

FILED

Sep 21 2018

Disciplinary
Board

Docket # 020

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON SUPREME COURT

In re

HESTER CATHERINE MALLONEE,

Lawyer (Bar No. 11896).

Proceeding No. 17#00080

ODC File No(s). 16-00767, 16-00800, 16-00831, and 16-00879

STIPULATION TO REPRIMAND

Following settlement conference conducted under ELC 10.12(h)

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), 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 Sachia Stonefeld Powell, Respondent's Counsel Kurt M. Bulmer and Respondent lawyer Hester Catherine Mallonee.

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that she is entitled under

the ELC to appeal the outcome of a hearing to the Disciplinary Board, and, in certain cases, the Stipulation to Discipline

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

5 **I. ADMISSION TO PRACTICE**

6 1. Respondent was admitted to practice law in the State of Washington on October 27,
7 1981. Respondent's license to practice law was administratively suspended on May 11, 2016,
8 and remains suspended to date.

9 **II. STIPULATED FACTS**

10 2. None of Respondent's conduct was motivated by selfish interests. Respondent had
11 no intent to deceive anyone, and received no benefit from any of the actions or omissions
12 described herein. Respondent was experiencing severe personal problems following the break-
13 up of her marriage, which affected her ability to function and make decisions, although did not
14 rise to an incapacity to practice law.

15 3. By February 1, 2016, all lawyers licensed in the State of Washington were required
16 to pay their licensing fees for 2016 and to comply with the other license renewal requirements
17 including submitting a signed trust account declaration (declaration) and a professional liability
18 insurance disclosure (disclosure).

19 4. Respondent failed to do so.

20 5. On February 26, 2016, the Washington State Bar Association (WSBA) sent
21 Respondent a notice via certified mail to her address on file with WSBA that she had to pay her
22 fees and submit her declaration and disclosure by April 26, 2016, to avoid the suspension of her
23 license.

1 6. Someone signed the return receipt to acknowledge receipt of this letter.

2 7. On March 23, 2016, a representative from WSBA telephoned Respondent to
3 remind her about her licensing requirements but was unable to leave a message because her
4 voicemail box was full.

5 8. Also on March 23, 2016, WSBA sent Respondent an email to her email address on
6 file with WSBA reminding her of her obligation to complete her licensing by April 26, 2016, to
7 avoid suspension.

8 9. On April 27, 2016, Respondent telephoned WSBA to inquire about the final
9 deadline to avoid suspension.

10 10. On April 27, 2016, a representative of WSBA told Respondent that the suspension
11 order would become effective one week after it was signed, and that it had not been signed yet.

12 11. Respondent did not complete her licensing requirements.

13 12. On May 4, 2016, the Washington Supreme Court issued an Order suspending
14 Respondent effective May 11, 2016.

15 13. The Order stated that Respondent could avoid suspension by completing all license
16 renewal requirements by 3:00 p.m. on May 10, 2016.

17 14. Accompanying the Order was a cover letter, on the reverse side of which was a list
18 titled "Duties on Suspension."

19 15. The Duties on Suspension notified Respondent she was "prohibited from any
20 further practice of law" until she was reinstated, and was required to cease holding herself out as
21 an attorney at law or lawyer in any matter, among other requirements.

22 16. On May 4, 2016, copies of the Order and transmittal letter were mailed to
23 Respondent via certified mail to her address on file with WSBA.

1 17. The mail was returned to WSBA unclaimed.

2 18. Respondent failed to meet the May 10, 2016, 3:00 p.m. deadline to avoid
3 suspension.

4 19. On May 11, 2016, Respondent emailed WSBA stating: "Due to not getting out of
5 court early enough I missed the dues payment deadline by forty-five minutes. When I called, I
6 was told there is no flexibility. What happens next? What can I do to resolve this as quickly as
7 possible?"

8 20. On May 11, 2016, the WSBA responded to the email and informed Respondent
9 that "to return to Active" she had to submit a \$100 investigation fee and complete a
10 "membership change" application.

11 21. On May 11, 2016, Respondent was further advised via email that "[a]ll
12 membership changes to active require a review of the information for possible character and
13 fitness issues," and was provided a link for "more information about returning to Active from
14 Inactive."

15 22. By the end of the day on May 11, 2016, Respondent should have known that her
16 license to practice law had been suspended.

17 23. On May 12, 2016, Respondent appeared in court representing the petitioner in a
18 dissolution matter, Onochie v. Onochie, King County Superior Court No. 16-3-02489-4 KNT.

19 24. Also on May 12, 2016, Respondent filed a Proposed Parenting Plan of Petitioner,
20 as well as a Supplemental Declaration for Ex Parte Restraining Order, Order to Show Cause,
21 and Order Allowing Service by Mail in the same matter.

