

FILED

Nov 16, 2021

Disciplinary
Board

Docket # 002

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

GWYN ELIZABETH STATON,

Lawyer (Bar No. 9419).

Proceeding No.

ODC File Nos. 18-01946 and 18-01997

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 Jonathan Burke, Respondent's Counsel Anne I. Seidel and Respondent lawyer Gwyn Elizabeth Staton.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are 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 to them. Respondent chooses to resolve this proceeding

1 now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,
2 time, expense, and publicity attendant to further proceedings.

3 I. ADMISSION TO PRACTICE

4 1. Respondent was admitted to practice law in the State of Washington on October 30,
5 1979.

6 II. STIPULATED FACTS

7 A. Facts Regarding the Condo and Dissolution

8 2. On October 30, 2013, Louis DiDomenici (DiDomenici) and DiDomenici's then wife,
9 Christine Miller (Miller), purchased a condominium (Condo) located in Shoreline, Washington.

10 3. Jeanne Congdon (Congdon), DiDomenici's mother, was a primary creditor of
11 DiDomenici and Miller: 1) Congdon personally guaranteed the \$53,500 purchase money loan on
12 the Condo; 2) Congdon loaned \$12,690.92 to DiDomenici and Miller to pay the closing costs on
13 the Condo, obtained a default judgment against Miller and DiDomenici, and later obtained a deed
14 of trust (DOT1) on this judgment; 3) Congdon paid off a \$15,349 debt owed by DiDomenici and
15 Miller to the Homeowners' Association (HOA) to stop the HOA's foreclosure of the Condo; and
16 4) Congdon made personal loans and advances to DiDomenici.

17 4. On March 30, 2017, DiDomenici commenced a *pro se* dissolution against Miller. On
18 November 3, 2017, the court entered an order of default in the dissolution. On December 18,
19 2017, the court entered a decree of dissolution, and findings of fact and conclusions of law. The
20 Condo, the main asset in the dissolution, was awarded to DiDomenici.

21 5. Miller filed a motion to vacate the property distribution order on the grounds that Miller
22 was not personally served with the dissolution pleadings. On March 16, 2018, the court entered
23 an order vacating the final orders and reopened the dissolution regarding the ownership of the

1 Condo.

2 6. The trial on the ownership of the Condo was eventually re-scheduled for June 18, 2018.

3 7. Congdon and Respondent assisted DiDomenici in preparing for the June 18, 2018 trial,
4 including preparing and filing DiDomenici's witness list, the trial exhibits, and the trial brief.

5 8. In May and June 2018, Congdon inquired about hiring Respondent to make a limited
6 appearance on behalf of DiDomenici at the June 18, 2018 trial. Respondent initially declined due
7 to health reasons but eventually to provide pro se assistance.

8 9. DiDomenici told Respondent to follow Congdon's directions in presenting
9 DiDomenici's case at the trial.

10 10. Respondent understood that Congdon and DiDomenici were aligned in their efforts
11 against Miller to award the Condo to DiDomenici.

12 11. Respondent filed a limited notice of appearance after Miller's lawyer appeared at the
13 June 18, 2018 hearing.

14 12. The trial was not completed on June 18, 2018. The court set the second day of the
15 trial for June 25, 2018.

16 13. After June 18, 2018, Respondent told Congdon that Respondent did not want to
17 handle the rest of the trial due to health issues.

18 14. Congdon told Respondent to work out the issue of fees with DiDomenici.

19 15. Congdon asked Respondent to withdraw from representing DiDomenici at the trial.

20 16. Congdon hired lawyer Joseph Hunt (Hunt) to represent DiDomenici in completing
21 the property distribution trial and related proceedings regarding the Condo.

22 17. After Respondent consulted with DiDomenici, Respondent signed a notice of
23 substitution, which Hunt filed on June 25, 2018.

1 **B. DiDomenici Executed a Fee Agreement, Conflicts Waivers, a Promissory Note, and a**
2 **Deed of Trust Prepared By Respondent**

3 18. On June 20, 2018, Respondent met with DiDomenici where DiDomenici signed a
4 number of documents, including a fee agreement, a conflict waiver letter, a promissory note with
5 a principal of \$15,000, and a deed of trust to secure the note. These documents are described in
6 detail below.

