

DEC 04⁷⁵⁻ 2017

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

THOMAS EDWARD GATES,

Lawyer (Bar No. 34010).

Proceeding No. 17#00063

ODC File No(s). 17-00359

STIPULATION TO ADMONITION

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel M Craig Bray and Respondent lawyer Thomas Edward 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 proceeding now by entering into the following stipulation to facts, misconduct and sanction to

Stipulation to Discipline
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OFFICE OF DISCIPLINARY COUNSEL
OF THE WASHINGTON STATE BAR ASSOCIATION
1325 4th Avenue, Suite 600
Seattle, WA 98101-2539
(206) 727-8207

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1 avoid the risk, time, and 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 27,
4 2003.

5 **II. STIPULATED FACTS**

6 2. Dianne Sullivan executed a will on March 23, 2012.

7 3. In the will, Dianne¹ stated that she had three children, "Elisabeth Cole, Ranse
8 Sullivan, and a third child, Russ Eastland, who was adopted at birth."

9 4. The will bequeathed nothing to Elisabeth, but bequeathed \$1,000 to Mr. Eastland,
10 and left the remainder of the estate in three equal shares to Ranse, "my granddaughter Keara
11 Sullivan [Ranse's daughter], and my grandson Elijah Cole [Elisabeth Cole's minor son]."

12 5. Ranse, Elisabeth, Elijah, Keara, and Mr. Eastland were all potential heirs of Dianne's
13 estate.

14 6. The will nominated Ranse as personal representative (PR).

15 7. Dianne died in October 2015.

16 8. Ranse hired Respondent to probate the estate.

17 9. Ranse gave Respondent a copy of the 2012 will.

18 10. The copy of the will did not include an affidavit signed by the witnesses to its
19 execution.

20 11. Ranse told Respondent that he contacted the will's witnesses and they refused to
21 provide an affidavit.

22 12. Respondent believed it would be difficult to have the will admitted to probate and

23 ¹ Because some of the players share the same last name we use first names to avoid confusion.

1 deemed valid without an affidavit.

2 13. Respondent did not contact the will's witnesses or attempt to get an affidavit
3 himself.

4 14. Ranse falsely told Respondent that Elisabeth was dead.

5 15. Respondent did not conduct an inquiry into the status of Diane's other family
6 members that was adequate to determine if they were potential heirs.

7 16. After consultation, Respondent and Ranse decided to file for an intestate probate.

8 17. On January 19, 2016, Respondent filed an intestate Petition for Letters of
9 Administration and Nonintervention Powers.

10 18. Respondent did not disclose the existence of the 2012 will in the Petition.

11 19. Respondent stated in the Petition that Ranse was the only heir.

12 20. Ranse was not the only potential heir of the intestate estate.

13 21. Elijah was a potential heir had Elisabeth actually been deceased.

14 22. Mr. Eastland was a potential heir if he had been legally adopted by Dianne.

15 23. Ranse was appointed PR of the intestate estate.

16 24. Elisabeth hired lawyer Frank DeMarco in November 2016.

17 25. Mr. DeMarco wrote a letter to Respondent seeking information about the probate
18 action, notifying Respondent that Elisabeth was not dead, and expressing concern that the
19 Petition did not acknowledge Elisabeth's existence.

20 26. Mr. DeMarco filed a petition seeking to remove Ranse as PR and to admit a prior
21 will of Dianne's that Elisabeth had in her possession.

22 27. Respondent withdrew from the representation of Ranse for health reasons on January
23 17, 2017. At the time, Elisabeth's motion to admit the prior will was pending.

1 28. Ranse hired a different lawyer to represent him.

2 29. Ranse found the original 2012 will shortly thereafter. The witnesses, one of whom is
3 a lawyer, provided an affidavit to its execution.

4 30. The 2012 will and the affidavit were filed with the court.

5 31. Probate continued under the terms of the 2012 will.

6 **III. STIPULATION TO MISCONDUCT**

7 32. By failing to attempt to obtain an affidavit from witnesses to the 2012 will, failing to
8 disclose the existence of the will in the Petition, and failing to adequately inquire into the status
9 of other family members listed in the will to determine if they were potential heirs, Respondent
10 violated RPC 1.1 (competence) and 1.3 (diligence).

11 **IV. PRIOR DISCIPLINE**

12 33. Respondent does not have any prior public discipline.

13 **V. APPLICATION OF ABA STANDARDS**

14 34. The following American Bar Association Standards for Imposing Lawyer Sanctions
15 (1991 ed. & Feb. 1992 Supp.) apply to this case:

16 **4.4 Lack of Diligence**

17 4.41 Disbarment is generally appropriate when:

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

20 4.42 Suspension is generally appropriate when:

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

23 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.

1 4.44 Admonition is generally appropriate when a lawyer is negligent and does
2 not act with reasonable diligence in representing a client, and causes little
or no actual or potential injury to a client.

3 **4.5 Lack of Competence**

4 4.51 Disbarment is generally appropriate when a lawyer's course of conduct
5 demonstrates that the lawyer does not understand the most fundamental
6 legal doctrines or procedures, and the lawyer's conduct causes injury or
potential injury to a client.

