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JUN 21 2016
DISCIPLINARY
BOARD

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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re
KEVIN L. GIBBS,
Lawyer (Bar No. 23990).

Proceeding No. 16#00040
ODC File No. 15-00778
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 Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Benjamin J. Attanasio and Respondent lawyer Kevin L. Gibbs.

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

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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 October 31,
4 1994.

5 2. On March 20, 2013, Respondent was suspended from the practice of law for 30
6 months for violations of RPC 1.3, 1.4, 1.5(a), 1.15A(c), 1.15A(e), 1.15A(f), 1.16(d), and 8.4(f).

7 3. Respondent has remained in a suspended status since March 20, 2013.

8 **II. STIPULATED FACTS**

9 4. Respondent's wife, Lensa Gibbs, is a singer.

10 5. Respondent represents himself as the sole proprietor of an entity named "Lensa
11 Gibbs Music."

12 6. In March 2014, a dispute arose concerning the termination of Lensa Gibbs' services
13 for a band named "4MORE."

14 7. RL¹ is a representative of 4MORE.

15 8. On March 26, 2015, Respondent sent a letter to RL about the matter concerning
16 Lensa Gibbs and 4MORE. Respondent demanded that RL pay money to settle the dispute, and
17 he threatened to file suit. Respondent stated, "should you prefer that I seek to resolve this
18 dispute with your legal representative, please provide me with your insurance carrier's and/or
19 attorney's contact information."

20 9. Respondent was representing himself in the matter concerning Lensa Gibbs and
21 4MORE.

22 10. On April 1, 2015, lawyer Jay Berneburg sent a letter to Lensa Gibbs in response to
23

24 ¹ This individual's name is redacted to initials to protect his or her privacy.

1 the March 26, 2015 letter that Respondent sent to RL. Mr. Berneburg stated that he was a
2 lawyer representing RL in the matter concerning Lensa Gibbs and 4MORE. Mr. Berneburg
3 rejected Respondent's demand.

4 11. Respondent received the April 1, 2015 letter that Mr. Berneburg sent to Lensa Gibbs.

5 12. Respondent did not have Mr. Berneburg's consent to communicate with RL about
6 the matter concerning Lensa Gibbs and 4MORE.

7 13. On April 24, 2015, after reviewing the April 1, 2015 letter from Mr. Berneburg to
8 Lensa Gibbs, Respondent sent a second letter to RL about the matter concerning Lensa Gibbs
9 and 4MORE.

10 14. Respondent did not provide Mr. Berneburg with a copy of his April 24, 2015 letter to
11 RL.

12 15. In communicating with RL about the matter concerning Lensa Gibbs and 4MORE,
13 knowing that Mr. Berneburg represented RL in the matter, and knowing that he did not have
14 Mr. Berneburg's consent, Respondent caused injury or potential injury to RL.

15 III. STIPULATION TO MISCONDUCT

16 16. By communicating about a matter with a person whom he knew to be represented by
17 another lawyer in the matter, without the other lawyer's consent, Respondent violated RPC 4.2.

18 IV. PRIOR DISCIPLINE

19 17. Respondent stipulated to a 30-month suspension in March 2013 for the following
20 misconduct:

- 21 • mishandling his clients' advance fee deposit in violation of RPC 1.15A(c);
- 22 • failing to work diligently or complete his clients' matter in violation of RPC 1.3;
- 23 • failing to adequately communicate with his clients in violation of 1.4;

- 1 • charging unreasonable fees in violation of RPC 1.5(a);
2 • failing to return original documents, unearned fees, and unexpended costs upon
3 termination in violation of RPC 1.15A(f) and 1.16(d);
4 • failing to provide an accounting of advance fees when requested in violation of
5 RPC 1.15A(e); and
6 • failing to notify his clients of his administrative suspension from the practice of
7 law, failing to discontinue the representation, and failing to return original
8 documents in violation of 8.4(l) (by violating ELC 14.1(a) and 14.1(c)).

