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4 **DISCIPLINARY BOARD**

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

9 In re

10 **DALE L. RUSSELL,**  
11 **Lawyer (Bar No. 7941).**

Proceeding No. 13#00094

**STIPULATION TO THREE-YEAR  
SUSPENSION**

12  
13 Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), and following  
14 a settlement conference conducted under ELC 10.12(h), the following Stipulation to Three-Year  
15 Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington  
16 State Bar Association (Association) through Special Disciplinary Counsel Thomas D. Frey and  
17 Senior Disciplinary Counsel Scott G. Busby, by Respondent's Counsel D. Christopher Russell,  
18 and by Respondent Dale L. Russell.

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

020

1 the Supreme Court. Respondent further understands that a hearing and appeal could result in an  
2 outcome more favorable or less favorable to him. Respondent chooses to resolve this  
3 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
4 avoid the risk, time, and expense attendant to further proceedings.

#### 5 I. ADMISSION TO PRACTICE

6 1. Respondent Dale L. Russell was admitted to the practice of law in the State of  
7 Washington on November 18, 1977.

#### 8 II. STIPULATED FACTS

9 1. On January 3, 2002, Susan Marino executed a will that Respondent drafted for her.

10 2. The will provided that Susan Marino's entire estate would pass to the trustee of a  
11 trust to be set up for the exclusive benefit of Kathryn Usalis, Susan Marino's sister.

12 3. On numerous occasions, Kathryn Usalis has been involuntarily committed to  
13 Eastern State Hospital, a state-owned psychiatric hospital that provides inpatient treatment for  
14 adults with serious or long-term mental illness.

15 4. The will that Respondent drafted for Susan Marino provided that Carol Smiles-  
16 Fahs would be the personal representative of Susan Marino's estate and that, in the event she  
17 was unable or unwilling serve, Thomas Smiles would be the alternate personal representative.

18 5. Carol Smiles-Fahs and Thomas Smiles reside in Wisconsin and are cousins of  
19 Kathryn Usalis.

20 6. Susan Marino died on October 21, 2007, in Whitman County, Washington.

21 7. Carol Smiles-Fahs agreed to have Respondent handle the probate and set up the  
22 trust referenced in Susan Marino's will.

1 8. On December 19, 2007, Respondent filed in the Whitman County Superior Court a  
2 Petition for Probate of Will and an Oath of Personal Representative Carol Smiles-Fahs.

3 9. Carol Smiles-Fahs had signed both documents in Wisconsin.

4 10. Respondent's wife, Ethel Russell, notarized both documents stating that they had  
5 been "subscribed and sworn to before [her]."

6 11. Respondent knew that Carol Smiles-Fahs resided in Wisconsin, and that she had  
7 not signed or sworn to the documents in Ethel Russell's presence.

8 12. Respondent drafted an Order Admitting Will to Probate and presented it to the  
9 court *ex parte* on December 19, 2007.

10 13. On December 19, 2007, the court entered the Order Admitting Will to Probate  
11 confirming Carol Smiles-Fahs as personal representative, and issued Letters Testamentary  
12 authorizing Carol Smiles-Fahs to administer the estate.

13 14. On December 19, 2007, Respondent filed an Appointment of Resident Agent  
14 whereby his wife, Ethel Russell, was appointed "resident agent" under RCW 11.36.010.

15 15. Under RCW 11.36.010, a nonresident such as Carol Smiles-Fahs may act as  
16 personal representative "if the nonresident appoints an agent who is a resident of the county  
17 where such estate is being probated." The agent, under RCW 11.36.010, is a resident of the  
18 county where the estate is being probated "upon whom service of all papers may be made."

19 16. Respondent knew that Ethel Russell was not a resident of Whitman County, the  
20 county where the estate was being probated.

21 17. In the December 19, 2007, Appointment of Resident Agent, Respondent  
22 represented that the appointment of Ethel Russell as "resident agent" was "in accordance with  
23

1 RCW 11.36.010.”

2 18. The appointment of Ethel Russell as “resident agent” was not “in accordance with  
3 RCW 11.36.010” because Ethel Russell was not a resident of Whitman County, the county  
4 where the estate was being probated.

5 19. In the December 19, 2007 Order Admitting Will to Probate that Respondent  
6 drafted and presented to the court *ex parte*, Respondent represented that Ethel Russell was  
7 “qualified to act as agent, in accordance with RCW 11.36.010.”

8 20. Ethel Russell was not “qualified to act as agent, in accordance with RCW  
9 11.36.010,” because Ethel Russell was not a resident of Whitman County, the county where the  
10 estate was being probated.

