

**FILED**  
OCT 21 2014  
**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**NEIL T. JORGENSEN,**

Lawyer (Bar No. 17008).

Proceeding No. 13#00108

STIPULATION TO REPRIMAND

Under Rule 9.1 of the 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 Joanne S. Abelson, Respondent's Counsel Dayna E. Underhill, and Respondent lawyer Neil T. Jorgenson.

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 Stipulation to Reprimand

*mw*

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
2 avoid the risk, time, and expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on June 15,  
5 1987 and in the State of Oregon on December 22, 1972.

6 **II. STIPULATED FACTS**

7 2. Oma Mustain<sup>1</sup> died on December 4, 2011. Her will and codicil named her sons,  
8 Rick and Terry, as heirs and personal representatives.

9 3. Rick resides in Oklahoma but came to the Vancouver, Washington area, where Oma  
10 resided, in November 2011 to assist with her care.

11 4. Terry, who died in October 2013, resided in Vancouver. He had diminished  
12 capacity. His wife, Irene, had a power of attorney for him.

13 5. A few days before Oma died, Rick hired Respondent to look into a guardianship for  
14 his mother.

15 6. After Oma died, Rick hired Respondent to represent him as personal representative  
16 (PR). Respondent filed the paperwork to have Rick appointed.

17 7. Terry and Irene, through their counsel, advised Respondent of their concerns that  
18 Rick had taken unauthorized funds from Oma and/or the estate and objected to Rick's  
19 appointment as PR without a bond.

20 8. Respondent was unable to obtain a bond for Rick.

21 9. Eventually, Respondent and counsel for Terry and Irene agreed that Respondent  
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23 <sup>1</sup> Since the family members share the surname Mustain, we refer to them by their first names to avoid  
confusion. No disrespect is intended.

1 would become PR.

2 10. On December 30, 2011, the court entered a stipulated order admitting the will and  
3 codicil to probate and appointing Respondent as PR with nonintervention powers.

4 11. By virtue of this appointment, Respondent also became attorney for the PR.

5 12. Respondent has not worked diligently to close the Mustain estate.

6 13. In April 2012, Respondent filed an inventory listing the assets at approximately  
7 \$270,000.

8 14. In August 2012, Irene filed a grievance complaining about Respondent's failure to  
9 finalize the estates and, through counsel, has repeatedly brought her concerns to Respondent's  
10 attention.

11 15. The estate consisted primarily of stocks and Oma's house, which Respondent sold in  
12 or about September 2012.

13 16. Respondent's office prepared a draft final report in November 2012, but it was  
14 incomplete and was not filed.

15 17. Respondent filed the final report and petition for decree of final distribution on  
16 February 24, 2014. The heirs were to receive approximately \$90,000 each.

17 18. In March 2014, Respondent made a preliminary partial distribution to Irene and to  
18 Rick of \$33,000 each.

### 19 **III. STIPULATION TO MISCONDUCT**

20 19. By failing to pursue closure of the estate diligently, Respondent violated RPC 1.3  
21 and RPC 3.2.

### 22 **IV. PRIOR DISCIPLINE**

23 20. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 21. The following American Bar Association Standards for Imposing Lawyer Sanctions  
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 Standard 4.4 -- Lack of Diligence

- 5 4.41 Disbarment is generally appropriate when:  
6 (a) a lawyer abandons the practice and causes serious or potentially serious  
7 injury to a client; or  
8 (b) a lawyer knowingly fails to perform services for a client and causes  
9 serious or potentially serious injury to a client; or  
10 (c) a lawyer engages in a pattern of neglect with respect to client matters and  
11 causes serious or potentially serious injury to a client.  
12 4.42 Suspension is generally appropriate when:  
13 (a) a lawyer knowingly fails to perform services for a client and causes  
14 injury or potential injury to a client, or  
15 (b) a lawyer engages in a pattern of neglect and causes injury or potential  
16 injury to a client.  
17 4.43 Reprimand is generally appropriate when a lawyer is negligent and does not act  
18 with reasonable diligence in representing a client, and causes injury or potential  
19 injury to a client.  
20 4.44 Admonition is generally appropriate when a lawyer is negligent and does not act  
21 with reasonable diligence in representing a client, and causes little or no actual or  
22 potential injury to a client.

23 22. Respondent initially acted negligently, but over time acted knowingly.

24 23. The heirs suffered financial injury from the delay in closing the estate, and Irene was  
upset and frustrated by Respondent's handling of the matter.

25 24. The presumptive sanction is suspension under Standard 4.42(a).

26 25. The following aggravating factor applies under ABA Standard 9.22:

- 27 (i) substantial experience in the practice of law.

28 26. The following mitigating factors apply under ABA Standard 9.32:

- 29 (a) absence of a prior disciplinary record;  
30 (b) absence of a dishonest or selfish motive.

31 27. It is an additional mitigating factor that Respondent has agreed to resolve this matter

1 at an early stage of the proceedings.

2 28. On balance, the presumptive sanction should be mitigated to a reprimand, based  
3 primarily on Respondent's 42 years of practice without prior discipline.

#### 4 VI. STIPULATED DISCIPLINE

5 29. The parties stipulate that Respondent shall receive a reprimand.

