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DISCIPLINARY
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BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

<p>In re CHARLES WADE PEACH, Lawyer (Bar No. 13744).</p>	<p>Proceeding No. 17# <u>00007</u> ODC File No. 15-01154 STIPULATION TO 30-MONTH SUSPENSION</p>
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Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), 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 Linda B. Eide and Respondent lawyer Charles Wade Peach.

Peach 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. Peach 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. Peach further understands that a hearing and appeal could result in an outcome more favorable or less favorable to him. Peach chooses to resolve this proceeding now by entering into the following stipulation to facts, misconduct and sanction to avoid the risk, time, expense, and publicity

Stipulation to 30-Month Suspension
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007

1 attendant to further proceedings.

2 Peach wishes to stipulate to suspension without affirmatively admitting the facts and
3 misconduct in ¶12, rather than proceeding to a public hearing. Peach agrees that if this matter
4 were to proceed to a public hearing, there is a substantial likelihood that ODC would be able to
5 prove, by a clear preponderance of the evidence, the facts and misconduct in ¶12 and that the
6 facts and misconduct will be deemed proved in any subsequent disciplinary proceeding in any
7 jurisdiction.

8 I. ADMISSION TO PRACTICE

9 1. Peach was admitted to practice law in the State of Washington on October 28, 1983.

10 II. STIPULATED FACTS

11 Peach's representation of R.S.

12 2. Peach represented R.S. in a Kitsap County Superior Court dissolution case with
13 children. In December 2013, he filed the dissolution petition for R.S.

14 3. During the representation, Peach asked R.S. to go out with him to a karaoke venue
15 after they had worked on her case.

16 4. R.S. refused.

17 5. Early in the representation, Peach complimented R.S. on her looks and texted a
18 picture of his genitalia to R.S. and instigated late night telephone calls.

19 6. R.S. felt trapped because she had limited resources and could not immediately afford
20 to change lawyers.

21 7. But in April 2015, about four months before the case concluded, R.S. did change
22 lawyers.

23 8. On September 18, 2015, Peach apologized to R.S. in person at the urging of one of

1 R.S.'s friends. The next day he sent R.S. an email and apologized for "the first few weeks of
2 the improper texting."

3 9. A former employee filed the grievance against Peach, which ODC investigated
4 resulting in this Stipulation. In his March 8, 2016 response to the grievance, Peach wrote:
5 "there was never any inappropriate conduct when [R.S.] was at my office or anywhere else --
6 just the phone calls and texts during the first few weeks." He added:

7 I am not sugar coating my conduct. It was wrong. What I perceived as being
8 playful and flirting through phone calls and texting out of the office was found by
9 R.S. to be seriously offensive and inappropriate. I understand that. I am sure
[R.S.] will tell your investigator what was stated and how poorly I handled myself
and I will just have to take responsibility for my actions.

10 Peach's representation of J.C.

11 10. From July 28, 2011 to October 27, 2011, Peach represented J.C. in a child
12 custody/relocation matter filed in Kitsap County Superior Court. She paid him \$2,500.

13 11. During the representation, Peach and J.C. exchanged texts. Peach commented on
14 J.C.'s appearance and sent comments unrelated to the representation that he considered to be
15 "flirting."

16 12. One night, when J.C. was at his office, Peach exposed himself to her, asked for and
17 received what J.C. described as a "hand job," and briefly placed his penis in J.C.'s mouth. J.C.
18 was humiliated by Peach's conduct.

19 13. When Peach asked for another \$2,500 for the relocation hearing, J.C. told him she
20 could not afford that amount but understood that Peach would waive the fee for further sexual
21 favors. Peach denies that, but admits he asked for more money because things were "lean." He
22 did the hearing without further compensation, which Peach attributes to J.C.'s threat to report
23 him to the Washington State Bar Association for the sexual contact.

1 **III. STIPULATION TO MISCONDUCT**

2 14. By sending sexually suggestive messages to R.S. and J.C. while he was representing
3 them, Peach violated RPC 1.7(a)(2) (conflict of interest).

4 15. By having sexual relations with J.C., a current client, Peach violated RPC 1.8(j)
5 (sexual relations with client).

6 **IV. PRIOR DISCIPLINE**

7 16. Peach has no prior discipline.

8 **V. APPLICATION OF ABA STANDARDS**

9 17. The following American Bar Association Standards for Imposing Lawyer Sanctions
10 (1991 ed. & Feb. 1992 Supp.) apply to this case:

11 ABA Standard 4.3 applies to the duty to avoid conflicts of interest under RPC 1.7 or
12 RPC 1.8.

13 **4.3 Failure to Avoid Conflicts of Interest**

14 4.31 Disbarment is generally appropriate when a lawyer, without the informed
consent of client(s):

15 (a) engages in representation of a client knowing that the lawyer's interests
are adverse to the client's with the intent to benefit the lawyer or another, and
causes serious or potentially serious injury to the client; or

16 (b) simultaneously represents clients that the lawyer knows have adverse
interests with the intent to benefit the lawyer or another, and causes serious or
17 potentially serious injury to a client; or

18 (c) represents a client in a matter substantially related to a matter in which
the interests of a present or former client are materially adverse, and knowingly
uses information relating to the representation of a client with the intent to
benefit the lawyer or another and causes serious or potentially serious injury to a
19 client.