11 21. In the December 19, 2007 Order Admitting Will to Probate that Respondent  
12 drafted and presented it to the court *ex parte*, Respondent informed the court that Ethel Russell  
13 “reside[d] in Washington State,” but he failed to inform the court that Ethel Russell was not a  
14 resident of Whitman County, the county where the estate was being probated.

15 22. On March 19, 2008, Kathryn Usalis was arrested and involuntarily committed to  
16 Eastern State Hospital.

17 23. On March 24, 2008, Respondent visited Kathryn Usalis at Eastern State Hospital  
18 and had her sign a Retainer Agreement authorizing him to represent her in a mental  
19 commitment proceeding.

20 24. The Retainer Agreement provided that payment could be made directly to  
21 Respondent with funds available for distribution from the estate of Susan Marino or from the  
22 Kathryn Usalis Special Needs Trust (which did not yet exist) without further authorization or  
23

1 approval.

2 25. Carol Smiles-Fahs was not informed of the representation until after the fact.

3 26. There was a significant risk that Respondent's representation of Kathryn Usalis  
4 and/or Carol Smiles-Fahs would be materially limited by Respondent's responsibilities to  
5 another client, or by a personal interest of Respondent.

6 27. Carol Smiles-Fahs did not give her informed consent, confirmed in writing, to the  
7 representation.

8 28. Kathryn Usalis did not give her informed consent, confirmed in writing, to the  
9 representation; the Waiver of Potential Conflicts of Interest & Consent Kathryn Usalis signed  
10 on March 24, 2008 was insufficient .

11 29. Respondent was paid for the representation with funds distributed from the estate  
12 of Susan Marino.

13 30. Respondent's wife, Ethel Russell, distributed the funds on or about July 3, 2008.  
14 On May 22, 2008, Kathryn F. Usalis signed an "Authorization and Disbursement of Attorney's  
15 Fees and Costs, in part, for Respondent's representation of Kathryn Usalis in the commitment  
16 proceedings at Eastern State Hospital. On June 30, 2008, Carol Smiles-Fahs signed an "Interim  
17 Estate Partial Distribution to Beneficiary," in part, for Respondent's representation of Kathryn  
18 Usalis in the commitment proceedings at Eastern State Hospital.

19 31. In May 2008, Kathryn Usalis was again arrested and involuntarily committed to  
20 Eastern State Hospital.

21 32. Respondent represented Kathryn Usalis in the May 2008 mental commitment  
22 proceeding.

1 33. Carol Smiles-Fahs was not informed of the representation until after the fact.

2 34. There was a significant risk that Respondent's representation of Kathryn Usalis  
3 and/or Carol Smiles-Fahs would be materially limited by Respondent's responsibilities to  
4 another client, or by a personal interest of Respondent.

5 35. Carol Smiles-Fahs did not give her informed consent, confirmed in writing, to the  
6 representation.

7 36. Kathryn Usalis did not give her informed consent, confirmed in writing, to the  
8 representation.

9 37. Respondent was paid for the representation with funds distributed from the estate  
10 of Susan Marino.

11 38. Respondent's wife, Ethel Russell, distributed the funds on or about July 30, 2008.  
12 On July 18, 2008, Kathryn F. Usalis signed an "Authorization and Disbursement of Attorney's  
13 Fees and Costs, in part, for Respondent's representation of Kathryn Usalis in the commitment  
14 proceedings at Eastern State Hospital. On July 24, 2008, Carol Smiles-Fahs signed an "Interim  
15 Estate Partial Distribution to Beneficiary," in part, for Respondent's representation of Kathryn  
16 Usalis in the commitment proceedings at Eastern State Hospital.

17 39. On May 15, 2008, while Kathryn Usalis was involuntarily committed to Eastern  
18 State Hospital, Respondent filed a Petition for Appointment of Guardian on behalf of his wife,  
19 Ethel Russell, the petitioner. On January 22, 2009, the Respondent filed a Voluntary Non-Suit  
20 Order for Dismissal, and a guardian was never appointed in that proceeding.

21 40. Carol Smiles-Fahs was not informed of the representation until after the fact.

22 41. In the Petition, Respondent alleged that Kathryn Usalis was an incompetent person  
23

1 as defined by RCW 11.88.010 by reason of schizoaffective disorder. Respondent requested that  
2 his wife, Ethel Russell, be appointed guardian of the person and estate of Kathryn Usalis.

