

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JANET A. IRONS,

Lawyer (Bar No. 12687).

Proceeding No. 15#00089

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 Erica Temple, Respondent's Counsel Anne I. Seidel and Respondent lawyer Janet A. Irons.

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

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1 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 November 2,
4 1982.

5 **II. STIPULATED FACTS**

6 2. In March 2011, Tina and Wendell Malmberg (the Malmbergs) hired Respondent to
7 represent their company, HPF Portofab Inc. (HPF), for the purpose of recovering accounts
8 receivable from Kimberly and Thomas Spiller. Mr. Malmberg is the president of HPF.

9 3. On September 19, 2011, Respondent filed a complaint in U.S. Bankruptcy Court,
10 Western District of Washington, 11-01901-KAO (the Adversary Proceeding), alleging that Mr.
11 Spiller had acted with the intent to defraud his creditors, including HPF.

12 4. On September 20, 2011, the court issued a Summons and Notice for the Adversary
13 Proceeding, setting a telephonic pretrial conference on November 29, 2011. Respondent
14 received this document.

15 5. On September 27, 2011, Alan Wenokur, acting as Mr. Spiller's lawyer in the
16 Adversary Proceeding, propounded Defendant's First Interrogatories and Requests for
17 Production to Respondent. The discovery responses were due back on October 27, 2011.

18 6. Between October 25, 2011 and November 4, 2011, Mr. Wenokur contacted
19 Respondent multiple times to request that she provide the discovery responses. Respondent
20 contacted Mr. Wenokur on or about October 27, 2011 to request additional time and Mr.
21 Wenokur agreed to an additional day or two.

22 7. The responses never arrived, and Mr. Wenokur heard nothing further from
23 Respondent.

1 8. Respondent drafted the discovery responses with Mr. Malmberg, and had him sign
2 them, but her office never served Mr. Wenokur with the discovery responses.

3 9. On November 10, 2011, Mr. Wenokur filed and served a Notice of Hearing and
4 Defendant's Motion to Compel Responses to Discovery and For Payment of Terms.
5 Respondent did not respond.

6 10. On November 29, 2011, though she had received a notice from the court,
7 Respondent did not appear on the telephone for the pretrial conference held in the Adversary
8 Proceeding.

9 11. On December 1, 2011, after a hearing on Mr. Wenokur's discovery motion, the court
10 entered an Order Compelling Responses to Discovery and for Terms, directing that HPF
11 provide the responses no later than December 5, 2011, and that Respondent and HPF pay \$700
12 to Defendant's counsel for expenses incurred in bringing the motion. Respondent was not
13 present at this hearing.

14 12. Respondent did not comply with the court's order.

15 13. Respondent still did not provide Mr. Wenokur with the responses. As a result on
16 December 6, 2011, Mr. Wenokur filed a Notice of Hearing and Defendant's Motion to Dismiss
17 Case as Sanctions for Failure to Comply with Order Compelling Discovery Responses (Motion
18 to Dismiss). Mr. Wenokur's file indicates that he mailed these pleadings to Respondent.

19 14. As of late December 2011, Respondent was aware that the court had ordered
20 sanctions in the Malmberg's case and that she had not served Mr. Wenokur with the responses.

21 15. But Respondent neither paid the sanction nor provided the discovery to Mr.
22 Wenokur.

23 16. As of January 6, 2012, Respondent was aware that Mr. Wenokur had filed the
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1 Motion to Dismiss. She filed a request for a continuance of Mr. Wenokur's Motion to Dismiss
2 because she believed, erroneously, that the hearing on the Motion to Dismiss was that day.

3 17. Respondent never logged into the court's electronic filing system to look at the
4 docket or the pleadings, though she agrees that she should have.

5 18. On January 13, 2012 the court granted Mr. Wenokur's Motion to Dismiss, and
6 ordered \$3,700 in terms against Respondent personally.

7 19. After that, Mr. Malmberg called and emailed Respondent repeatedly over the next
8 weeks, requesting that she provide him with information about the status of the Adversary
9 Proceeding. Respondent spoke to Mr. Malmberg and discussed a superior court case in which
10 she also represented HPF. But Respondent did not adequately inform Mr. Malmberg about the
11 status of the Adversary Proceeding.

12 20. In June 2012, Respondent paid both sanctions ordered in the Adversary Proceeding.

