

**FILED**

Mar 15, 2022

Disciplinary  
Board

Docket # 002

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

**GERALD JOHN MOBERG,**

Lawyer (Bar No. 5282).

Proceeding No. 22#00014

ODC File Nos. 17-00721 and 20-00077

**STIPULATION TO ADMONITION**

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Admonition is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Managing Disciplinary Counsel Joanne S. Abelson, Respondent's Counsel Jeffrey T. Kestle, and Respondent lawyer Gerald John Moberg.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent 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. Respondent chooses to resolve this proceeding now by entering into

1 the following stipulation to facts, misconduct and sanction to avoid the risk, time, and expense  
2 attendant to further proceedings.

### 3 I. ADMISSION TO PRACTICE

4 1. Respondent was admitted to practice law in the State of Washington on October 18,  
5 1973.

### 6 II. STIPULATED FACTS

7 2. This case arises in the context of the Fair Campaign Financing Act, the purpose of  
8 which is to foster transparency with respect to political campaigns and lobbying.

#### 9 Background

10 3. In 2014, Garth Dano challenged incumbent Angus Lee in the election for Grant  
11 County Prosecutor. Kenneth Greene, a friend of Respondent's and a local business owner who  
12 had known Dano for years (as had Respondent), was concerned about Dano's qualifications to  
13 serve and wanted to create a brochure to mail to Grant County voters to oppose Dano and support  
14 Lee.

15 4. In approximately August or September 2014, Greene consulted Respondent about the  
16 mailer, initially obtaining legal advice regarding defamation law.

17 5. Greene created the mailer and invented a fictitious group, Grant County Concerned  
18 Voters (GCCV), as the sponsor. Respondent states that Respondent had no involvement in or  
19 knowledge of Greene's activities with respect to GCCV.

20 6. Greene later sought Respondent's advice regarding a company to print and distribute  
21 the mailer. Respondent assisted Greene in finding the Borns Group, a South Dakota company,  
22 and had most of the communication with Borns about the project.

23 7. Respondent saw the mailer before it went out.

1 8. Borns quoted a price of \$3,872.10 for the mailer.

2 9. Greene asked Respondent for a loan to fund the mailer, and Respondent agreed.

3 10. On September 30, 2014, Respondent sent Borns an email stating, among other things,  
4 that “[Greene] will forward you a signed check for the amount due. Those funds will be available  
5 for withdrawal tomorrow by noon Pacific Standard Time.”

6 11. At that time, Greene’s account balance was insufficient to fund the mailer.

7 12. Also on September 30, 2014, Respondent obtained a check for \$4,000 from  
8 Respondent’s law firm account, payable to Respondent, and cashed it. Respondent gave Greene  
9 the \$4,000, and Greene wrote and sent a check for \$3,872.10 to Borns.

10 13. On October 1, 2014, Greene deposited \$4,000 to Greene’s bank account.

11 14. Respondent knew that the loaned funds Respondent provided would be used to pay  
12 for the mailer and that Greene would not otherwise be able to pay for the mailer without those  
13 funds.

14 15. The mailer was sent to approximately 14,000 Grant County voters in early October  
15 2014.

16 16. Despite these efforts, Dano was elected Prosecutor.

17 **PDC Investigation**

18 17. Voters filed complaints about the mailer with the Public Disclosure Commission  
19 (PDC), which opened an investigation to determine who sponsored it.

20 18. After some delay, Borns disclosed Greene’s and Respondent’s involvement..

21 19. Respondent and Greene hired counsel to represent them. In January 2016, counsel  
22 sent a written response to the PDC on behalf of both Greene and Respondent. Among other  
23 things, the written response admitted that GCCV was never a legal entity and stated that Greene

1 was the sole decision-maker and financial contributor. The written response included a copy of  
2 the check from Greene to Borns, which was written on the account of Greene/True Step (Greene's  
3 business) and signed by Greene.

4 20. On July 15, 2016, the PDC Investigator separately interviewed Greene and  
5 Respondent.

6 21. Respondent was under oath during the interview.

7 22. During the interview, Respondent did not state that he loaned money to Greene for the  
8 mailer. With respect to the payment issue, Respondent was asked and answered as follows:

9 Q: Did you offer to help Ken Greene pay for the expense of the flyer?

10 A: No

11 Q: Do you know if anyone offered to help him pay for it, the flyer?

12 A: No. I don't know.

13 Q: Did you help him pay for the flyer?

14 A: No.

15 23. In September 2016, after PDC staff sought copies of Greene's bank records,  
16 Respondent's counsel disclosed to the PDC that Respondent had loaned Greene the money that  
17 Greene had used to pay for the mailer.

18 24. Counsel later produced the bank records to substantiate the exchange from Respondent  
19 to Greene described in ¶¶ 12-13.

20 25. In a letter to the PDC dated December 29, 2016, counsel characterized the payment as  
21 a loan that Greene paid back to Respondent with shoes, shoe repair services, and chauffeur  
22 services.

23 26. On or about March 17, 2017, PDC staff issued a report concluding that Respondent  
24 and Greene committed multiple civil violations of the Fair Campaign Financing Act, RCW  
42.17A, and recommending that the PDC refer the matter to the Attorney General's Office  
(AGO).



1 **Attorney General's Complaint and Litigation**

2 27. On May 8, 2017, the AGO filed a complaint against Respondent and Greene alleging  
3 multiple civil violations of the Fair Campaign Financing Act. State v. Respondent et. al., Thurston  
4 County Superior Court No. 17-2-02517-34.

5 28. The AGO took Respondent's deposition on July 10, 2019.