3 42. On May 15, 2008, the same date on which Respondent alleged that Kathryn Usalis  
4 was incompetent by reason of schizoaffective disorder, Respondent had Kathryn Usalis sign a  
5 Waiver of Notice of Hearing by which she consented to the entry of an order appointing Ethel  
6 Russell as her guardian.

7 43. There was a significant risk that Respondent's representation of Kathryn Usalis,  
8 Carol Smiles-Fahs, and/or Ethel Russell would be materially limited by Respondent's  
9 responsibilities to another client, or by a personal interest of Respondent.

10 44. Carol Smiles-Fahs did not give her informed consent, confirmed in writing, to the  
11 representation.

12 45. Kathryn Usalis did not give her informed consent, confirmed in writing, to the  
13 representation.

14 46. On June 26, 2008, Respondent sent Carol Smiles-Fahs a document entitled  
15 "Personal Representative's Agency Declaration to Ethel L. Russell Washington Agent."

16 47. The document provided that Carol Smiles-Fahs delegated "each and every right  
17 and responsibility" she had as personal representative of Susan Marino's estate to Respondent's  
18 wife, Ethel Russell.

19 48. Respondent told Carol Smiles-Fahs to sign the document immediately or without  
20 disbursements no one would adequately care for Kathryn Usalis.

21 49. On June 30, 2008, Carol Smiles-Fahs signed the document and returned it to  
22 Respondent.

1 50. Carol Smiles-Fahs was not advised that the delegation of all her rights and  
2 responsibilities as personal representative to Respondent's wife was contrary to the terms of the  
3 will and/or to her duties as personal representative.

4 51. Carol Smiles-Fahs did not give her informed consent, confirmed in writing, to the  
5 delegation all her rights and responsibilities as personal representative to Respondent's wife.

6 52. The January 3, 2002, will that Respondent drafted for Susan Marino provided that  
7 Susan Marino's entire estate would pass to the trustee of a trust to be set up for the exclusive  
8 benefit of Kathryn Usalis. The will further provided that the trustee of that trust would be Carol  
9 Smiles-Fahs, and that the alternate trustee would be Thomas Smiles.

10 53. Respondent drafted a trust agreement for the Kathryn Usalis Special Needs Trust  
11 that named Respondent's wife, Ethel Russell, the sole trustee.

12 54. The trust agreement that Respondent drafted further provided that the trustee's  
13 attorney could appoint a successor trustee.

14 55. The trust agreement that Respondent drafted further provided that all distributions  
15 from the trust were exclusively within the discretion of the trustee (Ethel Russell), that the  
16 trustee could hire an attorney (such as Respondent) and pay that person's fees from the trust  
17 estate, and that the trustee would receive compensation at an unspecified "commercially  
18 reasonable hourly rate or monthly flat fee."

19 56. On July 15, 2008, Ethel Russell executed the trust agreement both as "Resident  
20 Agent, Grantor for Carol Smiles Fahs, Personal Representative," and also as "Trustee."

21 57. Carol Smiles-Fahs did not execute the trust agreement.

22 58. Carol Smiles-Fahs was not advised that the appointment of Ethel Russell as trustee  
23



1 was contrary to the terms of the will and/or to Carol Smiles-Fahs' duties as personal  
2 representative.

3 59. Carol Smiles-Fahs did not give her informed consent, confirmed in writing, to the  
4 appointment of Ethel Russell as trustee.

5 60. While she purported to act as trustee, Ethel Russell paid herself \$500 per month  
6 from the trust estate.

7 61. While she purported to act as trustee, Ethel Russell hired Respondent and paid his  
8 fees from the trust estate.

9 62. On September 11, 2008, Respondent filed an Inventory in the probate proceeding  
10 stating that the value of the probate estate was \$169,285.90.

11 63. On September 11, 2008, Respondent filed a Declaration of Completion of Probate  
12 stating that his attorney fees for the probate were \$18,070.06 and that there were no personal  
13 representative fees.

14 64. The declaration was inaccurate in that the amount stated included, among other  
15 things, Ethel Russell's personal representative fees and Respondent's fees for the mental  
16 commitment proceedings.

17 65. On September 18, 2008, Respondent filed a quit claim deed by which Carol  
18 Smiles-Fahs, as personal representative of the estate, deeded the former home of Susan Marino  
19 to the trust, with Ethel Russell as trustee.

20 66. Carol Smiles-Fahs signed the quit claim deed in Wisconsin.

21 67. Respondent's assistant notarized the deed stating that Carol Smiles-Fahs had  
22 "personally appeared" before her to acknowledge the signature.