7 4.52 Suspension is generally appropriate when a lawyer engages in an area of
8 practice in which the lawyer knows he or she is not competent, and
9 causes injury or potential injury to a client.

10 4.53 Reprimand is generally appropriate when a lawyer:

- 11 (a) demonstrates failure to understand relevant legal doctrines or
12 procedures and causes injury or potential injury to a client; or
13 (b) is negligent in determining whether he or she is competent to
14 handle a legal matter and causes injury or potential injury to a
15 client.

16 4.54 Admonition is generally appropriate when a lawyer engages in an
17 isolated instance of negligence in determining whether he or she is
18 competent to handle a legal matter, and causes little or no actual or
19 potential injury to a client.

20 35. Respondent acted negligently.

21 36. Potential heirs could have been injured because they could have been deprived of
22 their inheritance. There was little or no actual injury because the original 2012 will was found
23 and filed.

24 37. The presumptive sanction is admonition.

38. The following aggravating factor applies under ABA Standard 9.22:

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

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

- (a) absence of a prior disciplinary record; and
(b) absence of a dishonest or selfish motive.

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

1 41. On balance the aggravating and mitigating factors do not require a departure from
2 the presumptive sanction.

3 **VI. STIPULATED DISCIPLINE**

4 42. The parties stipulate that Respondent shall receive an admonition for his conduct.

5 43. A copy of the admonition is attached to this stipulation. Respondent agrees to the
6 language of the admonition.

7 44. Respondent will be subject to probation for a period of one year beginning when this
8 stipulation receives final approval.

9 45. Respondent's compliance with conditions of probation will be monitored by the
10 Probation Administrator of the Office of Disciplinary Counsel ("Probation Administrator").

11 46. Failure to comply with a condition of probation listed herein may be grounds for
12 further disciplinary action under ELC 13.8(b).

13 47. Respondent shall comply with the specific probation terms set forth below:

14 **Ethics School**

- 15 a) Respondent shall attend Ethics School in person or by webinar (approximately six
16 hours), or by obtaining the recorded product, and to pay registration costs of \$150.
Respondent will receive all applicable approved CLE credits for time in attendance
17 at the Ethics School. Ethics School will be held at the WSBA's office.
- 18 b) Attendance at Ethics School is in addition to and shall not fulfill any continuing
legal education (CLE) requirements set out in this stipulation.
- 19 c) Respondent shall not disclose the names or other identifying information of other
Ethics School attendees outside of Ethics School.
- 20 d) Respondent shall contact the Ethics School Administrator, currently Thea Jennings,
21 at (206) 733-5985 or theaj@wsba.org, no less than 30 days after this stipulation
receives final approval to confirm enrollment in Ethics School and related logistics.
- 22 e) The Ethics School administrator may respond to inquiries from the Probation
23 Administrator regarding Respondent's compliance with these conditions.

1 **CLEs**

- 2 f) During the probationary period, Respondent shall complete a minimum of 12 credit
3 hours of continuing legal education courses, at Respondent's own expense, in the
4 areas of estate law and client communication/dealing with difficult clients.
5 g) Respondent shall provide evidence of attendance at such courses to the Probation
6 Administrator no later than 30 days after the conclusion of the course. Proof of
7 attendance shall include the program brochure, evidence of payment, and a written
8 statement that includes the date and time of attendance.

9 **VII. RESTITUTION**

10 48. No restitution is owing in this matter.

11 **VIII. COSTS AND EXPENSES**

12 49. In light of Respondent's willingness to resolve this matter by stipulation at an early
13 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$325 in
14 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(i) if
15 these costs are not paid within 30 days of approval of this stipulation.

16 **IX. VOLUNTARY AGREEMENT**

17 50. Respondent states that prior to entering into this Stipulation he had an opportunity to
18 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
19 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
20 Association, nor by any representative thereof, to induce the Respondent to enter into this
21 Stipulation except as provided herein.

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

24 **X. LIMITATIONS**

52. 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

1 expenditure of additional resources by the Respondent and ODC. Both the Respondent and
2 ODC acknowledge that the result after further proceedings in this matter might differ from the
3 result agreed to herein.

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

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

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

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

20 57. If this Stipulation is not approved by the Hearing Officer, this Stipulation will have
21 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
22 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
23 or criminal action.

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

Thomas E. Gates
Thomas Edward Gates, Bar No. 34010
Respondent

Dated: 11/21/17

M Craig Bray
M Craig Bray, Bar No. 20821
Disciplinary Counsel

Dated: 11/27/2017

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8 OF THE
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11 **THOMAS EDWARD GATES,**

12 Lawyer (Bar No. 34010).

13 Proceeding No. 17#00063

14 ADMONITION

15 Pursuant to Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, the following
16 Admonition was issued by the Disciplinary Board Chair.

17 **I. ADMISSION TO PRACTICE**

18 At all times material to the complaint, you were licensed to practice in the state of
19 Washington.

20 **II. FACTS**

21 You were hired by the son of a deceased woman to file a probate action and have the son
22 appointed personal representative of the estate.

23 You filed a petition for intestate probate that stated there was no will and that the son
24 was the only heir of the estate.

But the son had provided you with a copy of a will that was not accompanied by an
affidavit of witnesses attesting to its execution. Although this will might have been deemed

