

FILED

JUL 15 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

MATTHEW R. AYLWORTH,

Lawyer (Bar No. 37892).

Proceeding No. 12#00119

STIPULATION TO TWO REPRIMANDS

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to two reprimands is entered into by the Washington State Bar Association (Association), through disciplinary counsel Francesca D'Angelo, Respondent lawyer Matthew R. Aylworth.

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 avoid the risk, time, expense attendant to further proceedings.

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on November 2,
3 2006.

4 **II. STIPULATED FACTS**

5 **Scattergood Grievance**

6 2. On September 24, 2009, Respondent, representing Asset Acceptance, LLC, sued
7 Darrell Scattergood in Snohomish County District Court to collect an unpaid debt.

8 3. On August 1, 2011, the court granted summary judgment in favor of Asset
9 Acceptance, LLC. and entered a judgment against Mr. Scattergood for \$14,943.73.

10 4. Mr. Scattergood appealed to the Snohomish County Superior Court.

11 5. On December 26, 2011, Respondent filed a proposed order on appeal and an
12 affidavit for attorney's fees and expenses.

13 6. The affidavit detailed expenses totaling \$3,260, including \$2,200 for "Travel to and
14 appearance at oral argument" on December 18 and 19, 2011.

15 7. Respondent signed the affidavit, swearing that the expenses listed were "correct and
16 true," and had already been incurred, though the hearing had in fact not taken place yet.

17 8. This entry for the expense of travelling to the oral argument was false. No argument
18 occurred on these days.

19 9. On January 16, 2012, Respondent sent another affidavit for attorney's fees to the
20 court which corrected the caption. This affidavit was the same as the December 26, 2011
21 affidavit in that it also stated that Respondent had traveled to and appeared at an oral argument
22 on December 18 and 19, 2011.

23 10. On March 6, 2012, Respondent attended the oral argument. When the final
24

1 judgment was entered, Respondent filed another affidavit for cost and expenses with the correct
2 date of the oral argument and was awarded fees.

3 **Grigg Grievance**

4 11. In October 2006, the firm of Bishop, White and Marshall (Bishop) filed a lawsuit in
5 Benton County Superior Court on behalf of Atlantic Credit & Finance (Atlantic) against Darwin
6 Grigg.

7 12. In November 2006, the Benton County Superior Court entered a judgment against
8 Mr. Grigg awarding Atlantic the original amount of the debt plus fees and costs, for a total
9 judgment of \$5,708.80.

10 13. Since 2004, Mr. Grigg has relied on Social Security Disability benefits (SSD) as his
11 sole source of income.

12 14. By the terms of the judgment, Mr. Grigg agreed to pay Atlantic \$50 per month.

13 15. Between December 2006 and September 2009, Mr. Grigg paid Atlantic \$1,750.

14 16. In April 2010, Atlantic retained Respondent's firm.

15 17. On April 6, 2010, a note was entered into Respondent's firm's electronic notes
16 which stated "I rec'd a dispute letter on the above today. His sole income is SSI and he doesn't
17 own property. I recommend to close file, we will be unable to garnish."

18 18. These electronic records were available to Respondent, but he failed to review them.
19 Instead, Respondent checked Mr. Grigg's credit report which indicated that Mr. Grigg had
20 previously been employed as a fork lift operator.

21 19. Respondent did not check the court file which would have revealed that Mr. Grigg
22 had made substantial payments on the judgment.

23 20. On June 22, 2010, Respondent entered a notice of substitution for Bishop as attorney
24

1 of record for Atlantic.

2 21. On July 30, 2010, Respondent mailed an application for writ of garnishment and a
3 proposed writ to the Benton County Superior Court for entry ex parte.

4 22. Respondent's application stated that Mr. Grigg had made no payments on the debt,
5 and that "Judgment Creditor has reason to believe and does believe" that the garnishee held
6 property that was not exempted from garnishment by any state or federal law.

7 23. The application was signed by Respondent under penalty of perjury.

8 24. In fact, Mr. Grigg's only income was from SSD, which are exempt from
9 garnishment under federal law. 42 US 407, section 207. And, Mr. Grigg had made \$1,750 in
10 payments to Atlantic.

