

FILED
SEP 09 2015
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

KATHLEEN G. KILCULLEN,
Lawyer (Bar No. 16490).

Proceeding No. 11#00099

STIPULATION TO THREE-YEAR
SUSPENSION

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 Sachia Stonefeld Powell, Respondent's Counsel Kurt M. Bulmer and Respondent lawyer Kathleen G. Kilcullen.

Respondent understands that she is entitled under the ELC to a hearing, to present exhibits and witnesses on her behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that she 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 her. Respondent chooses to resolve this proceeding

now by entering into the following stipulation to facts, misconduct and sanction to avoid the

0774

1 risk, time, and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to practice law in the State of Washington on November 4,
4 1986.

5 2. On July 1, 2013, Respondent's license was suspended on an interim basis pending
6 the outcome of supplemental proceedings under ELC Title 8.

7 **II. STIPULATED FACTS**

8 Client: Jon Ramey

9 3. In mid-December 2008, Jon Ramey hired the firm Calbom & Schwab (C&S) to
10 appeal the denial of his social security disability.

11 4. Until January 27, 2010, Respondent worked for C&S, where she handled mostly
12 social security work.

13 5. By January 2010, Respondent had done social security work for approximately 20
14 years.

15 6. Within a few days of hiring C&S, Mr. Ramey's file was assigned to Respondent.

16 7. Respondent believes that she performed some work on Mr. Ramey's matter during
17 the time she was assigned to the case, but acknowledges that she did not complete his matter.

18 8. Mr. Ramey never met Respondent. Respondent believes that she spoke to him on
19 the phone at least once, but Mr. Ramey has no recollection of that call.

20 9. Mr. Ramey's case was fairly straightforward because his disability was based on a
21 military disability finding and he had other factors that made his case strong.

22 10. Respondent claims she sent Mr. Ramey's military disability orders to social
23 security but admits she did not contact Mr. Ramey's physician.

1 11. On January 27, 2010, Respondent's employment with C&S terminated.

2 12. Mr. Ramey's file remained with Respondent after she left C&S. However, in mid-
3 February 2010, Respondent returned Mr. Ramey's client file to C&S.

4 13. In early March 2010, Respondent signed a substitution of counsel and C&S
5 notified the Social Security Administration (SSA) that a lawyer from C&S would represent Mr.
6 Ramey.

7 14. Respondent is advised that, at that time, Mr. Ramey's hearing was pending on
8 April 30, 2010, but she has no personal knowledge of this.

9 15. After Respondent ceased representing Mr. Ramey, C&S lawyer Randy Fair began
10 representing him.

11 16. Mr. Fair spent less than three hours obtaining the necessary documents and filing a
12 motion for an "On The Record Decision" with the SSA.

13 17. Mr. Fair obtained a favorable result for Mr. Ramey by mid-April, 2010. The SSA
14 found that Mr. Ramey had a full disability and awarded him \$1393 monthly and \$30,000 in
15 back benefits.

16 18. Legal fees from a disability finding by the SSA are paid by the government
17 directly to the lawyer and are based on a percentage of past due benefits.

18 19. When Respondent withdrew from the representation, she signed a waiver of her
19 fee.

20 20. The fee for Mr. Ramey's representation should have gone to Mr. Fair and/or C&S.

21 21. In August 2010, the SSA inadvertently sent Respondent a check for almost \$6000
22 for legal fees in Mr. Ramey's matter. The check was made payable to Kathleen Kilcullen,
23 Attorney for John Ramey.

1 22. Respondent did not inform anyone that she had received the check.

2 23. In December 2010, Respondent cashed the check and used the money for personal
3 purposes.

4 24. Respondent was not entitled to this money.

5 25. In April 2011, Respondent repaid the money she erroneously received after she
6 was contacted about it by the SSA.

7 26. On August 15, 2012, Respondent was charged with Theft in the Third Degree in
8 State v. Kilcullen, Grant County District Court Cause Number G120037CC, based on her
9 conduct with respect to the Ramey fee.

10 27. On October 9, 2012, the charge was amended to Theft in the First Degree. State v.
11 Kilcullen, Grant County Superior Court Cause Number 12-1-00530-6.

12 28. On March 25, 2014, Respondent entered an *Alford* plea and was found guilty of
13 Theft in the Third Degree. She was sentenced to 364 days in prison with all 364 days
14 suspended for two years. A copy of the Judgment and Sentence is attached to this Stipulation as
15 Appendix A.

16 Client: Jacqueline Baer

17 29. In 2004 Leslie Baer was injured on the job and filed two separate L&I claims
18 (Y919135 and AA05533).

19 30. On February 1, 2005, Mr. Baer died. The cause of death was the combined effects
20 of the medication prescribed to treat his industrial injuries.

