

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

JAN 31 2013

DISCIPLINARY BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**JOHN G. GISSBERG,**  
Lawyer (Bar No. 19677).

Proceeding No. ~~12#~~ 17#00003 <sup>A.S.</sup>

(WSBA File Nos. 11-00979)

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 Washington State Bar Association (Association), through disciplinary counsel Linda B. Eide and Respondent lawyer John G. Gissberg.

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

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

2 | **I. ADMISSION TO PRACTICE**

3 | 1. Respondent was first admitted to practice law in Alaska and Michigan in 1971. In  
4 | June 1990, Washington State admitted him to practice here.

5 | **II. STIPULATED FACTS**

6 | 2. The Gissberg/Van Sickle Connection. Seattle lawyer Gissberg met Troy Van Sickle  
7 | in 2010, after Van Sickle told fellow inmate and Gissberg friend, Jason Knuth, that he could  
8 | help with Knuth's case. Van Sickle was incarcerated based on allegations that he willfully  
9 | failed to meet criminal restitution obligations. Van Sickle had prior felony convictions for theft,  
10 | perjury and extortion. Van Sickle persuaded Gissberg to take his case, stating that if he was  
11 | released, he would try to locate a witness in Knuth's case. Gissberg represented Van Sickle and  
12 | secured Van Sickle's release. Van Sickle received a few thousand dollars from a Knuth  
13 | supporter, but he never produced the witness.

14 | 3. On December 15, 2010, Gissberg and Van Sickle signed a Personal Services  
15 | Contract for Van Sickle to serve as an independent contractor providing services to Gissberg  
16 | clients. In the contract, Gissberg described himself as someone who, since 1996 had  
17 | "represented Japanese clients who have been wrongly accused, overlooked and/or discriminated  
18 | [against]...." Van Sickle described himself as someone who had "risked his life and  
19 | jeopardized his personal and professional life and been relied on by authorities in numerous  
20 | multistate investigations of a highly confidential nature."

21 | 4. The Oregon Death. In June 2008, hotel employees found a young woman's body in  
22 | her hotel room. In October 2008, police officials reviewed the evidence with the victim's  
23 | father, Japanese citizen and permanent U.S. resident Yoshihiro Osako. In November 2008 final  
24 |

1 reports, the Portland Oregon Police Department and the Multnomah County Medical Examiner  
2 concluded the young woman's death was a suicide.

3 5. Osako wanted further investigation. In November 2010, he consulted Gissberg after  
4 seeing an advertisement for Gissberg in a Japanese language directory. Gissberg speaks  
5 Japanese and frequently travels to Japan on business. Gissberg is not admitted in Oregon. He  
6 urged Osako to obtain Oregon counsel because Osako believed Oregon's two-year statute of  
7 limitations for negligence actions would soon expire (or had already expired if it began to run  
8 from the date of death, rather than the date of the final police report).

9 6. Osako's friend, Linda Warren, traveled with him to Oregon. They could not find a  
10 lawyer willing to take the case without a substantial advance. On November 23, 2010, Osako,  
11 with Warren's help, filed a pro se complaint against the hotel in federal court. Osako v. Crowne  
12 Plaza Hotel, U.S. District Court (Portland) No. 10-01446. It alleged that the hotel caused the  
13 Osako family distress by negligently failing to enter the daughter's hotel room and discover her  
14 body until three days after her check-out time. Also, it alleged that hotel employees discarded  
15 evidence or made misrepresentations to investigators that led police to erroneously conclude  
16 that the daughter died by her own hand.

17 7. Despite the police and medical examiner findings, Osako could not believe that his  
18 daughter had killed herself. He sought another explanation.

19 8. Gissberg introduced Warren and Osako to Troy Van Sickle. Van Sickle persuaded  
20 Warren, Osako, and Gissberg that if they provided him with sufficient funds, he could obtain  
21 evidence to advance the case against the Oregon hotel. Gissberg, Warren, and Osako believed  
22 that their "investment" in such evidence would be reimbursed when the Oregon case settled.  
23 Gissberg estimated settlement at \$1M or more.

