

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**FILED**  
JUL 02 2013

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re  
**MARY TURGEON WYNNE,**  
Lawyer (Bar No. 12441).

Proceeding No. 12#00014  
STIPULATION TO TWO REPRIMANDS

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Two Reprimands is entered into by the Washington State Bar Association (Association), through disciplinary counsel Marsha Matsumoto and Respondent lawyer Mary Turgeon Wynne.

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

942

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**I. ADMISSION TO PRACTICE**

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

**II. STIPULATED FACTS**

**Wapato Heritage Matter**

2. On September 11, 2003, William Wapato Evans, Jr. (William) died testate. He was survived by two daughters, Sandra Evans (Sandra) and Nancy Gallagher (Nancy), and by Nancy's three sons, Kenneth Evans, John Wayne Evans, and Jamie Jones (the grandsons).

3. William was a member of the Confederated Tribes of the Colville Reservation, and his estate included Indian trust property. Consequently, the probate of William's will fell in part under the jurisdiction of the Office of Special Trustee/Bureau of Indian Affairs (BIA).

4. At the time of William's death, he held a 100% interest in trust property known as Moses Allotment No. 10 (MA-10). The MA-10 property was subject to a lease in favor of Wright-Wapato, Inc., with a remaining term of approximately 70 years. The MA-10 property generates income of approximately \$750,000 to \$800,000 per year.

5. At the time of William's death, he also held a 24% interest in trust property known as Moses Allotment No. 8 (MA-8). The MA-8 property generates income of approximately \$370,000 per year.

6. During the probate of William's will, a dispute arose between Sandra and the grandsons, all of whom were beneficiaries of William's estate.

7. The parties to the dispute entered into a Settlement Agreement, which was approved by the BIA on January 10, 2006.

8. Respondent represented Sandra in the BIA probate of William's will and in the

1 drafting, negotiation, and execution of the Settlement Agreement.

2 9. Under the Settlement Agreement, Sandra received a 100% life interest in the MA-  
3 10 property; the grandsons received a 100% interest in the MA-8 property; and Wapato Herit-  
4 age LLC (Wapato Heritage), a company owned by the grandsons, received 35% of the income  
5 generated by the MA-10 property over a five-year period. The payments to Wapato Heritage  
6 were to be made on a quarterly basis from the MA-10 income that was deposited to Sandra's  
7 individual Indian money (IIM) account.

8 10. Sandra resides in the United Kingdom. Respondent states that Sandra needed an  
9 account in the United States to receive wire transfers from her IIM account, but opening an ac-  
10 count for Sandra was complicated by the fact that Sandra was unable to travel to the United  
11 States due to ill health. Respondent states that she had a Wynne Law Firm business account  
12 ending in 6585 at Wells Fargo Bank (Wells Fargo account 6585) in South Dakota that she no  
13 longer needed because she was moving to Arizona for a new job. Respondent states that, as a  
14 result, in or around December 2005, she decided to assign Wells Fargo account 6585 to Sandra  
15 as a personal account to receive the IIM funds.

16 11. From at least the first quarter of 2006 through the fourth quarter of 2009, all of the  
17 MA-10 income deposited to Sandra's IIM account was transferred to Wells Fargo account 6585,  
18 including the 35% in which Wapato Heritage claimed an interest.

19 12. Throughout the time that the MA-10 funds were deposited to Wells Fargo account  
20 6585, the account was held under the name of Wynne Law Firm and under the firm's tax identi-  
21 fication number. The authorized signers on the account were Respondent and her non-lawyer  
22 husband, Daniel Gargan (Gargan). The monthly bank statements were addressed to Wynne  
23 Law Firm and sent to Respondent's address in Arizona.

1 13. Wells Fargo account 6585 was never actually assigned to Sandra and was never  
2 held in Sandra's name or under her tax identification number.

3 14. Wells Fargo account 6585 was never a trust account.

4 15. After deciding to assign the Wynne Law Firm business account to Sandra, Re-  
5 spondent failed to take adequate measures to ensure that the assignment was accomplished.  
6 Had Respondent taken appropriate measures, she would have ascertained, at a minimum, that  
7 Wells Fargo did not allow assignments of accounts.

