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DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

TUELLA O. SYKES,

Lawyer (Bar No. 36179).

Proceeding No. 22#00012

ODC File No(s). 20-01322 and 21-00219

STIPULATION TO TWO REPRIMANDS

Following settlement conference conducted under ELC 10.12(h)

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 Two Reprimands is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Sachia Stonefeld Powell, Respondent’s Counsel Jeffrey T. Kestle and Respondent lawyer Tuella O. Sykes.

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,

1 the Supreme Court. Respondent further understands that a hearing and appeal could result in an
2 outcome more favorable or less favorable to Respondent. Respondent chooses to resolve this
3 proceeding now by entering into the following stipulation to facts, misconduct and sanction to
4 avoid the risk, time, expense attendant to further proceedings.

5 I. ADMISSION TO PRACTICE

6 1. Respondent was admitted to practice law in the State of Washington on June 2, 2005.

7 II. STIPULATED FACTS

8 Client: Dillard

9 2. On December 27, 2018, Laurie Dillard hired Respondent to represent Dillard in a
10 bankruptcy matter.

11 3. By the first week of January 2019, Dillard completed and returned Respondent's 53-
12 page intake questionnaire, provided a list of all creditors, and provided copies of all the required
13 documents.

14 4. On January 4, 2019, Respondent's paralegal after receiving from Dillard a completed
15 53-page intake questionnaire, list of all creditors, and copies of all the required documents, requested
16 more information from Dillard.

17 5. In the weeks and months thereafter, Respondent's paralegal was Dillard's primary
18 contact at Respondent's office. Every two or three months, Dillard would leave a voicemail message
19 for Respondent's office, but no one responded to Dillard's messages.

20 6. On February 11, 2019, Dillard provided additional collection notices from creditors to
21 Respondent's office and requested information about the status of the bankruptcy filing. No one from
22 Respondent's office responded.

23 7. On March 12, 2019, Dillard again wrote to Respondent's office seeking information

1 about the matter. No one from Respondent's office provided the requested information.

2 8. Respondent failed to make reasonable efforts to ensure that that Respondent's paralegal
3 was keeping Dillard reasonably informed about the status of the case and responding to Dillard's
4 reasonable requests for information.

5 9. Respondent terminated Respondent's paralegal's employment in March 2020 but did
6 not tell Dillard that Respondent's paralegal's employment was terminated.

7 10. Dillard continued to email Respondent's office but nobody from Respondent's office
8 responded.

9 11. Dillard continued to receive collection notices and forward them to Respondent's office,
10 but no one from Respondent's office responded.

11 12. Respondent did not speak to Dillard until May 26, 2020. During the conversation,
12 Respondent notified Dillard that Respondent's paralegal no longer worked for Respondent and that
13 Respondent was unaware of Dillard's prior communications with the paralegal.

14 13. On June 17, 2020, Dillard provided Respondent with updated paycheck stubs and again
15 inquired about the status of the bankruptcy via email. Respondent responded, but did not answer
16 Dillard's inquiries to Dillard's satisfaction.

17 14. On July 14, 2020, Respondent emailed Dillard to set up an interview. Even through
18 Dillard responded that Dillard was available anytime, Respondent never set up the interview.

19 15. On August 28, 2020, Dillard wrote to Respondent that the two-year delay was
20 inexcusable. Respondent replied that Respondent would complete a draft petition and would contact
21 Dillard to review it "later next week." Nobody from Respondent's office called Dillard the following
22 week.

23 16. On November 12, 2020, Dillard emailed Respondent again, inquiring about the status

1 of the bankruptcy filing. That same day, Respondent replied that Respondent was awaiting additional
2 information from Dillard, and again requested that Dillard provide the documents that Dillard had
3 already provided. Respondent informed Dillard that Respondent would call Dillard the following day
4 to complete the bankruptcy paperwork, but Respondent did not contact Dillard the following day.

5 17. On December 8, 2020, Respondent informed Dillard that Respondent was reviewing
6 Dillard's documents.

7 18. On or about February 28, 2021, Dillard received a summons to appear in court. The
8 plaintiff was a creditor of Dillard's, seeking \$5,459.59.

9 19. Dillard wrote Respondent seeking advice on how to address the summons, and
10 expressed an inability to pay the court costs or extra attorney's fees.

11 20. Respondent responded about a possible meeting with Dillard but did not respond to
12 Dillard's request for information about responding to the summons before Dillard took care of it on
13 her own.

14 21. Dillard responded to the creditor without input from Respondent.

15 22. In March 2021, more than two years after Dillard hired Respondent, and a year after
16 firing Respondent's paralegal, Respondent filed the bankruptcy petition.

17 23. On April 13, 2021, Dillard and Respondent met with the bankruptcy trustee.