1 68. Respondent knew that Carol Smiles-Fahs resided in Wisconsin, and that  
2 she had not personally appeared before Respondent's assistant to acknowledge the signature.

3 69. On June 2, 2009, Respondent filed an amended Declaration of Completion of  
4 Probate stating that his attorney fees for the probate were \$19,570.06, and that there were no  
5 personal representative fees.

6 70. The declaration was inaccurate in that the amount stated included, among other  
7 things, Ethel Russell's personal representative fees and Respondent's fees for the mental  
8 commitment proceedings.

9 71. Respondent did not seek or obtain court approval of his fees, or submit an  
10 accounting to the court for approval.

11 72. On October 27, 2010, Respondent wrote to the Palouse River Counseling Center  
12 (PRC), which provided mental health services to Kathryn Usalis.

13 73. Respondent told PRC that Kathryn Usalis "has to have medical management and  
14 treatment team contact in order to maintain her current least restrictive alternative position with  
15 Eastern State Hospital," that "she also needs to pay her rent and her monthly bills in a  
16 reasonable manner," that "she seems incapable of exercising those duties," and that a  
17 guardianship for Kathryn Usalis was probably necessary. Respondent suggested that PRC file a  
18 guardianship petition.

19 74. Respondent assured PRC that its fees and costs for the guardianship proceeding  
20 would be paid by the Kathryn Usalis Special Needs Trust.

21 75. Respondent represented to PRC, its lawyers, the court, and others that Ethel  
22 Russell was the legitimate trustee of the Kathryn Usalis Special Needs Trust.

1 76. On January 19, 2011, Ethel Russell signed a fee agreement with Dorothy Wiley,  
2 PRC's lawyer.

3 77. On January 25, 2011, Ethel Russell wrote a check for \$2,500 to Dorothy Wiley  
4 representing an advance fee deposit for the guardianship proceeding.

5 78. Ethel Russell wrote the check on the account of the Kathryn Usalis Special Needs  
6 Trust and signed it as "trustee" of the Kathryn Usalis Special Needs Trust.

7 79. On February 4, 2011, PRC filed a Petition for Guardianship of Person and Estate  
8 under RCW 11.88.030 in the Whitman County Superior Court.

9 80. Beth Prinz was appointed Guardian ad Litem (GAL) under RCW 11.88.090.

10 81. The order appointing her provided that the GAL's fees "shall be paid by Ethel L.  
11 Russell, Trustee of Kathryn Usalis Special Needs Trust."

12 82. On February 17, 2011, Respondent filed a notice of appearance in the guardianship  
13 proceeding on behalf of Kathryn Usalis, the alleged incapacitated person.

14 83. Respondent intended that his fees for the representation would be paid by the  
15 Kathryn Usalis Special Needs Trust.

16 84. On April 28, 2011, Respondent filed an answer to the petition for guardianship in  
17 which he denied that Kathryn Usalis was in need of a "full guardianship" and stated that "she  
18 may need a limited guardianship dealing with monthly financial, and credit card matters . . .  
19 management of her medical treatments and medicine requirements," among other things.

20 85. Carol Smiles-Fahs was not informed of the representation until after the fact.

21 86. RCW 11.88.045(2) provides that any attorney purporting to represent a person  
22 alleged to be incapacitated shall petition to be appointed to represent the alleged incapacitated  
23

1 person, and that fees for the representation shall be subject to approval by the court.

2 87. Respondent undertook the representation of Kathryn Usalis in the guardianship  
3 proceeding without prior appointment by the court, in violation of RCW 11.88.045(2).

4 88. There was a significant risk that Respondent's representation of Kathryn Usalis,  
5 Carol Smiles-Fahs, and/or Ethel Russell would be materially limited by Respondent's  
6 responsibilities to another client, or by a personal interest of Respondent.

7 89. Carol Smiles-Fahs did not give her informed consent, confirmed in writing, to the  
8 representation.

9 90. Kathryn Usalis did not give her informed consent, confirmed in writing, to the  
10 representation. The March 4, 2011 written retainer for the Guardianship Proceedings in  
11 Whitman County signed by Kathryn Usalis was insufficient.

12 91. In the course of her duties as GAL, Beth Prinz discovered (a) that Respondent had  
13 drafted Susan Marino's will naming Carol Smiles-Fahs the trustee of the trust to be set up for  
14 Kathryn Usalis, and (b) that Respondent had also drafted the Kathryn Usalis Special Needs  
15 Trust naming his wife, Ethel Russell, as trustee.

