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**FILED**

Sep 18 2018

Disciplinary  
Board

Docket # 017

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON SUPREME COURT

In re

**WILLIAM CLAY BUDIGAN,**

Lawyer (Bar No. 13443).

Proceeding No. 16#00111

ODC File No(s). #15-00693

STIPULATION TO SUSPENSION

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 Suspension is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through disciplinary counsel Natalea Skvir, Respondent's Counsel Kurt M. Bulmer and Respondent lawyer William Clay Budigan.

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

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 27,  
6 1983.

#### 7 **II. STIPULATED FACTS**

8 2. Lillian Gaines and Peter Gaines dissolved their marriage in 2010.

9 3. Under the terms of their dissolution agreement, Peter was to pay Lillian maintenance  
10 for four years unless she remarried, cohabited in a marital-like relationship, or Peter died. In  
11 addition, a court could order Peter to pay the costs of collection if he failed to pay Lillian's  
12 maintenance.

13 4. Peter was granted custody of the couple's young daughter, CG, and Lillian was to  
14 pay him child support.

15 5. In or around April 2012, Peter stopped paying Lillian maintenance, alleging that she  
16 was cohabitating with a man.

17 6. In or around May 2012, Peter was diagnosed with cancer and given a short time to  
18 live.

19 7. In June 2012, Peter married Lauri Thoday.

20 8. In August 2012, Respondent filed a motion on Lillian's behalf, seeking to collect  
21 unpaid maintenance and attorney's fees from Peter.

22 9. In September 2012, the court found that Peter owed Lillian for unpaid maintenance,  
23 but it would be offset by unpaid child support and attorney's fees Lillian owed Peter.

1 10. On November 28, 2012, the court entered a judgment against Peter for \$7,067.87 and  
2 a wage assignment order.

3 11. On December 10, 2012, Peter died.

4 12. At the time of his death, Peter owed Lillian approximately \$9,069.87, which  
5 included the amount previously ordered plus a maintenance payment for December.

6 13. Immediately after Peter's death, Lauri filed suit seeking custody of CG.

7 14. Respondent initially represented Lillian in the custody matter, but withdrew from the  
8 representation on January 11, 2013.

9 15. Lillian obtained new counsel, Ruth Kimball, for the custody matter shortly after  
10 Respondent's withdrawal.

11 16. On or about January 28, 2013, Lauri filed a petition to probate Peter's estate and  
12 was designated personal representative.

13 17. On or about June 3, 2013, Respondent filed a creditor's claim against Peter's estate  
14 for "Lillian Gaines and Assignee William C. Budigan, Attorney," seeking \$60,104.05 from the  
15 estate.

16 18. Respondent represented that \$48,230.65 of the \$60,104.05 was owed to him as legal  
17 fees and costs.

18 19. RCW 4.08.080 provides that an assignee for the payment of money may, by  
19 assignment in writing, sue and maintain an action in his or her name. Washington case law  
20 recognizes an exception to the requirement of a written assignment when the assignor  
21 personally testifies to the assignment having occurred.

22 20. Respondent knew that he did not have a written assignment from Lillian, but  
23 believed he had an oral assignment. He also knew that Lillian had not testified to having given

1 him an assignment.

2 21. Respondent also knew that he had sent assignment forms to Lillian for her  
3 signature. She did not return them on the advice of Ms. Kimball.

4 22. On or about September 6, 2013, Lauri filed a notice of a partial rejection of the  
5 creditor's claim.

6 23. In or around January 2014, Respondent filed suit against Peter's estate on the  
7 creditor's claim, under a new cause number, on behalf of Lillian and himself, "individually and  
8 as assignee of Lillian Gaines."

9 24. Approximately one month later, Respondent filed a lis pendens in the probate case  
10 on Peter's real estate, as "assignee of Lillian Gaines."

11 25. In late February 2014, Lauri (through counsel) sent Respondent a written offer to  
12 settle the creditor's claim for \$12,729 plus interest, which was rejected.

13 26. On or about March 27, 2014, Lauri successfully moved to consolidate the probate  
14 matter and Respondent's creditor's claim and later filed a Motion for Determination of  
15 Creditor's Claim, Disbursement of Funds in the Court's Registry and for Attorney's Fees.

16 27. Respondent states that he moved for a continuance. However, on May 27, 2014,  
17 the court ruled that Peter's estate owed Lillian and Respondent, individually and as assignee of  
18 Lillian, a total of \$10,511.39.

19 28. This total was offset by an award of \$12,417.96 to Lauri for legal fees and costs  
20 incurred in litigating the matter.

21 29. As a result, Lillian and Respondent owed the estate \$1,906.57, which Respondent  
22 personally paid.

23 30. The court dismissed the creditor's claim with prejudice and ordered the estate funds

1 to be disbursed to Lauri.

2 31. On or about June 6, 2014, Respondent filed a Motion for Reconsideration, on behalf  
3 of Lillian and himself, “individually and as Lillian’s assignee.”

4 32. Respondent’s Motion for Reconsideration was accompanied by voluminous pages  
5 of materials, including many months of invoices for work on several of Lillian’s matters.

6 33. In response to Respondent’s Motion for Consideration, Lauri’s counsel filed a  
7 declaration signed by Lillian, asking the court to discontinue consideration of any motion filed  
8 by William Budigan purportedly on her behalf, because she believed that he had withdrawn  
9 from representing her in January 2013. In the declaration, Lillian also stated that she did not  
10 know Respondent was continuing on with litigation in the guise of being her attorney or  
11 assignee.