20 4.32 Suspension is generally appropriate when a lawyer knows of a
conflict of interest and does not fully disclose to a client the possible effect of
that conflict, and causes injury or potential injury to a client.

21 4.33 Reprimand is generally appropriate when a lawyer is negligent in
determining whether the representation of a client may be materially affected by
the lawyer's own interests, or whether the representation will adversely affect
22 another client, and causes injury or potential injury to a client.

23 4.34 Admonition is generally appropriate when a lawyer engages in an

1 isolated instance of negligence in determining whether the representation of a
2 client may be materially affected by the lawyer's own interests, or whether the
3 representation will adversely affect another client, and causes little or no actual
4 or potential injury to a client.

5 18. Peach acted knowingly.

6 19. Peach's conduct caused injury to J.C. and R.S. because they both suffered unwanted
7 sexual advances while trying to resolve family law matters with child custody issues. Such
8 conduct also damages the image of the profession in the eyes of the public.

9 20. The presumptive sanction is suspension.

10 21. The following aggravating factors apply under ABA Standard 9.22:

11 (b) dishonest or selfish motive; and

12 (i) substantial experience in the practice of law [admitted to practice law in
13 October 1983].

14 22. The following mitigating factors apply under ABA Standard 9.32:

15 (a) absence of a prior disciplinary record;

16 (c) personal or emotional problems (misconduct occurred close in time to
17 Peach's own dissolution, his mother's death and his son's serious health issues);

18 (d) timely good faith effort to rectify consequences of misconduct (prior to
19 entering into this stipulation, Peach sought out counseling to address the issues
20 that led to the misconduct outlined above. See Appendix A).

21 (e) full and free disclosure to disciplinary board or cooperative attitude
22 toward proceedings (In a recent email he reported: "I am humbled by this
23 grievance process. I have a lot of work to do and I am ready and eager to do
24 it."); and

(l) remorse. See Appendix A.

25 23. It is an additional mitigating factor that Peach has agreed to resolve this matter at an
26 early stage of the proceedings.

27 24. The accepted minimum term of suspension is six months. In re Disciplinary

1 Proceeding Against Abele, 184 Wn.2d 1, 28 (2015). A minimum term suspension applies when
2 there are no aggravating factors and some mitigators or when the mitigators clearly outweigh
3 the aggravators. Id. Under ELC 13.3(a) a suspension must not exceed three years.

4 25. Here, the nature of the misconduct supports a more serious suspension than the
5 presumed minimum. But the mitigating factors enumerated above, Peach's expressed
6 willingness to follow a plan to prevent any recurrence, and precedent described below support a
7 suspension less than the maximum suspension of three years.

8 26. The following two cases were decided after contested hearings and appeals to the
9 Disciplinary Board. The first case produced a Supreme Court opinion following appeal; the
10 second case resulted in a Supreme Court order on review of the Board's order and Hearing
11 Officer's Recommendation.

12 27. In In re Disciplinary Proceeding Against Halverson, 140 Wn.2d 475, 494, 998 P.2d
13 833 (2000), the Supreme Court determined that ABA Standard 4.32 (suspension) was the
14 presumptive sanction for a former Association President's sexual relationship with his client.
15 That standard provides that "[s]uspension is generally appropriate when a lawyer knows of a
16 conflict of interest and does not fully disclose to a client the possible effect of that conflict, and
17 causes injury or potential injury to a client." The Hearing Officer and the Disciplinary Board
18 had recommended a six month suspension and considered the aggravating and mitigating
19 factors to be equal. The Court disagreed. It found aggravating factors to outweigh the
20 mitigating factors, especially in view of Halverson's admission that he had engaged in sexual
21 affairs with six clients. To "adequately serve the purposes of attorney discipline," the Court
22 increased the sanction to one year. 140 Wn.2d at 500.

23 28. More recently, in In re Jason M. Feldman, Proceeding No. 14#00080, Supreme

1 Court No. 201,594-8, the Hearing Officer recommended a 30-month suspension for a lawyer
2 who violated RPC 1.8(j) (sex with client) and RPC 8.4(i) (moral turpitude) by having sexual
3 relations with a current criminal defense client in the lawyer's office, also citing ABA Standard
4 4.32. The only mitigating factor, no prior discipline, was outnumbered by these aggravating
5 factors: dishonest or selfish motive, refusal to acknowledge wrongful nature of conduct and
6 vulnerability of victim. On appeal, the Disciplinary Board adopted the Hearing Officer's
7 decision by a nine to one vote in a September 29, 2016 order. On December 23, 2016,
8 a unanimous Supreme Court suspended the lawyer for 30 months after reviewing the Hearing
9 Officer's decision and the Board's order.

