

FILED

Jul 15 2019

Disciplinary  
Board

Docket # 002

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**DAVID B. GATES,**

Lawyer (Bar No. 28952).

Proceeding No. *17-00042*

ODC File No(s). 18-02009

STIPULATION TO REPRIMAND AND  
PROBATION

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 Jonathan Burke and Respondent lawyer David B. Gates.

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

Stipulation to Discipline

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OFFICE OF DISCIPLINARY COUNSEL  
OF THE WASHINGTON STATE BAR ASSOCIATION  
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1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
2 avoid the risk, time, and expense attendant to further proceedings.

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to practice law in the State of Washington on June 14,  
5 1999.

6 **II. STIPULATED FACTS**

7 2. In 2011, Doug Phillips (Phillips) hired Respondent to pursue claims against Crown  
8 Hill Automotive (CHA) regarding a dispute over the charges for installing an engine into a 1994  
9 Ford Probe (Probe) owned by Phillips. CHA refused to return the Probe to Phillips without full  
10 payment and asserted a mechanics lien on the Probe.

11 3. On November 7, 2011, Respondent commenced a lawsuit against CHA for Phillips.

12 4. On March 22, 2013, Respondent temporarily withdrew from representing Phillips  
13 for nonpayment of fees. On May 3, 2013, Respondent appeared again as Phillips's lawyer in  
14 the lawsuit.

15 5. On May 7, 2013, CHA filed a motion to strike the hearing date and assess fees  
16 against Phillips. CHA's motion alleged that Phillips failed to comply with the scheduling order  
17 regarding scheduling arbitration.

18 6. Respondent did not file a response to CHA's motion.

19 7. On May 17, 2013, the court entered an order striking the trial date, compelling  
20 arbitration, and requiring Phillips and/or Respondent to pay \$1,000 to CHA's lawyer. The order  
21 provided that if Phillips failed to initiate arbitration within 30 days after payment of the \$1,000,  
22 his claims will be dismissed without prejudice.

23 8. Respondent did not do anything to pay \$1,000 to CHA or CHA's lawyer.

1 9. On June 26, 2013, CHA filed a motion to dismiss Phillips' claims and enter a  
2 judgment against Phillips for failing to comply with the May 17, 2013 order.

3 10. Respondent did not file a response to CHA's motion.

4 11. On July 12, 2013, the court granted CHA's motion dismissing Phillips's claim  
5 without prejudice, preserving CHA's counterclaims, and entered a judgment against Phillips in  
6 the amount of \$1,250, which included the \$1,000 that Phillips was previously ordered to pay in  
7 the May 17, 2013 order.

8 12. Respondent did not inform Phillips about the motions filed by CHA, the orders  
9 entered by the court, or and the judgment for \$1,250.

10 13. Respondent sent several emails to Phillips expressing remorse for how he was  
11 handling the case and stating that he would work harder for Phillips.

12 14. An arbitration was scheduled for September 24, 2013.

13 15. Prior to the arbitration, Respondent sent an email recommending that Phillips not  
14 attend the arbitration because he was recuperating from an operation.

15 16. Respondent did not attend the arbitration and did not seek a continuance of the  
16 arbitration.

17 17. On September 24, 2013, the arbitrator entered an award in favor of CHA for  
18 \$12,563.56.

19 18. On October 15, 2013, Respondent filed a petition for trial de novo and the court  
20 entered an order setting a new case schedule. The case schedule was apparently issued in error  
21 because a party who does not attend arbitration cannot request a trial de novo.

22 19. On October 16, 2013, CHA filed a motion for a judgment on the arbitration award.

23 20. On October 30, 2013, the court entered a judgment in favor of CHA on the

1 arbitration award for \$14,062.88, which also included the July 12, 2013 judgment of \$1,250.

2 21. On November 18, 2013, Respondent filed a witness list.

3 22. On January 21, 2014, CHA and Respondent filed a pre-trial report.