11 25. The writ was signed by the court on August 10, 2010.

12 26. On October 1, 2010, Mr. Grigg discovered the funds in his credit union account were
13 frozen.

14 27. As a result of the garnishment, Mr. Grigg did not have funds to buy food,
15 medication, or gas for his car.

16 28. On October 5, 2010, Respondent wrote a letter to the court transmitting a proposed
17 judgment and order to pay to be considered ex parte, which stated that the garnishee bank held
18 \$1,226.60 in non-exempt funds.

19 29. The proposed judgment ordered Mr. Grigg's bank to pay \$1,226.60 to Respondent.

20 30. On October 12, 2012, lawyer Greg Smith, on behalf of Mr. Grigg, faxed a letter to
21 Respondent informing him that Mr. Grigg's sole income since 2004 had been his monthly SSD
22 benefits and that these benefits represented the entirety of the funds in the attached bank
23 account. Mr. Smith also demanded that Respondent immediately contact the bank and release
24

1 the full amount of the exempted funds.

2 31. Included with Mr. Smith's letter was a copy of Mr. Grigg's exemption claim and a
3 motion to quash the garnishment.

4 32. Respondent did not immediately release the attached funds or otherwise respond to
5 Mr. Smith's letter.

6 33. Despite having an order pending with the ex-parte court that stated Mr. Grigg's bank
7 account held only non-exempt funds, Respondent did not inform the court that Mr. Grigg was
8 represented by counsel or that Mr. Grigg had filed and served him with a notice of exemption
9 and motion to quash to the garnishment a week earlier.

10 34. On October 20, 2010, the court signed Respondent's proposed judgment without the
11 benefit of this information. The same day, the court sent a conformed copy of the judgment to
12 Respondent.

13 35. Respondent did not forward this judgment to Mr. Smith or inform the court that the
14 judgment had been entered based on erroneous facts.

15 36. That same day another lawyer in Respondent's firm sent a release of garnishment to
16 Mr. Grigg's credit union. The credit union released the funds to Mr. Grigg on October 24,
17 2010.

18 37. Mr. Smith later discovered the October 20, 2010 judgment that had been entered
19 without his knowledge. Mr. Smith told Respondent that if he did not agree to sign an agreed
20 order vacating the judgment, Mr. Grigg would seek sanctions. Respondent signed the order and
21 the judgment was vacated.

22 38. In February 2011, Mr. Grigg filed a civil suit against Respondent in the United
23 States District Court for the Eastern District of Washington.

1 39. On April 7, 2011, the suit was settled by payment of \$25,000 to Mr. Grigg and a
2 waiver of the balance Mr. Grigg owed to Atlantic.

3 **Failure To Supervise Non-Lawyer Assistants**

4 40. Respondent has a high volume collection practice with supervisory authority over a
5 large number of non-lawyer assistants who prepare documents on his behalf. In both the Grigg
6 and Scattergood matters, Respondent failed to supervise his non-lawyer assistants to ensure that
7 their conduct was compatible with the professional obligations of the lawyer.

8 **III. STIPULATION TO MISCONDUCT**

9 41. By twice filing an affidavit with the court stating that he had incurred fees for
10 appearing at oral argument when he had not done so, Respondent violated RPC 8.4(d).

11 42. By signing an application for writ of garnishment that stated Mr. Grigg had made no
12 payments on the debt and had property that was not exempt from garnishment by any state or
13 federal law, when he had information available showing the statements were false, Respondent
14 violated RPC 1.3 and RPC 8.4(d).

15 43. By presenting ex-parte orders without informing the court of material facts and by
16 failing to correct the false statements of material fact before the court signed his order,
17 Respondent violated RPC 3.3(c).

18 44. By failing to supervise his non-lawyer assistants to ensure that their conduct was
19 compatible with the professional obligations of a lawyer, Respondent violated RPC 5.3.

20 **IV. PRIOR DISCIPLINE**

21 45. On March 25, 2010, Respondent was ordered to receive a reprimand based on
22 reciprocal discipline imposed by the Supreme Court of the State of Oregon. The reprimand was
23 based on Respondent's failure to review a proposed judgment of dismissal and to serve it on the
24 defendant before filing in violation of Oregon's RPC 3.5(b), prohibiting ex-parte

1 | communications with the court and Oregon's RPC 8.4(a)(4), prohibiting conduct prejudicial to
2 | the administration of justice.