16 92. On March 9, 2011, Beth Prinz sent Respondent a letter requesting copies of any  
17 court orders or other documents by which the trustee or the alternate trustee named in the will  
18 had declined to serve as trustee, as well as any court order or other document by which Ethel  
19 Russell was appointed trustee.

20 93. A week later, on March 16, 2011, Respondent sent Carol Smiles-Fahs a document  
21 entitled Affidavit of Carol Smiles-Fahs that he had drafted for her signature.

22 94. The Affidavit was dated July 15, 2008, the same date that Ethel L. Russell signed  
23

1 the trust agreement both as "Resident Agent, Grantor" and as "Trustee."

2 95. The Affidavit states, "I, Carol Smiles-Fahs, do not want to be the trustee of a  
3 Special Needs Irrevocable Trust for Kathryn Usalis." The Affidavit further states, "I choose  
4 Ethel Russell, legal assistant in the office of Dale L. Russell, for that position."

5 96. Respondent asked Carol Smiles-Fahs to sign the Affidavit and return it to him.

6 97. Shortly before she received the Affidavit, Carol Smiles-Fahs learned that a  
7 guardianship petition had been filed at Respondent's suggestion, that Respondent was opposing  
8 the guardianship petition, and that fees and costs for the guardianship proceeding would be paid  
9 by the Kathryn Usalis Special Needs Trust.

10 98. Carol Smiles-Fahs declined to sign the Affidavit, and she informed Respondent  
11 that she would act as trustee.

12 99. On June 16, 2011, Ethel Russell sent Carol Smiles-Fahs her resignation as  
13 "Resident Agent Trustee."

14 100. Meanwhile, on April 28, 2011, Respondent filed a motion to vacate the February 4,  
15 2011 order providing that the GAL's fees "shall be paid by Ethel L. Russell, Trustee of Kathryn  
16 Usalis Special Needs Trust."

17 101. Respondent argued that the GAL's fees should be paid from the guardianship  
18 estate of Kathryn Usalis, not by Ethel Russell as "trustee" of the Kathryn Usalis Special Needs  
19 Trust.

20 102. Respondent purported to file the motion on behalf of Kathryn Usalis, the alleged  
21 incapacitated person.

22 103. In the ensuing litigation over the GAL's fees, Respondent filed a Motion for  
23

1 Approval of Attorney's Fees, as well as motions for sanctions against the GAL and PRC's  
2 lawyers.

3 104. PRC filed a Motion for Fees and Costs, and as well as a motion for sanctions  
4 against Respondent.

5 105. On April 27, 2012, the court entered Findings of Fact, Conclusions of Law, and  
6 Orders.

7 106. Respondent's Motion for Approval of Attorney's Fees and his motions for  
8 sanctions were denied.

9 107. PRC's Motion for Fees and Costs and its motion for sanctions against Respondent  
10 were granted.

11 108. The court ordered Respondent to pay \$10,000 in sanctions to the estate of Kathryn  
12 Usalis and to pay PRC's reasonable attorney fees.

13 109. Respondent paid the sanctions and attorney fees as ordered.

14 110. The court found and concluded, *inter alia*, that Respondent had unreasonably  
15 diminished Susan Marino's estate; that Ethel Russell was not authorized to act as personal  
16 representative or as trustee; that Respondent had engaged in "self-dealing for his own monetary  
17 benefit;" and that Respondent "very clearly" had a conflict of interest that was "irreconcilable  
18 and unwaivable."

### 19 III. STIPULATION TO MISCONDUCT

20 111. By filing the December 19, 2007, Appointment of Resident Agent, which  
21 contained an inaccurate statement concerning Ethel Russell's eligibility to act as agent under  
22 RCW 11.36.010; and by presenting the December 19, 2007, Order Admitting Will to Probate,  
23

1 | which contained an inaccurate statement concerning Ethel Russell's eligibility to act as agent  
2 | under RCW 11.36.010 and which failed to inform the court that Ethel Russell was not a resident  
3 | of the county where the estate was being probated; Respondent violated RPC 1.1 and RPC  
4 | 8.4(d).

5 |       112. By directing Carol Smiles-Fahs to delegate all her rights and responsibilities as  
6 | personal representative to Ethel Russell, by making Ethel Russell the sole trustee of the Kathryn  
7 | Usalis Special Needs Trust, by failing to advise Carol Smiles-Fahs that the delegation and the  
8 | appointment of Ethel Russell as trustee were contrary to the terms of the will and to Carol  
9 | Smiles-Fahs' duties as personal representative, and by failing to advise Carol Smiles-Fahs about  
10 | the material risks and reasonably available alternatives, Respondent violated RPC 1.2(a), RPC  
11 | 1.4, and RPC 8.4(d).

