

FILED

Jul 10, 2024

Disciplinary  
Board

Docket # 019

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

**GERALD T. OSBORN,**

Lawyer (Bar No. 13712).

Proceeding No. 23#00054

ODC File No. 21-01636

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Amanda Lee and Respondent lawyer Gerald T. Osborn.

Respondent understands that under the ELC Respondent is entitled to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that under the ELC Respondent is entitled 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 a more favorable or less favorable outcome to Respondent. Respondent chooses

1 to resolve this proceeding now by entering into the following stipulation to facts, misconduct  
2 and sanction to avoid the risk, 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 October 28,  
5 1983.

6 **II. STIPULATED FACTS**

7 2. At all times relevant to this matter, Respondent maintained an Interest on Lawyer's  
8 Trust Account (trust account) ending in 9166 at Banner Bank.

9 3. On February 4, 2020, Anita Mitchell hired Respondent for representation in *John*  
10 *Diamond v. Anita Mitchell*, Skagit County District Court case no. Y19-01794 (*Diamond*).

11 4. Prior to hiring Respondent, Mitchell had filed an Answer to the Complaint and a  
12 Counterclaim against Diamond.

13 5. Respondent agreed to represent Mitchell in *Diamond* for a flat fee of \$1,500.

14 6. Respondent's fee agreement provided that Respondent would represent Mitchell in  
15 the "Defense and Countersuit" in *Diamond*.

16 7. Respondent's fee agreement also stated:

17 Unless otherwise agreed, client agrees to pay attorney's hourly fee for any  
services provided in addition to those covered by the flat fee.

18 8. Respondent's hourly rate provided by the fee agreement was \$250 per hour.

19 9. The fee agreement did not explain what services would be treated as "in addition to  
20 those covered by the flat fee."

21 10. On February 7, 2020, Respondent received \$1,500 from Mitchell.

22 11. In November, 2020, Diamond died.

1           12. In April, 2021, Respondent filed a creditor claim in Diamond's estate and joined  
2 Diamond's estate as a party in *Diamond*.

3           13. On or about November 2, 2021, Diamond's estate agreed to dismiss its claims  
4 against Mitchell and to pay \$11,500 to resolve Mitchell's counterclaims.

5           14. Respondent did not perform any work for Mitchell beyond the "Defense and  
6 Countersuit" in *Diamond*.

7           15. On November 12, 2021, Diamond's estate issued a cashier's check for \$11,500  
8 payable to Respondent's trust account.

9           16. On December 6, 2021, Respondent received from opposing counsel in *Diamond*  
10 the settlement check, as well as a satisfaction of creditor claim form and a stipulation and order  
11 of dismissal.

12           17. Respondent agreed to ensure that Mitchell signed both the satisfaction of creditor  
13 claim form and the stipulation and order of dismissal before Respondent disbursed settlement  
14 funds to Mitchell.

15           18. On December 7, 2021, Respondent deposited the check into Respondent's trust  
16 account.

17           19. Respondent asserts that Respondent believed that Respondent was entitled to  
18 \$1,500 beyond what Mitchell had already paid. Therefore, Respondent intended to disburse  
19 \$10,000 from the settlement funds to Mitchell and keep \$1,500 as attorney fees.

20           20. Respondent scheduled a meeting with Mitchell for December 14, 2021. Mitchell  
21 appeared for the meeting but Respondent did not.

22           21. Respondent scheduled a meeting with Mitchell for December 17, 2021. Mitchell  
23 appeared for the meeting but Respondent did not.

1           22. Respondent scheduled a meeting with Mitchell at Respondent's office for  
2 December 22, 2021.

3           23. Respondent left Mitchell a voice message on the morning of December 22, 2021,  
4 reminding Mitchell of the meeting time and place. Mitchell traveled from Sedro Wooley to  
5 Respondent's office in Anacortes for the meeting with Respondent, but Respondent did not  
6 appear for the meeting.

7           24. On December 24, 2021, Respondent and Mitchell met at a bank in Sedro Wooley.  
8 Respondent brought an unsigned check for \$10,000 made out to Mitchell and a stipulation form,  
9 which Respondent filled out during the meeting with Mitchell.

10          25. Respondent and Mitchell had a disagreement about the stipulation Respondent  
11 drafted and Mitchell declined to sign it.

12          26. Because Mitchell would not sign the stipulation, Respondent did not sign the  
13 \$10,000 check. Respondent left the bank without having disbursed any of the settlement funds  
14 to Mitchell.

15          27. Under the terms of the written fee agreement, Mitchell was entitled to receive the  
16 full \$11,500 in settlement funds.

