

FILED

MAR 15 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ANDREW F. HIBLAR, JR.,

Lawyer (Bar No. 7648).

Proceeding No. 12#00108

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Washington State Bar Association (Association), through disciplinary counsel Marsha Matsumoto and Respondent lawyer Andrew F. Hiblar, Jr. (Respondent).

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 avoid the risk, time, expense attendant to further proceedings.

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on November
3 10, 1977.

4 2. Respondent is currently suspended from the practice of law.

5 **II. STIPULATED FACTS**

6 3. Diana Driskill (Driskill) and Christopher Rogers (Rogers) dissolved their marriage in
7 2005. The couple had one child from the marriage, Rylee.

8 4. In June 2009, Driskill initiated a relocation action because she wanted to move with
9 Rylee to Kentucky. Driskill was represented by Laura Groves. Rogers was represented by Re-
10 spondent.

11 5. The relocation trial was held on November 20, 2009. By order filed on July 30,
12 2010, the court denied Driskill's request to relocate Rylee to Kentucky.

13 6. On August 1, 2010, Respondent was suspended from the practice of law for nine
14 months pursuant to an order of the Washington Supreme Court approving a stipulation to disci-
15 pline in an unrelated matter. Respondent has remained on suspended status since that time.

16 7. Driskill unsuccessfully moved for reconsideration of the court's July 30, 2010 order,
17 and appealed to the Court of Appeals.

18 8. After his suspension, Respondent continued to advise Rogers regarding his dispute
19 with Driskill, reviewed and suggested changes to documents prepared by Rogers for the litiga-
20 tion, and prepared the brief that Rogers filed in May 2011 with the Court of Appeals. This con-
21 duct constituted the practice of law as defined in General Rule 24.

22 9. Respondent states that because he did not sign any pleadings, appear in court, or re-
23 ceive any compensation for the services he rendered following his suspension, he did not be-
24

1 believe he was engaged in the practice of law. Respondent's belief was incorrect.

2 **III. STIPULATION TO MISCONDUCT**

3 10. By continuing to practice law while suspended, Respondent violated RPC 5.5(a),
4 RPC 1.16(a)(1), RPC 5.8(a), and RPC 8.4(l) (through ELC 1.5 and ELC 14.2).

5 **IV. PRIOR DISCIPLINE**

6 11. Respondent was suspended from the practice of law for nine months effective Au-
7 gust 1, 2010. Respondent has not sought reinstatement from the nine month suspension.

8 12. Respondent was suspended from the practice of law for three months effective Au-
9 gust 19, 2011. Respondent has not sought reinstatement from the three month suspension.

10 **V. APPLICATION OF ABA STANDARDS**

11 13. The following American Bar Association Standards for Imposing Lawyer Sanctions
12 (1991 ed. & Feb. 1992 Supp.) apply to this case:

13 **8.0 Prior Discipline Orders**

14 Absent aggravating or mitigating circumstances, upon application of the
15 factors set out in Standard 3.0, the following sanctions are generally appropriate
16 in cases involving prior discipline.

17 8.1 Disbarment is generally appropriate when a lawyer:

- 18 (a) intentionally or knowingly violates the terms of a prior disciplinary order
19 and such violation causes injury or potential injury to a client, the public,
20 the legal system, or the profession; or
- 21 (b) has been suspended for the same or similar misconduct, and intentionally
22 or knowingly engages in further similar acts of misconduct that cause in-
23 jury or potential injury to a client, the public, the legal system, or the pro-
24 fession.

8.2 Suspension is generally appropriate when a lawyer has been reprimanded
for the same or similar misconduct and engages in further similar acts of
misconduct that cause injury or potential injury to a client, the public, the
legal system, or the profession.

8.3 Reprimand is generally appropriate when a lawyer:

- (a) negligently violates the terms of a prior disciplinary order and such viola-
tion causes injury or potential injury to a client, the public, the legal sys-
tem, or the profession; or

1 (b) has received an admonition for the same or similar misconduct and en-
2 gages in further similar acts of misconduct that cause injury or potential
injury to a client, the public, the legal system, or the profession.

3 8.4 An admonition is generally not an appropriate sanction when a lawyer
4 violates the terms of a prior disciplinary order or when a lawyer has en-
gaged in the same or similar misconduct in the past.

5 14. Respondent's conduct in practicing law after he was suspended was negligent, and
6 caused potential injury to Rogers and the legal system.

7 15. The presumptive sanction is reprimand.

8 16. The following aggravating factors apply under ABA Standards Section 9.22:

9 (a) prior disciplinary offenses (Respondent was suspended for nine months,
10 effective August 1, 2010, based on his failure to properly handle client
11 funds and his failure to cooperate in the Association's investigation. Re-
spondent was suspended for three months, effective August 19, 2011,
based on his failure to properly handle and account for advance fees, fail-
ure to deliver a client's file, and failure to produce records during the As-
sociation's investigation);

12 (i) substantial experience in the practice of law (Respondent was admitted to
13 the practice of law in the State of Washington on November 10, 1977).

14 17. The following mitigating factors apply under ABA Standards Section 9.32:

15 (b) absence of a dishonest or selfish motive (Respondent was motivated by a
16 desire to help his former client, not by personal gain. Respondent did not
receive any compensation for assisting Rogers after his suspension).

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

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

21 VI. STIPULATED DISCIPLINE

22 20. Respondent stipulates to receive a reprimand for his conduct in this matter.

23 VII. RESTITUTION

24 21. No restitution is required under this stipulation.

1 **VIII. COSTS AND EXPENSES**

2 22. In light of Respondent's willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay attorney's fees and administrative costs of \$750
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.

6 **IX. VOLUNTARY AGREEMENT**

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

12 **X. LIMITATIONS**

13 24. This Stipulation is a compromise agreement intended to resolve this matter in ac-
14 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
15 penditure of additional resources by the Respondent and the Association. Both the Respondent
16 lawyer and the Association acknowledge that the result after further proceedings in this matter
17 might differ from the result agreed to herein.

18 25. This Stipulation is not binding upon the Association or the respondent as a statement
19 of all existing facts relating to the professional conduct of the respondent lawyer, and any addi-
20 tional existing facts may be proven in any subsequent disciplinary proceedings.

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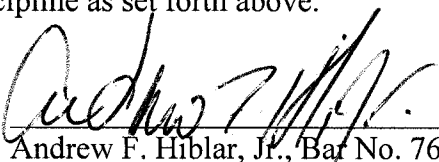
1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved Stipula-
4 tion.

5 27. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
6 Board shall have available to it for consideration all documents that the parties agree to submit
7 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
8 form the record before the Board for its review become public information on approval of the
9 Stipulation by the Board, unless disclosure is restricted by order or rule of law.


10 28. If this Stipulation is approved by the Disciplinary Board, it will be followed by the
11 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforce-
12 ment of Lawyer Conduct will be made.

13 29. If this Stipulation is not approved by the Disciplinary Board, this Stipulation will
14 have no force or effect, and neither it nor the fact of its execution will be admissible as evidence
15 in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civ-
16 il or criminal action.

17 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
18 to Discipline as set forth above.

19 
20 Andrew F. Hiblar, Jr., Bar No. 7648
21 Respondent

Dated: 01-28-13

22 
23 Marsha Matsumoto, Bar No. 15831
24 Senior Disciplinary Counsel

Dated: 1/29/13