22 25. On May 12, 2016, Respondent also presented an Order Allowing Service by Mail
23 and an Order to Show Cause, both of which she signed as "Attorney for Petitioner."

1 26. The documents were prepared on pleading paper designating Respondent as
2 “Attorney at Law.”

3 27. Also on May 12, 2016, Respondent mailed a letter to the opposing party in the
4 Onochie dissolution.

5 28. The letter is on letterhead designating Respondent as “Attorney at Law” and states
6 in part: “Enclosed please find legal papers pertaining to a legal separation started in King
7 County Superior Court by Chris A. Onochie, whom I represent as his attorney.”

8 29. On May 16, 2016, Respondent signed a Declaration of Mailing in Onochie v.
9 Onochie, King County Superior Court No. 16-3-02489-4 KNT as “Attorney for Petitioner.”

10 30. On May 16, 2016, Respondent appeared in court representing a client in an
11 unlawful detainer matter, Belara Communities LLC v. Erekoehinimi Onochie, Pierce County
12 Superior Court No. 16-2-07333-1.

13 31. During the argument on Respondent’s motion to vacate the eviction in the
14 unlawful detainer matter, opposing counsel informed the court that Respondent’s license to
15 practice was suspended.

16 32. Upon hearing from opposing counsel, the court inquired of Respondent’s status.
17 She stated that she was currently working out a “past dues situation” and sought guidance from
18 the court since she was in email communication with the WSBA.

19 33. The court told her that it could not hear from her if she was suspended and made
20 no ruling, but instead ended the hearing because no motion was pending before it.

21 34. By the end of the day on May 16, 2016, Respondent knew that her license to
22 practice law had been suspended.

1 35. On May 20, 2016, Respondent filed and served a Disclosure of Plaintiff's Rebuttal
2 Witnesses in Schwarder et al v. Roe et al. Pierce County Superior Court No. 15-2-06604-3.

3 36. Respondent filed the Disclosure to protect her client.

4 III. STIPULATION TO MISCONDUCT

5 37. By practicing law while her license to do so was suspended, Respondent violated
6 RPC 5.5(a) and RPC 5.8(a).

7 IV. PRIOR DISCIPLINE

8 38. Respondent has no prior discipline.

9 V. APPLICATION OF ABA STANDARDS

10 39. The following American Bar Association Standards for Imposing Lawyer Sanctions
11 (1991 ed. & Feb. 1992 Supp.) apply to this case:

12 7.0 *Violations of Duties Owed as a Professional*

13 7.1 **Disbarment** is generally appropriate when a lawyer knowingly engages
14 in conduct that is a violation of a duty owed as a professional with the
intent to obtain a benefit for the lawyer or another, and causes serious or
potentially serious injury to a client, the public, or the legal system.

15 7.2 **Suspension** is generally appropriate when a lawyer knowingly engages in
16 conduct that is a violation of a duty owed as a professional and causes
injury or potential injury to a client, the public, or the legal system.

17 7.3 **Reprimand** is generally appropriate when a lawyer negligently engages
18 in conduct that is a violation of a duty owed as a professional and causes
injury or potential injury to a client, the public, or the legal system.

19 7.4 **Admonition** is generally appropriate when a lawyer engages in an
isolated instance of negligence that is a violation of a duty owed as a
professional, and causes little or no actual or potential injury to a client,
the public, or the legal system.

20 40. Respondent acted both negligently and knowingly. She acted negligently up until
21 May 16, 2016. After court on May 16, 2016, she knew that her license to practice law had been
22 suspended, yet she continued to practice law until May 20, 2016.

23 41. Respondent's conduct caused potential injury to her clients and the legal system.

1 42. The presumptive sanction is suspension.

2 43. The following aggravating factor applies under ABA Standard 9.22:

3 (i) substantial experience in the practice of law [admitted October 27, 1981].

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

- 5 (a) absence of a prior disciplinary record,
6 (b) absence of a dishonest or selfish motive, and
7 (c) personal or emotional problems.

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

10 46. Based on the factors set forth above, the presumptive sanction should be mitigated to
11 a reprimand.

12 VI. STIPULATED DISCIPLINE

13 47. The parties stipulate that Respondent shall receive a reprimand for her conduct.

14 48. Respondent will be subject to probation for a period of two years beginning on the
15 date she reinstates her license to practice law and shall comply with the specific probation terms
16 set forth below:

17 Practice Monitor

- 18 a) During the period of probation, Respondent's practice will be supervised by a
19 practice monitor. The practice monitor must be a WSBA member with no record of
20 public discipline and who is not the subject of a pending public disciplinary
21 proceeding.
22 b) The role of the practice monitor is to consult with and provide guidance to
23 Respondent regarding case management, office management, and avoiding
24 violations of the Rules of Professional Conduct, and to provide reports and
information to the Probation Administrator regarding Respondent's compliance
with the terms of probation and the RPC. The practice monitor does not represent
the Respondent.

