750
4 before reinstatement in accordance with ELC 13.9(i). The Association will seek a money
5 judgment under ELC 13.9(l) if these costs are not paid within 30 days of approval of this
6 stipulation. Reinstatement from suspension is conditioned on payment of costs.

7 **XI. VOLUNTARY AGREEMENT**

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

13 60. 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 **XII. LIMITATIONS**

16 61. 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 62. 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 63. 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 Stipulation.

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

11 65. Under ELC 9.1(d)(5), if the Board approves the stipulation, the stipulation and all
12 materials that were submitted to the Board are submitted to the Supreme Court for review.

13 66. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
14 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
15 Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in addition
16 to Washington, Respondent also is admitted to practice law in the following jurisdictions, whether
17 current status is active, inactive or suspended: United States Bankruptcy Court for the Western
18 District of Washington.

19 67. 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 to
2 suspension as set forth above.

3 
4 /s/ Matthew Johnson

Dated: 12/17/2021

5 Matthew Erik Johnson, Bar No. 43808
6 Respondent

Dated: _____

7 Kevin M. Bank, Bar No. 28935
8 Counsel for Respondent

Dated: _____

9 Henry Cruz, Bar No. 38799
10 Disciplinary Counsel

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

3 /s/ Matthew Johnson
4 _____
5 Matthew Erik Johnson, Bar No. 43808
6 Respondent

Dated: 12/17/2021

7 
8 _____
9 Kevin M. Bank, Bar No. 28935
10 Counsel for Respondent

Dated: 12/17/2021

11 
12 _____
13 Henry Cruz, Bar No. 38799
14 Disciplinary Counsel

Dated: 12/17/2021

1 **6.2 Abuse of the Legal Process**

2 Absent aggravating or mitigating circumstances, upon application of the factors set out in
3 Standard 3.0, the following sanctions are generally appropriate in cases involving failure to
4 expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules
5 of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

6 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court
7 order or rule with the intent to obtain a benefit for the lawyer or another, and causes
8 serious injury or potentially serious injury to a party or causes serious or
9 potentially serious interference with a legal proceeding.

10 **6.22 Suspension is generally appropriate when a lawyer knows that he or she is
11 violating a court order or rule, and causes injury or potential injury to a client
12 or a party, or causes interference or potential interference with a legal
13 proceeding.**

14 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with
15 a court order or rule, and causes injury or potential injury to a client or other party,
16 or causes interference or potential interference with a legal proceeding.

17 6.24 Admonition is generally appropriate when a lawyer engages in an isolated instance
18 of negligence in complying with a court order or rule, and causes little or no actual
19 or potential injury to a party, or causes little or no actual or potential interference
20 with a legal proceeding.

21 **7.0 Violations of Duties Owed as a Professional**

22 Absent aggravating or mitigating circumstances, upon application of the factors set out in
23 Standard 3.0, the following sanctions are generally appropriate in cases involving false or
24 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.

1 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
2 that is a violation of a duty owed as a professional with the intent to obtain a benefit
3 for the lawyer or another, and causes serious or potentially serious injury to a
4 client, the public, or the legal system.

5 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
6 that is a violation of a duty owed as a professional and causes injury or potential
7 injury to a client, the public, or the legal system.

8 **7.3 Reprimand is generally appropriate when a lawyer negligently engages in
9 conduct that is a violation of a duty owed as a professional and causes injury
10 or potential injury to a client, the public, or the legal system.**

11 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
12 of negligence that is a violation of a duty owed as a professional, and causes little
13 or no actual or potential injury to a client, the public, or the legal system.