7 19. Fee Agreement. On or after June 20, 2018, DiDomenici signed a fee agreement. The
8 fee agreement did not describe the nature of legal services to be provided by Respondent.

9 20. First Conflict Waiver Letter. On or after June 20, 2018, DiDomenici signed a conflict
10 waiver letter (First Conflict Waiver Letter), covering “the partial payment of [Respondent’s] fees
11 with [DiDomenici’s automotive] services.” The First Conflict Waiver Letter was intended to deal
12 with conflicts of interest related to services that DiDomenici was going to provide to Respondent
13 relating to the repair of Respondent’s vehicles. The First Conflict Waiver Letter contains no
14 specificity regarding the services to be provided or details regarding the value of services to be
15 provided by DiDomenici and how those services would be credited to DiDomenici’s fees. It does
16 not disclose the potential risks involved. Instead, the First Conflict Waiver Letter includes the text
17 of RPC 1.8(a) and two comments from RPC 1.8. The First Conflict Waiver Letter contains a
18 signature line for DiDomenici, which DiDomenici signed and dated June 14, 2018, reflecting
19 DiDomenici’s agreement to waive the conflicts of interest.

20 21. DiDomenici and Respondent later had disputes regarding whether DiDomenici had
21 competently completed certain automobile services.

22 22. Promissory Note. DiDomenici signed a promissory note (Note) prepared by
23 Respondent with a principal of \$15,000 owed to Respondent. The terms of the Note required
24 DiDomenici to pay Respondent the \$15,000 principal plus accrued interest at the rate of 12

1 percent from June 14, 2018 until October 1, 2018, when full payment was due. After October 1,
2 2018, the Note accrued interest at the rate of 18 percent.

3 23. At the time DiDomenici signed the Note, Respondent knew that DiDomenici was
4 sometimes homeless, had sporadic income, and no significant assets other than DiDomenici's
5 interest in the Condo.

6 24. The Note, which was a template, stated that it was "For Value Received." But the
7 value of Respondent's legal services to DiDomenici as of June 14, 2018 was substantially less
8 than the \$15,000 principal on the Note and a portion of the services provided were for Congdon's
9 benefit.

10 25. Deed of Trust. On or after June 20, 2018, DiDomenici signed a deed of trust (DOT2)
11 prepared by Respondent from a template on the Condo that secured the Note. Respondent caused
12 the DOT2 to be recorded on June 26, 2018.

13 26. Second Conflict Waiver Letter. DiDomenici asked Respondent for a loan to pay
14 for repairs to DiDomenici's automobile. Respondent wrote a second conflict waiver letter
15 (Second Conflict Waiver Letter), dated June 21, 2018. Although the Second Conflict Letter
16 Waiver Letter was drafted as though it were written by independent counsel, DiDomenici never
17 consulted with independent counsel, but the letter states that DiDomenici should consult with
18 independent counsel. The Second Conflict Waiver Letter does not discuss the potential conflicts
19 of interest, the risks involved for the loan, and does not discuss the terms of the loan and
20 repayment, but references the DOT2.

21 **C. DiDomenici Incurred Financial Obligations to Respondent**

22 27. During the period from approximately June 20, 2018 through October 25, 2018,
23 DiDomenici incurred financial obligations to Respondent. Many of these transactions were

1 advances and/or loans from Respondent to DiDomenici. A number of other financial obligations
2 were due to DiDomenici's conversion or theft of funds or personal property from Respondent and
3 from Respondent's son Sean (Sean), including DiDomenici's unauthorized use of credit cards.
4 Respondent documented these transactions on handwritten scraps of papers that did not contain
5 the terms of the transaction and were often difficult to comprehend.

6 28. Respondent was negligent in failing to ensure that each new transaction with
7 DiDomenici and each resolution of Respondent's claim for conversion complied with RPC 1.8(a)
8 and RPC 1.7.

