

FILED

May 21 2019

Disciplinary  
Board

Docket # 035

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**ROBERT E. CARUSO,**  
Lawyer (Bar No. 29338).

Proceeding No. 17#00019

ODC File No 12-00527

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer Conduct (ELC), and following a settlement conference conducted under ELC 10.12(h), the following Stipulation to suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Debra Slater, Respondent's Counsel Stephen Kerr Eugster and Respondent lawyer Robert E. Caruso.

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

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1 outcome more favorable or less favorable to him. 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, expense and publicity attendant to further proceedings.

#### 4 I. ADMISSION TO PRACTICE

5 1. Respondent was admitted to practice law in the State of Washington on October 25,  
6 1999.

#### 7 II. STIPULATED FACTS

8 2. Respondent represented Richard Wixom in a post dissolution modification of a  
9 parenting plan.

10 3. During the trial on the modification, CR 11 sanctions were imposed against  
11 Respondent and Mr. Wixom.

12 4. The court ordered them to pay 90% of Ms. Wixom's attorney fees of \$51,778.58  
13 and \$3,949.84 in costs jointly and severally.

14 5. Respondent appealed on behalf of both himself and Mr. Wixom, arguing that  
15 attorney fees for intransigence could not be imposed against him. Respondent posted the  
16 appeal bond with his own personal funds in the full amount of the judgement.

17 6. Although Respondent's argument would leave only his client liable for the sanction,  
18 Respondent knew that Mr. Wixom lacked the ability to pay and always intended to pay the  
19 sanction himself.

20 7. On May 7, 2014, Renee S. Townsley, Clerk/Administrator for Division III, sent  
21 Respondent a letter asking him to address whether his argument created a conflict of interest  
22 under RPC 1.7 or RPC 1.8, whether the conflict could be waived, and asking if Mr. Wixom  
23 had given informed consent to the conflict.

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1 8. Respondent filed his "Conflict of Interest Brief" in response, in which he stated that  
2 no conflict of interest existed and that he had met with Mr. Wixom on May 16, 2014 after the  
3 issue had been raised by the court and that Mr. Wixom had consented to the conflict.

4 9. Mr. Wixom acknowledged that Respondent advised him about the conflict on May  
5 16, 2014 and gave him an opportunity to seek independent counsel.

6 10. Mr. Wixom chose to continue to have Respondent represent him.

7 11. On August 12, 2014, the court of appeals issued its ruling. Even though  
8 Respondent had paid the judgment in full and forgave in excess of \$10,000 of his client's  
9 attorney's fees, the court held that Respondent's position that Mr. Wixom alone should bear  
10 the costs of the sanctions was actively and directly adverse to the interests of Mr. Wixom in  
11 violation of RPC 1.7. The court held that the conflict of interest was nonconsentable.

12 12. The court also held that under RPC 1.16(a)(1), Respondent was required to  
13 withdraw but failed to do so. The court disqualified Respondent from representing Mr. Wixom  
14 and imposed limits on Respondent's representation of himself. Respondent promptly hired  
15 counsel.

16 13. Respondent paid the costs and sanctions (approximately \$85,000 in costs, sanctions  
17 and interest) himself and forgave Mr. Wixom in excess of \$10,000 in attorney's fees.

18 14. Respondent is 81 years of age and is recovering from cancer.

19 15. Respondent is no longer accepting new clients and is finishing his few remaining  
20 cases.

### 21 III. STIPULATION TO MISCONDUCT

22 16. By representing Mr. Wixom when his interests were directly adverse to those of Mr.  
23 Wixom, Respondent violated RPC 1.7.

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1 17. By not withdrawing from representing Mr. Wixom after the court brought the issue  
2 of the conflict of interest to his attention, Respondent violated RPC 1.16(a)(1).

3 **IV. PRIOR DISCIPLINE**

4 18. Respondent received an admonition in 2015 for ordering an associate lawyer in his  
5 office to withdraw from a client's case without giving 10 days' notice as required by CR 71,  
6 thereby violating RPC 5.1(c) and without taking steps to protect the client's interests, causing  
7 the associate to violate RPC 1.16(c) and RPC 1.16(d).

8 **V. APPLICATION OF ABA STANDARDS**

9 19. American Bar Association Standards for Imposing Lawyer Sanctions (1991 ed. &  
10 Feb. 1992 Supp.) 4.3 and 7.0 apply to this case. Copies are attached hereto as Exhibit A.

