

FILED
MAY 12 2015
DISCIPLINARY
BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

ERIC JON FJELSTAD,

Lawyer (Bar No. 19633).

Proceeding No. 15#00008

STIPULATION TO REPRIMAND

Under Rule 9.1 of the Rules for Enforcement of Lawyer Conduct (ELC), the following Stipulation to Reprimand is entered into by the Office of Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through Managing Disciplinary Counsel Joanne S. Abelson and Respondent lawyer Eric Jon Fjelstad.

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

Stipulation to Reprimand
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1 avoid the risk, time, and expense attendant to further proceedings.

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent was admitted to the practice of law in the State of Washington on June
4 13, 1990.

5 2. Effective July 31, 2013, Respondent was suspended from the practice of law in
6 Washington for 30 days as reciprocal discipline following a 30-day suspension of his license to
7 practice law in Oregon.

8 3. As of the date of this Stipulation, Respondent has not been reinstated to practice in
9 Washington.

10 **II. STIPULATED FACTS**

11 4. In May 2011, Mary Williams met with Respondent about her concerns that
12 Southwest Washington Medical Center (SWMC), now known as PeaceHealth, violated the
13 Americans with Disabilities Act (ADA) and other anti-discrimination laws by failing to
14 accommodate her and her father's hearing disabilities in December 2010 when her father was a
15 surgery patient at the hospital. Ms. Williams wanted to sue SWMC to obtain changes in the
16 hospital's procedures regarding the use of live interpreters and to compensate her for emotional
17 distress.

18 5. SWMC is in Vancouver, Washington, where Ms. Williams resides.

19 6. Before meeting with Respondent, Ms. Williams filed claims with various state and
20 federal government agencies.

21 7. The United States Department of Justice (DOJ), representing the interests of the
22 United States, was investigating SWMC for ADA violations as well.

23 8. Respondent agreed to take Ms. Williams's case.

1 9. On June 29, 2011, Ms. Williams signed a contingency fee agreement that provided
2 that Respondent would represent her "in matters relating to claims against Southwest
3 Washington Medical Center." By its terms, the fee agreement authorized Respondent to "take
4 all actions appropriate to assert Client's interests in this matter," and "specifically authorize[d]
5 Attorneys to commence and litigate such civil actions as are appropriate" The fee
6 agreement called for a \$750 "retainer" "[u]pon filing with the Court."

7 10. Notwithstanding the fee agreement, Respondent did not intend to file a civil
8 complaint on Ms. Williams's behalf because he did not think she had a strong case for damages.
9 Instead, he thought that her best option was to pursue relief through the DOJ action, for which
10 he would act as facilitator.

11 11. Respondent did not communicate this information to Ms. Williams.

12 12. A private civil action relating to disability accommodations comes under Title III of
13 the ADA. In such cases, the applicable statute of limitations is the state's personal injury statute
14 of limitations, which in Washington is three years.

15 13. Disability-related accommodation cases differ from disability-related employment
16 cases because, in employment cases, an administrative complaint with the EEOC is a
17 prerequisite to a private suit and tolls the statute of limitations. In accommodation cases, there
18 is no there is no administrative exhaustion requirement and the statute of limitations is not tolled
19 by filing an administrative claim.

20 14. Respondent, who was familiar with disability-related employment cases, did not
21 research the procedural differences between disability-related accommodation cases and
22 disability-related employment cases when he was handling Ms. Williams's matter.

23 15. Respondent did not advise Ms. Williams that she needed to file a civil suit within

1 three years of her father's December 2010 stay at SWMC. Instead, he advised her to wait until
2 the DOJ investigation was complete before filing a private lawsuit.

3 16. Over the course of the representation, Ms. Williams frequently emailed Respondent
4 with questions and urged him to take action on her case.

5 17. Respondent did not promptly respond to Ms. Williams's emails and questions about
6 her case.

7 18. Respondent did not advise Ms. Williams of his July 31, 2013, suspension in
8 Washington. He failed to appreciate that Ms. Williams was a Washington client. Oregon,
9 unlike Washington, does not impose an obligation on suspended lawyers to notify all clients
10 when suspended. See OSB Rules of Procedure 6.3.

11 19. In November 2013, DOJ's lawyer told Respondent that the DOJ was on the verge of
12 entering into a stipulation with SWMC that would provide some compensation to Ms. Williams
13 and her father.

14 20. At Ms. Williams's request, Respondent served as a go-between with the DOJ on
15 certain issues, primarily working to set up a meeting.

16 21. After January 2014, Respondent broke off communication with Ms. Williams.

17 22. In approximately March 2014, Ms. Williams learned on her own of Respondent's
18 Washington suspension.

19 23. At about that same time, Ms. Williams also learned that the statute of limitations on
20 her private ADA case had expired.

21 24. Ms. Williams fired Respondent and, pro se, agreed to the DOJ stipulation with
22 SWMC.

23 25. Respondent did not receive any fee for his representation of Ms. Williams.

1
2 **III. STIPULATION TO MISCONDUCT**

3 26. By failing to acquire adequate legal knowledge about the procedural rules applicable
4 to accommodation-related ADA cases, Respondent violated RPC 1.3.

5 27. By failing to advise Ms. Williams that he did not believe she had a strong case for
6 damages and thus did not expect to file a civil suit on her behalf, by failing to respond promptly
7 to Ms. Williams's reasonable requests for information about her case, and by failing to advise
8 Ms. Williams regarding the statute of limitations applicable to her claims, Respondent violated
9 RPC 1.4.

