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APR 03 2018

DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JACOB BRIAN SMITH,

Lawyer (Bar No. 45482).

Proceeding No. (V) #00000

ODC File No(s). 16-01682, 17-00239, 17-00667

STIPULATION TO SUSPENSION

Under Rule 9.1 of the 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 Debra Slater and Respondent lawyer Jacob Brian Smith.

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

002

proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time, expense attendant to further proceedings.

I. ADMISSION TO PRACTICE

1. Respondent was admitted to practice law in the State of Washington on November 28, 2012.

II. STIPULATED FACTS

ODC Grievance

2. SD hired Respondent to represent him on felony criminal assault domestic violence charges in Pierce County.

3. SD agreed to pay Respondent \$4,000 for the representation, which Respondent described as a flat fee for the entire representation SD paid Respondent \$2,600, which Respondent deposited into his operating account prior to earning the fee.

4. The fee agreement was not reduced to writing nor was it signed by SD.

5. Because there was no written fee agreement that complied with RPC 1.5(f), the fee should have been deposited into a trust account.

6. On September 19, 2016, Respondent appeared at SD's arraignment. A Scheduling Order establishing pretrial and trial dates was entered, and the prosecutor delivered the discovery to Respondent.

7. On October 4, 2016, Respondent appeared with SD at the Pretrial Conference.

8. An Omnibus hearing took place on October 25, 2016. Respondent failed to appear at the hearing and SD subsequently terminated Respondent. On October 28, 2016, Respondent withdrew from the representation.

9. On November 2, 2016, SD requested that Respondent refund any unearned fees.

1 Respondent's paralegal responded to SD, stating that "We work on a flat fee basis and all
2 payments are nonrefundable." The paralegal informed SD that the \$2,500 he had paid was non-
3 refundable.

4 Voeller Grievance

5 10. Debra Voeller wanted to adopt her granddaughter. On November 5, 2016, she
6 responded to an advertisement Respondent had placed on Facebook in which he advertised that
7 he would reduce his fees by one-half.

8 11. Respondent told Voeller that he would normally charge \$1,800 for the adoption, but
9 because of the sale, the fee would be a flat fee of \$900. Voeller asked him if the fee included
10 court costs. Respondent told her it did not, but if she was low income she might qualify for a
11 waiver of the filing fee. Voeller replied that she would likely need the waiver and would
12 qualify based on her income.

13 12. Voeller and Respondent entered into a written fee agreement on November 9, 2016.
14 The agreement provided for a \$900 fee for the termination of parental rights and adoption. The
15 fee agreement did not comply with the requirements of RPC 1.5(f).

16 13. Respondent deposited the \$900 fee Voeller paid him into his operating account prior
17 to earning the \$900 fee.

18 14. Because the fee agreement did not comply with RPC 1.5(f), the fee should have been
19 deposited into a trust account.

20 15. Between November 9, 2016 when Respondent was hired, and January 6, 2017,
21 Voeller communicated with Respondent's paralegal on My Case, an electronic data
22 management system used by Respondent. Respondent's paralegal repeatedly assured Voeller
23 that work was being done on her case and that it was ready to be filed and would be filed soon.

1 16. Voeller became frustrated with the lack of progress on her case. On January 6, 2017,
2 Respondent's paralegal sent Voeller an email telling her that she and Respondent had conducted
3 a thorough review of her file. Respondent was copied on the communication. The paralegal
4 stated that the initial presentation of the case by Voeller was much different from what it had
5 turned into; that she had initially represented that the case was straight forward with cooperative
6 parties.

7 17. That statement was not true. Voeller had made no such representations about the
8 case. Respondent had reduced his fee because of the advertised sale, not because of
9 representations made by Voeller.

10 18. The communication went on to state that Voeller had never told Respondent that she
11 qualified for a filing fee waiver.

12 19. That statement was not true.

13 20. The communication stated that based upon the merits and posture of the case,
14 Respondent's fee would be \$10,500 plus filing fees. However, Respondent would continue the
15 representation if Voeller paid an additional \$1,000.