8 16. Respondent states that, even though the bank statements for Wells Fargo account  
9 6585 were sent to her address, she did not review them. Respondent states that the bank state-  
10 ments were reviewed by Gargan, who was employed as Sandra's financial advisor.

11 17. The MA-10 income, in which Evans and Wapato Heritage claimed an interest, was  
12 repeatedly deposited to and disbursed from Wells Fargo account 6585.

13 18. Respondent did not notify Wapato Heritage or the grandsons when the MA-10 in-  
14 come was received or deposited.

15 19. Respondent did not provide Wapato Heritage or the grandsons with an accounting  
16 after distributions of the MA-10 income were made.

17 20. Respondent did not provide Wapato Heritage or the grandsons with an annual ac-  
18 counting of the MA-10 income.

19 21. For reasons that became the subject of extensive litigation between Sandra and  
20 Wapato Heritage, Wapato Heritage did not receive any payments from the MA-10 income.

21 22. In October 2007, Wapato Heritage filed suit against Sandra in the U.S. District  
22 Court for Eastern Washington, Wapato Heritage, LLC; Kenneth Evans; Wayne Jones; and Ja-  
23 mie Jones vs. Sandra Evans, CV-07-00314-EFS (Wapato Heritage litigation).

1 23. Respondent represented Sandra during portions of the Wapato Heritage litigation.

2 24. On August 19, 2009, the U.S. District Court determined that Sandra had breached  
3 the Settlement Agreement by refusing to pay 35% of the MA-10 income to Wapato Heritage.

4 25. On February 9, 2010, the District Court awarded principle damages to Wapato  
5 Heritage in the amount of \$1,355,099.62, representing 35% of the MA-10 income for the period  
6 covering the first quarter of 2006 through the fourth quarter of 2009.

7 **Statements to the Court**

8 26. In post-judgment proceedings, Wapato Heritage, through its counsel, subpoenaed  
9 records from several Wells Fargo accounts to trace the flow of the MA-10 income. The sub-  
10 poenaed accounts included the Wynne Law Firm account in South Dakota that was "assigned"  
11 to Sandra and three accounts in Arizona.

12 27. On February 11, 2011, Respondent filed a motion to quash the subpoena and, in  
13 the alternative, for a protective order.

14 28. On February 11, 2011, the U.S. District Court held a hearing on Respondent's mo-  
15 tion to quash. During the hearing, Respondent represented to the court that the Wynne Law  
16 Firm account in South Dakota was an IOLTA account and had always been an IOLTA account.  
17 Respondent argued that producing records for this account would disclose information relating  
18 to other clients.

19 29. Respondent's statements to the court were susceptible to more than one interpreta-  
20 tion and caused the court to believe that the Wynne Law Firm account was an IOLTA account,  
21 which it was not. Respondent had an IOLTA account at Wells Fargo in South Dakota, but it  
22 was not the account that Respondent "assigned" to Sandra and was not the account used for the  
23 MA-10 funds.

1 30. On March 9, 2011, Wapato Heritage filed a Request for Summary Assistance cit-  
2 ing prior statements by Respondent that the Wynne Law Firm account was not a trust account.

3 31. On April 1, 2011, the court issued an order denying Respondent's motion to quash.

4 32. Respondent states that she did not intend to mislead the court. Respondent  
5 acknowledges, however, that her statements were confusing to the court.

### 6 III. STIPULATION TO MISCONDUCT

7 33. By depositing the MA-10 funds, in which Sandra Evans and Wapato Heritage  
8 claimed an interest, to the Wynne Law Firm business account, which was not a trust account,  
9 Respondent violated RPC 1.15A(c) and RPC 1.15A(g).

10 34. By failing to notify Wapato Heritage of the receipt of the MA-10 funds, Respondent  
11 violated RPC 1.15A(d).

12 35. By failing to provide Wapato Heritage with an accounting annually or upon distribu-  
13 tion of the MA-10 funds, Respondent violated RPC 1.15A(e).

14 36. By making confusing statements to the court during the February 11, 2011 hearing,  
15 Respondent violated RPC 8.4(d).