4 23. The matter did not go forward because, as mentioned above in paragraph 18, the  
5 case schedule was issued in error and the proceedings ceased.

6 24. In April 2014, Respondent left the firm where he was employed.

7 25. Respondent believed that he could pursue the return of the Probe by filing a Chapter  
8 7 bankruptcy for Phillips.

9 26. On August 8, 2014, Respondent filed Phillips's Chapter 7 bankruptcy. The  
10 bankruptcy schedules included \$7,000 in debt owed to Respondent's former law firm for  
11 representing Phillips. On November 28, 2014, an order of discharge was entered. Respondent  
12 did not charge Phillips any fees or costs for handling his bankruptcy.

13 27. On December 1, 2014, Phillips's bankruptcy was closed.

14 28. On March 24, 2015, Respondent sent a letter to CHA demanding the return of  
15 Phillips's Probe. CHA did not respond to the letter.

16 29. During April 2015, Respondent represented Phillips in protective order proceedings  
17 filed by Phillips's estranged spouse.

18 30. Respondent assigned an associate lawyer at his firm, David Hastings (Hastings), to  
19 pursue the return of the Probe from CHA.

20 31. On January 8, 2016, Hastings filed a motion to re-open Phillips's bankruptcy, which  
21 was granted on February 17, 2016. Hastings did not timely file an adversary proceeding against  
22 CHA.

23 32. During the period from March 2016 through July 2016, Respondent represented

1 Phillips in his marital dissolution at no charge. Phillips's marital residence was awarded to his  
2 ex-spouse.

3 33. On January 7, 2017, the bankruptcy court administratively re-closed Phillips's  
4 bankruptcy for non-activity.

5 34. On May 4, 2017, Hastings filed another motion to re-open Phillips's bankruptcy,  
6 which was granted on August 14, 2017.

7 35. On September 20, 2017, Hastings filed an adversary proceeding against CHA.

8 36. In October 2017, CHA offered to return the Probe if Phillips dismissed the adversary  
9 proceeding. There are conflicting accounts between Phillips and Hastings regarding CHA's  
10 offer. According to Hastings, Phillips declined CHA's offer contrary to Hastings's  
11 recommendation.

12 37. CHA filed a motion for summary judgment, which was granted on December 12,  
13 2017. The adversary case against CHA was closed.

14 38. On March 13, 2019, CHA filed a full satisfaction of the October 30, 2013 judgment  
15 against Phillips. Phillips's ex-spouse paid the judgment to release the judgment lien on the  
16 marital residence that was awarded to her in the dissolution.

### 17 III. STIPULATION TO MISCONDUCT

18 39. By failing to diligently represent Phillips in connection with the efforts to retrieve  
19 the Probe, Respondent violated RPC 1.3.

20 40. By failing to keep Phillips informed about the status of the proceedings, and orders  
21 and judgments entered in the lawsuit, Respondent violated RPC 1.4.

### 22 IV. PRIOR DISCIPLINE

23 41. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 42. The following American Bar Association Standards for Imposing Lawyer Sanctions  
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 **4.4 Lack of Diligence**

5 4.41 Disbarment is generally appropriate when:

- 6 (a) a lawyer abandons the practice and causes serious or potentially  
7 serious injury to a client; or
- 8 (b) a lawyer knowingly fails to perform services for a client and causes  
9 serious or potentially serious injury to a client; or
- 10 (c) a lawyer engages in a pattern of neglect with respect to client  
11 matters and causes serious or potentially serious injury to a client.

12 4.42 Suspension is generally appropriate when:

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

17 4.43 **Reprimand is generally appropriate when a lawyer is negligent and  
18 does not act with reasonable diligence in representing a client, and  
19 causes injury or potential injury to a client.**

20 4.44 Admonition is generally appropriate when a lawyer is negligent and does  
21 not act with reasonable diligence in representing a client, and causes little  
22 or no actual or potential injury to a client.