9 **D. Hunts Representation of DiDomenici**

10 29. On June 25, 2018, lawyer Joseph Hunt (Hunt) substituted for Respondent as
11 DiDomenici's lawyer in the pending trial regarding the Condo.

12 30. On July 3, 2018, the court entered the Supplemental and Amended Findings of Fact
13 and Conclusions of Law About a Marriage (FOF) and the Supplemental and Amended Divorce
14 Order (Order). The FOF and Order provided that the Condo should be sold and that the proceeds
15 from the sale of the Condo be paid in the following order: closing costs and real estate
16 commissions, costs of repair of the Condo prior to June 25, 2018, real estate taxes, mortgage debt
17 (which was guaranteed by Congdon), any debt owed to the HOA, and the amount due under the
18 2014 judgment to Congdon.

19 31. The FOF and Order did not reference payment of the DOT2 because Hunt and the
20 court were not aware of the existence of the DOT2.

21 **E. Respondent Represented DiDomenici**

22 32. After the June 18, 2018 hearing, Respondent provided legal services to DiDomenici
23 in various legal matters, including clearing title to the Condo.

1 33. DiDomenici signed a second fee agreement prepared by Respondent, dated August
2 28, 2018, for legal services related to clearing title to the liens filed against the Condo.
3 Respondent had a conflict of interest in representing DiDomenici regarding clearing title to the
4 Condo because the Note and DOT2 that Respondent obtained from DiDomenici constituted
5 potential claims against clear title.

6 34. Respondent ceased providing legal services to DiDomenici in mid to late October
7 2018.

8 **F. Sale of the Condo and Disbursement of Proceeds**

9 35. On October 24, 2018, an offer to sell the Condo for \$199,000 was accepted.

10 36. The sale of the Condo was due to close on November 30, 2018.

11 37. Starting in late October 2018, Respondent and DiDomenici had a dispute regarding
12 the outstanding debt owed by DiDomenici for legal services and loans provided by Respondent,
13 and for property converted by DiDomenici. Respondent and DiDomenici also had a dispute
14 regarding the value of DiDomenici's automobile-related services.

15 38. On November 15, 2018, Respondent provided the closing agent for the Condo sale
16 containing a demand for \$15,000. No interest was requested by Respondent on the \$15,000
17 principal.

18 39. In November 2018, Respondent and DiDomenici met to negotiate a resolution of the
19 outstanding debt owed to Respondent by DiDomenici.

20 40. The result of the meeting between Respondent and DiDomenici was that the parties
21 agreed that DiDomenici owed Respondent approximately \$8,000. The \$8,000 amount that the
22 parties settled on reflects that Respondent compromised and reduced the amount of claims against
23 DiDomenici.

1 41. On a piece of paper dated November 29, 2018, DiDomenici directed Respondent to
2 use the \$15,000 DOT2 to recover proceeds from the Condo and then disburse \$7,000 of the
3 \$15,000 to DiDomenici.

4 42. After the sale of the Condo closed, Respondent received \$15,000 in proceeds on the
5 DOT2. During the following weeks, Respondent made several disbursements to DiDomenici
6 totaling \$6,690.

7 43. Respondent ultimately did not receive any financial gain from Respondent's
8 transactions with DiDomenici.

9 44. Respondent states that Respondent has ceased practicing law except for occasionally
10 providing pro bono services.

11 III. STIPULATION TO MISCONDUCT

12 45. By representing DiDomenici while simultaneously representing Congdon in
13 connection with the June 18, 2018 hearing when there was a significant risk that one client's
14 representation may be materially limited by the other client's representation, and, by continuing
15 to represent DiDomenici when there was a significant risk that the representation may be
16 materially limited by Respondent's personal interests as DiDomenici's creditor, customer, and
17 having claims against DiDomenici for theft and/or conversion, Respondent violated RPC 1.7(a).
18 Respondent's "waivers" from DiDomenici were insufficient to satisfy the informed consent
19 requirements of RPC 1.7(b).

20 46. By engaging in business transactions with DiDomenici, including the Note, DOT2,
21 and subsequent loans to DiDomenici, when the terms were not fair and reasonable and were not
22 fully conveyed in writing, and when DiDomenici did not give informed confirmed in writing to
23 the essential terms of the transaction, Respondent violated RPC 1.8(a).