11 20. Although Respondent at first may have been negligent in determining whether the  
12 representation of Mr. Wixom created a current conflict of interest, his conduct became  
13 knowing after the court informed him about the possible conflict. There was potential injury to  
14 Mr. Wixom but no actual injury because Respondent paid the sanction himself as he always  
15 intended. The presumptive sanction under ABA Standard 4.32 is suspension.

16 21. It appears Respondent acted knowingly when he failed to withdraw from  
17 representing Mr. Wixom after the Court of Appeals brought the conflict of interest to his  
18 attention, there was potential injury but no actual injury occurred due to Respondent's payment  
19 of the sanction himself. The presumptive sanction under ABA Standard 7.1 appears to be  
20 suspension.

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

- 22 (a) prior disciplinary offenses [Respondent received an admonition in 2015 for  
23 ordering an associate lawyer in his office to withdraw from a client's case  
24 without giving 10 days' notice as required by CR 71, in violation of RPC 5.1(c)  
and without taking steps to protect the client's interests, causing the associate to

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1 violate RPC 1.16(c) and RPC 1.16(d)];

2 (i) substantial experience in the practice of law [Mr. Caruso was admitted to  
3 practice in Washington on October 25, 1999].

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

5 (b) absence of dishonest or selfish motive;

6 (d) timely good faith effort to make restitution or to rectify the consequences of  
7 misconduct;

8 (k) imposition of other penalties or sanctions; and

9 (l) remorse.

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

12 25. Based on the factors set forth above, the Respondent should receive a one year  
13 suspension.

#### 14 VI. STIPULATED DISCIPLINE

15 26. The parties stipulate that Respondent shall receive a one year suspension for his  
16 conduct.

17 27. As a condition of reinstatement, Respondent shall pay \$1,000 in costs incurred as a  
18 result of these proceedings.

#### 19 VII. RESTITUTION

20 28. No restitution is indicated in these proceedings.

#### 21 VIII. COSTS AND EXPENSES

22 29. In light of Respondent's willingness to resolve this matter by stipulation at an early  
23 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1,000

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1 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC  
2 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement  
3 from suspension is conditioned on payment of \$1,000 in fees and costs.

#### 4 IX. VOLUNTARY AGREEMENT

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

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

#### 12 X. LIMITATIONS

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

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

21 34. This Stipulation results from the consideration of various factors by both parties,  
22 including the benefits to both by promptly resolving this matter without the time and expense  
23 of hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review.

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1 As such, approval of this Stipulation will not constitute precedent in determining the  
2 appropriate sanction to be imposed in other cases; but, if approved, this Stipulation will be  
3 admissible in subsequent proceedings against Respondent to the same extent as any other  
4 approved Stipulation.

5 35. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on  
6 the record agreed to by the parties. The record the parties are agreeing to in this case is this  
7 stipulation to suspension. Under ELC 3.1(b), all documents that form the record before the  
8 Board for its review become public information on approval of the Stipulation by the Board,  
9 unless disclosure is restricted by order or rule of law. Under ELC 3.1(b), all documents that  
10 form the record before the Hearing Officer for his or her review become public information on  
11 approval of the Stipulation by the Hearing Officer, unless disclosure is restricted by order or  
12 rule of law.

13 36. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will  
14 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the  
15 Rules for Enforcement of Lawyer Conduct will be made.

16 37. If this Stipulation is not approved by the Disciplinary Board and Supreme Court,  
17 this Stipulation will have no force or effect, and neither it nor the fact of its execution will be  
18 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary  
19 proceeding, or in any civil or criminal action.

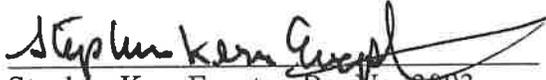


1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
2 to Suspension as set forth above.

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4 Robert E. Caruso, Bar No. 29338  
5 Respondent

Dated: 21 febr 2019

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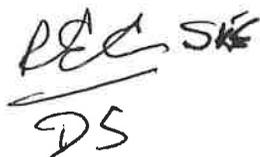
7 Stephen Kerr Eugster, Bar No. 2003  
8 Counsel for Respondent

Dated: Feb. 21, 2019

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10 Debra Slater, Bar No. 18346  
11 Disciplinary Counsel

Dated: February 21, 2019



## EXHIBIT A

### 4.3 *Failure to Avoid Conflicts of Interest*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

- 4.31 Disbarment is generally appropriate when a lawyer, without the informed consent of client(s):
- (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
  - (b) simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
  - (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the lawyer or another and causes serious or potentially serious injury to a client.
- 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
- 4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
- 4.34 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

### 7.0 *Violations of Duties Owed as a Professional*

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

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- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

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