21 31. Mr. Baer's widow, Jacqueline Baer, was entitled to file a Claim for Pension Benefits
22 of Spouse (widow's claim), but was required to do so within a year of Mr. Baer's death.

23 32. In August 2005, Ms. Baer hired Respondent to represent her in the widow's claims.

1 33. In September 2005, Ms. Baer signed a widow's claim for L&I claim AA05533. It
2 was mailed to L&I a week later.

3 34. In early January 2006, Ms. Bear contacted C&S to request a status report as she had
4 not heard anything from Respondent in several months.

5 35. On January 3, 2006, Ms. Baer signed a widow's claim for L&I claim Y919135. It
6 was apparently faxed to L&I on January 30, 2006, although the C&S file did not contain proof
7 thereof. The claim was scanned by L&I on February 3, 2006, three days past the deadline.

8 36. In October 2006, L&I notified Respondent that the first widow's claim (under
9 AA05533) was denied because the cause of death was not related to the industrial injury.

10 37. In November 2006, Respondent filed a protest of the denial.

11 38. Beginning in November 2006, Respondent began trying to contact the coroner who
12 investigated Mr. Baer's death to determine whether the coroner could establish the proximate
13 cause of the death. However, Respondent never made contact with the coroner.

14 39. In February 2009, L&I notified Respondent that the second widow's claim (under
15 Y919135) was denied because the cause of death was not related to the industrial injury and
16 because the claim was not filed within a year of the death.

17 40. Also in February 2009, L&I reaffirmed the denial of the first widow's claim because
18 Respondent had not submitted any additional information to support her protest.

19 41. In March 2009, Respondent filed a protest of the denial of the second widow's
20 claim.

21 42. In January 2010, Respondent's employment with C&S was terminated. Ms. Bear
22 elected to stay as a client of C&S.

23 43. In August 2010, C&S filed a memorandum in support of the timeliness of the filing

1 of the second widow's claim. L&I ultimately conceded the issue of timeliness of the second
2 claim.

3 44. In September 2010, C&S made contact with the coroner, who was able to establish
4 the proximate cause between Mr. Baer's death and the medications he took for his industrial
5 injuries. Soon thereafter, L&I allowed both widow's claims.

6 III. STIPULATION TO MISCONDUCT

7 45. By failing to have meaningful contact with Mr. Ramey for the 15-month period
8 during which she represented him, Respondent violated RPC 1.4.

9 46. By failing to pursue Mr. Ramey's matter diligently, Respondent violated RPC 1.3.

10 47. By retaining legal fees owed to Mr. Fair and/or C&S without entitlement,
11 Respondent violated RPC 8.4(b) (by violating RCW 9A.56.020), RPC 8.4(c) and RPC 8.4(i).

12 48. By failing to pursue Ms. Baer's matter diligently, Respondent violated RPC 1.3.

13 IV. PRIOR DISCIPLINE

14 49. Respondent has no prior discipline.

15 V. APPLICATION OF ABA STANDARDS

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

18 4.4 *Lack of Diligence*

19 4.41 **Disbarment** is generally appropriate when:

- 20 (a) a lawyer abandons the practice and causes serious or potentially serious injury
21 to a client; or
22 (b) a lawyer knowingly fails to perform services for a client and causes serious or
23 potentially serious injury to a client; or
24 (c) a lawyer engages in a pattern of neglect with respect to client matters and
causes serious or potentially serious injury to a client.

4.42 **Suspension** is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or
potential injury to a client, or

1 (b) a lawyer engages in a pattern of neglect and causes injury or potential injury
2 to a client.

3 4.43 **Reprimand** is generally appropriate when a lawyer is negligent and does not
4 act with reasonable diligence in representing a client, and causes injury or
5 potential injury to a client.

6 4.44 **Admonition** is generally appropriate when a lawyer is negligent and does not
7 act with reasonable diligence in representing a client, and causes little or no
8 actual or potential injury to a client.

9 **5.1 Failure to Maintain Personal Integrity**

10 5.11 **Disbarment** is generally appropriate when:

11 (a) a lawyer engages in serious criminal conduct, a necessary element of which
12 includes intentional interference with the administration of justice, false
13 swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or
14 the sale, distribution or importation of controlled substances; or the intentional
15 killing of another; or an attempt or conspiracy or solicitation of another to
16 commit any of these offenses; or

17 (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud,
18 deceit, or misrepresentation that seriously adversely reflects on the lawyer's
19 fitness to practice.

20 5.12 **Suspension** is generally appropriate when a lawyer knowingly engages in
21 criminal conduct which does not contain the elements listed in Standard 5.11
22 and that seriously adversely reflects on the lawyer's fitness to practice.

