

**FILED**

AUG 01 2016

DISCIPLINARY  
BOARD

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BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**BRIAN DOUGLAS ROESCH,**

Lawyer (Bar No. 12404).

Proceeding No. 16#

00074

ODC File No. 11-02021

STIPULATION TO REPRIMAND

Under Rule 9.1 of the 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 Linda B. Eide and Respondent lawyer Brian Douglas Roesch.

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

Stipulation to Discipline  
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OFFICE OF DISCIPLINARY COUNSEL  
OF THE WASHINGTON STATE BAR ASSOCIATION  
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Seattle, WA 98101-2539  
(206) 727-8207

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1 avoid the risk, time, and expense attendant to further proceedings.

## 2 I. ADMISSION TO PRACTICE

3 1. Respondent was admitted to practice law in the State of Washington on  
4 May 17, 1982. He is on inactive status.

## 5 II. STIPULATED FACTS

6 2. In 2003, Ted Spice met Doris Matthews when he rented his home from her. She  
7 owned several properties. He offered to help with repairs and maintenance. She gave Spice a  
8 Promissory Note and 51% interest in Plexus Investments, the LLC they formed with Doris  
9 Matthews's property as the capital. According to Spice, no one would loan to Plexus, so they  
10 took property out of Plexus and deeded it back to Doris Matthews in order to mortgage it to  
11 provide money for a warehouse project. Spice claims Doris Matthews used \$900,000 in such  
12 funds for her personal expenditures and to support the plans or business ventures of her  
13 children and grandchild. Spice acknowledges that he withdrew \$400,000 in cash at casinos.  
14 He maintains he took the funds to give to Doris Mathews; her heirs dispute that. Doris  
15 Mathews died at home in December 2009 at age 81. Her daughter, Donna DuBois, was named  
16 her Personal Representative.

17 3. On August 2, 2010, Spice sued Donna Dubois and the Estate of Doris Mathews,  
18 claiming that he was owed \$8 million under the Promissory Note referenced above. From the  
19 poorly drafted note, it is unclear what consideration Spice provided or how the note could be  
20 worth \$8 million. The Pierce County Superior Court assigned case No. 10-2-11622-8.

21 4. Roesch represented Dubois and the Estate. He filed many counterclaims, mostly  
22 alleging fraud or negligence, resulting in Doris Mathews giving Spice too much control over  
23 her property, to his benefit and her detriment. Additionally, one counterclaim alleged that "[a]s

1 a proximate result of Spice's negligence. Doris passed away." That claim was dismissed on  
2 summary judgment by order entered June 5, 2012. The court sent the remaining claims and  
3 counterclaims to trial.

4 5. The court appointed a special master to handle a proliferation of discovery issues.  
5 The special master allowed Roesch's clients to obtain Spice's financial records, including tax  
6 returns and bank records, but also ruled that they could use them "only for the case in question  
7 and not divulge the same to anyone else." Nevertheless, Roesch's paralegal apparently used  
8 information from such records and/or previously acquired records to notify Social Security and  
9 the Internal Revenue Service that Spice had submitted false information to them. Later, the IRS  
10 got a \$40,000 levy and social security garnished Spice's disability payments. March 2012  
11 emails between Roesch and his paralegal Sharon Carter revealed that Roesch was aware of the  
12 disclosures or planned disclosures by Carter to Social Security and/or the IRS in violation of  
13 the special master's ruling.

14 6. On September 4, 2012, the court entered an Order on Motions in Limine. It  
15 precluded Roesch from introducing evidence or calling witnesses related to Spice's "prior acts  
16 or conduct unrelated to this matter."

17 7. During trial, Roesch violated this order when he introduced evidence that Spice  
18 entertained "boys. Lots and Lots of young boys" at his home. The Court's post trial  
19 November 30, 2012 order called this an "egregious" violation of the motion in limine order.