3 | **V. APPLICATION OF ABA STANDARDS**

4 | 46. The following American Bar Association Standards for Imposing Lawyer Sanctions
5 | (1991 ed. & Feb. 1992 Supp.) apply to this case:

6 | ***6.1 False Statements, Fraud, and Misrepresentation***

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

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

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

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

6.14 Admonition is generally appropriate when a lawyer engages in an
isolated instance of neglect in determining whether submitted statements
or 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.

20 | ***7.0 Violations of Duties Owed as a Professional***

21 | Absent aggravating or mitigating circumstances, upon application of the factors
22 | set out in Standard 3.0, the following sanctions are generally appropriate
23 | in cases involving false or misleading communication about the lawyer or
24 | 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.

- 1 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in
2 conduct that is a violation of a duty owed as a professional with the intent
3 to obtain a benefit for the lawyer or another, and causes serious or
4 potentially serious injury to a client, the public, or the legal system.
- 5 7.2 Suspension is generally appropriate when a lawyer knowingly engages in
6 conduct that is a violation of a duty owed as a professional and causes
7 injury or potential injury to a client, the public, or the legal system.
- 8 7.3 Reprimand is generally appropriate when a lawyer negligently engages in
9 conduct that is a violation of a duty owed as a professional and causes
10 injury or potential injury to a client, the public, or the legal system.
- 11 7.4 Admonition is generally appropriate when a lawyer engages in an
12 isolated instance of negligence that is a violation of a duty owed as a
13 professional, and causes little or no actual or potential injury to a client,
14 the public, or the legal system.

15 **Scattergood matter**

16 47. Respondent's conduct in twice signing an affidavit without verifying its accuracy
17 was negligent and a reckless violation of his duties as a lawyer.

18 48. Respondent's conduct in failing to supervise his non-lawyer assistants in the
19 Scattergood matter was also negligent.

20 49. The legal system was injured in that it relies on lawyers to not submit false
21 information to the court.

22 50. The presumptive sanction is reprimand under ABA Standards 6.13 and 7.3.

23 **Grigg matter**

24 51. Respondent's conduct in signing an application for writ of garnishment containing
false information without reviewing information that was readily available to him was negligent
and a reckless violation of his duties as a lawyer.

52. Respondent's failure to supervise his non-lawyer assistants in the Grigg matter was
also negligent.

53. Mr. Grigg was injured in that, while his bank account funds were frozen, he was not
able to buy medication, food, or gas for his car.

1 54. Respondent's conduct in failing to take remedial action by correcting the false
2 statements in his proposed judgment while the judgment was before the court for signature ex
3 parte was negligent. While there was little actual harm to Mr. Grigg since Respondent released
4 the garnishment and eventually vacated the order, the legal system is harmed when lawyers do
5 not inform the courts of all known facts in ex parte proceedings.

6 55. The presumptive sanction is reprimand under ABA Standards 6.13 and 7.13.

7 56. The following aggravating factors apply under ABA Standards Section 9.22:

- 8 (a) prior disciplinary offenses [In 2010, Mr. Aylworth received a reprimand for
9 failure to review a proposed judgment of dismissal and to serve it on the
10 defendant before filing];
- (h) vulnerability of victim [Mr. Grigg is disabled and suffers from mental
illness].

11 57. The following mitigating factors apply under ABA Standards Section 9.32:

- 12 (c) cooperative attitude toward the proceedings.
- 13 (k) imposition of other penalties or sanctions [Respondent's firm
eventually paid \$25,000 to Mr. Grigg to settle his civil suit].
- 14 (l) remorse.

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

17 59. The aggravating and mitigating factors do not warrant departing from the
18 presumptive sanction.

19 60. Based on the factors set forth above, the presumptive sanction for the Scattergood
20 matter is Reprimand. The presumptive sanction for the Grigg matter is also Reprimand.