18 24. On April 13, 2021, the trustee directed Dillard to file 2019 and 2020 income tax returns
19 immediately and continued the meeting for one week.

20 25. On April 14, 2021, Respondent informed Dillard that Respondent received notification
21 from Dillard's mortgage holder that the automatic mortgage payment had been cancelled as of March
22 24, 2021.

23 26. Although Respondent informed Dillard that this was a typical action, Respondent had

1 not told Dillard about it in advance.

2 27. Because Dillard did not know about the cancellation of the automatic mortgage
3 payment, Dillard's house payment was late and Dillard incurred late fees.

4 28. Because of Respondent's delay in filing the bankruptcy documents, Dillard's
5 certification for credit counseling, which Dillard had paid for in December 2018, expired.

6 29. Because the certification for credit counseling had expired, Dillard had to retake the 6-
7 hour course, and pay for it, again.

8 30. On June 16, 2021, the Order of Discharge was filed.

9 **Client: Spice**

10 31. On January 6, 2020, Respondent filed a complaint on behalf of client Ted Spice
11 against several defendants including bankruptcy trustee Brian L. Budsberg.

12 32. On February 11, 2020, Budsberg wrote to Respondent that filing the claims would
13 violate the Barton doctrine, and cited relevant caselaw.

14 33. Respondent contacted Budsberg, advised that she was ill, and asked for more time
15 to discuss the issue with her client.

16 34. Respondent did not dismiss the claim.

17 35. On March 17, 2020, Budsberg and other defendants moved to dismiss the suit and
18 moved for sanctions..

19 36. The motion was based on the argument that the court did not have subject matter
20 jurisdiction over the claims asserted because of the Barton doctrine, and on the argument that
21 Budsberg had quasi-judicial immunity against the claims.

22 37. The Barton doctrine requires preauthorization for actions against bankruptcy
23 trustees.

1 38. Respondent had not sought or obtained preauthorization for the action against
2 Budsberg.

3 39. There are two recognized exceptions to the Barton doctrine: the business exception
4 and the ultra vires exception. Neither one applied in the action against Budsberg.

5 40. On April 30, 2020, Respondent filed a motion for leave to file an amended complaint,
6 with the proposed amended complaint attached.

7 41. In the proposed amended complaint, Respondent asserted that: “[t]he Court has subject
8 matter jurisdiction over this matter pursuant to 28 U.S.C. §1331.”

9 42. Respondent did not address Barton or its exceptions in either the motion or the amended
10 complaint.

11 43. On May 11, 2020, the court ruled that:

- 12 • Respondent’s pleadings did not support application of an exception to the Barton
doctrines;
- 13 • Respondent did not meaningfully address Budsberg’s immunity claim; and
- 14 • Budsberg was entitled to quasi-judicial immunity.

15 44. On May 11, 2020, the court dismissed Respondent’s claims against Budsberg, the
16 bankruptcy estate, and two other defendants with prejudice and granted the motion for sanctions under
17 Fed. R. Civ. P. 11.

18 45. On May 11, 2020, the court addressed Respondent’s motion for leave to file an amended
19 complaint, ordering Respondent to file a new proposed complaint by May 20, 2020.

20 46. On May 26, 2020, Respondent filed a motion to reconsider the dismissal order, the
21 order on the motion for leave to file an amended complaint, and the sanctions.

22 47. In the motion, Respondent asserted that Spice’s claims against Budsberg were made
23

1 pursuant to 28 U.S.C. § 959 (the business exception to the Barton doctrine).

2 48. In the motion, Respondent argued that the Barton doctrine did not apply because
3 Budsburg acted outside the scope of authority, which would implicate the ultra vires exception.

4 49. On June 1, 2020, the court rejected Respondent's arguments, denied the motions, and
5 upheld the sanctions against Respondent.

6 50. The court awarded sanctions against Respondent personally, as well as against
7 Respondent's client.

8 **III. STIPULATION TO MISCONDUCT**

9 51. By failing to file Dillard's bankruptcy petition for 26 months, Respondent violated
10 RPC 1.3.

11 52. By failing to adequately supervise Respondent's paralegal's work on Dillard's case
12 to ensure that there was sufficient communication and the matter moved forward, Respondent
13 violated RPC 5.3.

14 53. By failing to communicate with Dillard and respond to Dillard's reasonable requests
15 for information, Respondent violated RPC 1.4.

16 54. By failing to provide Spice with competent representation, including the legal
17 knowledge, skill, thoroughness, and preparation reasonably necessary for the representation,
18 Respondent violated RPC 1.1.

19 55. By bringing a proceeding against Budsberg, and/or asserting an issue therein, without
20 "a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an
21 extension, modification or reversal of existing law," Respondent violated RPC 3.1.