1 **IV. PRIOR DISCIPLINE**

2 47. Respondent has no prior discipline.

3 **V. APPLICATION OF ABA STANDARDS**

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

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

7 4.31 Disbarment is generally appropriate when a lawyer, without the informed
8 consent of client(s):

9 (a) engages in representation of a client knowing that the lawyer’s interests
10 are adverse to the client’s with the intent to benefit the lawyer or another,
11 and causes serious or potentially serious injury to the client; or

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

15 (c) represents a client in a matter substantially related to a matter in which
16 the interests of a present or former client are materially adverse, and
17 knowingly uses information relating to the representation of a client with the
18 intent to benefit the lawyer or another and causes serious or potentially
19 serious injury to a client.

20 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of
21 interest and does not fully disclose to a client the possible effect of that
22 conflict, and causes injury or potential injury to a client.

23 **4.33 Reprimand is generally appropriate when a lawyer is negligent in
24 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 adversely affect another client, and causes little or no
actual or potential injury to a client.

49. RPC 1.7. Respondent was negligent in determining that Respondent’s representation
of DiDomenici may be affected by Respondent’s representation of Congdon’s interests, and
Respondent’s own interests as a lienholder on the Condo, as a creditor of DiDomenici, as a
claimholder related to conversions by DiDomenici, and as a custom of DiDomenici’s with

1 | disputes regarding the value of DiDomenici's work. Respondent was negligent in obtaining
2 | effective waivers of the conflicts of interest.

3 | 50. Respondent's conflicts caused potential injury to DiDomenici.

4 | 51. RPC 1.8(a). Respondent was negligent in failing to comply with RPC 1.8(a) in
5 | connection with (1) the Note and DOT2, (2) the loans advanced to DiDomenici, and (3) the claims
6 | relating to DiDomenici's conversion of money and property belonging to Respondent and Sean.

7 | 52. Respondent's conflicts caused potential but no actual injury to DiDomenici.

8 | 53. The presumptive sanction for each violation is reprimand under ABA Standard 4.33.

9 | 54. The following aggravating factor applies under ABA Standard 9.22:

10 | (f) Substantial experience in the practice of law [Respondent has been licensed to
11 | practice law since 1979].

12 | 55. The following mitigating factors apply under ABA Standard 9.32:

13 | (a) Absence of a prior disciplinary record; and

14 | (b) Personal and emotional problems [during all material times, Respondent was
15 | suffering from health issues that are described in the Confidential Attachment A].

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

18 | 57. On balance the aggravating and mitigating factors do not require a departure from the
19 | presumptive sanction of reprimand.

20 | **VI. STIPULATED DISCIPLINE**

21 | 58. The parties stipulate that Respondent shall receive a reprimand.

22 | **VII. RESTITUTION**

23 | 59. Restitution is not applicable.

1 **VIII. COSTS AND EXPENSES**

2 60. In light of Respondent’s willingness to resolve this matter by stipulation at an early
3 stage of the proceedings, Respondent shall pay expenses and costs of \$1310.00 in accordance
4 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs
5 are not paid within 30 days of approval of this stipulation.

6 **IX. VOLUNTARY AGREEMENT**

7 61. Respondent states that prior to entering into this Stipulation they have consulted with
8 independent legal counsel regarding this Stipulation, that Respondent is entering into this
9 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
10 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
11 as provided herein.

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

14 **X. LIMITATIONS**

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

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

23 65. This Stipulation results from the consideration of various factors by both parties,

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

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

9 67. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by the
10 disciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement
11 of Lawyer Conduct will be made.

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

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

Signed for purposes of this proceeding only.

Gwynn Elizabeth Staton
Gwynn Elizabeth Staton, Bar No. 9419
Respondent

Dated: 7/9/2021

Anne I. Seidel
Anne I. Seidel, Bar No. 22742
Counsel for Respondent

Dated: 8/12/21

Jonathan Burke
Jonathan Burke, Bar No. 20910
Senior Disciplinary Counsel*

Dated: 07/07/2021