23 43. Respondent negligently failed to diligently represent and communicate with Phillips  
24 resulting in actual and potential injury when CHA obtained judgments against Phillips and his  
claims were dismissed.

44. Reprimand is the presumptive sanction under ABA Standard 4.43.

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

(a) Multiple offenses [Respondent failed to diligently represent and communicate  
with Phillips];

(b) Bad faith obstruction of the disciplinary proceeding by intentionally failing  
to comply with rules of the disciplinary process [Respondent failed to timely  
respond to the grievance requiring ODC to subpoena him for a deposition  
pursuant to ELC 5.3(h)(1)]; and

(c) Substantial experience in the practice of law [Respondent has practiced law  
since 1999].

1 46. The following mitigating factors apply under ABA Standard 9.32:

2 (a) Absence of prior disciplinary record;

3 (b) Good faith effort to rectify consequences of misconduct [Respondent attempted  
4 to rectify consequences by providing free legal services to Phillips for his  
bankruptcy and marital dissolution proceedings];

5 (c) Remorse [Respondent sent emails to Phillips in September 2013 expressing  
6 remorse].

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

9 48. On balance the aggravating and mitigating factors do not require a departure from  
10 the presumptive sanction of reprimand.

#### 11 VI. STIPULATED DISCIPLINE

12 49. The parties stipulate that Respondent shall receive a reprimand for his conduct.

#### 13 VII. PROBATION

14 50. Respondent shall be subject to probation for a period of 24 months beginning on the  
15 date of the final approval of this stipulation.

16 51. The conditions of probation are set forth below. Respondent's compliance with  
17 these conditions will be monitored by the Probation Administrator of the Office of Disciplinary  
18 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed  
19 herein may be grounds for further disciplinary action under ELC 13.8(b).

#### 20 Practice Monitor

21 (a) Conditions regarding Practice Monitor. During the period of probation,  
22 Respondent's practice will be supervised by a practice monitor. The practice  
23 monitor must be a WSBA member with no record of public discipline and who is not  
24 the subject of a pending public disciplinary proceeding.

- 1 (b) The role of the practice monitor is to consult with and provide guidance to  
2 Respondent regarding case management, and avoiding violations of the Rules of  
3 Professional Conduct, and to provide reports and information to the Probation  
4 Administrator regarding Respondent's compliance with the terms of probation and  
5 the RPC. Consultations between the practice monitor and Respondent may be by  
6 Skype. The practice monitor does not represent the Respondent.
- 7 (c) At the beginning of the probation period, the Probation Administrator will select a  
8 lawyer to serve as practice monitor for the period of Respondent's probation as  
9 follows:
- 10 (i) Initial Challenge: If, within 15 days of the written notice of the selection of a  
11 practice monitor, Respondent sends a written request to the Probation  
12 Administrator that another practice monitor be selected, the Probation  
13 Administrator will select another practice monitor. Respondent need not  
14 identify any basis for this initial request.
- 15 (ii) Subsequent Challenges: If, after selection of a second (or subsequent)  
16 practice monitor, Respondent believes there is good cause why that  
17 individual should not serve as practice monitor, Respondent may, within 15  
18 days of notice of the selected practice monitor, send a written request to the  
19 Probation Administrator asking that another practice monitor be selected.  
20 That request must articulate good cause to support the request. If the  
21 Probation Administrator agrees, another practice monitor will be selected. If  
22 the Probation Administrator disagrees, the Office of Disciplinary Counsel  
23 will submit its proposed selection for practice monitor to the Chair of the  
24 Disciplinary Board for appointment pursuant to ELC 13.8(a)(2), and will also  
provide the Chair with the Respondent's written request that another practice  
monitor be selected.
- (d) In the event the practice monitor is no longer able to perform his or her duties, the  
Probation Administrator will select a new practice monitor at his or her discretion.
- (e) During the period of probation, Respondent must cooperate with the named practice  
monitor. Respondent must meet with the practice monitor at least once per month.  
Respondent must communicate with the practice monitor to schedule all required  
meetings.
- (f) The Respondent must bring to each meeting (including Skype meetings) a current,  
complete written list of all pending client legal matters being handled by the  
Respondent. The list must identify the current status of each client matter and any  
problematic issues regarding each client matter. The list may identify clients by  
using the client's initials rather than the client's name.
- (g) At each meeting, the practice monitor will discuss with Respondent practice issues  
that have arisen or are anticipated. In light of the conduct giving rise to the