1 9. Gissberg informed Osako and Warren that he had a lawyer discipline history and  
2 Van Sickle had a criminal history. But he persuaded Warren and Osako that in Gissberg's case,  
3 "poor bookkeeping" was to blame and that in Van Sickle's case, he had been the victim of  
4 malicious prosecution, as few, if any, others had been incarcerated for so long for failure to  
5 make restitution.

6 10. Van Sickle told Warren, Osako and Gissberg that he had a friend who could retrieve  
7 text messages from the daughter's cellular telephone. He produced a printout of such alleged  
8 messages. He claimed the text messages led to a "producer". Van Sickle offered to meet with  
9 the "producer". Later, Van Sickle said the "producer" was a porn king who would sell evidence  
10 to Van Sickle showing that Osako's daughter, and a dozen other young women, had been lured  
11 to the Portland hotel for job interviews and then became the subjects/victims of a sex snuff  
12 video. The evidence indicates that Gissberg, "believed the additional videos would expedite a  
13 quick settlement [with the Portland hotel]...." Today, Gissberg believes that Van Sickle made  
14 up the text messages.

15 11. During the first quarter of 2011, Osako, Warren and Gissberg each provided \$10,000  
16 or more in cash to Van Sickle to purchase the video evidence. When Warren and others pushed  
17 for the "evidence," Van Sickle delivered a couple hard drives, allegedly containing the video  
18 evidence. Van Sickle claimed "the porn king/Producer" wanted an additional \$40,000 for the  
19 password that allowed access to the contents.

20 12. Later, Warren and Osako asked two different computer consultants to review the  
21 hard drives. They discovered the hard drives were blank. As one of the technicians told them:  
22 "You've been scammed."

23 13. On or after April 5, 2011, Van Sickle abandoned the apartment where Gissberg had  
24

1 paid his rent, and Gissberg notified the apartment manager that he had made his last rent  
2 payment for Van Sickle, and he considered his guarantee ended.

3 14. The Litigation. Meanwhile, in Oregon, on December 13, 2010, the federal court  
4 appointed a local lawyer to represent Osako. The hotel moved to dismiss. A Magistrate Judge  
5 recommended dismissal. Osako objected through counsel, and sought leave to amend his  
6 complaint. On August 22, 2011, the court ruled such amendment would be futile, because even  
7 if Osako could prove a cover-up or other tortious conduct by hotel employees, the hotel would  
8 not be vicariously liable for such actions, as the alleged misconduct was clearly outside the  
9 scope of their employment. The court, with some modifications, adopted the Magistrate  
10 Judge's decision and dismissed the case with prejudice.

11 15. Gissberg urged Osako to appeal the dismissal to the Ninth Circuit, and offered to do  
12 the appeal. While not admitted in Oregon, Gissberg is admitted before the appellate court.  
13 Osako did not accept the offer.

### 14 III. STIPULATION TO MISCONDUCT

15 16. Gissberg associated with Van Sickle as an independent contractor, and introduced  
16 Osako and Warren to Van Sickle, but he did not take adequate steps to ensure that Van Sickle's  
17 conduct complied with the RPC, thus violating RPC 5.3 (Responsibilities Regarding Nonlawyer  
18 Assistants).

### 19 IV. PRIOR DISCIPLINE

20 17. Effective April 30, 2009, Gissberg was suspended for nine months for trust account  
21 violations following a default hearing.

### 22 V. APPLICATION OF ABA STANDARDS

23 18. American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. &  
24

1 Feb. 1992 Supp.) Section 7.0 applies to Gissberg's failure to supervise Van Sickle. It provides:

2 **7.0 Violations of Duties Owed as a Professional**

3 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in  
4 conduct that is a violation of a duty owed as a professional with the intent to  
5 obtain a benefit for the lawyer or another, and causes serious or potentially  
6 serious injury to a client, the public, or the legal system.

7 7.2 Suspension is generally appropriate when a lawyer knowingly engages in  
8 conduct that is a violation of a duty owed as a professional and causes injury or  
9 potential injury to a client, the public, or the legal system.