13 21. There was actual injury to Mr. Malmberg. He lost his day in court, and he was
14 frustrated by the lack of information from Respondent. Until Respondent paid the sanctions, he
15 was jointly liable for the \$700 sanction issued in December 2011.

16 22. Respondent asserts that if Mr. Malmberg had filed a motion to vacate the January 12,
17 2012 dismissal order within a reasonable period of time, that such motion would have been
18 granted.

19 23. ODC's position is that Respondent knowingly engaged in the conduct described
20 above. Respondent asserts that, because of her personal issues in 2011 and 2012, she acted
21 negligently. Nonetheless, the parties are willing to enter into this stipulation on the terms set
22 forth below.

1 **III. STIPULATION TO MISCONDUCT**

2 24. By failing to attend the telephonic conference in November 2011, failing to provide
3 discovery responses to Mr. Wenokur, or to respond to his initial discovery motion and his
4 Motion to Dismiss, and failing to take action to determine the status of the Adversary
5 Proceeding, Respondent violated RPC 1.3.

6 25. By failing to respond adequately to Mr. Malmberg's requests for information about
7 the status of the Adversary Proceeding, Respondent violated RPC 1.4.

8 26. By failing to promptly comply with the court's orders in the Adversary Proceeding
9 regarding sanctions and discovery, Respondent violated RPC 3.4(c) and RPC 8.4(j).

10 **IV. PRIOR DISCIPLINE**

11 27. In 2002, Respondent received a reprimand in Formal Proceedings No. 00#00242 and
12 01#00053, for violations of RPC 1.1, RPC 1.3, RPC 3.2, RPC 8.4(e), RPC 1.8(e) and RLD 2.8.

13 **V. APPLICATION OF ABA STANDARDS**

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

16 29. ABA Standard 4.4 is most applicable to cases involving a failure to act with
17 reasonable diligence and promptness in representing a client:

18 4.42 Suspension is generally appropriate when:

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

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

25 30. ABA Standard 6.2 is most applicable to a lawyer's failure to obey any obligation
under the rules of a tribunal:

1 6.22 Suspension is generally appropriate when a lawyer knows that he or she is
2 violating a court order or rule, and causes injury or potential injury to a client or
a party, or causes interference or potential interference with a legal proceeding.

3 6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply
4 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.

5 31. ODC asserts that the presumptive sanction is suspension based on a mental state of
6 knowledge. Respondent asserts that the presumptive sanction is reprimand based on a mental
7 state of negligence.

8 32. Regardless of Respondent's mental state in 2011 and 2012, ODC and Respondent
9 agree that the Respondent should receive a reprimand, based upon the aggravating and
10 mitigating factors set forth below.

11 33. The following aggravating factors apply under ABA Standard 9.22:

- 12 (a) prior disciplinary offenses;
- 13 (i) substantial experience in the practice of law.

14 34. The following mitigating factors apply under ABA Standard 9.32:

- 15 (c) personal or emotional problems (as set forth in Appendix A);
- 16 (k) imposition of other penalties and sanctions;
- 17 (l) remorse;
- 18 (m) remoteness of prior offenses.

19 35. It is an additional mitigating factor that Respondent has agreed to resolve this matter
20 at an early stage of the proceedings.

21 36. Based on the factors set forth above, Respondent should be reprimanded.

22 VI. STIPULATED DISCIPLINE

23 37. The parties stipulate that Respondent shall receive a reprimand for her conduct.

24 38. Respondent will be subject to probation for a period of one year beginning when

1 this stipulation receives final approval and shall comply with the specific probation terms set
2 forth in paragraphs 38-44 below.

3 39. Respondent's compliance with these conditions shall be monitored by the Probation
4 Administrator of the Office of Disciplinary Counsel ("Probation Administrator"). Failure to
5 comply with a condition of probation listed herein may be grounds for further disciplinary
6 action under ELC 13.8(b).

7 40. Respondent shall comply with all applicable federal and state laws.

8 41. Respondent shall not violate the RPC.

9 42. Practice Monitor

10 a) During the period of probation, Respondent's practice shall be supervised by a
11 practice monitor. The practice monitor must be a WSBA member with no record of
12 public discipline and who is not the subject of a pending public disciplinary
13 proceeding.