10 VI. STIPULATED DISCIPLINE

11 29. The parties stipulate that Peach shall receive a 30-month suspension.

12 30. As a condition of reinstatement, Peach shall, at least 30 days prior to a request for
13 reinstatement, undergo an independent examination by a licensed clinical psychologist or
14 psychiatrist to be approved by disciplinary counsel (the mental health evaluator). Peach shall
15 execute all the necessary releases to permit the mental health evaluator to obtain all necessary
16 treatment records and make a report to disciplinary counsel as to whether Peach has recovered
17 from the issues that contributed to the misconduct in this case and whether he is currently fit to
18 practice law.

19 31. If the evaluator concludes that Peach is not currently fit to practice law, the report
20 shall recommend a course of treatment necessary to enable Peach to return to the practice of
21 law.

22 32. If the evaluator concludes that Peach is not currently fit to practice law, Peach (or his
23 counsel, if he is then represented) and disciplinary counsel shall meet to discuss the evaluator's

1 report and what steps can be taken to address the evaluator's concerns. If Peach and
2 disciplinary counsel cannot reach an agreement, both parties shall present written materials to
3 the Disciplinary Board. The Disciplinary Board shall decide whether and the conditions under
4 which Peach shall return to the active practice of law.

5 33. If the evaluator concludes that Peach is fit to practice law or if Peach completes any
6 terms necessary to make him fit to practice law, then the evaluator shall recommend what, if
7 any, additional treatment should be undertaken once Peach resumes practice.

8 34. If additional treatment is recommended, then Peach shall be subject to probation for
9 a period of 24 months beginning on the date he is reinstated to the practice of law.

10 35. The conditions of any such probation are set forth below. Peach's compliance with
11 these conditions shall be monitored by ODC's Probation Administrator. Failure to comply with
12 a condition of probation listed herein may be grounds for further disciplinary action under ELC
13 13.8(b).

14 a) Peach shall begin or continue treatment with any mental health professional as
15 recommended and/or continue attending group meetings as recommended by
16 the mental health evaluator. The mental health professional providing treatment
17 shall be approved by the Probation Administrator.

18 b) Peach shall execute an authorization allowing and directing the mental health
19 professional providing treatment to take the following actions and shall provide
20 a copy of that authorization to the Probation Administrator:

- 21 • on a quarterly basis, send written reports to the Probation Administrator
22 that include the dates of treatment, whether Peach has been cooperative
23 with treatment, and whether continued treatment is recommended;
- 24 • report immediately to the Probation Administrator if Peach fails to appear
for treatment or stops treatment without the provider's agreement and
prior to either termination of the treatment plan or expiration of the
probation period set forth in this stipulation;
- report immediately to the Probation Administrator if Peach fails to
comply with any treatment recommendations of the treatment provider;

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- report immediately to the Probation Administrator if Peach otherwise violates any of the terms or conditions of treatment;
- report immediately to the Probation Administrator if the provider will no longer serve as treatment provider to Peach prior to termination of the treatment plan or expiration of the probation period set forth in this stipulation; and
- report to the Probation Administrator if Peach successfully completes treatment and is discharged from further treatment.

36. Peach shall be solely responsible for paying the mental health professional, who conduct his fitness to practice examination, and solely responsible for paying any costs associated with following treatment terms recommended by the fitness to practice evaluator or the treating mental health professional.

VII. RESTITUTION

37. No restitution is appropriate.

VIII. COSTS AND EXPENSES

38. In light of Peach's willingness to resolve this matter by stipulation at an early stage of the proceedings, Peach shall pay attorney fees and administrative costs of \$1,000 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(j) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from suspension is conditioned on payment of costs.

IX. VOLUNTARY AGREEMENT

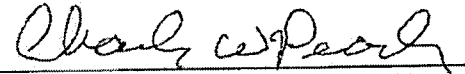
39. Peach states that prior to entering into this Stipulation he had an opportunity to consult independent legal counsel regarding this Stipulation, that Peach is entering into this Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association, nor by any representative thereof, to induce the Peach to enter into this Stipulation

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

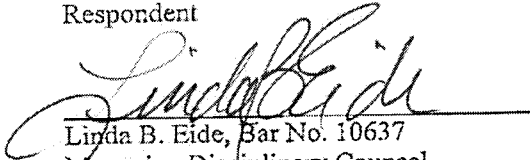
46. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any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

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



Charles Wade Peach, Bar No. 13744
Respondent

Dated: February 7, 2017



Linda B. Eide, Bar No. 10637
Managing Disciplinary Counsel

Dated: February 7, 2017