21 VI. STIPULATED DISCIPLINE

22 61. Respondent stipulates he will receive two reprimands, one for his conduct related to
23 the Scattergood matter and one for the Grigg matter.

24 62. The parties stipulate Respondent will serve a period of probation of up to one year as

1 set forth in Paragraph VIII of this Stipulation.

2 **VII. RESTITUTION**

3 63. Respondent has paid \$25,000 to Mr. Grigg as the result of a settlement of a civil suit.

4 There is no further restitution required by this Stipulation.

5 **VIII. PROBATION**

6 64. Respondent will be placed on probation following imposition of the stipulated
7 discipline for a period of up to one year. During that time, Respondent shall attend Ethics
8 School (approximately six hours), tentatively scheduled to be held October 11, 2013, and to pay
9 registration costs of \$150. Respondent will receive all applicable approved CLE credits for time
10 in attendance at the Ethics School. Ethics School will be held at the Association's office or
11 CLE Conference Center on that date. While attending Ethics School, Respondent agrees not to
12 disclose the names or other identifying information of other Ethics School attendees outside of
13 Ethics School.

14 65. Respondent shall contact the Ethics School administrator, currently Senior
15 Disciplinary Counsel Marsha Matsumoto, at (206) 727-8233 or marsham@wsba.org, by August
16 30, 2013 to confirm enrollment in Ethics School.

17 66. Respondent and Respondent's counsel agree that Respondent may contact the Ethics
18 School administrator directly to enroll in Ethics School, and that administrative
19 communications, e.g. regarding registration, payment, program content and schedule, and CLE
20 credits may be sent directly to Respondent.

21 67. Respondent's probation will terminate upon the completion of ethics school.

22 **IX. COSTS AND EXPENSES**

23 68. In light of Respondent's willingness to resolve this matter by stipulation at an early
24

1 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
2 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(i)
3 if these costs are not paid within 30 days of approval of this stipulation.

4 **X. VOLUNTARY AGREEMENT**

5 69. 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 the Association, nor
8 by any representative thereof, to induce the Respondent to enter into this Stipulation except as
9 provided herein.

10 **XI. LIMITATIONS**

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

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

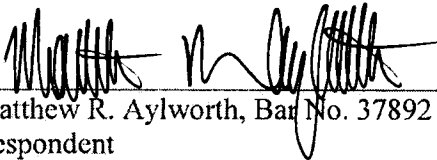
19 72. This Stipulation results from the consideration of various factors by both parties,
20 including the benefits to both by promptly resolving this matter without the time and expense of
21 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
22 such, approval of this Stipulation will not constitute precedent in determining the appropriate
23 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
24

1 subsequent proceedings against Respondent to the same extent as any other approved
2 Stipulation.

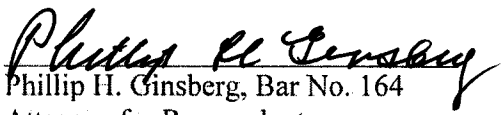
3 73. If this Stipulation is approved by the Hearing Officer, it will be followed by the
4 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
5 Enforcement of Lawyer Conduct will be made.

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


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

12 
13 _____
14 Matthew R. Aylworth, Bar No. 37892
15 Respondent

Dated: 5/21/13

16 
17 _____
18 Phillip H. Ginsberg, Bar No. 164
19 Attorney for Respondent

Dated: 5/23/13

20 
21 _____
22 Francesca D'Angelo, Bar No. 22979
23 Disciplinary Counsel

Dated: _____

1 subsequent proceedings against Respondent to the same extent as any other approved
2 Stipulation.

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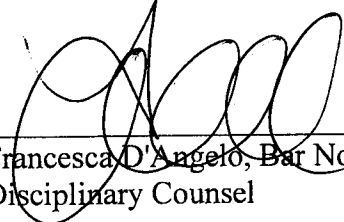
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11 to Discipline as set forth above.

12 _____
13 Matthew R. Aylworth, Bar No. 37892
14 Respondent

Dated: _____

15 _____
16 Phillip H. Ginsberg, Bar No. 164
17 Attorney for Respondent

Dated: _____

18 
19 _____
20 Francesca D'Angelo, Bar No. 22979
21 Disciplinary Counsel

Dated: 5/24/13