

FILED  
JAN 21 2014  
DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**DAVID A. GOICOECHEA,**  
Lawyer (Bar No. 15539).

Proceeding No. 13#00006

STIPULATION TO ONE-YEAR  
SUSPENSION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to One-Year Suspension is entered into by the Washington State Bar Association (Association) through Senior Disciplinary Counsel Scott G. Busby, by Respondent David A. Goicoechea, and by Respondent's counsel, Joseph P. Delay.

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, to 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

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 November  
4 26, 1985.

5 **II. STIPULATED FACTS**

6 2. In October 2007, Marcia Goicoechea filed a petition in the Spokane County Superior  
7 Court for the dissolution of her marriage to Respondent.

8 3. On November 15, 2007, the court entered a Temporary Order requiring Respondent  
9 to pay \$2,500 per month as spousal support and to disclose any settlement he might receive  
10 before January 8, 2008.

11 4. At a hearing on February 19, 2008, the court entered another Temporary Order  
12 requiring Respondent to continue paying \$2,500 per month as spousal maintenance "until  
13 further order," and to disclose all fees from his law practice, "including [an] expected recovery  
14 in May 2008."

15 5. Respondent disobeyed the court's February 19, 2008, order by failing to pay spousal  
16 maintenance and by failing to disclose fees from his law practice.

17 6. While the February 19, 2008, order was in effect, Respondent received a \$200,000  
18 legal fee that he failed to disclose to Ms. Goicoechea's lawyer.

19 7. Respondent maintains that although he he failed to disclose the \$200,000 to Ms.  
20 Goicoechea's lawyer, he did disclose it to his own lawyer.

21 8. By the time Ms. Goicoechea's lawyer discovered that Respondent had received the  
22 \$200,000 legal fee, Respondent had already spent most of it.

23 9. Respondent testified that he had not disclosed the fee because, in his view, "the fee,  
24

1 by itself, would have . . . given an inaccurate representation as to the gross versus net income in  
2 terms of what was owed on the business, taxes, that kind of thing, in terms of operating  
3 expenses.”

4 10. On February 9, 2009, the court issued an order requiring Respondent to appear and  
5 show cause why he should not be held in contempt of court for violating the court’s February  
6 19, 2008 Temporary Order.

7 11. In response, Respondent acknowledged that he had failed to disclose fees from his  
8 law practice and that he had failed to make at least two monthly spousal maintenance payments.  
9 He asked the court to impose “modest terms” for his failure to comply with the February 19,  
10 2008 Temporary Order and to “eliminate” his obligation to pay spousal maintenance, as well as  
11 his obligation to pay for Ms. Goicoechea’s medical insurance.

12 12. At a show cause hearing on March 19, 2009, the court ruled that Respondent was  
13 in contempt of court for violating the February 19, 2008 Temporary Order by failing to disclose  
14 the \$200,000 fee.

15 13. The court imposed a \$20,000 sanction of which \$15,000 was suspended on the  
16 condition that Respondent “fully comply” with all orders pending trial.

17 14. Also on March 19, 2009, the court issued an order requiring Respondent to appear  
18 and show cause why he should not be held in contempt of court for violating the February 19,  
19 2008 Temporary Order by failing to make timely spousal maintenance payments.

20 15. While the February 19, 2008, order was in effect, Respondent had failed to make  
21 timely spousal maintenance payments in November and December of 2008 even though he had  
22 sufficient funds to make at least some payment.

23 16. At a show cause hearing on April 9, 2009, the court ruled that Respondent was in  
24

1 contempt of court for violating the February 19, 2008 order by failing to make timely spousal  
2 maintenance payments.

3 17. The court ruled that Respondent could purge the contempt by his “[f]ull  
4 compliance with all orders through the time of trial.”

5 18. Subsequent to the March 19, 2009, and April 9, 2009, rulings, Respondent continued  
6 to disobey the court’s February 19, 2008, order by failing to make timely spousal maintenance  
7 payments.

8 19. In August 2009, Respondent informed Ms. Goicoechea, through their respective  
9 attorneys, that he had “shut down” his law practice.

10 20. The dissolution case went to trial in December 2009 and January 2010.

11 21. On January 7, 2010, the court issued an order requiring Respondent to appear and  
12 show cause why he should not be held in contempt of court for violating the February 19, 2008,  
13 order by failing to make spousal maintenance payments.