1 imposition of probation, ODC recommends that the practice monitor and Respondent  
2 discuss: whether Respondent is diligently making progress on each client matter,  
3 whether Respondent is in communication with each client, whether Respondent has  
4 promptly billed each client, whether Respondent's fee agreements are consistent  
5 with the RPC and are understandable to the client, whether Respondent needs to  
6 consider withdrawing from any client matters. Meetings may be in person or by  
7 telephone at the practice monitor's discretion. The practice monitor uses discretion  
8 in determining the length of each meeting.

9 (h) The practice monitor will provide the Probation Administrator with quarterly written  
10 reports regarding Respondent's compliance with probation terms and the RPC. Each  
11 report must include the date of each meeting with Respondent, a brief synopsis of the  
12 discussion topics, and a brief description of any concerns the practice monitor has  
13 regarding the Respondent's compliance with the RPC. The report must be signed by  
14 the practice monitor. Each report is due within 30 days of the completion of the  
15 quarter.

16 (i) If the practice monitor believes that Respondent is not complying with any of her  
17 ethical duties under the RPC or if Respondent fails to schedule or attend a monthly  
18 meeting, the practice monitor will promptly communicate that to the Probation  
19 Administrator.

20 (j) Respondent must make payments totaling \$1,000 to the Washington State Bar  
21 Association to defray the costs and expenses of administering the probation, as  
22 follows:

- 23 i. \$250 due within 30 days of the start of the probation;
- 24 ii. \$250 due within 6 months of the start of the probation period;
- iii. \$250 due within 12 months of the start of the probation period; and
- iv. \$250 due within 18 months of the start of the probation period.

All payments should be provided to the Probation Administrator for processing.

## VIII. COSTS AND EXPENSES

52. In light of Respondent's willingness to resolve this matter by stipulation at an early  
stage of the proceedings, Respondent shall pay attorney fees [\$1,000] and administrative costs  
[\$79.00 personal service + \$668.40 deposition transcript] for a total of \$1,747.24 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.

1 **IX. VOLUNTARY AGREEMENT**

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

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

9 **X. LIMITATIONS**

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

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

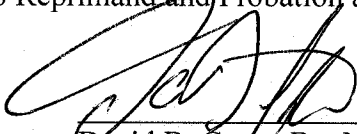
18 57. This Stipulation results from the consideration of various factors by both parties,  
19 including the benefits to both by promptly resolving this matter without the time and expense of  
20 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As  
21 such,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

1 Stipulation.

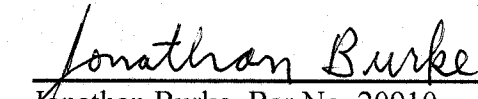
2 58. If this Stipulation is approved by the Chief Hearing Officer, it will be followed by  
3 the disciplinary action agreed to in this Stipulation. All notices required in the Rules for  
4 Enforcement of Lawyer Conduct will be made.

5 59. If this Stipulation is not approved by the Chief Hearing Officer, this Stipulation will  
6 have no force or effect, and neither it nor the fact of its execution will be admissible as evidence  
7 in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any  
8 civil or criminal action.

9 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
10 to Reprimand and Probation as set forth above.

11   
12 \_\_\_\_\_  
13 David B. Gates, Bar No. 28952  
Respondent

Dated: 7/8/19

14   
15 \_\_\_\_\_  
Jonathan Burke, Bar No. 20910  
Senior Disciplinary Counsel

Dated: 7/8/19