12 34. The court found that Respondent’s submitted materials were filed without client  
13 authorization or permission, noting that the record was devoid of evidence that Lillian Gaines  
14 ever executed a legal assignment of her claim against the Estate of Peter Gaines to Respondent.  
15 The court also noted that, in filing the petition as the assignee and signing the petition as  
16 counsel, Respondent was certifying that the petition was well grounded in fact, which was a  
17 misrepresentation.

18 35. On August 19, 2014, the court entered an order (1) denying Respondent’s Motion for  
19 Reconsideration; (2) removing Lillian’s name as a judgment creditor; (3) ordering Respondent  
20 individually liable for CR 11 terms of \$2,500 payable to Lauri; and (4) affirming the earlier  
21 order for disbursement of the estate funds to Lauri. Respondent paid the CR 11 terms of  
22 \$2,500.

23 36. Respondent’s litigation over maintenance and attorney fees on behalf of Lillian and

1 himself, individually and as Lillian's assignee, involved a concurrent conflict of interest.

2 37. Respondent did not inform Lillian about the material risks of and reasonably  
3 available alternatives to his continued litigation on behalf of Lillian and himself, individually  
4 and as Lillian's assignee.

5 38. Respondent did not obtain Lillian's informed consent, confirmed in writing, to the  
6 conflict of interest.

### 7 III. STIPULATION TO MISCONDUCT

8 39. By pursuing litigation on behalf of Lillian and himself, individually and as Lillian's  
9 assignee, where the representation involved a concurrent conflict of interest, Respondent  
10 violated RPC 1.7(a).

### 11 IV. PRIOR DISCIPLINE

12 40. Respondent has no record of prior discipline.

### 13 V. APPLICATION OF ABA STANDARDS

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

16 42. ABA Standard 4.3 is most applicable to duty to avoid conflicts of interest.  
17 Respondent knowingly failed to avoid a conflict of interest, when he engaged in litigation on  
18 behalf of Lillian and himself, individually and as Lillian's assignee, when there was a  
19 substantial risk that his own personal interest would materially limit the representation. Lillian  
20 was actually harmed because, rather than recovering maintenance funds due to her,  
21 Respondent's prolongation of the litigation in pursuit of his fees caused Lauri's legal expenses  
22 to be used as a set-off against Lillian's maintenance and wiped out any recovery. The  
23 presumptive sanction is suspension.

1 43. The following aggravating factors apply under ABA Standard 9.22:

2 (d) multiple offenses regarding a series of conflicts of interest in this  
3 case; and

3 (i) substantial experience in the practice of law: Respondent was  
4 admitted to practice in 1983.

5 44. The following mitigating factor applies under ABA Standard 9.32:

6 (a) absence of a prior disciplinary record.

7 45. It is an additional mitigating factor that Respondent has agreed to resolve this matter  
8 at an early stage of the proceedings, has paid restitution prior to the execution of this  
9 Stipulation, and has waived any and all outstanding attorney fees owed by Lillian Gaines.

10 46. On balance, the aggravating and mitigating factors do not warrant a departure from  
11 the presumptive sanction of suspension, but support a sanction less than the minimum six-  
12 month suspension.

13 **VI. STIPULATED DISCIPLINE**

14 47. The parties stipulate that Respondent shall receive a 60 day suspension for his  
15 conduct.

16 **VII. RESTITUTION**

17 48. Restitution has been paid in full and no restitution is required by this Stipulation.

18 **VIII. COSTS AND EXPENSES**

19 49. In light of Respondent's willingness to resolve this matter by stipulation at an early  
20 stage of the proceedings, Respondent shall pay reduced attorney fees and administrative costs of  
21 \$1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment under  
22 ELC 13.9(l) if these costs are not paid within 30 days of approval of this Stipulation.

23 50. Reinstatement from suspension is conditioned on payment of costs and expenses.

1 **IX. VOLUNTARY AGREEMENT**

2 51. Respondent states that prior to entering into this Stipulation he has consulted  
3 independent legal counsel regarding this Stipulation, that Respondent is entering into this  
4 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 52. 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 53. 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 54. 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 55. 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



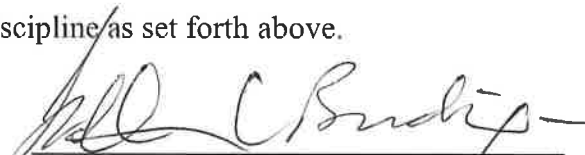
1 Stipulation.

2 56. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on  
3 the record agreed to by the parties. Under ELC 3.1(b), all documents that form the record  
4 before the Board for its review become public information on approval of the Stipulation by the  
5 Board, unless disclosure is restricted by order or rule of law.

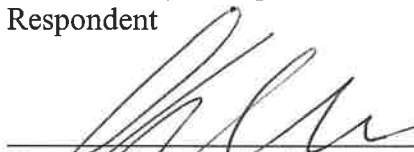
6 57. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will  
7 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the  
8 Rules for Enforcement of Lawyer Conduct will be made.

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

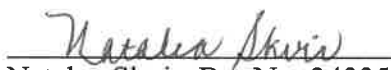
13 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation  
14 to Discipline as set forth above.

15   
16 \_\_\_\_\_  
17 William Clay Budigan, Bar No. 13443  
18 Respondent

Dated: 5/30/18

19   
20 \_\_\_\_\_  
21 Kurt M. Bulmer, Bar No. 5559  
22 Counsel for Respondent

Dated: 5/30/18

23   
24 \_\_\_\_\_  
25 Natalea Skvir, Bar No. 34335  
26 Disciplinary Counsel

Dated: 6/4/18