

**FILED**

Feb 12, 2024

**Disciplinary  
Board**

**Docket # 004**

DISCIPLINARY BOARD  
WASHINGTON STATE BAR ASSOCIATION

In re

**F. DANA KELLEY,**

Lawyer (Bar No. 17460).

Proceeding No.24#00009

ODC File No. 23-00225

STIPULATION TO SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's 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 Francisco Rodriguez, Respondent's Counsel Joshua Maurer and Respondent lawyer F. Dana Kelley.

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

1 proceeding now by entering into the following stipulation to facts, misconduct and sanction to  
2 avoid the risk, time, expense attendant to further proceedings.

### 3 I. ADMISSION TO PRACTICE

4 1. Respondent was admitted to practice law in the State of Washington on October  
5 30, 1987.

### 6 II. STIPULATED FACTS

7 2. In 2019, Paul and Kathleen Snyder hired Respondent to represent them in  
8 connection with a property line dispute with their neighbor DP. The Snyders were seeking to  
9 quiet title to their land and obtain compensation for trees DP had taken from the property. The  
10 Snyders paid Respondent a total of \$5,000 for the representation.

11 3. In October 2019, Respondent filed a petition to quiet title on behalf of the Snyders.  
12 The petition also sought damages for theft of trees.

13 4. On November 4, 2019, DP, proceeding pro se, filed an answer generally denying  
14 the allegations. DP claimed several affirmative defenses but did not make a claim of title by  
15 adverse possession.

16 5. Respondent did not take any steps to move the case forward until April 20, 2020,  
17 when Respondent noted the matter for trial, requesting the trial date be scheduled in September  
18 2020.

19 6. At a status conference held on September 10, 2020, Respondent indicated the  
20 matter was ready for trial even though Respondent had not conducted any discovery or  
21 investigation or subpoenaed any witnesses. Respondent requested a trial date in early December,  
22 and the trial was later scheduled for December 9, 2020.

1           7.     On October 13, 2020, attorney Dale Russell appeared on behalf of DP and  
2 requested a continuance of the trial date.

3           8.     On October 22, 2020, Russell filed a motion to amend the answer along with a  
4 proposed amended answer and counterclaims that expressly claimed adverse possession.

5           9.     On November 20, 2020, the trial was continued to a date to be determined.

6           10.    On January 4, 2021, Russell served interrogatories and requests for production on  
7 Respondent, requesting a response from the Snyders within 30 days. Respondent did not provide  
8 a timely response to the interrogatories or requests for production.

9           11.    On February 8, 2021, the trial was rescheduled for May 21, 2021. A pre-trial status  
10 hearing was scheduled for April 29, 2021.

11          12.    On March 26, 2021, Russell filed a motion to compel discovery based on the  
12 Snyders' failure to timely respond to the interrogatories and requests for production. Russell also  
13 sought sanctions. The same day, Russell filed a motion for default based on the Snyders' failure  
14 to answer or respond to the amended answer and counterclaims.

15          13.    On April 28, 2021, Russell filed a motion to dismiss based on the Snyders' failure  
16 to respond to interrogatories and requests for production. The motion noted that: "Petitioner has  
17 provided no response to any of Respondent's correspondences, has not responded to discovery,  
18 and has given no indication Petitioner wants to proceed to trial."

19          14.    At the pre-trial status hearing on April 29, 2021, Respondent again indicated the  
20 matter was ready for trial even though Respondent had not conducted any discovery or  
21 investigation, subpoenaed any witnesses, or responded to the motions filed by Russell.

22          15.    Russell indicated that the matter was not ready for trial.  
23

1           16.    After the court reviewed the motions Russell had filed on behalf of DP,  
2 Respondent agreed to a continuance.

3           17.    The court continued the trial to a future date to be set by the court administrator.  
4 The trial was later set for September 17, 2021.

