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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

STEPHEN KERR EUGSTER,
Lawyer (Bar No. 2003).

Proceeding No. 16#00017

STIPULATION TO A 60-DAY
SUSPENSION

[Following Settlement Conference Conducted
Under ELC 10.12(h)]

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to a 60-Day suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Francesca D'Angelo and Respondent lawyer Stephen Kerr Eugster.

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

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1 outcome more favorable or less favorable to him. Respondent chooses to resolve this
2 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
3 avoid the risk, time and expense attendant to further proceedings.

4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on January 2,
6 1970.

7 II. STIPULATED FACTS

8 2. In September 2014, Verdelle O'Neill (Ms. O'Neill) was 88 years old, legally blind,
9 and hard of hearing.

10 3. Kevin Carbury and Michelle Carbury (the Carburys) were Ms. O'Neill's neighbors
11 who had borrowed a substantial amount of money from Ms. O'Neill. The Carburys had
12 previously consulted with Respondent regarding a potential personal bankruptcy.

13 4. On or about September 11, 2014, Ms. O'Neill hired Respondent to draft her estate
14 plan and to gather her assets.

15 5. During the meeting, Ms. O'Neill expressed concern to Respondent that the Carburys
16 owed her money.

17 6. On or about September 12, 2014, Ms. O'Neill signed a fee agreement (agreement)
18 with Respondent for "Estate Planning; Power of Attorney, and other estate planning
19 documents."

20 7. The agreement stated that Respondent's fee for legal and other work would be \$75
21 per hour.

22 8. On or about September 12, 2014, Ms. O'Neill also signed a power of attorney
23 appointing Respondent as her attorney-in-fact.

1 9. The power of attorney gave Respondent full power to administer Ms. O'Neill's
2 personal and business affairs and granted him power to take action for the recovery of debts
3 owed to her.

4 10. The power of attorney also allowed Respondent to be reimbursed for reasonable
5 expenses incurred but did not provide for other compensation.

6 11. On or about September 12, 2014, Respondent drafted a letter addressed to Ms.
7 O'Neill and Kevin and Michelle Carbury.

8 12. The letter stated:

9 I write this letter to you in light of the fact that Mrs. O'Neill has asked me to
10 undertake legal work for her and, because Kevin and Michelle Carbury have
11 asked or soon will ask me to provide them with legal representation concerning a
chapter seven straight bankruptcy (liquidation).

11 ...

12 Kevin and Michelle, I understand are indebted to Mrs. O'Neill, in the amount of
\$20,000. If Kevin and Michelle go through a chapter 7 bankruptcy the amount
owing to Mrs. O'Neill will be listed as a debt in the bankruptcy proceeding. If
13 the bankruptcy results in a discharge of Kevin and Michelle, that is a discharge
of all of their debts including the \$20,000 owed to Mrs. O'Neill, Mrs. O'Neill
14 will not gain anything from Kevin and Michelle, unless Kevin and Michelle were
to agree to reaffirm the debt in the course of the bankruptcy or thereafter. They
15 would have no obligation to reaffirm the debt.

16 ...

16 The representation of each of you does not involve the assertion of a claim by
one of you against the other represented by me in the same litigation or a
17 proceeding before a tribunal. Mrs. O'Neill [sic], if a bankruptcy is filed by
Kevin and Michelle will be represented of [sic] other counsel if necessary for
18 purposes of filing her bankruptcy claim.

19 13. Ms. O'Neill signed the letter.

20 14. Prior to signing the letter, Ms. Carbury revised the letter to reflect a dispute over the
21 amount of money that the Carburys owed to Ms. O'Neill as follows:
22
23

1 Kevin and Michelle, I understand, ^{maybe - MC} are indebted to Mrs. O'Neill, ~~in the amount of approximately~~
2 ^{only} \$20,000. If Kevin and Michelle go through a chapter 7 bankruptcy the amount owing to Mrs.
3 O'Neill will be listed as a debt in the bankruptcy proceeding. If the bankruptcy results in a
4 discharge of Kevin and Michelle, that is a discharge of all of their debts including ~~the \$20,000~~ ^{any money}
5 owed to Mrs. O'Neill, Mrs. O'Neill will not gain anything from Kevin and Michelle, unless
6 Kevin and Michelle were to agree to reaffirm the debt in the course of the bankruptcy or
7 thereafter. They would have no obligation to reaffirm the debt.