16 21. Respondent did not inform Voeller in writing of the desirability of seeking
17 independent counsel.

18 22. The communication also stated that if Voeller chose to terminate the representation,
19 Respondent would forward copies of the paperwork that had already been prepared, but there
20 would be no refund of fees based on the work already put into the case.

21 23. As of February 10, 2017, little or no work had been done on the case. Nothing had
22 been filed on the case. On February 21, 2017, Respondent notified Voeller that he would no
23 longer be representing her. On March 3, 2017, Respondent refunded the \$900 fee to Voeller.

1 Lewis Grievance

2 24. Phillip Lewis III hired Respondent on January 9, 2017, to represent him in a child
3 custody matter. Lewis entered into a written fee agreement in which he agreed to pay what was
4 described as a flat fee of \$6,500 for the entirety of the case. The agreement did not comply with
5 the requirements of RPC 1.5(f).

6 25. On February 23, 2017, a Show Cause hearing took place and temporary orders were
7 entered.

8 26. On March 21, 2017, Respondent's paralegal notified Lewis that Respondent was
9 switching from flat fees to hourly billing and that Lewis' case was being switched to hourly
10 billing. Respondent's paralegal also told Lewis that Respondent was not able to do the trial on
11 Lewis' case on a flat fee basis "per the WSBA."

12 27. The statement that Respondent could not do the trial on Lewis case on a flat fee basis
13 "per the WSBA" was false.

14 28. Respondent did not inform Lewis in writing of the desirability of seeking
15 independent counsel.

16 29. On March 27, 2017, Respondent told Lewis that "if the funds paid for flat fee and
17 services rendered are somewhat close or especially when the attorney has done more than the
18 amount paid, it is acceptable to end the contract."

19 30. That statement was false.

20 31. On March 29, 2017, the representation was terminated and Respondent refused to
21 refund any of the \$2,600 Lewis had paid in fees.

III. STIPULATION TO MISCONDUCT

ODC Grievance

32. By failing to appear at the Omnibus Hearing in SD's case, Respondent violated RPC 1.3.

33. By failing to deposit into a trust account SD's legal fees paid in advance, Respondent violated RPC 1.5(f) and RPC 1.15A(c)(2).

Voeller Grievance

34. By doing little or no work on Voeller's case, Respondent violated RPC 1.3.

35. By making false statements to Voeller, Respondent violated RPC 8.4(c).

36. By failing to deposit into a trust account Voeller's legal fees paid in advance, Respondent violated RPC 1.5(f) and RPC 1.15A(c)(2)..

37. By modifying the fee arrangement with Voeller without advising her that she should consult independent counsel, Respondent violated RPC 1.8.

38. By failing to supervise his paralegal, Respondent violated RPC 5.3.

Lewis Grievance

39. By making false statements to Lewis, Respondent violated RPC 8.4(c).

40. By modifying the fee arrangement with Lewis without advising him that he should consult independent counsel, Respondent violated RPC 1.8.

41. By failing to supervise his paralegal, Respondent violated RPC 5.3.

IV. PRIOR DISCIPLINE

42. Respondent has no prior discipline.

V. APPLICATION OF ABA STANDARDS

43. The following American Bar Association Standards for Imposing Lawyer Sanctions

1 (1991 ed. & Feb. 1992 Supp.) apply to this case and are attached hereto as Appendix A.

2 44. ABA Standard 4.4 applies to Respondent's failure to diligently represent SD
3 and Voeller, in violation of RPC 1.3. Respondent acted knowingly in failing to appear at SD's
4 omnibus hearing and in doing little or no work on Voeller's case. There was injury to SD in
5 that he appeared at the Omnibus hearing without a lawyer. There was injury to Voeller as no
6 work was done on her case for several months, resulting in delay in the adoption.

7 45. The presumptive sanction for Respondent's violation of RPC 1.3 is suspension.

