

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 21-19  
)  
LUCINDA R. GIORGETTI, )  
)  
Respondent. )

Counsel for the Bar: Eric J. Collins

Counsel for the Respondent: David J. Elkanich

Disciplinary Board: None

Disposition: Violation of RPC 4.2. Stipulation for Discipline. Public reprimand.

Effective Date of Order: September 2, 2021

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Lucinda R. Giorgetti and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Lucinda R. Giorgetti is publicly reprimanded for violation of RPC 4.2.

DATED this 2nd day of September 2021.

/s/ Mark A. Turner

Mark A. Turner

Adjudicator, Disciplinary Board

**STIPULATION FOR DISCIPLINE**

Lucinda R. Giorgetti, attorney at law (Respondent), and the Oregon State Bar (Bar) hereby stipulate to the following matters pursuant to Bar Rule of Procedure 3.6(c).

1.

The Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to the discipline of attorneys.

2.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1995, and has been a member of the Bar continuously since that time, having her office and place of business in Clackamas County, Oregon.

3.

Respondent enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 6, 2021, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against Respondent for alleged violation of Oregon Rule of Professional Conduct (RPC) 4.2 (communication with person represented by counsel). The parties intend that this stipulation set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of this proceeding.

#### **Facts**

5.

In 2019, Respondent represented a woman (wife) in a dissolution of marriage proceeding in which the client's partner (husband) was also represented by counsel. The parties failed to reach a settlement on all issues after two rounds of mediation. The morning after the second mediation session, wife emailed Respondent, stating that she and husband were again working on a possible settlement without the involvement of their lawyers. Wife asked Respondent to write down the proposed terms of the agreement. Respondent did not believe that husband and wife would actually settle the case, as they had failed to do so after two rounds of mediation and had previously failed to negotiate the case on their own.

Nonetheless, Respondent wrote down the terms proposed by her client and also recalculated child support based on terms Respondent had previously omitted. Respondent included signature lines on the agreement for wife and husband but not for either attorney.

Respondent provided the draft settlement agreement to wife, who then gave it to husband with a deadline for him to sign that evening. Respondent did not provide the agreement

to husband's attorney; Respondent told wife that she and husband should each let their attorney know if they reached an agreement.

During the same time period on the same day, Respondent and opposing counsel exchanged emails regarding the dissolution, but Respondent never mentioned their clients' contemporaneous negotiation. Husband ultimately did not sign the agreement after communicating with his attorney, whom husband mistakenly believed had been provided a copy of the agreement.

### **Violations**

6.

Respondent admits that, while representing wife, she caused wife to communicate with husband, a represented party, on the subject of the representation while knowing that husband was represented by a lawyer on that subject. Respondent admits that she did so when she prepared a draft settlement agreement containing both terms proposed by her client as well as her own child support calculation and gave wife the document knowing that wife expressed an intention to provide it to husband. Thus, Respondent admits she violated RPC 4.2.

### **Sanction**

7.

Respondent and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (ABA Standards). The ABA Standards require that Respondent's conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- a. **Duty Violated.** Respondent violated her duty to refrain from improper communication with individuals in the legal system. ABA Standard 6.3.
- b. **Mental State.** The most culpable mental state is that of "intent," when the lawyer acts with the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure to be aware of a substantial risk that circumstances exist or that a result will follow and which deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* Here, Respondent acted negligently when she drafted a settlement agreement containing terms proposed by her client as well as Respondent's own child support calculation and provided it to her client, who expressed an intention to provide the document to husband, a party represented in the divorce proceedings, as a final agreement. Respondent thus failed to be aware of a substantial risk that her client would follow through with her stated

intention and that husband would assent to the terms of the agreement without the assistance of his counsel.

- c. **Injury.** Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). "Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. ABA Standards at 19. Respondent's communications with husband through wife caused potential injury to husband in the form of potential interference with the client-lawyer relationship and the potential for the husband's uncounseled assent to the settlement agreement.
- d. **Aggravating Circumstances.** Aggravating circumstances include:
  - 1. Substantial experience in the practice of law. ABA Standard 9.22(i). Respondent was admitted to practice in Oregon in 1995.
- e. **Mitigating Circumstances.** Mitigating circumstances include:
  - 1. Absence of prior disciplinary record. ABA Standard 9.32(a).
  - 2. Cooperative attitude toward proceedings. ABA Standard 9.32(e).
  - 3. Character and reputation. ABA Standard 9.32(g).

8.

Under the ABA Standards, reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury. ABA Standard 6.33.

9.

A reprimand is in accord with Oregon case law. See *In re Newell*, 348 Or 396, 234 P3d 967 (2010) (reprimanding an attorney for summoning a witness to a deposition without giving him time to consult with his attorney).

10.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be publicly reprimanded for violation of RPC 4.2, the sanction to be effective upon approval of this stipulation by the Disciplinary Board Adjudicator.

11.

Respondent acknowledges that she is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in her suspension. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

12.

Respondent represents that, in addition to Oregon, she also is admitted to practice law in the jurisdictions listed in this paragraph, whether her current status is active, inactive, or suspended, and she acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Respondent is admitted: Washington state (inactive).

Approval of this Stipulation for Discipline as to substance was given by the SPRB on March 6, 2021, and June 5, 2021. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 19th day of August 2021.

/s/ Lucinda R. Giorgetti  
Lucinda R. Giorgetti, OSB No. 950752

APPROVED AS TO FORM AND CONTENT:

/s/ David J. Elkanich  
David J. Elkanich, OSB No. 992558

EXECUTED this 1st day of September 2021.

OREGON STATE BAR

By: /s/ Eric J. Collins  
Eric J. Collins, OSB No. 122997  
Assistant Disciplinary Counsel