8 15. Ms. O'Neill did not initial the changes made by Ms. Carbury.

9 16. On or about September 23, 2014, Respondent drafted and presented Ms. O'Neill
10 with a new power of attorney.

11 17. The new power of attorney added a provision that allowed Respondent to pay
12 himself compensation for his services as attorney-in-fact.

13 18. Ms. O'Neill signed the new power of attorney on or about September 23, 2014, the
14 same day that Respondent presented it to her.

15 19. Respondent did not advise Ms. O'Neill in writing about the desirability of seeking
16 the advice of independent counsel before she signed the new power of attorney.

17 20. Respondent did not give Ms. O'Neill a reasonable opportunity to seek the advice of
18 independent counsel before she signed the new power of attorney.

19 21. Ms. O'Neill did not give her informed consent in writing to the essential terms of the
20 transaction and/or Respondent's role in the transaction, including whether Respondent was
21 representing Ms. O'Neill in the transaction.

22 22. On or about January 13, 2015, Respondent filed a bankruptcy petition on behalf of
23 the Carburys which listed Ms. O'Neill as a creditor. The petition listed the amount of debt owed
24 to Ms. O'Neill as "unknown."

25 23. At the time of the bankruptcy filing, Respondent was still Ms. O'Neill's attorney in
fact with the power to take action for the recovery of debts owed to her.

1 24. Respondent incorrectly believed that the conflict waiver that Ms. O'Neill and the
2 Carburys had signed was sufficient to waive the conflict of interest after the bankruptcy was
3 filed and Ms. O'Neill became a creditor in the bankruptcy.

4 25. Respondent did not advise Ms. O'Neill to seek other counsel or assist her in
5 obtaining alternate representation for the purposes of filing a claim in the Carburys' bankruptcy.

6 26. Respondent did not obtain Ms. O'Neill's informed consent, confirmed in writing, to
7 his continued representation of both her and the Carburys.

8 27. Respondent's representation of Ms. O'Neill was directly adverse to the Carburys.

9 28. Respondent's representation of the Carburys was directly adverse to Ms. O'Neill.

10 29. There was a significant risk that Respondent's representation of Ms. O'Neill would
11 be materially limited by Respondent's responsibilities to the Carburys.

12 30. There was a significant risk that Respondent's representation of the Carburys would
13 be materially limited by Respondent's responsibilities to Ms. O'Neill.

14 31. On or about May 27, 2015, the Carburys' debts to Ms. O'Neill were discharged.

15 III. STIPULATION TO MISCONDUCT

16 32. By representing Ms. O'Neill and the Carburys, where one or both representations
17 involved a concurrent conflict of interest, Respondent violated RPC 1.7.

18 33. By having Ms. O'Neill execute the second power of attorney, without meeting the
19 requirements of RPC 1.8(a), Respondent violated RPC 1.8(a).

20 IV. PRIOR DISCIPLINE

21 34. On June 11, 2009, Respondent was suspended for eighteen months. See In re
22 Eugster, 166 Wn.2d 293 (2009).