9 **V. APPLICATION OF ABA STANDARDS**

10 18. The following American Bar Association Standards for Imposing Lawyer Sanctions
11 (1991 ed. & Feb. 1992 Supp.) apply to this case:

12 **6.3 Improper Communications with Individuals in the Legal System**

13 6.31 Disbarment is generally appropriate when a lawyer:

- 14 (a) intentionally tampers with a witness and causes serious or
15 potentially serious injury to a party, or causes significant or
16 potentially significant interference with the outcome of the legal
17 proceeding; or
18 (b) makes an ex parte communication with a judge or juror with intent
19 to affect the outcome of the proceeding, and causes serious or
20 potentially serious injury to a party, or causes significant or
21 potentially significant interference with the outcome of the legal
22 proceeding; or
23 (c) improperly communicates with someone in the legal system other
24 than a witness, judge, or juror with the intent to influence or affect
the outcome of the proceeding, and causes significant or
potentially significant interference with the outcome of the legal
proceeding.

6.32 Suspension is generally appropriate when a lawyer engages in
communication with an individual in the legal system when the lawyer
knows that such communication is improper, and causes injury or
potential injury to a party or causes interference or potential interference
with the outcome of the legal proceeding.

6.33 Reprimand is generally appropriate when a lawyer is negligent in
determining whether it is proper to engage in communication with an
individual in the legal system, and causes injury or potential injury to a

1 party or interference or potential interference with the outcome of the legal
proceeding.

2 6.34 Admonition is generally appropriate when a lawyer engages in an isolated
3 instance of negligence in improperly communicating with an individual in
4 the legal system, and causes little or no actual or potential injury to a
party, or causes little or no actual or potential interference with the
outcome of the legal proceeding.

5 19. Respondent knew he was contacting a represented party, RL, without first obtaining
6 the consent of Mr. Berneburg, but was negligent in determining whether it was proper for him
7 to do so when he was representing himself.²

8 20. Respondent caused potential injury to RL, who could have been disadvantaged in
9 dealing with Respondent without the benefit of counsel.

10 21. The presumptive sanction is reprimand.

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

- 12 (a) prior disciplinary offenses; and
13 (i) substantial experience in the practice of law.

14 23. None of the mitigating factors under ABA Standard 9.32 apply. However, it is a
15 mitigating factor that Respondent has agreed to resolve this matter at an early stage of the
proceedings.

16 24. On balance the aggravating and mitigating factors do not require a departure from
17 the presumptive sanction.

18 VI. STIPULATED DISCIPLINE

19 25. The parties stipulate that Respondent shall receive a reprimand for his conduct.

20 VII. RESTITUTION

21 26. No restitution is required as part of this stipulation.
22

23 ² Respondent was not aware of the holding in In re Disciplinary Proceeding Against Haley, 156 Wn.2d
24 324, 338, 126 P.3d 1262 (2006) that "a lawyer acting pro se is 'representing a client' for the purposes of
RPC 4.2(a)."

1 **VIII. COSTS AND EXPENSES**

2 27. Respondent shall pay attorney fees and administrative costs of \$500 in accordance
3 with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l) if these
4 costs are not paid within 30 days of approval of this stipulation.

5 **IX. VOLUNTARY AGREEMENT**

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

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

13 **X. LIMITATIONS**

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

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

22 32. This Stipulation results from the consideration of various factors by both parties,
23 including the benefits to both by promptly resolving this matter without the time and expense of
24

1 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
2 such, approval of this Stipulation will not constitute precedent in determining the appropriate
3 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
4 subsequent proceedings against Respondent to the same extent as any other approved
5 Stipulation.

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

9 34. If this Stipulation is approved by the Hearing Officer, it will be followed by the
10 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
11 Enforcement of Lawyer Conduct will be made.

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

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

18
19 _____
Kevin L. Gibbs, Bar No. 23990
20 Respondent

Dated: _____

21 _____
Benjamin J. Attanasio, Bar No. 43032
22 Disciplinary Counsel

Dated: _____

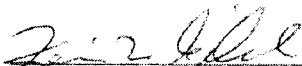
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15 or criminal action.

16 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation
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18 
19 _____
Kevin L. Gibbs, Bar No. 23990
Respondent

Dated: 6/18/2016

20 
21 _____
22 Benjamin J. Attanasio, Bar No. 43032
Disciplinary Counsel

Dated: 6/20/16