20 The Court continued:

21 The question and answer almost caused a mistrial. It was derogatory to Mr. Spice and  
22 attempted to push a button of sexual bigotry that had only one aim. The Court finds  
23 that there is no amount of inexperience or lack of jury trial practice that can mitigate  
24 this type of behavior. The Court finds it was intentional conduct knowingly violating a  
pretrial order. Mr. Roesch was attempting to paint Mr. Spice in a criminal-like  
behavior posture. Attempting to introduce homosexuality and/or sexual misconduct

1 with minors had absolutely no bearing in the case and was and is contemptuous  
2 behavior.

3 8. For violating the motion in limine order and for allowing the prohibited disclosure  
4 of Spice's finances, the trial court held Roesch in contempt and sanctioned him \$7,000 (offset  
5 by \$500 owed by Spice's lawyer for deposition misconduct). Roesch paid the ordered  
6 sanction.

7 9. The jury verdict did not rule on Spice's claims or the Estate's counterclaims.  
8 Instead, the verdict form simply listed all the properties at issue and awarded most of them to  
9 the Estate, some to Spice, and some in percentages to each party. Spice asked the trial court for  
10 attorney's fees as the "prevailing party," but the court denied that request and entered the  
11 following findings:

12 The Court further finds that the initiation of this lawsuit, by Mr. Spice, was high risk to  
13 begin with based on the lack of any contemporary accounting which was done  
14 throughout Mr. Spice's involvement in this case, lack of best business practices for an  
15 attempted multi-million dollar development, and the fact that there were literally  
hundreds of thousands of dollars unaccounted for during the course of this project.  
These conclusions are based on the evidence, or lack thereof, which were submitted at  
the time of trial, the credibility of the witnesses, and the overall legal theories presented  
by the Plaintiff for recovery.

16 The Court further finds that Mr. Spice, when he initially met Ms. Matthews, was on  
17 Section 8 housing, was dependent on Social Security disability for income, and had  
18 little or no prior experience in being a project manager/developer of a commercial  
warehouse facility and/or cancer treatment center as testified to during the trial.

19 The Court further finds that Mr. Spice would have had no independent ability to pay  
20 any attorney's fees, except for funds that he would have received through the various  
mortgages and refinances of the property that were originally owned by Doris E.  
Mathews and was later transferred to Plexus, LLC.

21 10. Spice appealed the denial of his attorney fees and lost. Spice v. Dubois, 2016 WL  
22 899914 (Unpublished opinion, March 1, 2016). Given the nature of the jury verdict, i.e. simply  
23 awarding certain property, it was impossible to determine who had prevailed on the numerous

1 claims and counterclaims. Based on his failure to preserve the issues for appeal, the court  
2 denied Spice's request for review of the trial court's denial of his requests for judgment  
3 notwithstanding the verdict, and his request for a new trial. .

4 11. This matter was deferred during the trial and appeal.

### 5 III. STIPULATION TO MISCONDUCT

6 12. By allowing his paralegal to disclose Spice's financial information to the Social  
7 Security Administration and/or the Internal Revenue Service, Roesch violated RPC 5.3  
8 (responsibilities regarding nonlawyer assistants).

9 13. By violating the Order in Limine and eliciting testimony precluded by the order,  
10 Roesch nearly caused a mistrial and violated RPC 3.4(e), which prohibits a lawyer in trial from  
11 alluding "to any matter that the lawyer does not reasonably believe is relevant or that will not  
12 be supported by admissible evidence", and/or RPC 4.4, which prohibits using means "that have  
13 no substantial purpose other than to embarrass, delay or burden a third person."

### 14 IV. PRIOR DISCIPLINE

15 14. Roesch has no prior discipline.

### 16 V. APPLICATION OF ABA STANDARDS

17 15. The following American Bar Association Standards for Imposing Lawyer Sanctions  
18 (1991 ed. & Feb. 1992 Supp.) apply to this case:

#### 19 **7.0 Violations of Duties Owed as a Professional [for failure to supervise paralegal]**

20 7.1 Disbarment is generally appropriate when a lawyer  
21 knowingly engages in conduct that is a violation of a duty owed as a  
22 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.