17          28. After their meeting on December 24, 2021, Respondent stopped communicating  
18 with Mitchell.

19          29. On December 24, 2021, Mitchell filed a grievance against Respondent alleging  
20 Respondent refused to release the settlement funds.

21          30. On or about February 1, 2022, Respondent mailed Mitchell the check for \$10,000,  
22 as well as the stipulation and order of dismissal that opposing counsel had provided to  
23 Respondent on December 6, 2021.

1 31. On or about February 4, 2022, Mitchell signed and returned the form to  
2 Respondent and deposited the check.

3 32. Between December, 2021 and February, 2024, Respondent held the remaining  
4 \$1,500 in settlement funds in trust but failed to take reasonable steps to resolve the dispute over  
5 the funds.

6 33. On February 28, 2024, Respondent disbursed the disputed \$1,500 to Mitchell.

7 34. Respondent did not provide a written accounting to Mitchell after the distributions  
8 of funds from Respondent's trust account.

9 35. Respondent did not provide an annual written accounting to Mitchell of funds held  
10 in Respondent's trust account.

11 36. Between November, 2021 and February, 2022, Respondent did not maintain  
12 individual client ledgers and did not maintain a complete check register.

13 37. Between November, 2021 and February, 2022, Respondent did not reconcile the  
14 trust account check register to the trust account bank statements and did not reconcile the trust  
15 account check register balances to the combined total of all client ledgers.

### 16 **III. STIPULATION TO MISCONDUCT**

17 38. By charging and/or attempting to charge Mitchell more than provided for by the  
18 fee agreement, Respondent violated RPC 1.5(a).

19 39. By failing to promptly pay or deliver to Mitchell funds Mitchell was entitled to  
20 receive, Respondent violated RPC 1.3 and RPC 1.15A(f).

21 40. By failing to take reasonable action to resolve the dispute with Mitchell over the  
22 disputed portion of the settlement funds, Respondent violated RPC 1.3 and RPC 1.15A(g).

41. By failing to maintain client ledgers and a current check register, Respondent violated RPC 1.15B(a)(1), RPC 1.15B(a)(2) and RPC 1.15A(h)(2).

42. By failing to reconcile Respondent's trust account check register to the bank statements and/or by failing to reconcile the check register balance to the combined total of all client ledgers, Respondent violated RPC 1.15A(h)(6).

43. By failing to provide a written accounting to Mitchell after the distribution of property and/or at least annually, Respondent violated RPC 1.15A(e).

#### IV. PRIOR DISCIPLINE

44. Respondent has no prior discipline.

#### V. APPLICATION OF ABA STANDARDS

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

46. ABA *Standard* 4.1 applies to the lawyer's duty to preserve client property:

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

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

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

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

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

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

47. ABA *Standard* 4.4 applies to the lawyer's duty to act with reasonable diligence and promptness in representing a client:

#### 4.4 *Lack of Diligence*

Absent aggravating or mitigating circumstances, upon application of the factors set out in *Standard 3.0*, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

4.41 Disbarment is generally appropriate when:

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

4.42 Suspension is generally appropriate when:

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

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

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

48. ABA *Standard 7.0* applies to the lawyer's duty not to charge unreasonable fees:

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

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

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

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

1           7.3     Reprimand is generally appropriate when a lawyer negligently engages in  
2                     conduct that is a violation of a duty owed as a professional and causes  
3                     injury or potential injury to a client, the public, or the legal system.

4           7.4     Admonition is generally appropriate when a lawyer engages in an  
5                     isolated instance of negligence that is a violation of a duty owed as a  
6                     professional, and causes little or no actual or potential injury to a client,  
7                     the public, or the legal system.

8           49.     Respondent knowingly failed to attend meetings with Mitchell and failed to bring  
9                     the necessary releases for Mitchell to sign when they did meet.

10          50.     Mitchell was injured by having to wait longer than necessary to receive any of the  
11                     settlement funds and by the time wasted when Respondent failed to attend meetings.

12          51.     The presumptive sanction under ABA *Standard* 4.42(a) is suspension.

13          52.     Respondent knowingly tried to collect from Mitchell \$1,500 in fees beyond what  
14                     was authorized under the terms of their fee agreement.

15          53.     Mitchell was injured by Respondent's conduct in creating an unnecessary dispute  
16                     over the funds in Respondent's trust account and by the delay in receiving funds to which  
17                     Mitchell was entitled.

18          54.     The presumptive sanction under ABA *Standard* 7.2 is suspension.

