

FILED

May 5, 2023

Disciplinary
Board

Docket # 068

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

JAMES HENRY MAGEE,

Lawyer (Bar No. 23434).

Proceeding No. 21#00033

ODC File No. 20-00512

STIPULATION TO ADMONITION

Under Rule 9.1 of the Washington Supreme Court's 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 Chris Chang and Respondent lawyer James Henry MaGee.

Respondent understands that they are entitled under the ELC to a hearing, to present exhibits and witnesses on their behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that they are 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 them. Respondent chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk,

1 time, expense, and publicity attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on December 1,
4 1993.

5 **II. STIPULATED FACTS**

6 2. On September 27, 2019, Kelly Johnson (Kelly) filed a petition for dissolution of
7 marriage in Grant County, Washington.

8 3. Vernon Johnson (Johnson) hired the McKean Law Office to represent Johnson.
9 Respondent worked for the McKean Law Office as an associate and was assigned to handle
10 Johnson's case.

11 4. On November 8, 2019, the court held a hearing on Kelly's Motion for Temporary
12 Family Law Orders. One of the issues under consideration at the hearing was attorney's fees
13 provided for by RCW 26.09.140. Kelly requested \$5,000 in fees based on the unequal financial
14 resources of the parties. Respondent advised Johnson that Johnson would likely be ordered to pay
15 a substantial amount toward Kelly's fees under the statute because Johnson's income was at least
16 double Kelly's income and Johnson had fewer expenses than Kelly.

17 5. During the hearing on November 8, 2019, the court reserved the issue of attorney's
18 fees. Johnson was present at the hearing when the court reserved the issue of Kelly's request for
19 \$5,000 in attorney's fees.

20 6. On February 28, 2020, a commissioner held a hearing and entered a judgment against
21 Johnson for \$5,000 in attorney's fees under RCW 26.09.140, based on Kelly's need and Johnson's
22 ability to pay fees.

23 7. The commissioner also ordered Johnson to make monthly payments of \$1,000, due on

1 or before the 20th of each month beginning no later than March 20, 2020. The order provided that
2 no interest was due on the judgment unless Johnson failed to make payments on or before the
3 20th of each month as ordered.

4 8. On March 10, 2020, Respondent received a proposed order from opposing counsel
5 that restated the court's February 28, 2020, oral ruling. That same day, Respondent signed and
6 returned the proposed order to opposing counsel.

7 9. Also on March 10, 2020, Respondent instructed a legal assistant to email a copy of the
8 order to Johnson, but the legal assistant forgot to email the order. On March 23, 2020, a
9 commissioner signed the order.

10 10. On April 3, 2020, Respondent filed a motion for reconsideration of the order.
11 Respondent did not consult with Johnson about the motion for reconsideration or tell Johnson that
12 Respondent filed the motion until April 21, 2020. On April 6, 2020, the court denied the motion
13 for reconsideration. Respondent did not tell Johnson that the reconsideration motion was denied
14 until April 21, 2020.

15 11. Prior to April 21, 2020, Respondent did not inform Johnson of the \$5,000 judgment
16 or notify Johnson that if the payments were not made by the 20th of the month, Johnson would
17 be charged interest at a rate of 12 percent.

18 12. Johnson first learned of Johnson's obligation to pay \$5,000 towards Kelly's attorney's
19 fees after receiving an email from Respondent on April 21, 2020, one month after Johnson's first
20 \$1,000 monthly payment was due and after having missed the deadline for two payments.

21 13. On April 24, 2020, Johnson called Respondent to discuss the attorney's fee award.
22 Johnson terminated Respondent's services before ending the telephone conversation. Respondent
23 alleges Johnson did not allow Respondent to speak during this conversation.

1 **III. STIPULATION TO MISCONDUCT**

2 14. By failing to advise Johnson until April 21, 2020, about Johnson's obligation to pay
3 Kelly's attorney's fees per the March 23, 2020, order and failing to inform Johnson until April
4 21, 2020, about the motion to reconsider attorney's fees and the court's denial of the same,
5 Respondent violated RPC 1.4(a)(3).