23 5.13 **Reprimand** is generally appropriate when a lawyer knowingly engages in any
24 other conduct that involves dishonesty, fraud, deceit, or misrepresentation and
that adversely reflects on the lawyer's fitness to practice law.

5.14 **Admonition** is generally appropriate when a lawyer engages in any other
conduct that reflects adversely on the lawyer's fitness to practice law.

51. Respondent engaged in serious criminal conduct.

52. Respondent engaged in conduct involving dishonesty that seriously adversely
reflects on the lawyer's fitness to practice.

53. At the time of the misconduct referenced in paragraphs 45-48, Respondent was
suffering from serious personal and/or emotional problems, the details of which are reflected in
the report of Henry Richards, PhD, dated February 11, 2014, which is attached to this
Stipulation as Appendix B (and over which the parties will request a protective order).

54. Respondent engaged in a pattern of neglect with respect to Mr. Ramey's and Ms.

Bear's matter.

Stipulation to Discipline
Page 7

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

1 55. Respondent caused injury to her clients.

2 56. Reprimand under Standard 4.43 is the presumptive sanction for the misconduct in
3 paragraph 45.

4 57. Reprimand under Standard 4.43 is the presumptive sanction for the misconduct in
5 paragraph 46.

6 58. Disbarment under Standard 5.11 is the presumptive sanction for the misconduct in
7 paragraph 47.

8 59. Reprimand under Standard 4.43 is the presumptive sanction for the misconduct in
9 paragraph 48.

10 60. The following aggravating factor applies under ABA Standard 9.22:

11 (i) substantial experience in the practice of law (admitted in 1986).

12 61. The following mitigating factors apply under ABA Standard 9.32:

13 (a) absence of a prior disciplinary record;

14 (c) personal or emotional problems (see, In re Disciplinary Proceeding
Against Wickersham, 178 Wn.2d 653, 310 P.3d 1237 (2013)¹; and

15 (l) remorse.

16 62. Based on the factors set forth above, the presumptive sanction should be mitigated
17 to a three-year suspension.

18 VI. STIPULATED DISCIPLINE

19 63. The parties stipulate that Respondent shall receive a three-year suspension for her
20 conduct.

21 VII. RESTITUTION

22 64. Respondent has repaid the money she erroneously received. No additional

23 ¹ The personal and emotional problems are based on the issues described in Appendix B, for which the
24 parties request a protective order. The issues do not constitute mitigation under ABA Standard 9.32(i)
because factors 9.32(i)(3) and (4) have not been met.

1 restitution is necessary.

2 **VIII. COSTS AND EXPENSES**

3 65. Respondent shall pay attorney fees and administrative costs of \$3031.15 in
4 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(1)
5 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
6 suspension is conditioned on payment of costs.

7 **IX. VOLUNTARY AGREEMENT**

8 66. Respondent states that prior to entering into this Stipulation she has consulted
9 independent legal counsel regarding this Stipulation, that Respondent is entering into this
10 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
11 Association, nor by any representative thereof, to induce the Respondent to enter into this
12 Stipulation except as provided herein.

13 **X. LIMITATIONS**

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

19 68. This Stipulation is not binding upon ODC or the respondent as a statement of all
20 existing facts relating to the professional conduct of the respondent lawyer, and any additional
21 existing facts may be proven in any subsequent disciplinary proceedings.

22 69. This Stipulation results from the consideration of various factors by both parties,
23 including the benefits to both by promptly resolving this matter without the time and expense of

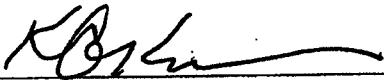
1 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As
2 such, approval of this Stipulation will not constitute precedent in determining the appropriate
3 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
4 subsequent proceedings against Respondent to the same extent as any other approved
5 Stipulation.

6 70. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
7 Board shall have available to it for consideration all documents that the parties agree to submit
8 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
9 form the record before the Board for its review become public information on approval of the
10 Stipulation by the Board, unless disclosure is restricted by order or rule of law.

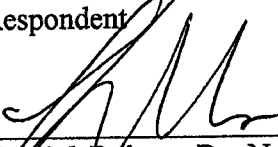
11 71. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
12 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
13 Rules for Enforcement of Lawyer Conduct will be made.

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


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

3 
4 Kathleen Greene Kilcullen, Bar No. 16490
5 Respondent

Dated: 12/5/2014

6 
7 Kurt M. Balmer, Bar No. 5559
8 Counsel for Respondent

Dated: 12/11/14

9 
10 Sachia Stonefeld Powell, Bar No. 21166
11 Disciplinary Counsel

Dated: 6/16/15