12 |       113. By representing to PRC, its lawyers, the court, and others that Ethel Russell was  
13 | the legitimate trustee of the Kathryn Usalis Special Needs Trust, Respondent violated RPC 1.1  
14 | and RPC 8.4(d).

15 |       114. By representing Kathryn Usalis in the February 2011 guardianship proceeding  
16 | without prior appointment by the court under RCW 11.88.045(2), Respondent violated RPC  
17 | 8.4(d).

18 |       115. By attempting to obtain the signature of Carol Smiles-Fahs in March 2011 on an  
19 | affidavit dated July 15, 2008, purporting to show that she had declined to serve as trustee of the  
20 | Kathryn Usalis Special Needs Trust, Respondent violated RPC 8.4(d).

21 |       116. By representing multiple clients, where the representations involved concurrent  
22 | conflicts of interest, Respondent violated RPC 1.7.

1 **IV. PRIOR DISCIPLINE**

2 117. Respondent received a reprimand in 1993 for violating RPC 1.6.

3 **V. APPLICATION OF ABA STANDARDS**

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

6 **4.3 Failure to Avoid Conflicts of Interest**

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

10 4.31 Disbarment is generally appropriate when a lawyer, without the  
11 informed consent of client(s):

12 (a) engages in representation of a client knowing that the  
13 lawyer's interests are adverse to the client's with the intent  
14 to benefit the lawyer or another, and causes serious or  
15 potentially serious injury to the client; or

16 (b) simultaneously represents clients that the lawyer knows  
17 have adverse interests with the intent to benefit the lawyer  
18 or another, and causes serious or potentially serious injury  
19 to a client; or

20 (c) represents a client in a matter substantially related to a  
21 matter in which the interests of a present or former client  
22 are materially adverse, and knowingly uses information  
23 relating to the representation of a client with the intent to  
24 benefit the lawyer or another and causes serious or  
potentially serious injury to a client.

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.

4.33 Reprimand is generally appropriate when a lawyer is negligent in  
determining whether the representation of a client may be  
materially 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.

4.34 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence in determining whether the  
representation of a client may be materially affected by the  
lawyer's own interests, or whether the representation will



1                   adversely affect another client, and causes little or no actual or  
2                   potential injury to a client.

3                   **4.4 Lack of Diligence**

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

8                   4.41 Disbarment is generally appropriate when:

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

17                  4.42 Suspension is generally appropriate when:

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

22                  4.43 Reprimand is generally appropriate when a lawyer is negligent  
23                  and does not act with reasonable diligence in representing a client,  
24                  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.

**4.5 Lack of Competence**

                  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 failure to provide competent representation to a client:

                  4.51 Disbarment is generally appropriate when a lawyer's course of  
                  conduct demonstrates that the lawyer does not understand the  
                  most fundamental legal doctrines or procedures, and the lawyer's  
                  conduct causes injury or potential injury to a client.

                  4.52 Suspension is generally appropriate when a lawyer engages in an  
                  area of practice in which the lawyer knows he or she is not  
                  competent, and causes injury or potential injury to a client.

                  4.53 Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines  
                  or procedures and causes injury or potential injury to a  
                  client; or

1 (b) is negligent in determining whether he or she is competent  
2 to handle a legal matter and causes injury or potential  
3 injury to a client.

4 4.54 Admonition is generally appropriate when a lawyer engages in an  
5 isolated instance of negligence in determining whether he or she  
6 is competent to handle a legal matter, and causes little or no actual  
7 or potential injury to a client.

### 8 **6.2 Abuse of the Legal Process**

9 Absent aggravating or mitigating circumstances, upon application of the  
10 factors set out in Standard 3.0, the following sanctions are generally appropriate  
11 in cases involving failure to expedite litigation or bring a meritorious claim, or  
12 failure to obey any obligation under the rules of a tribunal except for an open  
13 refusal based on an assertion that no valid obligation exists:

14 6.21 Disbarment is generally appropriate when a lawyer knowingly  
15 violates a court order or rule with the intent to obtain a benefit for  
16 the lawyer or another, and causes serious injury or potentially  
17 serious injury to a party or causes serious or potentially serious  
18 interference with a legal proceeding.