22 **IV. PRIOR DISCIPLINE**

23 56. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 57. 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
serious injury to a client; or
- 7 (b) a lawyer knowingly fails to perform services for a client and causes
serious or potentially serious injury to a client; or
- 8 (c) a lawyer engages in a pattern of neglect with respect to client
matters and causes serious or potentially serious injury to a client.

9 4.42 **Suspension** is generally appropriate when:

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

12 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.

13 4.44 **Admonition** is generally appropriate when a lawyer is negligent and does
not act with reasonable diligence in representing a client, and causes little or no
actual or potential injury to a client.

14 **4.5 Lack of Competence**

15 4.51 **Disbarment** is generally appropriate when a lawyer's course of conduct
demonstrates that the lawyer does not understand the most fundamental legal
doctrines or procedures, and the lawyer's conduct causes injury or potential injury
to a client.

16 4.52 **Suspension** is generally appropriate when a lawyer engages in an area of
practice in which the lawyer knows he or she is not competent, and causes injury
or potential injury to a client.

17 4.53 **Reprimand** is generally appropriate when a lawyer:

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

20 4.54 **Admonition** is generally appropriate when a lawyer engages in an isolated
instance of negligence in determining whether he or she is competent to handle a
legal matter, and causes little or no actual or potential injury to a client.

1 **6.2 Abuse of the Legal Process**

2 6.21 **Disbarment** is generally appropriate when a lawyer knowingly violates a
3 court order or rule with the intent to obtain a benefit for the lawyer or another, and
4 causes serious injury or potentially serious injury to a party or causes serious or
5 potentially serious interference with a legal proceeding.

6 6.22 **Suspension** is generally appropriate when a lawyer knows that he or she is
7 violating a court order or rule, and causes injury or potential injury to a client or a
8 party, or causes interference or potential interference with a legal proceeding.

9 6.23 **Reprimand** is generally appropriate when a lawyer negligently fails to
10 comply with a court order or rule, and causes injury or potential injury to a client
11 or other party, or causes interference or potential interference with a legal
12 proceeding.

13 6.24 **Admonition** is generally appropriate when a lawyer engages in an isolated
14 instance of negligence in complying with a court order or rule, and causes little or
15 no actual or potential injury to a party, or causes little or no actual or potential
16 interference with a legal proceeding.

17 **7.0 Violations of Duties Owed as a Professional**

18 7.1 **Disbarment** is generally appropriate when a lawyer knowingly engages in
19 conduct that is a violation of a duty owed as a professional with the intent to obtain
20 a benefit for the lawyer or another, and causes serious or potentially serious injury
21 to a client, the public, or the legal system.

22 7.2 **Suspension** is generally appropriate when a lawyer knowingly engages in
23 conduct that is a violation of a duty owed as a professional and causes injury or
24 potential injury to a client, the public, or the legal system.

 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.

58. Respondent knowingly failed to perform services for Dillard.

59. Respondent knowingly engaged in a pattern of neglect of Dillard's case.

60. Respondent knowingly failed to supervise Respondent's paralegal.

61. Respondent knowingly failed to keep Dillard informed about the status of the matter
and/or knowingly failed to comply with Dillard's reasonable requests for information.

62. Respondent demonstrated a failure to understand relevant legal doctrines or

1 procedures in the representation of Spice.

2 63. By filing an unwarranted action against Budsberg, Respondent knowingly violated
3 court rules.

4 64. Dillard's matter was delayed, causing Dillard stress and anxiety.

5 65. Dillard was left uninformed about Dillard's matter, causing Dillard stress and anxiety.

6 66. Spice was injured by Respondent's conduct because Spice was personally sanctioned.

7 67. Budsberg suffered potential injury when Respondent filed an unwarranted action
8 against Budsberg.

9 68. Respondent's conduct prejudiced the efficient administration of justice.

10 69. The presumptive sanction is suspension.

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

12 (d) multiple offenses;

(i) substantial experience in the practice of law (admitted in 2005);

13 71. The following mitigating factors apply under ABA Standard 9.32:

14 (a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

15 (c) personal or emotional problem (Specific information regarding this factor
is provided in the attached Exhibit A, which is subject to a protective
order); and

16 (l) remorse.

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

19 73. A significant mitigating factor is the contribution this stipulation makes to the efficient
20 and effective operation of the lawyer discipline system considering the effect the COVID-19
21 public health emergency has had on disciplinary resources and the orderly processing of
22 disciplinary matters.

1 74. On balance the aggravating and mitigating factors justify a departure from the
2 presumptive sanction and justify two reprimands.

3 VI. STIPULATED DISCIPLINE

4 75. The parties stipulate that Respondent shall receive two reprimands.