5           18.    On May 17, 2021, almost seven months after the counterclaims had been filed,  
6 Respondent filed an answer denying DP's counterclaims.

7           19.    The same day, Respondent filed answers to DP's interrogatories which had been  
8 due over three months earlier. The interrogatory responses were dated March 23, 2021, and were  
9 notarized on April 16, 2021. Respondent did not offer the court any explanation for Respondent's  
10 delay in answering the counterclaims or responding to the interrogatories.

11           20.    On September 2, 2021, at a pre-trial status hearing, both parties indicated the  
12 matter was ready for trial. Respondent had still not conducted any discovery or investigation or  
13 subpoenaed any witnesses.

14           21.    On September 7, 2021, Russell filed a trial memorandum setting forth DP's  
15 position and discussing the facts and issues expected to arise at trial. Respondent did not submit  
16 a trial memorandum on behalf of the Snyders.

17           22.    On September 13, 2021, four days before trial, the court granted the parties' agreed  
18 motion to continue so that they could seek mediation. A specific trial date was to be set at a later  
19 date by the court administrator.

20           23.    After the court granted the continuance, Respondent did not make timely efforts  
21 to schedule a mediation.

1           24.     Respondent and opposing counsel Russell eventually agreed on a mediator and  
2 scheduled a mediation for August 2022, almost a year after the matter had been continued to allow  
3 the parties to pursue mediation.

4           25.     In advance of the mediation, Russell provided the mediator with information in  
5 support of DP's position. Respondent did not submit anything to the mediator on behalf of the  
6 Snyders.

7           26.     Respondent cancelled the mediation shortly before it was scheduled to occur.

8           27.     On September 16, 2022, Respondent noted the matter for trial, requesting a trial  
9 date in December 2022.

10          28.     On October 12, 2022, the court scheduled the trial date for December 9, 2022, with  
11 a status conference scheduled for November 17, 2022.

12          29.     On November 17, 2022, both parties indicated they were ready for trial.  
13 Respondent had still not conducted any discovery or investigation or subpoenaed any witnesses.

14          30.     During the course of the representation, the Snyders had provided Respondent with a  
15 list of nine witnesses along with their contact information. Respondent failed to contact most of  
16 them. The only witnesses Respondent interviewed prior to trial were a surveyor the Snyders had  
17 hired and one of their adult children. Respondent talked to those two witnesses for the first time  
18 in the one to two weeks prior to trial.

19          31.     During this same time period, Respondent attempted to contact RB, a neighbor  
20 who also had a property line dispute with DP that was in litigation, but Respondent failed to  
21 follow up after RB indicated Respondent should check with RB's lawyer before they discussed  
22 the matter in any detail.

23          32.     Respondent never subpoenaed any witnesses for trial.

1           33.     At ODC's deposition of Respondent, Respondent testified that Respondent elected  
2 not to conduct any discovery in an effort to control costs due to the Snyders' limited means.  
3 However, Respondent never discussed with the Snyders whether to forego investigation,  
4 depositions, or other discovery due to the costs involved.

5           34.     At the December 9, 2022 trial, Respondent elected to proceed even though Paul  
6 Snyder was unavailable due to illness.

7           35.     Respondent presented the testimony of Kathleen Snyder and the surveyor.

8           36.     RB showed up at the trial out of curiosity, and Respondent called RB as a witness  
9 without ever having fully interviewed RB. Although RB had lived on the adjacent property for  
10 many years and had potentially critical testimony relating to DP's adverse possession claim,  
11 Respondent only presented cursory testimony from RB, lasting a total of about one minute.

12           37.     The Snyders had arranged for both of their adult children to be available to testify.  
13 Both had extensive first-hand knowledge regarding the use of the disputed area over the years,  
14 the lack of an established fence line, and other relevant issues. Respondent did not call either of  
15 them as witnesses.

16           38.     The Snyders had provided Respondent with an aerial photo from 2004 that  
17 contradicted DP's testimony. Respondent did not seek to admit the aerial photo at trial.