8 46. ABA Standard 4.1 applies to Respondent's violation of RPC 1.15A in the SD and
9 Voeller cases. Respondent should have known that his fee agreement did not comply with RPC
10 1.5(f), and therefore the fees he received from SD and Voeller should have been deposited into
11 a trust account. There was at least potential injury to SD and Voeller as their funds were at risk
12 of being available to Respondent's creditors.

13 47. The presumptive sanction for Respondent's violation of RPC 1.15A is suspension.

14 48. ABA Standard 4.6 applies to Respondent's violation of RPC 8.4(c) in the Voeller
15 and Lewis cases. Respondent knew that the statements he made to his clients were not true and
16 caused them injury by misleading them about their right to receive a refund of their fees.

17 49. The presumptive sanction for Respondent's violations of RPC 8.4(c) is suspension.

18 50. ABA Standard 4.3 applies to Respondent's violations of RPC 1.8. Respondent was
19 negligent in determining whether the representation of his client was materially affected by his
20 own interests. There was injury to his clients as they were denied the opportunity to consult
21 with independent counsel about the changes in the fee structure that Respondent proposed.

22 51. The presumptive sanction for Respondent's violation of RPC 1.8 is reprimand.

23 52. ABA Standard 7.0 applies to Respondent's failure to supervise his paralegal, in

1 violation of RPC 5.3. Respondent acted knowingly, resulting in injury to both Voeller and
2 Lewis.

3 53. The presumptive sanction for Respondent's violation of RPC 5.3 is suspension.

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

- 5 (c) a pattern of misconduct; and
- 6 (d) multiple offenses.

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

- 8 (a) absence of a prior disciplinary record;
- 9 (c) personal or emotional problems;
- (f) inexperience in the practice of law; and
- (l) remorse.

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

12 VI. STIPULATED DISCIPLINE

13 57. The parties stipulate that Respondent shall receive a one year suspension.

14 58. As a condition of reinstatement, Respondent shall, at least 30 days prior to a request
15 for reinstatement, undergo an independent examination by a licensed clinical psychologist or
16 psychiatrist proposed by him and approved by disciplinary counsel (the mental health
17 evaluator). Respondent shall execute all necessary releases to permit the mental health
18 evaluator to obtain all necessary treatment records and make a report to disciplinary counsel as
19 to whether Respondent is currently fit to practice law.

20 59. If the mental health evaluator concludes that Respondent is fit to practice law but
21 makes any recommendations for treatment, Respondent shall comply with such
22 recommendations.

23 60. Respondent shall be subject to probation for a period of 24 months, beginning on the

1 date Respondent is reinstated to the practice of law.

2 61. Respondent's probation shall include monitoring by a Mental Health Monitor,
3 including Respondent's compliance with the mental health evaluator's recommendations, and
4 monitoring by a Practice Monitor.

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

9 Mental Health Monitor

10 a) Within 60 days after probation begins, Respondent shall provide the Probation
11 Administrator with the name and contact information of a proposed mental health
12 provider. The proposed provider must be a licensed physician or psychologist. The
13 Probation Administrator will either approve or reject the proposed provider and will
14 notify Respondent of that decision in writing. If the provider is not approved,
15 Respondent shall provide the name of a second provider within three weeks of the
16 Probation Administrator's letter.

14 b) Respondent shall comply with all requirements and recommendations of the
15 mental health treatment provider.

15 c) Respondent shall execute an authorization allowing and directing the treatment
16 provider to take the following actions:

- 17 1. On a quarterly basis, send written reports to the Probation Administrator that
18 include the dates of treatment and whether continued treatment is
19 recommended.
- 20 2. Report immediately if Respondent fails to comply with any treatment
21 recommendations or otherwise violates any terms of treatment.

21 Practice Monitor

22 a) During the period of probation, Respondent's practice will be supervised by a
23 practice monitor. The practice monitor must be a WSBA member with no record of

1 public discipline and who is not the subject of a pending public disciplinary
2 proceeding.