23 7.2 Suspension is generally appropriate when a lawyer  
24 knowingly engages in conduct that is a violation of a duty owed as a  
professional and causes injury or potential injury to a client, the

1 **public, or the legal system.**

2 7.3 Reprimand is generally appropriate when a lawyer  
3 negligently engages in conduct that is a violation of a duty owed as a  
4 professional and causes injury or potential injury to a client, the public, or  
5 the legal system.

6 7.4 Admonition is generally appropriate when a lawyer  
7 engages in an isolated instance of negligence that is a violation of a duty  
8 owed as a professional, and causes little or no actual or potential injury to  
9 a client, the public, or the legal system.

10 **6.2 Abuse of the Legal Process [for violating the order in limine]**

11 6.21 Disbarment is generally appropriate when a lawyer  
12 knowingly violates a court order or rule with the intent to obtain a benefit  
13 for the lawyer or another, and causes serious injury or potentially serious  
14 injury to a party or causes serious or potentially serious interference with  
15 a legal proceeding.

16 **6.22 Suspension is generally appropriate when a lawyer  
17 knows that he or she is violating a court order or rule, and causes  
18 injury or potential injury to a client or a party, or causes interference  
19 or potential interference with a legal proceeding.**

20 6.23 Reprimand is generally appropriate when a lawyer  
21 negligently fails to comply with a court order or rule, and causes injury or  
22 potential injury to a client or other party, or causes interference or  
23 potential interference with a legal proceeding.

24 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.

16. Roesch acted knowingly.

17. His actions embarrassed Spice, and caused additional work for the court.

18. The presumptive sanction is suspension.

19. The following aggravating factors apply under ABA Standard 9.22:

(d) multiple offenses and

(i) substantial experience in the practice of law (admitted in 1982).

20. The following mitigating factors apply under ABA Standard 9.32:

(a) absence of a prior discipline;

- 1 (b) absence of a dishonest or selfish motive;
- 2 (c) personal problems (Respondent experienced heart problems during the
- 3 litigation)
- 4 (k) imposition of other penalties or sanctions [paid \$6,500 in sanctions for
- 5 motion in limine violation and paralegal's disclosures]; and
- 6 (l) remorse.

7 21. It is an additional mitigating factor that Respondent has agreed to resolve this

8 matter at an early stage of the proceedings.

9 22. In addition, this matter was delayed several years due to the pending litigation, but

10 both parties promptly provided requested information once the appeal was final earlier this

11 year.

12 23. Based on the factors set forth above, the presumptive sanction should be mitigated

13 to a reprimand.

#### 14 VI. STIPULATED DISCIPLINE

15 24. The parties stipulate that Respondent shall receive a reprimand for his conduct.

#### 16 VII. RESTITUTION

17 25. No restitution is appropriate.

#### 18 VIII. COSTS AND EXPENSES

19 26. In light of Respondent's willingness to resolve this matter by stipulation at an early

20 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750

21 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC

22 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

23

1 **IX. VOLUNTARY AGREEMENT**

2 27. Respondent states that prior to entering into this Stipulation he had an opportunity  
3 to consult independent legal counsel regarding this Stipulation, that Respondent is entering into  
4 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
5 Association, nor by any representative thereof, to induce the Respondent to enter into this  
6 Stipulation except as provided herein.

7 28. Once fully executed, this Stipulation is a contract governed by the legal principles  
8 applicable to contracts, and may not be unilaterally revoked or modified by either party.

9 **X. LIMITATIONS**

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

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

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



1 approved Stipulation.

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

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

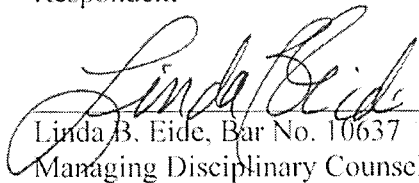
8 34. If this Stipulation is not approved by the Chief Hearing Officer, this Stipulation will  
9 have no force or effect, and neither it nor the fact of its execution will be admissible as  
10 evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or  
11 in any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

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

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16 Brian Douglas Roesch, Bar No. 12404  
Respondent

Dated: July 18, 2016

17  
18   
19 Linda B. Eide, Bar No. 10637  
Managing Disciplinary Counsel

Dated: July 19, 2016