

1 **FILED**

2 JUL 19 2012

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4 **DISCIPLINARY BOARD**

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6
7 **BEFORE THE**
8 **DISCIPLINARY BOARD**
9 **OF THE**
10 **WASHINGTON STATE BAR ASSOCIATION**

11 In re

12 **GARY C. HUGILL,**

13 Lawyer (Bar No. 4713).

14 Proceeding No. 10#00104

15 **STIPULATION TO REPRIMAND**

16 Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following
17 Stipulation to reprimand is entered into by the Washington State Bar Association (Association),
18 through disciplinary counsel Debra Slater, Respondent lawyer Gary C. Hugill, and
19 Respondent's counsel John Graham Schultz and Larry Stephenson.

20 Respondent understands that he is entitled under the ELC to a hearing, to present
21 exhibits and witnesses on his behalf, and to have a hearing officer determine the facts,
22 misconduct and sanction in this case. Respondent further understands that he is entitled under
23 the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the
24 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, and 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 October 25,
3 1972.

4 **II. STIPULATED FACTS**

5 2. Respondent began representing National Credit Adjustment Association ("NCAA"),
6 a debt collection agency, in 1978.

7 3. As part of that representation, Respondent filed lawsuits on behalf of NCAA in
8 Benton and Franklin County District Courts against individuals whose debts had been assigned
9 to NCAA. Respondent also represented NCAA in post judgment and supplemental
10 proceedings.

11 4. In March 2005, NCAA was purchased by Louis Ojeda. The conduct that is the
12 subject of this stipulation took place during the time that Mr. Ojeda owned NCAA.

13 5. NCAA employed Mary Kay Jacobs as an in-house paralegal. Ms. Jacobs was not a
14 lawyer.

15 6. Ms. Jacobs prepared all of the legal pleadings that were filed in court on behalf of
16 NCAA.

17 7. After Ms. Jacobs prepared the pleadings, Respondent signed them.

18 8. Respondent did not review the pleadings Ms. Jacobs prepared before or after he
19 signed them and before they were filed with the court.

20 9. Respondent did not perform any investigation of the legal and/or factual basis for the
21 claims made in the pleadings, either before and/or after the pleadings were signed by him and
22 filed with the court.

23 10. Respondent did not determine when legal action was appropriate to be filed by
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1 NCAA against debtors, nor did he determine what legal action was appropriate to be filed by
2 NCAA against debtors.

3 11. Ms. Jacobs, not Respondent, determined in which court to file the legal actions
4 brought by NCAA.

5 12. The complaints prepared by Ms. Jacobs incorrectly stated that venue was proper
6 based on the debtor's county of residence. Some lawsuits were filed in a county other than the
7 debtor's county of residence. In those cases, venue was improper.

8 13. The pleadings that Ms. Jacobs prepared and Respondent signed and that were filed
9 on behalf of NCAA added between \$3 and \$10 to the principal amount owed by the debtor,
10 which resulted in increased interest, statutory damages, and other costs.

11 14. Because he did not review the pleadings before or after they were filed, Respondent
12 was not aware of Ms. Jacobs' errors.

13 **III. STIPULATION TO MISCONDUCT**

14 15. By allowing Ms. Jacobs to determine when legal action should be taken against the
15 debtors and what legal action should be taken, Respondent violated RPC 2.1 and RPC 5.5(a).

16 16. By bringing actions on behalf of NCAA against debtors without investigating
17 whether there was a basis in law or fact for the claims asserted in the pleadings and by not
18 investigating whether the amount being sought by NCAA was correct, Respondent violated
19 RPC 1.3.

20 17. By failing to ensure that actions brought by NCAA were filed where venue was
21 proper, Respondent violated RPC 8.4(d).

22 **IV. PRIOR DISCIPLINE**

23 18. In August 2009, Respondent received an admonition for violating RPC 1.6 by
24

1 disclosing client information without consent, and a reprimand and probation for violating
2 former RPC 1.14(a), by having irregularities in his trust account, and former RPC 1.14(b)(3), by
3 failing to maintain complete records of client funds in his trust account.

4 V. APPLICATION OF ABA STANDARDS

5 19. The following American Bar Association Standards for Imposing Lawyer Sanctions
6 (1991 ed. & Feb. 1992 Supp.) apply to this case, a copy of which is attached hereto as Appendix
7 A.

8 20. ABA Standard 7.0 applies to Respondent's violation of RPC 2.1 and 5.5(a).