3 b) The role of the practice monitor is to consult with and provide guidance to
4 Respondent regarding case management, office management, and avoiding
5 violations of the Rules of Professional Conduct, and to provide reports and
6 information to the Probation Administrator regarding Respondent's compliance
7 with the terms of probation and the RPC. The practice monitor does not represent
8 the Respondent.

9 c) At the beginning of the probation period, the Probation Administrator will
10 select a lawyer to serve as practice monitor for the period of Respondent's
11 probation.

12 i) Initial Challenge: If, within 15 days of the written notice of the
13 selection of a practice monitor, Respondent sends a written request to the
14 Probation Administrator that another practice monitor be selected, the
15 Probation Administrator will select another practice monitor. Respondent
16 need not identify any basis for this initial request.

17 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
18 practice monitor, Respondent believes there is good cause why that
19 individual should not serve as practice monitor, Respondent may, within 15
20 days of notice of the selected practice monitor, send a written request to the
21 Probation Administrator asking that another practice monitor be selected.
22 That request must articulate good cause to support the request. If the
23 Probation Administrator agrees, another practice monitor will be selected.
24 If the Probation Administrator disagrees, the Office of Disciplinary Counsel
will submit its proposed selection for practice monitor to the Chair of the
Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will
also provide the Chair with the Respondent's written request that another
practice monitor be selected.

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

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

f) The Respondent must bring to each meeting a current, complete written list of
all pending client legal matters being handled by the Respondent and all fee
agreements entered into during the pertinent time period. The list must identify the
current status of each client matter and any problematic issues regarding each client

1 matter. The list may identify clients by using the client's initials rather than the
2 client's name.

3 g) At each meeting, the practice monitor will discuss with Respondent practice
4 issues that have arisen or are anticipated. In light of the conduct giving rise to the
5 imposition of probation, ODC recommends that the practice monitor and
6 Respondent discuss whether Respondent is diligently making progress on each
7 client matter, whether Respondent is in communication with each client, whether
8 Respondent has promptly billed each client, whether Respondent's fee agreements
9 are consistent with the RPC and are understandable to the client, whether
10 Respondent needs to consider withdrawing from any client matters. Meetings may
11 be in person or by telephone at the practice monitor's discretion. The practice
12 monitor uses discretion in determining the length of each meeting.

13 h) The practice monitor will provide the Probation Administrator with quarterly
14 written reports regarding Respondent's compliance with probation terms and the
15 RPC. Each report must include the date of each meeting with Respondent, a brief
16 synopsis of the discussion topics, and a brief description of any concerns the
17 practice monitor has regarding the Respondent's compliance with the RPC. The
18 report must be signed by the practice monitor. Each report is due within 30 days of
19 the completion of the quarter.

20 i) If the practice monitor believes that Respondent is not complying with any of
21 his ethical duties under the RPC or if Respondent fails to schedule or attend a
22 monthly meeting, the practice monitor will promptly communicate that to the
23 Probation Administrator.

24 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
Association to defray the costs and expenses of administering the probation, as
follows:

i) \$250 due within 30 days of the start of the probation;

ii) \$250 due within 6 months of the start of the probation period;

iii) \$250 due within 12 months of the start of the probation period; and

iv) \$250 due within 18 months of the start of the probation period.

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

VII. RESTITUTION

63. No restitution is ordered.

1 **VIII. COSTS AND EXPENSES**

2 64. 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 \$1,000
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 65. 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 66. 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 67. 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 68. 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 69. 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 70. 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.

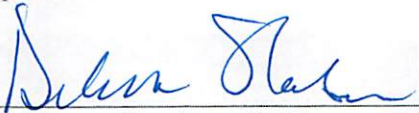
12 71. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
13 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
14 Rules for Enforcement of Lawyer Conduct will be made.

15 72. 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 Jacob Brian Smith, Bar No. 45482
5 Respondent

Dated: 01/16/2018

6 
7 Debra Slater, Bar No. 18346
8 Disciplinary Counsel

Dated: 1/23/18