

FILED

Jul 11, 2023

Disciplinary  
Board

Docket # 002

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

**RUSSELL HAROLD GILBERT,**

Lawyer (Bar No. 24968).

Proceeding No.

ODC File No. 23-00387

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Washington Supreme Court's 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 Erica Temple, Respondent's Counsel Todd Maybrown and Respondent lawyer Russell Harold Gilbert.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent 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

1 outcome more favorable or less favorable to Respondent. Respondent chooses to resolve this  
2 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
3 avoid the risk, time, and expense attendant to further proceedings.

4 **I. ADMISSION TO PRACTICE**

5 1. Respondent was admitted to practice law in the State of Washington on June 20, 1995.

6 **II. STIPULATED FACTS**

7 2. Respondent represented the Plaintiff in Yakima County Superior Court No. 23-2-  
8 00393-39, a residential unlawful detainer action.

9 3. On March 7, 2023, Respondent appeared in court before Judge Jared Boswell. Judge  
10 Boswell referred Respondent to the ex-parte docket in Judge Sonia Rodriguez-True's courtroom.

11 4. On that same date, at 2:04 p.m., Respondent appeared before Judge Rodriguez-True  
12 and presented an Order of Default, a Judgment and Order for Writ of Restitution.

13 5. Judge Rodriguez-True determined that the summons was not procedurally correct,  
14 returned the pleadings to Respondent, and did not issue the requested orders.

15 6. At 2:41 p.m., Respondent appeared before Judge Boswell and told the court that  
16 Respondent had missed the ex-parte matters and that Respondent, "got delayed and then when  
17 [Respondent] got over to the other courtroom it was locked."

18 7. This was a false statement.

19 8. Respondent presented the pleadings again to Judge Boswell, who entered an Order of  
20 Default, Judgment and Order for Writ of Restitution.

21 9. After realizing Respondent's deceit, the court issued an order to show cause for  
22 Respondent to appear before the court on March 8, 2023.

23 10. Upon receipt of the court's order to show cause, Respondent contacted the Yakima

1 County Sheriff's Office and placed a hold on the posting of the writ of restitution. The tenants  
2 remained in possession of the leased premises for an additional period of time until the matter  
3 was resolved.

4 11. On March 8, 2023, Judge Boswell vacated the orders the court had issued the day  
5 before.

6 12. During the court appearance, Respondent denied that Respondent had made the  
7 misstatement intentionally.

8 13. On March 8, 2023, Respondent filed and served an amended summons that corrected  
9 the procedural errors in Yakima County Superior Court No. 23-2-00393-39.

10 14. On March 17, 2023, the court issued an Order of Default, Judgement and Order for  
11 Writ of Restitution.

12 15. On March 22, 2023, the Yakima County Superior Court Presiding Judge filed a  
13 grievance with ODC.

14 16. In response to the grievance, Respondent accepted full responsibility for the  
15 misconduct and expressed remorse.

16 17. Respondent has transmitted a letter of apology to the judges involved in this matter.

### 17 **III. STIPULATION TO MISCONDUCT**

18 18. By making a false statement to the court, Respondent violated RPC 3.3(a)(1), RPC  
19 8.4(c) and RPC 8.4(d).

### 20 **IV. PRIOR DISCIPLINE**

21 19. Respondent has no prior discipline.

### 22 **V. APPLICATION OF ABA STANDARDS**

23 20. The following American Bar Association Standards for Imposing Lawyer Sanctions

1 (1991 ed. & Feb. 1992 Supp.) apply to this case:

2 **6.1 False Statements, Fraud, and Misrepresentation**

3 Absent aggravating or mitigating circumstances, upon application of the  
4 factors set out in Standard 3.0, the following sanctions are generally appropriate  
5 in cases involving conduct that is prejudicial to the administration of justice or that  
6 involves dishonesty, fraud, deceit, or misrepresentation to a court:

7 6.11 Disbarment is generally appropriate when a lawyer, with the intent to  
8 deceive the court, makes a false statement, submits a false document, or  
9 improperly withholds material information, and causes serious or  
10 potentially serious injury to a party, or causes a significant or potentially  
11 significant adverse effect on the legal proceeding.

12 6.12 Suspension is generally appropriate when a lawyer knows that false  
13 statements or documents are being submitted to the court or that material  
14 information is improperly being withheld, and takes no remedial action,  
15 and causes injury or potential injury to a party to the legal proceeding, or  
16 causes an adverse or potentially adverse effect on the legal proceeding.

17 6.13 Reprimand is generally appropriate when a lawyer is negligent either in  
18 determining whether statements or documents are false or in taking  
19 remedial action when material information is being withheld, and causes  
20 injury or potential injury to a party to the legal proceeding, or causes an  
21 adverse or potentially adverse effect on the legal proceeding.

22 6.14 Admonition is generally appropriate when a lawyer engages in an isolated  
23 instance of neglect in determining whether submitted statements or  
24 documents are false or in failing to disclose material information upon  
learning of its falsity, and causes little or no actual or potential injury to a  
party, or causes little or no adverse or potentially adverse effect on the legal  
proceeding.

21. Respondent acted knowingly in making a false statement.

22. Respondent caused injury to the profession and the court.

23. Respondent caused potential injury to the other parties in the proceeding.

24. The presumptive sanction is suspension.

25. The following aggravating factors apply under ABA Standard 9.22:

(i) substantial experience in the practice of law [admitted in 1995].

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

(a) absence of a prior disciplinary record;

(e) full and free disclosure to disciplinary board or cooperative attitude toward

- proceedings;
- (g) character or reputation; and,
- (l) remorse.

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

28. Based on the factors set forth above, the presumptive sanction should be mitigated to reprimand.

#### **VI. STIPULATED DISCIPLINE**

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

#### **VII. RESTITUTION**

30. Restitution is not appropriate in this case.

#### **VIII. COSTS AND EXPENSES**

31. 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 \$750 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**

32. Respondent states that prior to entering into this Stipulation Respondent has consulted 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.

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

**X. LIMITATIONS**

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

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

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

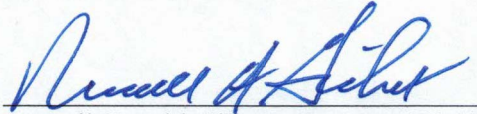
37. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for Hearing Officer’s review become public information on approval of the Stipulation by the Hearing Officer, unless disclosure is restricted by order or rule of law.

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

39. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the

1 pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or  
2 criminal action.

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

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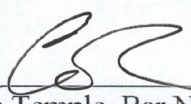
Dated: 07/10/23

6 Russell Harold Gilbert, Bar No. 24968  
7 Respondent

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Dated: July 10, 2023

9 Todd Maybrown, Bar No. 18557  
10 Counsel for Respondent

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Dated: July 11, 2023

12 Erica Temple, Bar No. 28458  
13 Senior Disciplinary Counsel  
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