9 21. Respondent was negligent in allowing Ms. Jacobs to determine when legal action
10 should be taken, and/or what legal action should be taken. There was injury to NCAA as it was
11 were sued by some of the debtors, in part because of Respondent's conduct. The presumptive
12 sanction is reprimand.

13 22. ABA Standard 4.4 applies to Respondent's violation of RPC 1.3.

14 23. Respondent acted negligently in failing to diligently represent his client. There was
15 injury to his client as NCAA was sued by some of the debtors. The presumptive sanction
16 appears to be reprimand.

17 24. ABA Standard 6.0 applies to Respondent's violation of RPC 8.4(d).

18 25. In filing lawsuits where venue was improper, Respondent acted negligently. There
19 was injury to the public in that the defendants were forced to defend the lawsuits filed by
20 NCAA in an improper county, sometimes at a substantial distance from their residence. The
21 presumptive sanction appears to be reprimand.

22 26. The following aggravating factors apply under ABA Standards Section 9.22:

- 23 (a) prior disciplinary offenses;
24 (d) multiple offenses;

1 (i) substantial experience in the practice of law.

2 27. The following mitigating factors apply under ABA Standards Section 9.32:

3 (b) absence of a dishonest or selfish motive (Respondent acted negligently and
without intent to deceive the debtors);

4 (c) personal or emotional problems (Respondent was going through a divorce,
5 had become dependent on pain medication following an auto accident, and
abused alcohol during the relevant period);

6 (g) character or reputation (In the local community).

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

8 29. On balance the aggravating and mitigating do not require a departure from the
9 presumptive sanction.

10 VI. STIPULATED DISCIPLINE

11 30. The parties stipulate that Respondent shall receive a reprimand.

12 VII. RESTITUTION

13 31. An order of restitution is not appropriate in this case.

14 VIII. COSTS AND EXPENSES

15 32. In light of Respondent's willingness to resolve this matter by stipulation at an early
16 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
17 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC13.9(l) if
18 these costs are not paid within 30 days of approval of this stipulation.

19 IX. VOLUNTARY AGREEMENT

20 33. Respondent states that prior to entering into this Stipulation he has consulted
21 independent legal counsel regarding this Stipulation, that Respondent is entering into this
22 Stipulation voluntarily, and that no promises or threats have been made by the Association, nor
23 by any representative thereof, to induce the Respondent to enter into this Stipulation except as
24

1 provided herein.

2 **X. LIMITATIONS**

3 34. This Stipulation is a compromise agreement intended to resolve this matter in
4 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
5 expenditure of additional resources by the Respondent and the Association. Both the
6 Respondent lawyer and the Association acknowledge that the result after further proceedings in
7 this matter might differ from the result agreed to herein.

8 35. This Stipulation is not binding upon the Association or the respondent as a statement
9 of all existing facts relating to the professional conduct of the respondent lawyer, and any
10 additional existing facts may be proven in any subsequent disciplinary proceedings.

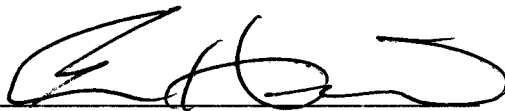
11 36. This Stipulation results from the consideration of various factors by both parties,
12 including the benefits to both by promptly resolving this matter without the time and expense of
13 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
14 such, approval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

18 37. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
19 his or her review become public information on approval of the Stipulation by the Hearing
20 Officer, unless disclosure is restricted by order or rule of law.


21 38. If this Stipulation is approved by the Hearing Officer, it will be followed by the
22 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
23 Enforcement of Lawyer Conduct will be made.

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


5 WHEREFORE the undersigned being fully advised, adopt and agree to the facts and
6 terms of this Stipulation to Discipline as set forth above.

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8 _____
9 Gary C. Hugill, Bar No. 4713
10 Respondent

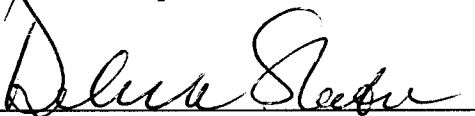
Dated: 7-3-12

11 
12 _____
13 John Graham Schultz, Bar No. 776
14 Counsel for Respondent

Dated: 7-3-12

15 
16 _____
17 Larry Stephenson, Bar No. 6434
18 Counsel for Respondent

Dated: 7-3-12

19 
20 _____
21 Debra Slater, Bar No. 18346
22 Disciplinary Counsel

Dated: 7-10-12

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.

6.1 *False Statements, Fraud, and Misrepresentation*

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 conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.13 **Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.**
- 6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and