

FILED
FEB 24 2015
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MICHAEL JOHN GAINER,
Lawyer (Bar No. 20219).

Proceeding No. *15#00017*

STIPULATION TO ADMONITION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Admonition is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Debra Slater and Respondent lawyer Michael John Gainer.

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

Stipulation to Discipline
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OFFICE OF DISCIPLINARY COUNSEL
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1 avoid the risk, time, 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 20, 1990.

5 **II. STIPULATED FACTS**

6 2. On June 5, 2013, Timothy Waggoner hired Respondent to modify a parenting plan to
7 change the primary custodial residence of his daughter. Respondent advised Mr. Waggoner that
8 such a change requires a substantial change in circumstances and that Mr. Waggoner did not
9 have sufficient proof to support a change in custody at that time.

10 3. Respondent advised Mr. Waggoner that they should evaluate the situation in the fall.

11 4. Respondent also told Mr. Waggoner that he would not be able to do much work on
12 his case over the summer because of other commitments.

13 5. Mr. Waggoner paid an advance fee deposit of \$2,000.

14 6. Respondent communicated with Mr. Waggoner on October 3, 2013 about the case.
15 Thereafter, over the next several months, Mr. Waggoner attempted to contact Respondent
16 numerous times, seeking information about the status of his case.

17 7. Respondent failed to timely respond to Mr. Waggoner's requests for information.

18 8. On November 14, 2013, Respondent sent Mr. Waggoner a proposed parenting plan
19 and asked him to review it and provide corrections.

20 9. Mr. Waggoner returned the parenting plan on November 19, 2013.

21 10. Respondent did not timely pursue modification of the parenting plan.

22 11. Respondent did not promptly respond to Mr. Waggoner's requests for information
23 about his case.

1 12. During November and December 2013, Respondent experienced personal family
2 medical issues.

3 13. On January 24, 2014, Mr. Waggoner terminated the representation.

4 14. On January 28, 2014, Respondent refunded the \$2,000 Mr. Waggoner had paid.

5 III. STIPULATION TO MISCONDUCT

6 15. By failing to promptly respond to Mr. Waggoner's requests for information about his
7 case, Respondent violated RPC 1.4(a)(4).

8 16. By failing to diligently represent Mr. Waggoner, Respondent violated RPC 1.3.

9 IV. PRIOR DISCIPLINE

10 17. Respondent received an admonition on July 5, 2013 for failing to provide a written
11 accounting to his client, in violation of RPC 1.15A(c), and for failing to comply with his client's
12 requests for information, in violation of RPC 1.4.

13 V. APPLICATION OF ABA STANDARDS

14 18. ABA Standards 4.4 applies to this case, a copy of which is attached hereto.

15 19. Respondent acted negligently.

16 20. There was injury to Mr. Waggoner. The modification of the parenting plan was
17 delayed because of Respondent's inaction. Mr. Waggoner experienced unnecessary stress as a
18 result of his inability to obtain information about his case.

19 21. The presumptive sanction is admonition.

20 22. The following aggravating factors apply under ABA Standard 9.22:

21 (a) Prior disciplinary offenses--Respondent received an admonition in
22 2013;

22 (b) Substantial experience in the practice of law--Respondent was
23 admitted in Washington in 1990.

24 23. The following mitigating factors apply under ABA Standard 9.32:

- (b) Absence of a dishonest or selfish motive;
- (c) Personal or emotional problems;
- (d) Timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) Remorse.

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

25. The aggravating and mitigating factors do not require a departure from the presumptive sanction.

VI. STIPULATED DISPOSITION

26. The parties stipulate that Respondent shall receive an admonition as attached to this stipulation for his conduct.

VII. RESTITUTION

27. Restitution is not indicated in this case.

VIII. COSTS AND EXPENSES

28. In light of Respondent's willingness to resolve this matter by stipulation at an early stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$375 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.

IX. VOLUNTARY AGREEMENT

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

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

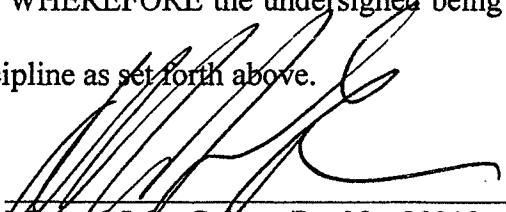
3 **X. LIMITATIONS**

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

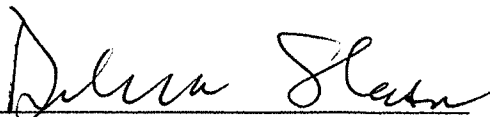
9 32. This Stipulation is not binding upon ODC or the respondent as a statement of all
10 existing facts relating to the professional conduct of the respondent lawyer, and any additional
11 existing facts may be proven in any subsequent disciplinary proceedings.

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

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

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4 Michael John Garner, Bar No. 20219
5 Respondent

Dated: 1/2/15

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7 Debra Slater, Bar No. 18346
8 Disciplinary Counsel

Dated: 2/10/15

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6 BEFORE THE
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8 OF THE
9 WASHINGTON STATE BAR ASSOCIATION

10 In re

11 **MICHAEL JOHN GAINER,**

12 Lawyer (Bar No. 20219).

13 Proceeding No.

14 **ADMONITION**

15 Pursuant to Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, the following
16 Admonition was issued by the Disciplinary Board Chair.

17 **I. ADMISSION TO PRACTICE**

18 1. At all times material to the complaint, you were licensed to practice in the state of
19 Washington.

20 **II. FACTS**

21 2. In 2013, a client hired you to modify a parenting plan. You were paid an advance
22 fee deposit of \$2,000.

23 3. The client contacted you numerous times requesting information about his case.

24 4. You did not timely respond to his requests for information.

5. You did not timely pursue modification of the parenting plan.

1 **III. MISCONDUCT**

2 6. By failing to promptly respond to your client's requests for information about his
3 case, you violated RPC 1.4(a)(4).

4 7. By failing to diligently represent your client, you violated RPC 1.3.

5 **IV. ADMONITION**

6 YOU ARE HEREBY ADMONISHED FOR THIS MISCONDUCT. This admonition is
7 not a disciplinary sanction, but is a disciplinary action, and shall be admissible in evidence in
8 subsequent discipline or disability proceedings involving you.

9 Dated this ____ day of _____, 2014.

10
11 _____
12 Chairperson
13 Disciplinary Board
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