14 22. While the February 19, 2008, order was in effect, Respondent had failed to make  
15 timely spousal maintenance payments in February, March, April, and August of 2009 even  
16 though he had sufficient funds to make at least some payment.

17 23. On April 16, 2010, the court entered Findings of Fact and Conclusions of Law, a  
18 Decree of Dissolution, and an Order on Show Cause re Contempt.

19 24. In its April 16, 2010, Findings of Fact and Conclusions of Law, and in the Decree of  
20 Dissolution, the court ordered Respondent to pay \$2,500 per month in spousal maintenance and  
21 to pay for Ms. Goicoechea’s medical insurance.

22 25. In the April 16, 2010, Order on Show Cause re Contempt, the court ruled that  
23 Respondent was in contempt of court yet again for violating the February 19, 2008 order by  
24

1 failing to make timely spousal maintenance payments.

2 26. The court ordered Respondent to pay \$5,000 as a sanction in addition to the spousal  
3 maintenance due, and ruled that Respondent could purge the contempt by his “[f]ull  
4 compliance” with the maintenance order contained in the Decree of Dissolution.

5 27. Subsequent to the April 16, 2010, Decree and Order, Respondent disobeyed the  
6 Decree of Dissolution by failing to make timely spousal maintenance payments.

7 28. On July 2, 2010, the court issued an order requiring Respondent to appear and show  
8 cause why he should not be held in contempt of court for violating the Decree of Dissolution by  
9 failing to make timely spousal maintenance payments.

10 29. Respondent had had failed to make any spousal maintenance payment, not even a  
11 partial payment, since the Decree of Dissolution was entered.

12 30. At a show cause hearing on August 31, 2010, the court ruled that Respondent was in  
13 contempt of court for violating the April 16, 2010, Decree of Dissolution by failing to make  
14 spousal maintenance payments.

15 31. The court ordered Respondent to serve seven days in jail unless he paid \$1,000 by  
16 September 14, 2010.

17 32. The court ruled that Respondent could purge the contempt by paying future  
18 maintenance as ordered. A contempt review hearing was set for September 21, 2010.

19 33. Respondent paid \$1,000 on September 9, 2010, and thereby avoided a seven-day jail  
20 term. He paid an additional \$200 on September 20, 2010, one day before the contempt review  
21 hearing.

22 34. At the September 21, 2010 contempt review hearing, the court entered judgment  
23 against Respondent for \$25,163 in unpaid spousal maintenance, \$1,528 in unpaid medical  
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1 insurance premiums, and \$2,736 in attorney fees.

2 35. The court suspended the seven-day jail term and ruled that Respondent could purge  
3 the contempt by paying Ms. Goicoechea \$256.50 per week and by actively seeking suitable  
4 employment. Contempt review hearings were set for November 9, 2010, and February 8, 2011.

5 36. Subsequent to the August 31, 2010, and September 21, 2010, hearings, Respondent  
6 continued to disobey the Decree of Dissolution and the court's subsequent orders by failing to  
7 pay spousal maintenance and by failing to make good faith efforts to seek suitable employment.

8 37. At the February 8, 2011 contempt review hearing, the court ruled that Respondent  
9 had failed to comply with the court's prior orders, both by failing to pay spousal maintenance  
10 and by failing to make good faith efforts to seek suitable employment.

11 38. The court ordered Respondent to serve seven days in jail unless he paid \$2,000 by  
12 5:00 p.m. that day. A review hearing was set for March 8, 2011.

13 39. Respondent paid \$2,000 that day, and thereby avoided jail time again.

14 40. Subsequent to the February 8, 2011, contempt review hearing, Respondent continued  
15 to disobey the Decree of Dissolution and the court's subsequent orders by failing to pay spousal  
16 maintenance and by failing to make good faith efforts to seek suitable employment.

17 41. On February 25, 2011, Respondent filed a "Notice and Declaration of  
18 Unavailability" in which he stated that on the date of the upcoming contempt review hearing,  
19 from which he had not been excused, he would no longer reside in the State of Washington and  
20 would be "travelling to or potentially may have arrived at a temporary out of state location" that  
21 he did not disclose.

22 42. Respondent failed to attend the March 8, 2011 contempt review hearing and all  
23 further proceedings.