### 16 IV. PRIOR DISCIPLINE

17 37. Respondent does not have a record of prior discipline with the Washington State Bar  
18 Association.

### 19 V. APPLICATION OF ABA STANDARDS

20 38. The following American Bar Association Standards for Imposing Lawyer Sanctions  
21 (1991 ed. & Feb. 1992 Supp.) apply to this case:  
22  
23  
24

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**4.1 Failure to Preserve the Client's Property**

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

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

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 conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court:

- 6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
- 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.
- 6.14 Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

39. Given the circumstances surrounding Respondent's intended assignment of the

1 Wynne Law Firm business account to Sandra Evans and her failure to complete the assignment  
2 or find an alternative solution, Respondent's failure to deposit the MA-10 funds to a trust ac-  
3 count and to render appropriate accounts was negligent.

4 40. In making statements that were confusing to the court regarding the nature of the  
5 Wynne Law Firm account, Respondent's conduct was negligent.

6 41. The deposit of the MA-10 funds into the Wynne Law Firm business account caused  
7 potential injury in that it rendered the funds vulnerable to Respondent's creditors.

8 42. Respondent's failure to account to Wapato Heritage caused actual and potential inju-  
9 ry in that Wapato Heritage had to pursue legal proceedings to locate and trace the flow of the  
10 MA -10 funds and collect on its judgment.

11 43. Respondent's confusing statements to the court caused potential injury to the legal  
12 system and to Wapato Heritage's efforts to obtain discovery.

13 44. The presumptive sanction under ABA Standards 4.1 is a reprimand.

14 45. The presumptive sanction under ABA Standards 6.1 is a reprimand.

15 46. The following aggravating factor applies under ABA Standards Section 9.22:

- 16 (i) substantial experience in the practice of law (Respondent was admitted to  
17 practice in Washington in 1982, North Dakota in 1978, and South Dakota  
in 1982).

18 47. The following mitigating factor applies under ABA Standards Section 9.32:

- 19 (a) absence of prior disciplinary record.

20 48. On balance the aggravating and mitigating do not require a departure from the pre-  
21 sumptive sanction of two reprimands.

## 22 VI. STIPULATED DISCIPLINE

23 49. Respondent shall receive two reprimands for her violations of the Rules of Profes-  
24



1 sional Conduct.

2 **VII. RESTITUTION**

3 50. Restitution is not appropriate in this matter.

4 **VIII. COSTS AND EXPENSES**

5 51. Respondent shall pay attorney fees and administrative costs of \$2,798.29 in accord-  
6 ance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these  
7 costs are not paid within 30 days of approval of this stipulation.

8 **IX. VOLUNTARY AGREEMENT**

9 52. Respondent states that prior to entering into this Stipulation she has had an oppor-  
10 tunity to consult independent legal counsel regarding this Stipulation, that Respondent is enter-  
11 ing into this Stipulation voluntarily, and that no promises or threats have been made by the As-  
12 sociation, nor by any representative thereof, to induce the Respondent to enter into this Stipula-  
13 tion except as provided herein.

14 **X. LIMITATIONS**

15 53. This Stipulation is a compromise agreement intended to resolve this matter in ac-  
16 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-  
17 penditure of additional resources by the Respondent and the Association. Both the Respondent  
18 and the Association acknowledge that the result after further proceedings in this matter might  
19 differ from the result agreed to herein.

20 54. This Stipulation is not binding upon the Association or the Respondent as a state-  
21 ment of all existing facts relating to the professional conduct of the respondent lawyer, and any  
22 additional existing facts may be proven in any subsequent disciplinary proceedings.

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

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

11           57. If this Stipulation is approved by the Hearing Officer, it will be followed by the dis-  
12 ciplinary action agreed to in this Stipulation. All notices required in the Rules for Enforcement  
13 of Lawyer Conduct will be made.

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


18           //

19           //

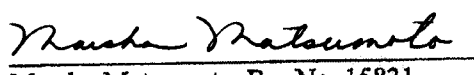
20           //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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

  
Mary Turgeon Wynne, Bar No. 12441  
Respondent

Dated: 06.21.2013

  
Marsha Matsumoto, Bar No. 15831  
Senior Disciplinary Counsel

Dated: 6/22/13