10 7.3 Reprimand is generally appropriate when a lawyer negligently engages in  
11 conduct that is a violation of a duty owed as a professional and causes injury or  
12 potential injury to a client, the public, or the legal system.

13 7.4 Admonition is generally appropriate when a lawyer engages in an isolated  
14 instance of negligence that is a violation of a duty owed as a professional, and  
15 causes little or no actual or potential injury to a client, the public, or the legal  
16 system.

17 19. Gissberg acted negligently as defined in the ABA Standards. Throughout the  
18 Association's investigation he maintained that the daughter's death needed further investigation  
19 based on unexplained gaps in the Oregon investigation and fueled by his firmly held belief that  
20 Japanese nationals could be the victims of discrimination in police investigations. Until April or  
21 May 2011, when it became apparent that Van Sickle could not deliver the promised "evidence,"  
22 he believed that Van Sickle would help prove the daughter had been murdered, and he had  
23 invested his own money or borrowed from others to support that misguided <sup>trust a</sup> belief. Use  
of

24 20. Gissberg's failure to follow the RPC caused actual injury in that Warren and Osako  
lost money to Van Sickle. Gissberg lost money, too.

21 21. The presumptive sanction is reprimand under ABA Standard 7.0 for the RPC 5.3  
22 violation (failure to ensure that nonlawyer associated with lawyer follows the RPC).

23 22. The following aggravating factors apply under ABA Standards Section 9.22:

24 (a) prior discipline (2009 suspension for trust account violations); and

(b) substantial experience in the practice of law (first admitted 1971).

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

1 (e) cooperative attitude (in that Gissberg agreed to resolve this matter at an early  
2 stage of the proceedings).

3 24. Weighing the aggravating and mitigating factors and given that the prior misconduct  
4 is unrelated to what happened here, there is no reason to depart from the presumptive sanction  
5 of reprimand.

6 **STIPULATED DISCIPLINE**

7 25. Gissberg stipulates to a Reprimand.

8 **VI. RESTITUTION**

9 26. It does not appear that Gissberg should be required to pay restitution. Gissberg  
10 received no fees. Moreover, Gissberg obtained no financial benefit from Van Sickle's  
11 activities. Indeed, it appears that Gissberg lost some of his own funds to Van Sickle.

12 **VII. COSTS AND EXPENSES**

13 27. In light of Respondent's willingness to resolve this matter by stipulation at an early  
14 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of <sup>500</sup>~~750~~ in  
15 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)  
16 if these costs are not paid within 30 days of approval of this stipulation.

17 **VIII. VOLUNTARY AGREEMENT**

18 28. Respondent states that prior to entering into this Stipulation he had an opportunity to  
19 consult independent legal counsel regarding this Stipulation, that Respondent is entering into  
20 this Stipulation voluntarily, and that no promises or threats have been made by the Association,  
21 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except  
22 as provided herein.

1 **IX. LIMITATIONS**

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

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

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

17 32. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary  
18 Board shall have available to it for consideration all documents that the parties agree to submit  
19 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that  
20 form the record before the Board for its review become public information on approval of the  
21 Stipulation by the Board, unless disclosure is restricted by order or rule of law.


22 33. If this Stipulation is approved by the Disciplinary Board, it will be followed by the  
23 disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
24




1 Enforcement of Lawyer Conduct will be made.

2 34. If this Stipulation is not approved by the Disciplinary Board, this Stipulation will  
3 have no force or effect, and neither it nor the fact of its execution will be admissible as evidence  
4 in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any  
5 civil or criminal action.

6 WHEREFORE the undersigned being fully advised, adopt and agree to the facts and  
7 terms of this Stipulation to Discipline as set forth above.

8  
9   
\_\_\_\_\_  
John G. Gissberg, Bar No. 19677  
Respondent

Dated: November 9, 2012

10  
11   
\_\_\_\_\_  
Linda B. Eide, Bar No. 10637  
Senior Disciplinary Counsel

Dated: NOV. 9, 2012