19 6.22 Suspension is generally appropriate when a lawyer knows that he  
20 or she is violating a court order or rule, and causes injury or  
21 potential injury to a client or a party, or causes interference or  
22 potential interference with a legal proceeding.

23 6.23 Reprimand is generally appropriate when a lawyer negligently  
24 fails to comply with a court order or rule, and causes injury or  
potential injury to a client or other party, or causes interference or  
potential interference with a legal proceeding.

6.24 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence in complying with a court order or  
rule, and causes little or no actual or potential injury to a party, or  
causes little or no actual or potential interference with a legal  
proceeding.

119. In filing the December 19, 2007, Appointment of Resident Agent, which  
contained an inaccurate statement concerning Ethel Russell's eligibility to act as agent under  
RCW 11.36.010; and in presenting the December 19, 2007, Order Admitting Will to Probate,  
which contained an inaccurate statement concerning Ethel Russell's eligibility to act as agent  
under RCW 11.36.010 and which failed to inform the court that Ethel Russell was not a resident  
of the county where the estate was being probated; Respondent demonstrated failure to

1 understand relevant legal relevant doctrines or procedures and caused injury or potential injury  
2 to a party and an adverse or potentially adverse effect on the proceeding.

3 120. The presumptive sanction for Respondent's violations of RPC 1.1 and RPC 8.4(d)  
4 as set forth in ¶ 111 is reprimand under ABA Standards sections 4.53(a) and 6.23

5 121. In directing Carol Smiles-Fahs to delegate all her rights and responsibilities as  
6 personal representative to Ethel Russell, in making Ethel Russell the sole trustee of the Kathryn  
7 Usalis Special Needs Trust, in failing to advise Carol Smiles-Fahs that the delegation and the  
8 appointment of Ethel Russell as trustee were contrary to the terms of the will and to Carol  
9 Smiles-Fahs' duties as personal representative, and in failing to advise Carol Smiles-Fahs about  
10 the material risks and reasonably available alternatives, Respondent acted knowingly and  
11 caused injury or potential injury to a client.

12 122. The presumptive sanction for Respondent's violations of RPC 1.2(a), RPC 1.4, and  
13 RPC 8.4(d) as set forth in ¶ 112 is suspension or disbarment under ABA Standards section 4.41  
14 or 4.42.

15 123. In representing to PRC, its lawyers, the court, and others that Ethel Russell was  
16 the legitimate trustee of the Kathryn Usalis Special Needs Trust, Respondent acted knowingly  
17 and caused injury or potential injury to a client and a party, and an adverse or potentially  
18 adverse effect on the proceeding.

19 124. The presumptive sanction for Respondent's violations of RPC 1.1 and RPC 8.4(d)  
20 as set forth in ¶ 113 is suspension under ABA Standards section 6.22.

21 125. In representing Kathryn Usalis in the February 2011 guardianship proceeding  
22 without prior appointment by the court under RCW 11.88.045(2), Respondent acted knowingly  
23

1 and caused injury or potential injury to a client and a party, and interference or potential  
2 interference with a legal proceeding.

3 126. The presumptive sanction for Respondent's violation of RPC 8.4(d) as set forth in  
4 ¶ 114 is suspension under ABA Standards section 6.22.

5 127. In attempting to obtain the signature of Carol Smiles-Fahs in March 2011 on an  
6 affidavit dated July 15, 2008, purporting to show that she had declined to serve as trustee of the  
7 Kathryn Usalis Special Needs Trust, Respondent acted knowingly and caused injury or potential  
8 injury to a client and a party and an adverse or potentially adverse effect on the proceeding.

9 128. The presumptive sanction for Respondent's violation of RPC 8.4(d) as set forth in  
10 ¶ 115 is suspension under ABA Standards section 6.22.

11 129. In representing multiple clients, where the representations involved concurrent  
12 conflicts of interest, Respondent acted knowingly and caused injury or potential injury to a  
13 client.

14 130. The presumptive sanction for Respondent's violations of RPC 1.7 as set forth in  
15 ¶ 116 is suspension or disbarment under ABA Standards section 4.31 or 4.32.

16 131. The following aggravating factors apply under ABA Standard 9.22:

- 17 (a) prior disciplinary offense;
- 18 (b) dishonest or selfish motive;
- 19 (d) multiple offenses;
- 20 (i) substantial experience in the practice of law.

21 132. The following mitigating factor applies under ABA Standard 9.32:

- 22 (m) remoteness of prior offense.

1 133. It is an additional mitigating factor that Respondent has agreed to resolve this  
2 matter at an early stage of the proceedings following a settlement conference conducted under  
3 ELC 10.12(h).