6 30. Respondent will be subject to probation for a period of two years beginning when  
7 this stipulation receives final approval and shall comply with the specific probation terms set  
8 forth below. Respondent's compliance with these conditions shall be monitored by ODC's  
9 Probation Administrator ("Probation Administrator"). Failure to comply with a condition of  
10 probation listed herein may be grounds for further disciplinary action under ELC 13.8(b).

11 31. During the probationary period, Respondent shall complete a minimum of 15 credit  
12 hours of continuing legal education courses, at Respondent's own expense, in the areas of  
13 conflicts of interest. CLE hours may be earned in Washington or Oregon.

14 32. Respondent shall provide evidence of attendance at such courses to the Probation  
15 Administrator no later than 30 days after the conclusion of the course. Proof of attendance shall  
16 include the program brochure, evidence of payment, and a written statement that includes the  
17 date and time of attendance.

18 33. Respondent shall attend Ethics School (approximately six hours) during the term of  
19 probation and pay registration costs of \$150. Respondent will receive all applicable approved  
20 CLE credits for time in attendance at the Ethics School. Ethics School will be held at the  
21 Association's office or CLE Conference Center.

22 34. Attendance at Ethics School is in addition to and shall not fulfill any continuing legal  
23 education (CLE) requirements set out in this stipulation.

1 35. Respondent shall not disclose the names or other identifying information of other  
2 Ethics School attendees outside of Ethics School.

3 36. Respondent shall contact the Ethics School administrator, currently Senior  
4 Disciplinary Counsel Marsha Matsumoto, at (206) 727-8233 or [marsham@wsba.org](mailto:marsham@wsba.org), within 30  
5 days of the date this stipulation is approved.

6 37. Respondent may contact the Ethics School administrator directly to enroll in Ethics  
7 School and administrative communications, e.g. regarding registration, payment, program  
8 content and schedule, and CLE credits, may be sent directly to Respondent.

9 38. The Ethics School administrator may respond to inquiries from the Probation  
10 Administrator regarding Respondent's compliance with these conditions.

11 39. During the probation term, Respondent shall petition the court to approve his fees in  
12 all probate cases, including nonintervention cases.

13 40. At the time that this Stipulation is signed the estate in In the Matter of the Estate of  
14 Oma Mustain, Clark County Superior Court No. 11-4-00880-1, is not yet closed due to an error  
15 in the final distribution of funds. Both heirs have been paid, but one heir remains indebted to  
16 the estate due to an overpayment. The parties have entered into an agreement to address the  
17 overpayment, but that agreement is expected to prevent the closing of the estate for  
18 approximately seven months. Respondent shall act diligently to close the estate during the  
19 probation period. In the event circumstances arise that prevent a closing order from being  
20 entered by the court within 18 months from approval of this stipulation, Respondent will  
21 provide a report to ODC with an explanation as to what actions he has taken to close the estate  
22 and why it has not closed.

1 **VII. RESTITUTION**

2 41. Within 30 days of the date this stipulation is approved, Respondent shall pay Irene,  
3 through her counsel, \$337.50 to reimburse her for legal fees incurred by Respondent's failure to  
4 attend the hearing set for May 2, 2014.

5 **VIII. COSTS AND EXPENSES**

6 42. In light of Respondent's willingness to resolve this matter by stipulation at an early  
7 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$500 in  
8 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)  
9 if these costs are not paid within 30 days of approval of this stipulation.

10 **IX. VOLUNTARY AGREEMENT**

11 43. Respondent states that prior to entering into this Stipulation he has consulted  
12 independent legal counsel regarding this Stipulation, that Respondent is entering into this  
13 Stipulation voluntarily, and that no promises or threats have been made by ODC, the  
14 Association, nor by any representative thereof, to induce the Respondent to enter into this  
15 Stipulation except as provided herein.

16 **X. LIMITATIONS**

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

22 45. This Stipulation is not binding upon ODC or the respondent as a statement of all  
23 existing facts relating to the professional conduct of the respondent lawyer, and any additional

1 existing facts may be proven in any subsequent disciplinary proceedings.

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

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

12 48. If this Stipulation is approved by the Hearing Officer, it will be followed by the  
13 disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
14 Enforcement of Lawyer Conduct will be made.

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

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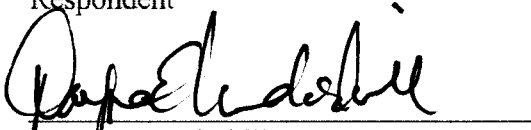
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1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
2 to Reprimand as set forth above.

3   
4 Neil T. Jorgenson, Bar No. 17008  
5 Respondent

Dated: 12.8.2014

6   
7 Dayna E. Underhill, Bar No. 25677  
8 Counsel for Respondent

Dated: Dec 13, 2014

9 \_\_\_\_\_  
10 Joanne S. Abelson, Bar No. 24877  
11 Senior Disciplinary Counsel

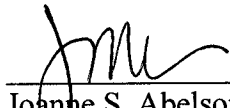
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WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
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Neil T. Jorgenson, Bar No. 17008  
Respondent  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Dayna E. Underhill, Bar No. 25677  
Counsel for Respondent  
Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Joanne S. Abelson, Bar No. 24877  
Senior Disciplinary Counsel  
Dated: 10/13/14