

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

SEP 13 2016  
DISCIPLINARY  
BOARD

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**RICHARD B. KAYNE,**  
Lawyer (Bar No. 8239).

Proceeding No. 16#00064

ODC File No(s). 14-00863

RESIGNATION FORM OF RICHARD B.  
KAYNE (ELC 9.3(b))

Richard B. Kayne, being duly sworn, hereby attests to the following:

1. I am over the age of eighteen years and am competent. I make the statements in this affidavit from personal knowledge.

2. I was admitted to practice law in the State of Washington on May 31, 1978.

3. I have voluntarily decided to resign from the Washington State Bar Association (the Association) in Lieu of Discipline under Rule 9.3 of the Rules for Enforcement of Lawyer Conduct (ELC).

4. Attached hereto as Exhibit A is Disciplinary Counsel's statement of alleged misconduct for purposes of ELC 9.3(b). I am aware of the alleged misconduct stated in disciplinary counsel's statement but, rather than defend against the allegations, I wish to

105

1 permanently resign from membership in the Association.

2 5. I have agreed to the entry of a confession of judgment of \$1,000.00 to cover  
3 expenses.

4 6. I agree to pay any additional costs or restitution that may be ordered by a Review  
5 Committee under ELC 9.3(g).

6 7. I understand that my resignation is permanent and that any future application by  
7 me for reinstatement as a member of the Association is currently barred. If the Supreme Court  
8 changes this rule or an application is otherwise permitted in the future, it will be treated as an  
9 application by one who has been disbarred for ethical misconduct, and that, if I file an  
10 application, I will not be entitled to a reconsideration or reexamination of the facts, complaints,  
11 allegations, or instances of alleged misconduct on which this resignation was based.

12 8. I agree to (a) notify all other states and jurisdictions in which I am admitted of this  
13 resignation in lieu of discipline; (b) seek to resign permanently from the practice of law in all  
14 other states and jurisdictions in which I am admitted; and (c) provide disciplinary counsel with  
15 copies of this notification and any response(s). I acknowledge that this resignation could be  
16 treated as a disbarment by all other jurisdictions.

17 9. I agree to (a) notify all other professional licensing agencies in any jurisdiction  
18 from which I have a professional license that is predicated on my admission to practice law of  
19 this resignation in lieu of discipline; (b) seek to resign permanently from any such license; and  
20 (c) provide disciplinary counsel with copies of any of these notifications and any responses.

21 10. I agree that when applying for any employment, I will disclose the resignation in  
22 lieu of discipline in response to any question regarding disciplinary action or the status of my  
23 license to practice law.

24 Affidavit of Respondent  
Page 2

OFFICE OF DISCIPLINARY COUNSEL  
OF THE WASHINGTON STATE BAR ASSOCIATION  
1325 4<sup>th</sup> Avenue, Suite 600  
Seattle, WA 98101-2539  
(206) 727-8207

1 11. I understand that my resignation becomes effective on disciplinary counsel's  
2 endorsement and filing of this document with the Clerk, and that under ELC 9.3(c) disciplinary  
3 counsel must do so promptly following receipt of this document and payment of costs and  
4 expenses.

5 12. When my resignation becomes effective, I agree to be subject to all restrictions that  
6 apply to a disbarred lawyer.

7 13. Upon filing of my resignation, I agree to comply with the same duties as a  
8 disbarred lawyer under ELC 14.1 through ELC 14.4.

9 14. I understand that, after my resignation becomes effective, it is permanent. I will  
10 never be eligible to apply and will not be considered for admission or reinstatement to the  
11 practice of law nor will I be eligible for admission for any limited practice of law.

12 15. I certify under penalty of perjury under the laws of the State of Washington that  
13 the foregoing is true and correct.

14 9/9/16, SPOKANE, WA  
Date and Place

[Signature]  
Richard B. Kayne, Bar No. 8239

15 SUBSCRIBED AND SWORN to before me this 09<sup>th</sup> day of September, 2016.

16 [Signature]  
17 NOTARY PUBLIC for the state of  
18 Washington, residing at SpoKane

19 My commission expires: 09-03-18

20 ENDORSED BY:

[Signature]  
21 Marsha Matsumoto, Managing Disciplinary Counsel  
22 Bar No. 15831

[Signature]  
Notary Public  
State of Washington  
Angela Grantham  
Commission Expires 09-03-18

# EXHIBIT A

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**RICHARD B. KAYNE,**  
Lawyer (Bar No. 8239).

Proceeding No. 16#00064

ODC File No(s). 14-00863

STATEMENT OF ALLEGED  
MISCONDUCT UNDER ELC 9.3(b)(1)

The following constitutes a Statement of Alleged Misconduct under Rule 9.3(b)(1) of the Rules for Enforcement of Lawyer Conduct (ELC).

**I. ADMISSION TO PRACTICE**

1. Respondent Richard B. Kayne was admitted to the practice of law in the State of Washington on May 31, 1978.

**II. ALLEGED FACTS**

2. Respondent maintained a trust account at Washington Trust Bank for the deposit of client funds.

3. During the period January 1, 2014 through December 31, 2014, Respondent did not maintain a complete check register for his trust account, did not maintain client ledgers for

1 his trust account, and did not reconcile his trust account.