1 **V. APPLICATION OF ABA STANDARDS**

2 35. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 **4.3 Failure to Avoid Conflicts of Interest**

5 Absent aggravating or mitigating circumstances, upon application of the factors set out
6 in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of
7 interest:

- 8 4.31 Disbarment is generally appropriate when a lawyer, without the informed
consent of client(s):
- 9 (a) engages in representation of a client knowing that the lawyer's interests
are adverse to the client's with the intent to benefit the lawyer or another,
and causes serious or potentially serious injury to the client; or
 - 10 (b) simultaneously represents clients that the lawyer knows have adverse
interests with the intent to benefit the lawyer or another, and causes
11 serious or potentially serious injury to a client; or
 - 12 (c) represents a client in a matter substantially related to a matter in which
the interests of a present or former client are materially adverse, and
13 knowingly uses information relating to the representation of a client with
the intent to benefit the lawyer or another and causes serious or
14 potentially serious injury to a client.
- 15 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of
interest and does not fully disclose to a client the possible effect of that
conflict, and causes injury or potential injury to a client.
- 16 4.33 Reprimand is generally appropriate when a lawyer is negligent in
determining whether the representation of a client may be materially
17 affected by the lawyer's own interests, or whether the representation will
adversely affect another client, and causes injury or potential injury to a
client.
- 18 4.34 Admonition is generally appropriate when a lawyer engages in an
isolated instance of negligence in determining whether the representation
19 of a client may be materially affected by the lawyer's own interests, or
whether the representation will adversely affect another client, and causes
20 little or no actual or potential injury to a client.

21 36. Respondent knew he had a conflict of interest in representing the Carburys in their
22 bankruptcy while holding Ms. O'Neill's financial power of attorney. Respondent was negligent
23 in determining that his conflict waiver was sufficient to waive the conflict of interest where the

1 two clients were directly adverse in the litigation.

2 37. There was injury to Ms. O'Neill whose loans to the Carburys were discharged.

3 38. The presumptive sanction under ABA Standard 4.33 is reprimand.

4 39. Respondent was negligent in requiring Ms. O'Neill to sign a second power of
5 attorney that allowed him to pay his own legal fees.

6 40. Ms. O'Neill was potentially injured in that she was not informed of the desirability
7 of consulting other counsel and not fully informed of the risks and reasonably available
8 alternatives to Respondent paying himself an hourly fee for tasks performed as a power of
9 attorney.

10 41. The following aggravating factors apply under ABA Standard 9.22:

- 11 (a) prior disciplinary offenses
12 (h) vulnerability of victim
(i) substantial experience in the practice of law

13 42. No mitigating factors apply under ABA Standard 9.32.

14 43. The aggravating factors justify a sanction of greater than the presumptive sanction of
15 reprimand.

16 VI. STIPULATED DISCIPLINE

17 44. The parties stipulate that Respondent shall receive a 60-day suspension for his
18 conduct.

19 45. Respondent will be subject to probation for a period of two years beginning when
20 Respondent is reinstated to the practice of law and shall comply with the specific probation
21 terms set forth below:

- 22 a. During the period of probation, Respondent shall not act as a power of attorney,
23 guardian, trustee, or personal representative in any matter.

1 b. Respondent shall provide ODC with a certification attesting to his compliance with
2 paragraph 45(a) every six months during the period of probation.

3 **VII. RESTITUTION**

4 46. Restitution is not a condition under this stipulation.

5 **VIII. COSTS AND EXPENSES**

6 47. Respondent shall pay attorney fees and administrative costs of \$750 in accordance
7 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
8 costs are not paid within 30 days of approval of this stipulation.

9 **IX. VOLUNTARY AGREEMENT**

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

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

17 **X. LIMITATIONS**

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

23 51. This Stipulation is not binding upon ODC or the respondent as a statement of all

1 existing facts relating to the professional conduct of the respondent lawyer, and any additional
2 existing facts may be proven in any subsequent disciplinary proceedings.

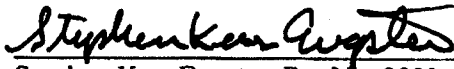
3 52. This Stipulation results from the consideration of various factors by both parties,
4 including the benefits to both by promptly resolving this matter without the time and expense of
5 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
6 such, approval of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

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


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

18 55. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
19 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
20 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
21 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 Stephen Kerr Eugster, Bar No. 2003
5 Respondent

Dated: 1/18/2017

6 
7 Francesca DiAngelo, Bar No. 22979
8 Disciplinary Counsel

Dated: 1/18/2017

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