19          55.     Respondent knowing failed to promptly disburse settlement funds and failed to  
20                     take reasonable steps to resolve the dispute over the funds held in Respondent's trust account.

21          56.     Mitchell was injured by Respondent's failure to disburse the undisputed portion of  
22                     the settlement funds until February, 2022, and by Respondent's failure to take reasonable steps  
23                     to resolve the dispute over the remaining \$1,500 Respondent held in trust until April, 2024.

24          57.     The presumptive sanction under ABA *Standard* 4.12 is suspension.

            58.     Respondent should have known Respondent was failing to properly manage client  
                     property and failing to maintain required trust account records.



59. Respondent's failure to properly manage client property caused potential harm to Respondent's client with funds held in Respondent's trust account.

60. The presumptive sanction under ABA *Standard* 4.12 is suspension.

61. The following aggravating factors apply under ABA *Standard* 9.22:

- (i) substantial experience in the practice of law (Respondent was admitted in 1983)

62. The following mitigating factors apply under ABA *Standard* 9.32:

- (a) absence of a prior disciplinary record, and
- (c) personal or emotional problems (respondent was experiencing mental health issues in the late fall/early winter of 2021. Respondent was involuntarily hospitalized for mental health treatment from December 31, 2021, through January 19, 2022, and was unable to obtain appropriate outpatient treatment following discharge for approximately two years. Respondent's personal and emotional problems strongly impacted Respondent's ability to diligently represent Mitchell during the fall of 2021 and winter of 2022).

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

64. Based on the factors set forth above, the presumptive sanction should be mitigated to reprimand.

## **VI. STIPULATED DISCIPLINE**

65. The parties stipulate that Respondent shall receive a reprimand for Respondent's conduct.

## **VII. CONDITIONS OF PROBATION**

66. Respondent will be subject to probation for a period of two years beginning when this stipulation receives final approval.

1       67. Ethics School

- 2           (a) Respondent shall attend Ethics School by webinar (approximately 7.5 hours),  
3           or by obtaining the recorded product, and to pay registration costs of \$150  
4           plus applicable sales tax. Respondent will receive all applicable approved  
5           CLE credits for time in attendance at the Ethics School.
- 6           (b) Attendance at Ethics School is in addition to and shall not fulfill any  
7           continuing legal education (CLE) requirements set out in this stipulation.
- 8           (c) Respondent shall contact the Ethics School Administrator, currently Chris  
9           Chang, at (206) 727-8328 or [chrisc@wsba.org](mailto:chrisc@wsba.org), by June 17, 2024, to confirm  
10          enrollment in Ethics School and related logistics.
- 11          (d) Respondent shall complete the ethics school requirement by August 30,  
12          2024.
- 13          (e) Respondent shall provide evidence of completion of ethics school to the  
14          Probation Administrator no later than 30 days after the conclusion of the  
15          course. Proof of attendance shall include the program brochure, evidence of  
16          payment, and a written statement that includes the date and time of  
17          attendance.
- 18          (f) The Ethics School administrator may respond to inquiries from the Probation  
19          Administrator regarding Respondent's compliance with these conditions.

20       68. During the period of probation, Respondent's trust account practices will be  
21       periodically reviewed under ELC 13.8(a) and Respondent shall comply with the following  
22       terms:

- 23           (a) Respondent shall carefully review and fully comply with RPC 1.15A and  
24           RPC 1.15B, and shall carefully review the current version of the publication,  
            *Managing Client Trust Accounts: Rules, Regulations, and Common Sense*.
- (b) For all client matters, Respondent shall have a written fee agreement signed  
            by the client, which agreements are to be maintained for least seven years  
            (see RPC 1.15B(a)(3)).
- (c) On a monthly basis, using ODC's form report entitled "Monthly  
            Reconciliation and Review Report," Respondent shall review the trust-  
            account records detailed on the form report, review the completed report, and  
            sign and date the completed report.
- (d) On a quarterly basis, Respondent shall provide ODC's audit staff with all  
            trust-account records for the time period to be reviewed by ODC's audit staff  
            and disciplinary counsel for compliance with the RPC:

- (i) Months 1 – 3. By no later than the 30th day of the fourth month after the commencement of probation, Respondent shall provide the trust account records from the date of commencement of probation to the end of the third full month.
- (ii) Months 4 – 6. By no later than the 30th day of the seventh 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 six.
- (iii) Months 7 – 9. By no later than the 30th day of the tenth 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 nine.
- (iv) Months 10 – 12. By no later than the 30th day of the thirteenth 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 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.
- (e) The trust account records to be provided by Respondent to ODC for each quarterly review of Respondent's trust account shall include:
- (i) copies of each completed "Monthly Reconciliation and Review Report" referenced in sub-paragraph(c) above,
- (ii) a complete checkbook register for Respondent's trust account covering the period being reviewed,
- (iii) complete individual client ledger records for any client with funds in Respondent's trust account during all or part of the period being reviewed, as well as for Respondent's own funds in the account (if any), and
- (iv) copies of all trust-account bank statements, deposit slips, and cancelled checks covering the period being reviewed. ODC's Audit