14 b) No later than 30 days after probation begins, Respondent shall provide to the
15 Probation Administrator, in writing, the name and contact information of a proposed
16 practice monitor, who must be approved by the Probation Administrator. If
17 Respondent fails to propose a practice monitor, or if the Probation Administrator
18 does not approve the proposed practice monitor, the Probation Administrator will
19 request that a practice monitor be appointed by the Chair of the Disciplinary Board.
20 *See* ELC 13.8(a)(2). Respondent shall cooperate with the appointed practice
21 monitor.

22 c) During the period of probation, Respondent shall meet with the practice monitor at
23 least once per month. At each meeting, the practice monitor will discuss with
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1 Respondent each of Respondent's client matters, the status of each client matter,
2 Respondent's communication with each client, upcoming deadlines, and
3 Respondent's intended course of action. Meetings may be in person or by telephone
4 at the practice monitor's discretion.

- 5 d) The practice monitor will provide the Probation Administrator with quarterly reports
6 regarding Respondent's performance on probation.
- 7 e) If the practice monitor believes that Respondent is not complying with any of her
8 ethical duties under the RPC or if Respondent fails to attend a monthly meeting, the
9 practice monitor shall promptly report that to the Probation Administrator.
- 10 f) Respondent shall be responsible for paying any and all fees, costs and/or expenses
11 charged by the practice monitor for supervision.

12 43. Ethics School

- 13 a) Respondent shall attend Ethics School (approximately six hours), tentatively
14 scheduled to be held April 8, 2016, and pay registration costs of \$150. Respondent
15 will receive all applicable approved CLE credits for time in attendance at the Ethics
16 School. Ethics School will be held at the Association's office or CLE Conference
17 Center.
- 18 b) Respondent shall not disclose the names or other identifying information of other
19 Ethics School attendees outside of Ethics School.
- 20 c) Respondent shall contact the Ethics School administrator, currently Thea Jennings,
21 at (206) 733-5985 or theaj@wsba.org, to confirm enrollment in Ethics School
22 within 30 days after the stipulation is approved.
- 23 d) Respondent may contact the Ethics School administrator directly to enroll in Ethics
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1 School and administrative communications, e.g. regarding registration, payment,
2 program content and schedule, and CLE credits, may be sent directly to Respondent.

3 e) The Ethics School administrator may respond to inquiries from the Probation
4 Administrator regarding Respondent's compliance with these conditions.

5 44. Respondent shall further comply with the conditions set forth in Appendix 1 to this
6 stipulation.

7 **VII. RESTITUTION**

8 45. An order of restitution is not appropriate.

9 **VIII. COSTS AND EXPENSES**

10 46. In light of Respondent's willingness to resolve this matter by stipulation at an early
11 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
12 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
13 if these costs are not paid within 30 days of approval of this stipulation.

14 **IX. VOLUNTARY AGREEMENT**

15 47. Respondent states that prior to entering into this Stipulation she has consulted
16 independent legal counsel regarding this Stipulation, that Respondent is entering into this
17 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
18 Association, nor by any representative thereof, to induce the Respondent to enter into this
19 Stipulation except as provided herein.

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

22 **X. LIMITATIONS**

23 49. This Stipulation is a compromise agreement intended to resolve this matter in
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1 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
2 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
3 and ODC acknowledge that the result after further proceedings in this matter might differ from
4 the result agreed to herein.

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

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

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

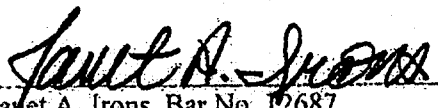
18 53. If this Stipulation is approved by the Hearing Officer, it will be followed by the
19 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
20 Enforcement of Lawyer Conduct will be made.

21 54. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
22 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
23 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
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1 or criminal action.

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

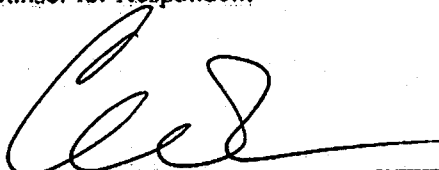
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Janet A. Irons, Bar No. 12687
Respondent

Dated: Nov. 10, 2015


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

Dated: 11/10/15


Erica Temple, Bar No. 28458
Disciplinary Counsel

Dated: 11/10/15