- 1 c) At the beginning of the probation period, the Probation Administrator will
2 select a lawyer to serve as practice monitor for the period of Respondent's
3 probation.
- 4 i) Initial Challenge: If, within 15 days of the written notice of the
5 selection of a practice monitor, Respondent sends a written request to the
6 Probation Administrator that another practice monitor be selected, the
7 Probation Administrator will select another practice monitor. Respondent
8 need not identify any basis for this initial request.
- 9 ii) Subsequent Challenges: If, after selection of a second (or subsequent)
10 practice monitor, Respondent believes there is good cause why that
11 individual should not serve as practice monitor, Respondent may, within 15
12 days of notice of the selected practice monitor, send a written request to the
13 Probation Administrator asking that another practice monitor be selected.
14 That request must articulate good cause to support the request. If the
15 Probation Administrator agrees, another practice monitor will be selected.
16 If the Probation Administrator disagrees, the Office of Disciplinary Counsel
17 will submit its proposed selection for practice monitor to the Chair of the
18 Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will
19 also provide the Chair with the Respondent's written request that another
20 practice monitor be selected.
- 21 d) In the event the practice monitor is no longer able to perform his or her duties,
22 the Probation Administrator will select a new practice monitor at his or her
23 discretion.
- 24 e) During the period of probation, Respondent must cooperate with the named
practice monitor. Respondent must meet with the practice monitor at least once per
month during the first year. Meetings may be set less frequently, but at quarterly,
during the second year at the practice monitor's discretion. Respondent must
communicate with the practice monitor to schedule all required meetings.
- f) The Respondent must bring to each meeting a current, complete written list of
all pending client legal matters being handled by the Respondent. The list must
identify the current status of each client matter and any problematic issues regarding
each client matter. The list may identify clients by using the client's initials rather
than the client's name.
- g) At each meeting, the practice monitor will discuss with Respondent practice
issues that have arisen or are anticipated. In light of the conduct giving rise to the
imposition of probation, ODC recommends that the practice monitor and
Respondent discuss whether Respondent is diligently making progress on each
client matter, whether Respondent is in communication with each client, whether
Respondent needs to consider withdrawing from any client matters. Meetings may
be in person or by telephone or by any other method at the practice monitor's

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1 discretion. The practice monitor uses discretion in determining the length of each
2 meeting.

3 h) The practice monitor will provide the Probation Administrator with quarterly
4 written reports regarding Respondent's compliance with probation terms and the
5 RPC. Each report must include the date of each meeting with Respondent, a brief
6 synopsis of the discussion topics, and a brief description of any concerns the
7 practice monitor has regarding the Respondent's compliance with the RPC. The
8 report must be signed by the practice monitor. Each report is due within 30 days of
9 the completion of the quarter.

10 i) If the practice monitor believes that Respondent is not complying with any of
11 her ethical duties under the RPC or if Respondent fails to schedule or attend a
12 monthly meeting, the practice monitor will promptly communicate that to the
13 Probation Administrator.

14 j) Respondent must make payments totaling \$1,000 to the Washington State Bar
15 Association to defray the costs and expenses of administering the probation, as
16 follows:

17 i) \$250 due within 30 days of the start of the probation;

18 ii) \$250 due within 6 months of the start of the probation period;

19 iii) \$250 due within 12 months of the start of the probation period; and

20 iv) \$250 due within 18 months of the start of the probation period.

21 All payments should be provided to the Probation Administrator for processing.

22 VII. RESTITUTION

23 49. Restitution is not required in this matter.

24 VIII. COSTS AND EXPENSES

50. In light of Respondent's willingness to resolve this matter by stipulation at an early
stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$250 in
accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(i)
if these costs are not paid within 30 days of approval of this stipulation.

IX. VOLUNTARY AGREEMENT

51. Respondent states that prior to entering into this Stipulation she has consulted

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

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

7 X. LIMITATIONS

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

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

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

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

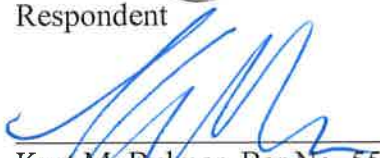
4 57. If this Stipulation is approved by the Hearing Officer, it will be followed by the
5 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
6 Enforcement of Lawyer Conduct will be made.

7 58. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
8 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
9 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
10 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 Hester Catherine Mallonee, Bar No. 11896
15 Respondent

Dated: 9/19/18

16 
17 Kurt M. Bulmer, Bar No. 5559
18 Counsel for Respondent

Dated: 9/19/18

19 
20 Sachia Stonefeld Powell, Bar No. 21166
21 Disciplinary Counsel

Dated: 9/19/18