18           39.     Although the complaint had sought damages for theft of trees, Respondent  
19 presented no evidence to support this claim at trial.

20           40.     At trial, DP testified to facts supporting DP's claim of adverse possession.

21           41.     Throughout DP's testimony, Kathleen Snyder communicated to Respondent that  
22 DP's testimony was false.

1           42.     Although Respondent considered DP’s testimony quite damaging, Respondent  
2 declined to cross-examine DP and did not call any rebuttal witnesses.

3           43.     At the conclusion of the trial, the court decided in favor of DP and awarded a  
4 portion of the Snyders’ property to DP.

5           44.     In its oral decision, the court expressed disappointment with the evidence  
6 presented, noting in particular the lack of evidence such as an aerial photo of the property as it  
7 appeared in the past. The court noted that the case came down to competing testimony between  
8 Kathleen Snyder and DP, and that DP’s testimony was “basically unchallenged.”

9           45.     After the Snyders obtained new counsel, the court granted their motion for a new  
10 trial. During the hearing on the motion for new trial, the court noted that its original decision “was  
11 almost totally predicated on [DP’s] testimony alone, primarily because of the lack of effort,  
12 diligence, competence, whatever you want to say, of the Snyders attorney at trial.”

13           46.     In Respondent’s March 17, 2023 preliminary response to the Snyders’ grievance,  
14 Respondent specifically denied the Snyders’ allegations that Respondent had failed to cross-  
15 examine DP, writing to ODC that “[DP’s] cross examination was extensive by me.” Respondent  
16 wrote that Kathleen Snyder was attempting to mislead ODC.

17           47.     Respondent’s claim that Respondent had conducted extensive cross-examination  
18 of DP was false.

19           48.     At ODC’s deposition of Respondent, Respondent acknowledged that Respondent  
20 had been mistaken about cross-examining DP and attributed this mistake to faulty memory.

21           49.     Respondent states that Respondent closed Respondent’s law practice in the  
22 summer of 2021 and has been winding down the practice since that time.

1 **III. STIPULATION TO MISCONDUCT**

2 50. By failing to exercise reasonable diligence in preparing the Snyders' case for trial  
3 and during the trial itself, Respondent violated RPC 1.3.

4 **IV. PRIOR DISCIPLINE**

5 51. Respondent has no prior discipline.

6 **V. APPLICATION OF ABA STANDARDS**

7 52. The American Bar Association Standards for Imposing Lawyer Sanctions (1991  
8 ed. & Feb. 1992 Supp.) apply to this case as set forth below.

9 53. ABA Standard 4.4 is most applicable to Respondent's lack of diligence:

10 4.41 Disbarment is generally appropriate when:

- 11 (a) a lawyer abandons the practice and causes serious or  
potentially serious injury to a client; or
- 12 (b) a lawyer knowingly fails to perform services for a client and  
causes serious or potentially serious injury to a client; or
- 13 (c) a lawyer engages in a pattern of neglect with respect to client  
matters and causes serious or potentially serious injury to a  
14 client.

14 4.42 Suspension is generally appropriate when:

- 15 (a) a lawyer knowingly fails to perform services for a client and  
causes injury or potential injury to a client, or
- 16 (b) a lawyer engages in a pattern of neglect and causes injury or  
potential injury to a client.

17 4.43 Reprimand is generally appropriate when a lawyer is negligent and  
does not act with reasonable diligence in representing a client, and  
causes injury or potential injury to a client.

18 4.44 Admonition is generally appropriate when a lawyer is negligent and  
does not act with reasonable diligence in representing a client, and  
causes little or no actual or potential injury to a client.  
19

20 54. Respondent acted knowingly with respect to the lack of diligence on the Snyders'  
21 matter.

22 55. Respondent's lack of diligence caused at least potential injury to the Snyders in  
23 that they lost their property at trial and had to hire new counsel to obtain relief.