1 43. Respondent left the State of Washington to avoid the court's jurisdiction and to  
2 avoid complying with the court's orders.

3 44. At the March 8, 2011, contempt review hearing, the court ruled that Respondent had  
4 failed to comply with the Decree of Dissolution, the August 31, 2010, Order on Contempt, the  
5 September 21, 2010, Order on Contempt Review, and the February 8, 2011, Order on Contempt  
6 Review.

7 45. The court ordered Respondent to serve seven days in jail beginning on March 16,  
8 2011, unless he paid \$2,500 by March 15, 2011. A contempt review hearing was set for May 3,  
9 2011.

10 46. Respondent failed to make any payment and failed to report to jail as ordered.

11 47. Respondent failed to attend the May 3, 2011, contempt review hearing.

12 48. Respondent has failed to make any maintenance payments and failed to otherwise  
13 comply with court orders since he paid \$2,000 to avoid jail time on February 8, 2011.

### 14 III. STIPULATION TO MISCONDUCT

15 49. By failing to disclose a legal fee in violation of the court's February 19, 2008, order,  
16 Respondent violated RPC 8.4(c).

17 50. By violating court orders, Respondent violated RPC 3.4(c) and 8.4(j).

18 51. By absenting himself from judicial proceedings, by leaving the jurisdiction, and by  
19 failing to comply with judicial orders, Respondent violated RPC 8.4(d).

### 20 IV. PRIOR DISCIPLINE

21 52. Respondent has no prior disciplinary record.

### 22 V. APPLICATION OF ABA STANDARDS

23 53. The following American Bar Association Standards for Imposing Lawyer Sanctions  
24

1 (1991 ed. & Feb. 1992 Supp.) apply to this case:

2 **5.1 Failure to Maintain Personal Integrity**

\* \* \* \* \*

3 5.11 Disbarment is generally appropriate when:

4 (a) a lawyer engages in serious criminal conduct, a necessary  
5 element of which includes intentional interference with the  
6 administration of justice, false swearing,  
7 misrepresentation, fraud, extortion, misappropriation, or  
8 theft; or the sale, distribution or importation of controlled  
9 substances; or the intentional killing of another; or an  
10 attempt or conspiracy or solicitation of another to commit  
11 any of these offenses; or

12 (b) a lawyer engages in any other intentional conduct  
13 involving dishonesty, fraud, deceit, or misrepresentation  
14 that seriously adversely reflects on the lawyer's fitness to  
15 practice.

16 5.12 Suspension is generally appropriate when a lawyer knowingly  
17 engages in criminal conduct which does not contain the elements  
18 listed in Standard 5.11 and that seriously adversely reflects on the  
19 lawyer's fitness to practice.

20 **5.13 Reprimand is generally appropriate when a lawyer knowingly  
21 engages in any other conduct that involves dishonesty, fraud,  
22 deceit, or misrepresentation and that adversely reflects on the  
23 lawyer's fitness to practice law.**

24 5.14 Admonition is generally appropriate when a lawyer engages in  
any other conduct that reflects adversely on the lawyer's fitness to  
practice law.

**6.2 Abuse of the Legal Process**

\* \* \* \* \*

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

6.22 **Suspension is generally appropriate when a lawyer knows that  
he or she is 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.**

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

6.24 Admonition is generally appropriate when a lawyer engages in an  
isolated instance of negligence in complying with a court order or



1 rule, and causes little or no actual or potential injury to a party, or  
2 causes little or no actual or potential interference with a legal  
proceeding.

3 54. In failing to disclose a legal fee in violation of the court's February 19, 2008, order,  
4 Respondent knowingly engaged in conduct involving misrepresentation that adversely reflects  
5 on his fitness to practice law.

6 55. The presumptive sanction for Respondent's violation of RPC 8.4(c) is reprimand  
7 under ABA Standards section 5.13.

8 56. In violating court orders, absenting himself from judicial proceedings, leaving the  
9 jurisdiction, and failing to comply with judicial orders, Respondent acted knowingly and caused  
10 injury to a party and interference with a legal proceeding.

11 57. The presumptive sanction for Respondent's violations of RPC 3.4(c), RPC 8.4(j),  
12 and RPC 8.4(d) is suspension under ABA Standards section 6.22.