1 Manager or designee will review Respondent's trust account records  
2 for each period.

- 3 (f) On the same quarterly time schedule set forth in the preceding paragraph,  
4 Respondent will provide ODC's Audit Manager or designee with copies of  
5 any and all fee agreements entered into within the time period at issue.
- 6 (g) ODC's Audit Manager or designee may request additional financial or client  
7 records if needed to verify Respondent's compliance with RPC 1.15A and/or  
8 1.15B. Within twenty days of a request from ODC's Audit Manager or  
9 designee for additional records needed to verify Respondent's compliance  
10 with RPC 1.15A and/or RPC 1.15B, Respondent will provide ODC's Audit  
11 Manager or designee the additional records requested.
- 12 (h) Respondent will reimburse the Association for time spent by ODC's Audit  
13 Manager or designee in reviewing and reporting on Respondent's records to  
14 determine Respondent's compliance with RPC 1.15A and RPC 1.15B, at the  
15 rate of \$85 per hour. Respondent will make payment within thirty days of  
16 each written invoice setting forth the auditor's time and payment due.

## 11 **VIII. RESTITUTION**

- 12 69. No restitution is appropriate in this matter.

## 13 **IX. COSTS AND EXPENSES**

- 14 70. In light of Respondent's willingness to resolve this matter by stipulation at an early  
15 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in  
16 accordance with ELC 13.9(i).<sup>1</sup> The Association will seek a money judgment under ELC 13.9(l)  
17 if these costs are not paid within 30 days of approval of this stipulation.

## 18 **X. VOLUNTARY AGREEMENT**

- 19 71. Respondent states that prior to entering into this Stipulation Respondent had an  
20 opportunity to consult independent legal counsel regarding this Stipulation, that Respondent is  
21 entering into this Stipulation voluntarily, and that no promises or threats have been made by  
22

23 <sup>1</sup> This obligation is separate from the obligation to reimburse the Association specified in ¶ 73(h).

1 ODC, the Association, nor by any representative of ODC or the Association, to induce the  
2 Respondent to enter into this Stipulation except as provided in this Stipulation.

3 72. Once fully executed, this Stipulation is a contract governed by the legal principles  
4 applicable to contracts and may not be unilaterally revoked or modified by either party.

## 5 **XI. LIMITATIONS**

6 73. This Stipulation is a compromise agreement intended to resolve this matter in  
7 accordance with the purposes of lawyer discipline while avoiding further proceedings and the  
8 expenditure of additional resources by the Respondent and ODC. Both the Respondent and  
9 ODC acknowledge that the result after further proceedings in this matter might differ from the  
10 result agreed to in this Stipulation.

11 74. This Stipulation is not binding upon ODC or the respondent as a statement of all  
12 existing facts relating to the professional conduct of the Respondent, and any additional existing  
13 facts may be proven in any subsequent disciplinary proceedings.

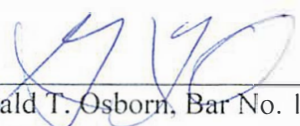
14 75. This Stipulation results from the consideration of various factors by both parties,  
15 including the benefits to both by promptly resolving this matter without the time and expense of  
16 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
17 such,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

21 76. Under ELC 3.1(b), all documents that form the record before the Hearing Officer  
22 for the Hearing Officer's review become public information on approval of the Stipulation by  
23 the Hearing Officer, unless disclosure is restricted by order or rule of law.

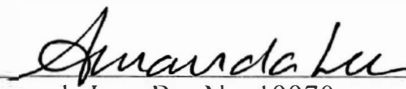
1 77. If this Stipulation is approved by the Hearing Officer, it will be followed by the  
2 disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
3 Enforcement of Lawyer Conduct will be made.

4 78. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have  
5 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in  
6 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil  
7 or criminal action.

8 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
9 to Reprimand as set forth above.

10  
11   
12 Gerald T. Osborn, Bar No. 13712  
Respondent

Dated: 5/21/24

13   
14 Amanda Lee, Bar No. 19970  
15 Disciplinary Counsel

Dated: 5/24/2024