1 56. Under ABA Standard 4.42(a) the presumptive sanction for Respondent's lack of  
2 diligence is suspension.

3 57. The following aggravating factors apply under ABA Standard 9.22:

- 4 (f) submission of false evidence, false statements, or other deceptive practices  
5 (i) substantial experience in the practice of law (admitted in Washington since  
6 1987).

7 58. The following mitigating factors apply under ABA Standard 9.32:

- 8 (a) absence of a prior disciplinary record; and  
9 (g) character or reputation.

10 59. It is an additional mitigating factor that Respondent has agreed to resolve this  
11 matter at an early stage of the proceedings.

12 60. On balance, the aggravating and mitigating factors do not require a departure from  
13 the presumptive sanction.

### 14 **VI. STIPULATED DISCIPLINE**

15 61. The parties stipulate that Respondent shall receive a 30-day suspension.

### 16 **VII. CONDITIONS OF REINSTATEMENT**

17 62. Reinstatement from suspension is conditioned on payment of restitution, costs, and  
18 expenses, as provided below, including any accumulated interest, pursuant to ELC 13.9(i).

### 19 **VIII. CONDITIONS OF PROBATION**

20 63. Respondent shall not be subject to probation because Respondent closed  
21 Respondent's law practice in the summer of 2021 and has been winding down the practice since  
22 that time.

### 23 **IX. RESTITUTION**

24 64. Respondent shall pay Kathleen and Paul Snyder a total of \$5,000 in restitution.

1 **X. COSTS AND EXPENSES**

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

7 **XI. VOLUNTARY AGREEMENT**

8 66. Respondent states that prior to entering into this Stipulation Respondent has  
9 consulted independent legal counsel regarding this Stipulation, that Respondent is entering into  
10 this 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 67. Once fully executed, this stipulation is a contract governed by the legal principles  
14 applicable to contracts and may not be unilaterally revoked or modified by either party.

15 **XII. LIMITATIONS**

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

21 69. This Stipulation is not binding upon ODC or the Respondent as a statement of all  
22 existing facts relating to the professional conduct of the Respondent, and any additional existing  
23 facts may be proven in any subsequent disciplinary proceedings.

1           70.     This Stipulation results from the consideration of various factors by both parties,  
2 including the benefits to both by promptly resolving this matter without the time and expense of  
3 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As such,  
4 approval of this Stipulation will not constitute precedent in determining the appropriate sanction  
5 to be imposed in other cases; but, if approved, this Stipulation will be admissible in subsequent  
6 proceedings against Respondent to the same extent as any other approved Stipulation.

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

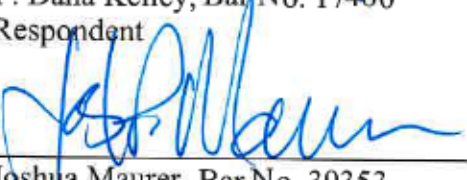
11           72.     If this Stipulation is approved by the Disciplinary Board and Supreme Court, it  
12 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in  
13 the Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in  
14 addition to Washington, Respondent also is admitted to practice law in the following jurisdictions,  
15 whether current status is active, inactive, or suspended: Kalispel Tribal Court, Spokane Tribal  
16 Court, and Colville Tribal Court.

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

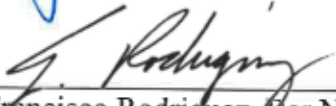
1 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to  
2 Suspension as set forth above.

3   
4 \_\_\_\_\_  
5 F. Dana Kelley, Bar No. 17460  
6 Respondent

Dated: 1.5.24

7   
8 \_\_\_\_\_  
9 Joshua Maurer, Bar No. 39353  
10 Counsel for Respondent

Dated: 1.8.24

11   
12 \_\_\_\_\_  
13 Francisco Rodriguez, Bar No. 22881  
14 Disciplinary Counsel

Dated: 01-08-2024