6 **IV. PRIOR DISCIPLINE**

7 15. Respondent has no prior discipline in Washington State.

8 **V. APPLICATION OF ABA STANDARDS**

9 16. The following American Bar Association Standards for Imposing Lawyer Sanctions
10 (1991 ed. & Feb. 1992 Supp.) apply to this case:

11 **4.4. Lack of Diligence**

12 Absent aggravating or mitigating circumstances, upon application of the factors set out
13 in Standard 3.0, the following sanctions are generally appropriate in cases involving a failure to
14 act with reasonable diligence and promptness in representing a client:

15 4.41 Disbarment is generally appropriate when:

- 16 (a) a lawyer abandons the practice and causes serious or potentially serious
17 injury to a client; or
- 18 (b) a lawyer knowingly fails to perform services for a client and causes
19 serious or potentially serious injury to a client; or
- 20 (c) a lawyer engages in a pattern of neglect with respect to client matters and
21 causes serious or potentially serious injury to a client.

22 4.42 Suspension is generally appropriate when:

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

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

4.44 Admonition is generally appropriate when a lawyer is negligent and does not act
with reasonable diligence in representing a client, and causes little or no actual or
potential injury to a client.

17. Respondent acted negligently in not promptly informing Johnson about the motion to

1 reconsider attorney's fees and the court's denial of the same until 18 days after he filed the motion.

2 18. Johnson was harmed in that Johnson was left unaware of the financial obligation until
3 Johnson was already \$2,000 in arrears.

4 19. The presumptive sanction under ABA Standard 4.43 is reprimand.

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

6 (i) substantial experience in the practice of law.

7 21. The following mitigating factors apply under ABA Standard 9.32:

8 (a) absence of prior disciplinary record;

9 (b) absence of dishonest or selfish motive;

(c) remorse.

10 22. Based on the factors set forth above, the presumptive sanction should be mitigated to
11 admonition.

12 VI. STIPULATED DISCIPLINE

13 23. The parties stipulate that Respondent shall receive an admonition.

14 VII. COSTS AND EXPENSES

15 24. In light of Respondent's willingness to resolve this matter by stipulation, Respondent
16 shall pay attorney fees and administrative costs of \$750 in accordance with ELC 13.9(i). The
17 Association will seek a money judgment under ELC 13.9(l) if these costs are not paid within 30
18 days of approval of this stipulation.

19 VIII. VOLUNTARY AGREEMENT

20 25. Respondent states that prior to entering into this Stipulation they had an opportunity
21 to consult independent legal counsel regarding this Stipulation, that Respondent is entering into
22 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
23 Association, nor by any representative thereof, to induce the Respondent to enter into this

1 Stipulation except as provided herein.

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

4 IX. LIMITATIONS

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

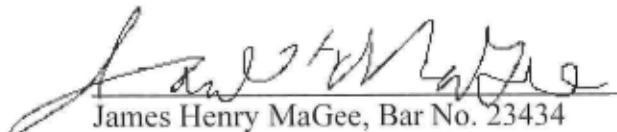
10 28. This Stipulation is not binding upon ODC or the respondent as a statement of all
11 existing facts relating to the professional conduct of the respondent lawyer, and any additional
12 existing facts may be proven in any subsequent disciplinary proceedings.

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


19 30. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
20 Hearing Officer's review become public information on approval of the Stipulation by the
21 Hearing Officer, unless disclosure is restricted by order or rule of law. If this Stipulation is
22 approved by the Hearing Officer, it will be followed by the disciplinary action agreed to in this
23 Stipulation. All notices required in the Rules for Enforcement of Lawyer Conduct will be made.

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

5 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
6 Admonition as set forth above.

7 
8 James Henry MaGee, Bar No. 23434
9 Respondent

Dated: 25 Apr 2023

10 
11 Jeffrey T. Kestle, Bar No. 29648
12 Counsel for Respondent

Dated: 4/25/23

13 
14 Chris Chang, Bar No. 54808
15 Disciplinary Counsel

Dated: 4/25/2023