4 **VI. STIPULATED DISCIPLINE**

5 134. The parties stipulate that Respondent shall receive a three-year suspension for his  
6 conduct.

7 135. Respondent agrees that, upon reinstatement, he will not prepare on behalf of a  
8 client any instrument or pleading naming himself or his spouse personal representative, trustee,  
9 guardian, or agent of a personal representative, trustee, or guardian, unless Respondent is related  
10 to the client as defined in RPC 1.8(c).

11 **VII. RESTITUTION**

12 136. Restitution is not required in light of (a) Respondent's payment of sanctions and  
13 attorney fees as ordered by the Whitman County Superior Court and (b) the court's denial of  
14 Respondent's Motion for Approval of Attorney's Fees.

15 **VIII. COSTS AND EXPENSES**

16 137. Respondent shall pay costs and expenses of \$2,000 in accordance with ELC  
17 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs and  
18 expenses are not paid within 30 days of approval of this stipulation. Reinstatement from  
19 suspension is conditioned on payment of costs and expenses in accordance with ELC 13.3(b).

20 **IX. VOLUNTARY AGREEMENT**

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

1 voluntarily, and that no promises or threats have been made by ODC, the Association, or any  
2 representative thereof to induce the him to enter into this Stipulation except as provided herein.

3 139. 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 X. LIMITATIONS

6 140. 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 Respondent and ODC. Both Respondent and ODC  
9 acknowledge that the result after further proceedings in this matter might differ from the result  
10 agreed to herein.

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

14 142. 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.

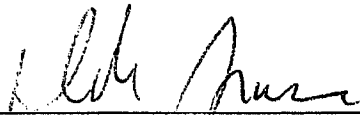
21 143. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
22 Board shall have available to it for consideration all documents that the parties agree to submit  
23

1 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
2 form the record before the Board for its review become public information on approval of the  
3 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

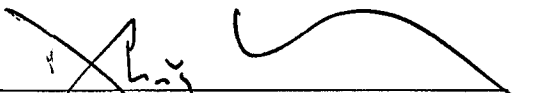
4 144. If this Stipulation is approved by the Disciplinary Board and the Supreme Court,  
5 it will be followed by the disciplinary action agreed to in this Stipulation. All notices required  
6 in the Rules for Enforcement of Lawyer Conduct will be made.

7 145. If this Stipulation is not approved by the Disciplinary Board and the Supreme  
8 Court, this Stipulation will have no force or effect, and neither it nor the fact of its execution  
9 will be admissible as evidence in the pending disciplinary proceeding, in any subsequent  
10 disciplinary proceeding, or in any civil or criminal action.

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

13   
14 \_\_\_\_\_  
15 Dale L. Russell, Bar No. 7941  
16 Respondent

Dated: Mar 2 2014

17   
18 \_\_\_\_\_  
19 D. Christopher Russell, Bar No. 26784  
20 Counsel for Respondent

Dated: Nov 5, 2014

21 \_\_\_\_\_  
22 Thomas D. Frey, Bar No. 1908  
23 Special Disciplinary Counsel

Dated: \_\_\_\_\_

24 \_\_\_\_\_  
25 Scott G. Busby, Bar No. 17522  
26 Senior Disciplinary Counsel

Dated: \_\_\_\_\_

1 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
2 form the record before the Board for its review become public information on approval of the  
3 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

4 144. If this Stipulation is approved by the Disciplinary Board and the Supreme Court,  
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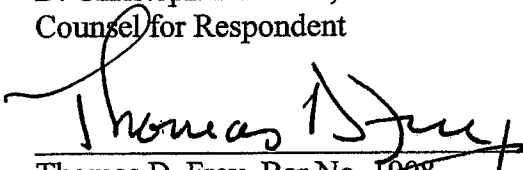
11 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
12 to Discipline as set forth above.

13  
14 \_\_\_\_\_  
Dale L. Russell, Bar No. 7941  
Respondent


Dated: \_\_\_\_\_

15  
16 \_\_\_\_\_  
D. Christopher Russell, Bar No. 26784  
Counsel for Respondent

Dated: \_\_\_\_\_

17  
18   
19 \_\_\_\_\_  
Thomas D. Frey, Bar No. 1908  
Special Disciplinary Counsel

Dated: 5-5-2014

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21   
22 \_\_\_\_\_  
Scott G. Busby, Bar No. 17522  
Senior Disciplinary Counsel

Dated: 5-9-14