13 58. The following aggravating factors apply under ABA Standards Section 9.22:

- 14 (d) multiple offenses;
- 15 (i) substantial experience in the practice of law.

16 59. The following mitigating factor applies under ABA Standards Section 9.32:

- 17 (a) absence of a prior disciplinary record;
- 18 (c) personal, emotional, and financial problems; Respondent lacked sufficient  
19 funds to fully comply with his financial obligations.

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

22 61. On balance, the aggravating and mitigating factors do not require a departure from  
23 the presumptive sanction.

## 24 VI. STIPULATED DISCIPLINE

62. The parties stipulate that Respondent will receive a one-year suspension for his

1 conduct.

2 **VII. COSTS AND EXPENSES**

3 63. In light of Respondent's willingness to resolve this matter by stipulation at an early  
4 stage of the proceedings, Respondent will pay costs and expenses of \$1,000 in accordance with  
5 ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs and  
6 expenses are not paid within 90 days of the approval of this stipulation. Reinstatement from  
7 suspension is conditioned on payment of costs and expenses as provided in ELC 13.3(b) and  
8 13.9(i).

9 **VIII. VOLUNTARY AGREEMENT**

10 64. Respondent states that prior to entering into this Stipulation he has consulted  
11 independent legal counsel regarding this Stipulation, that he is entering into this Stipulation  
12 voluntarily, and that no promises or threats have been made by the Association or by any  
13 representative thereof to induce Respondent to enter into this Stipulation, except as provided  
14 herein.

15 **IX. LIMITATIONS**

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

21 66. This Stipulation is not binding upon the Association or Respondent as a statement of  
22 all existing facts relating to the professional conduct of Respondent, and any additional existing  
23 facts may be proven in any subsequent disciplinary proceedings.

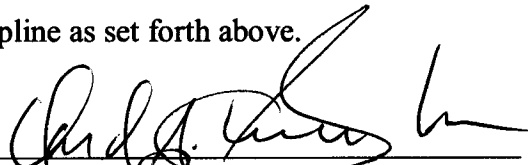
1           67. This Stipulation results from the consideration of various factors by both parties,  
2 including the benefits to both of promptly resolving this matter without the time and expense of  
3 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
4 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  
7 Stipulation.

8           68. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
9 Board will have available to it for consideration all documents that the parties agree to submit to  
10 the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that form  
11 the record before the Board for its review become public information on approval of the  
12 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

13           69. If this Stipulation is approved by the Disciplinary Board and the Supreme Court, it  
14 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in  
15 the Rules for Enforcement of Lawyer Conduct will be made.

16           70. If this Stipulation is not approved by the Disciplinary Board and the Supreme Court,  
17 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be  
18 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
19 proceeding, or in any civil or criminal action.  
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21  
22  
23  
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1           WHEREFORE the undersigned, being fully advised, adopt and agree to this Stipulation  
2 to Discipline as set forth above.

3   
4 \_\_\_\_\_  
5 David A. Goicoechea, Bar No. 15539  
6 Respondent

Dated: October 11, 2013

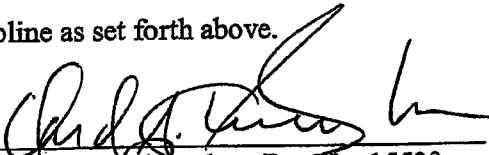
7 \_\_\_\_\_  
8 Joseph P. Delay, Bar No. 2044  
9 Counsel for Respondent

Dated: \_\_\_\_\_

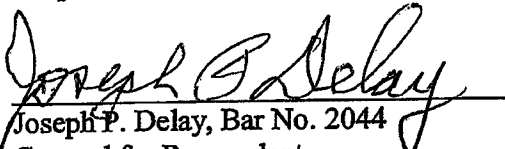
10 \_\_\_\_\_  
11 Scott G. Busby, Bar No. 17522  
12 Senior Disciplinary Counsel

Dated: \_\_\_\_\_


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3   
4 David A. Goicoechea, Bar No. 15539  
5 Respondent

Dated: October 11, 2013

6   
7 Joseph P. Delay, Bar No. 2044  
8 Counsel for Respondent

Dated: 10-21-13

9   
10 Scott G. Busby, Bar No. 17522  
11 Senior Disciplinary Counsel

Dated: 10-22-13