6 29. At the deposition, Respondent acknowledged loaning Greene \$4,000 in cash for the  
7 mailer but, with respect to questions asked and answered during the PDC interview, denied  
8 "helping" Greene pay for it. Respondent testified, "It was never a secret that I loaned Ken the  
9 money. And had anybody asked me at any time, I would have—from PDC, I would have told  
10 them I loaned Ken the money. So I think that it may be a matter of semantics."

11 30. Respondent's distinction between loaning Greene the funds to pay for the mailer and  
12 helping Greene to pay for the mailer was based in part on Respondent's conversations with  
13 Respondent's then-counsel. Respondent asked counsel after the PDC interview whether the  
14 testimony needed to be corrected and counsel said no.

15 31. The PDC investigator testified at deposition that Mr. Moberg "[told] the truth, but not  
16 the whole truth," and his answers were "perhaps technically accurate, but did not tell the whole  
17 story."

18 32. The AGO filed for partial summary judgment.

19 33. On January 3, 2020, the court granted the motion,

20 34. On March, 6, 2020, as part of a settlement, the parties entered stipulated conclusions  
21 of law and judgment. In relevant part, and consistent with the court's conclusions in granting the  
22 summary judgment motion, Respondent stipulated that Respondent "violated RCW 42.17A.435  
23 by engaging in conduct during the PDC's investigation that effected concealment of his \$4,000

1 contribution and therefore his role as the source of payment for the Dano Mailer from the PDC  
2 and the public.”<sup>1</sup>

3 35. The violations to which Respondent stipulated are civil, not criminal.

4 36. Respondent paid a civil penalty.

### 5 III. STIPULATION TO MISCONDUCT

6 37. By failing to disclose Respondent’s role as the source of payment for the Dano mailer  
7 when testifying under oath during the PDC investigation, Respondent violated RPC 8.4(d).

### 8 IV. PRIOR DISCIPLINE

9 38. Respondent has no prior discipline.

### 10 V. APPLICATION OF ABA STANDARDS

11 39. Standard 6.1 of the American Bar Association Standards for Imposing Lawyer  
12 Sanctions (1991 ed. & Feb. 1992 Supp.), attached hereto as Appendix A, applies to this case.

13 40. Respondent acted negligently.

14 41. The PDC’s regulatory investigation was injured by Respondent’s failure to be  
15 forthcoming, and the administration of justice was injured because additional resources needed  
16 to be expended because of Respondent conduct.

17 42. The presumptive sanction is a reprimand.

18 43. The following aggravating factors apply under ABA Standard 9.22:

19 (i) substantial experience in the practice of law [admitted 1973].  
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21 <sup>1</sup> RCW 42.17A.435 provides: “No contribution shall be made and no expenditure shall be incurred, directly  
22 or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other  
23 person in such a manner as to conceal the identity of the source of the contribution or in any other manner  
24 so as to effect concealment.” The statute does not require knowing or intentional conduct. State ex rel.  
Washington State Pub. Disclosure Comm'n v. Food Democracy Action!, 5 Wn.App.2d 542, 549–50, 427  
P.3d 699 (2018).

1 44. The following mitigating factors apply under ABA Standard 9.32:

- 2 (a) absence of a prior disciplinary record;  
3 (g) character or reputation; and  
(l) remorse.

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

6 46. A significant mitigating factor is the contribution this stipulation makes to the efficient  
7 and effective operation of the lawyer discipline system considering the effect the COVID-19  
8 public health emergency has had on disciplinary resources and the orderly processing of  
9 disciplinary matters.

10 47. Based on the factors set forth above, the presumptive sanction should be mitigated to  
11 an admonition.

#### 12 VI. STIPULATED DISCIPLINE

13 48. The parties stipulate that Respondent shall receive an admonition.

#### 14 VII. RESTITUTION

15 49. No restitution is required by this stipulation.

#### 16 VIII. COSTS AND EXPENSES

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

#### 21 IX. VOLUNTARY AGREEMENT

22 51. Respondent states that, prior to entering into this Stipulation, Respondent has  
23 consulted independent legal counsel regarding this Stipulation, that Respondent is entering into

1 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
2 Association, nor by any representative thereof, to induce the Respondent to enter into this  
3 Stipulation except as provided herein.

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

#### 6 X. LIMITATIONS

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

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

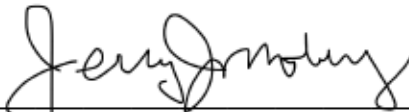
15 55. This Stipulation results from the consideration of various factors by both parties,  
16 including the benefits to both by promptly resolving this matter without the time and expense of  
17 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
18 such, approval of this Stipulation will not constitute precedent in determining the appropriate  
19 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in  
20 subsequent proceedings against Respondent to the same extent as any other approved Stipulation.  
21 Under ELC 3.1(b), all documents that form the record before the Chief Hearing Officer for review  
22 become public information on approval of the Stipulation by the Chief Hearing Officer, unless  
23 disclosure is restricted by order or rule of law.




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

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

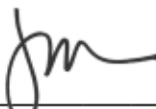
8 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to  
9 Admonition as set forth above.

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11 \_\_\_\_\_  
12 Gerald John Moberg, Bar No. 5282  
13 Respondent

Dated: March 10, 2022

14   
15 \_\_\_\_\_  
16 Jeffrey T. Kestle, Bar No. 29648  
17 Counsel for Respondent

Dated: March 11, 2022

18   
19 \_\_\_\_\_  
20 Joanne S. Abelson, Bar No. 24877  
21 Managing Disciplinary Counsel

Dated: March 11, 2022

# APPENDIX A

**ABA STANDARD 6.1**  
**False Statements, Fraud, and Misrepresentation**

- 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 causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.