2 ***Cate Matter***

3 4. Respondent knew the Cate family, which included Ron Cate and his stepson,  
4 Jerome Botner, for many years.

5 5. In July 2009, a guardianship was established for Mr. Cate. Mr. Botner served as  
6 guardian of Mr. Cate's estate until he resigned in November 2012. Mr. Botner was succeeded  
7 by Bernadine Wilson, who served as full guardian of Mr. Cate's person and estate until Mr.  
8 Cate's death in April 2013.

9 6. In April 2013, Mr. Botner hired Respondent to represent him as the personal  
10 representative of Ron Cate's estate (Cate estate).

11 7. In June 2013, Ms. Wilson provided Respondent with two checks, in the amounts of  
12 \$6,557.43 and \$17,586.99, representing assets of the Cate estate. In addition, the Cate estate  
13 owned real property in or around Spokane, Washington.

14 8. In January 2014, Respondent deposited the \$6,557.43 check into his general  
15 account, without entitlement to some or all the funds. Respondent did not provide Mr. Botner  
16 with a billing statement or an accounting for the \$6,557.43.

17 9. In January 2014, Respondent deposited the \$17,586.99 check into his trust  
18 account.

19 10. In March 2014, Respondent disbursed \$290.00 from the Cate estate funds in his  
20 trust account for the benefit of another client, who was not entitled to the funds.

21 11. During the period January 2014 through April 2014, Respondent disbursed  
22 \$17,200 from the Cate estate funds in his trust account to himself or for his own benefit, without  
23 entitlement to the funds.

1 12. Respondent did not provide Mr. Botner with written notice of his intent to disburse  
2 the funds from his trust account, nor did he promptly provide Mr. Botner with an accounting  
3 after disbursing the funds.

4 13. Respondent never filed an action to probate the Ron Cate estate.

5 14. On July 25, 2014, Respondent purchased a cashier's check payable to lawyer  
6 Thomas Robinson in the amount of \$4,000. Mr. Robinson represented Mr. Botner in the Cate  
7 guardianship. Although Mr. Robinson obtained court approval for other fees related to the  
8 guardianship, he did not seek or obtain court approval for the \$4,000. Nor did Mr. Robinson  
9 file a creditor's claim against the Cate estate since a probate action was never filed.

10 15. In or around January 2014 and September 2014, Respondent issued checks  
11 totaling \$200.00 to pay premiums on Mr. Botner's guardianship bond, which was not  
12 exonerated when Mr. Botner was discharged as guardian.

13 16. On November 25, 2015, Respondent purchased a cashier's check payable to Mr.  
14 Botner in the amount of \$4,887.00.

15 17. On June 10, 2016, Respondent purchased a cashier's check payable to Mr. Botner  
16 in the amount of \$2,850.00.

17 18. On June 13, 2016, Respondent paid \$3,145.16 to Spokane County to cover taxes  
18 on the real property owned by the Cate estate.

19 19. On June 13, 2016, Respondent purchased a cashier's check payable to Mr. Botner  
20 in the amount of \$488.00.

21 20. On June 14, 2016, Respondent purchased a cashier's check payable to Mr. Botner  
22 in the amount of \$1,635.20.

23 21. On June 27, 2016, Respondent purchased a cashier's check payable to Mr. Botner

1 in the amount of \$381.63.

2 22. On September 1, 2016, Respondent purchased a cashier's check payable to the  
3 Estate of Ronald Jerald Cate in the amount of \$6,557.43.

4 23. As a result of the distributions described in paragraphs 14-22 above, Respondent  
5 returned all of the funds he received from Ms. Wilson for the Cate estate. Respondent also  
6 agrees to waive any attorney fees owed to him for his representation of the Cate estate and Mr.  
7 Botner.

8 **III. ALLEGED MISCONDUCT**

9 24. By failing to maintain complete and accurate trust account records and by failing  
10 to reconcile his trust account, Respondent violated RPC 1.15A(h)(2), RPC 1.15B(a), and RPC  
11 1.15A(h)(6).


12 25. By failing to deposit and maintain the Cate estate funds in a trust account,  
13 Respondent violated RPC 1.15A(c).

14 26. By failing to provide Mr. Botner with a prompt written accounting of the Cate  
15 estate funds, Respondent violated RPC 1.15A(e) and RPC 1.4(a) and (b).

16 27. By failing to promptly deliver funds that Mr. Botner and/or third parties were  
17 entitled to receive, Respondent violated RPC 1.15A(f).

18 28. By failing to diligently represent Mr. Botner as personal representative of the Cate  
19 estate, Respondent violated RPC 1.3.

20 DATED this 9<sup>th</sup> day of September, 2016.

21   
22 \_\_\_\_\_  
23 Marsha Matsumoto, Bar No. 15831  
24 Managing Disciplinary Counsel