5 VII. CONDITIONS OF PROBATION

6 76. Respondent will be subject to probation for a period of two years beginning when
7 Respondent is reinstated to the practice of law and shall comply with the specific probation terms
8 set forth below:

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

11 Practice Monitor

- 12 a) During the period of probation, Respondent's practice will be supervised by a practice
13 monitor. The practice monitor must be a WSBA member with no record of public
14 discipline and who is not the subject of a pending public disciplinary proceeding.
- 15 b) The role of the practice monitor is to consult with and provide guidance to Respondent
16 regarding case management, office management, and avoiding violations of the Rules
17 of Professional Conduct, and to provide reports and information to the Probation
18 Administrator regarding Respondent's compliance with the terms of probation and
19 the RPC. The practice monitor does not represent the Respondent.
- 20 c) At the beginning of the probation period, the Probation Administrator will select a
21 lawyer to serve as practice monitor for the period of Respondent's probation.
- 22 i) Initial Challenge: If, within 15 days of the written notice of the selection of
23 a practice monitor, Respondent sends a written request to the Probation
24 Administrator that another practice monitor be selected, the Probation
Administrator will select another practice monitor. Respondent need not
identify any basis for this initial request.
- ii) Subsequent Challenges: If, after selection of a second (or subsequent)
practice monitor, Respondent believes there is good cause why that individual
should not serve as practice monitor, Respondent may, within 15 days of

1 notice of the selected practice monitor, send a written request to the Probation
2 Administrator asking that another practice monitor be selected. That request
3 must articulate good cause to support the request. If the Probation
4 Administrator agrees, another practice monitor will be selected. If the
5 Probation Administrator disagrees, the Office of Disciplinary Counsel will
submit its proposed selection for practice monitor to the Chair of the
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.

- 6 d) In the event the practice monitor is no longer able to perform the practice monitor's
7 duties, the Probation Administrator will select a new practice monitor at the Probation
Administrator's discretion.
- 8 e) During the period of probation, Respondent must cooperate with the named practice
9 monitor. Respondent must meet with the practice monitor every month for the period
of probation. Respondent must communicate with the practice monitor to schedule
all required meetings.
- 10 f) The Respondent must bring to each meeting a current, complete written list of all
11 pending client legal matters being handled by the Respondent. The list must identify
12 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.
- 13 g) At each meeting, the practice monitor will discuss with Respondent practice issues
14 that have arisen or are anticipated. In light of the conduct giving rise to the imposition
of probation, ODC recommends that the practice monitor and Respondent discuss
15 whether Respondent is diligently making progress on each client matter, whether
Respondent is in communication with each client, and whether Respondent needs to
16 consider withdrawing from any client matters. Meetings may be in person or by
telephone at the practice monitor's discretion. The practice monitor uses discretion
17 in determining the length of each meeting.
- 18 h) The practice monitor will provide the Probation Administrator with quarterly written
19 reports regarding Respondent's compliance with probation terms and the RPC. Each
report must include the date of each meeting with Respondent, a brief synopsis of the
20 discussion topics, and a brief description of any concerns the practice monitor has
regarding the Respondent's compliance with the RPC. The report must be signed by
21 the practice monitor. Each report is due within 30 days of the completion of the
quarter.
- 22 i) If the practice monitor believes that Respondent is not complying with any of
23 Respondent's ethical duties under the RPC or if Respondent fails to schedule or attend

1 a monthly meeting, the practice monitor will promptly communicate that to the
2 Probation Administrator.

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

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

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

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

13 **VIII. RESTITUTION**

14 79. No restitution is appropriate in this matter.

15 **IX. COSTS AND EXPENSES**

16 80. In light of Respondent's willingness to resolve this matter by stipulation at an early
17 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$1000 in
18 accordance with ELC 13.9(i).¹ The Association will seek a money judgment under ELC 13.9(l)
19 if these costs are not paid within 30 days of approval of this stipulation.

20 **X. VOLUNTARY AGREEMENT**

21 81. Respondent states that prior to entering into this Stipulation Respondent has consulted
22 independent legal counsel regarding this Stipulation, that Respondent is entering into this

23 ¹ These costs are separate from the \$1,000 payment required for the practice monitor.

1 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
2 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
3 as provided herein.

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

6 **XI. LIMITATIONS**

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

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

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


21 86. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
22 Hearing Officer's review become public information on approval of the Stipulation by the
23

1 Hearing Officer, unless disclosure is restricted by order or rule of law.

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


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

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

11
12 


13 Tuella O. Sykes, Bar No. 36179
Respondent

Dated: 03/16/2023

14 

15 Jeffrey T. Kestle, Bar No. 29648
Counsel for Respondent

Dated: March 17, 2023

16 

17 Sachia Stonefeld Powell, Bar No. 21166
Disciplinary Counsel

Dated: 3/17/23