10 28. By failing to notify Ms. Williams that he was suspended from the practice of law in
11 Washington, Respondent violated RPC 8.4(*l*) (through violations of ELC 14.1(b)(2) and ELC
12 14.2(a)) and RPC 1.4.

13 **IV. PRIOR DISCIPLINE**

14 29. Respondent was suspended from the practice of law in Washington for 30 days,
15 effective July 31, 2013. This was a reciprocal suspension based on a 30-day suspension in
16 Oregon for violating Oregon RPC 1.4(a), 1.15, 3.5(b), 5.3(a), and 8.4(a)(4).

17 **V. APPLICATION OF ABA STANDARDS**

18 30. The following American Bar Association Standards for Imposing Lawyer Sanctions
19 (1991 ed. & Feb. 1992 Supp.) apply to this case:¹

- 20 • ABA Standard 4.4 for the violations of RPC 1.3 and 1.4
21 • ABA Standard 7.0 for the violation of ELC 14.1 and 14.2.

22 31. Respondent acted negligently.

23 ¹Full copies of the applicable ABA Standards are attached as Appendix A.

1 32. Ms. Williams suffered injury because she lost the opportunity to litigate her claim.
2 In addition, she experienced anxiety and frustration from Mr. Fjelstad's failure to respond to her
3 requests for information.

4 33. The presumptive sanction is a reprimand under ABA Standards 4.43 and 7.3.

5 34. The following aggravating factors apply under ABA Standard 9.22:

- 6 (a) prior disciplinary offenses [see ¶ 29];
- 7 (d) multiple offenses;
- 8 (i) substantial experience in the practice of law [admitted 1990].

9 35. The following mitigating factors apply under ABA Standard 9.32:

- 10 (b) absence of a dishonest or selfish motive;
- 11 (c) personal or emotional problems [Respondent would testify that he suffered from
12 an anxiety and stress disorder during the period in question];
- 13 (l) remorse.

14 36. It is an additional mitigating factor that Respondent has agreed to resolve this matter
15 at an early stage of the proceedings.

16 37. On balance the aggravating and mitigating factors do not require a departure from
17 the presumptive sanction.

18 VI. STIPULATED DISCIPLINE

19 38. The parties stipulate that Respondent shall receive a reprimand.

20 39. Respondent will be subject to probation for a period of two years beginning the date
21 that this stipulation is approved by the hearing officer and shall comply with the specific
22 probation terms set forth below. Respondent's compliance with these conditions shall be
23 monitored by the Probation Administrator of the Office of Disciplinary Counsel ("Probation

1 Administrator").

- 2 a) During the period of probation, Respondent's practice shall be supervised by a
3 practice monitor. The practice monitor must be a WSBA member with no record of
4 public discipline and who is not the subject of a pending public disciplinary
5 proceeding.
- 6 b) No later than 30 days after probation begins, Respondent shall provide to the
7 Probation Administrator, in writing, the name and contact information of a proposed
8 practice monitor, who must be approved by the Probation Administrator. If
9 Respondent fails to propose a practice monitor, or if the Probation Administrator
10 does not approve the proposed practice monitor, the Probation Administrator will
11 request that a practice monitor be appointed by the Chair of the Disciplinary Board.
12 See ELC 13.8(a)(2). Respondent shall cooperate with the appointed practice
13 monitor.
- 14 c) During the period of probation, Respondent shall meet with the practice monitor at
15 least once per month.
- 16 d) At each meeting, the practice monitor will discuss with Respondent each of
17 Respondent's client matters, the status of each client matter, Respondent's
18 communication with each client, upcoming deadlines, and Respondent's intended
19 course of action. Meetings may be in person or by telephone at the practice
20 monitor's discretion.
- 21 e) The practice monitor will provide the Probation Administrator with quarterly
22 reports regarding Respondent's performance on probation.
- 23 f) If the practice monitor believes that Respondent is not complying with any of his
24 ethical duties under the RPC or if Respondent fails to attend a monthly meeting, the
practice monitor shall promptly report that to the Probation Administrator.
- g) Respondent shall be responsible for paying any and all fees, costs and/or expenses
charged by the practice monitor for supervision.

40. Failure to comply with a condition of probation listed herein may be grounds for
further disciplinary action under ELC 13.8(b).

VII. RESTITUTION

41. No restitution is required in this case.

VIII. COSTS AND EXPENSES

42. In light of Respondent's willingness to resolve this matter by stipulation at an early

1 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
2 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(1)
3 if these costs are not paid within 30 days of approval of this stipulation.

4 IX. VOLUNTARY AGREEMENT

5 43. Respondent states that prior to entering into this Stipulation he had an opportunity to
6 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
7 this Stipulation voluntarily, and that no promises or threats have been made by ODC, the
8 Association, nor by any representative thereof, to induce the Respondent to enter into this
9 Stipulation except as provided herein.

10 44. Once fully executed, this stipulation is a contract governed by the legal principles
11 applicable to contracts, and may not be unilaterally revoked or modified by either party.

12 X. LIMITATIONS

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

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

21 47. This Stipulation results from the consideration of various factors by both parties,
22 including the benefits to both by promptly resolving this matter without the time and expense of
23 hearings, Disciplinary Board appeals, and Supreme Court appeals or petitions for review. As

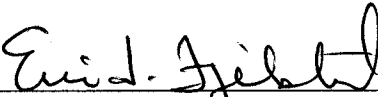
1 such, approval of this Stipulation will not constitute precedent in determining the appropriate
2 sanction to be imposed in other cases; but, if approved, this Stipulation will be admissible in
3 subsequent proceedings against Respondent to the same extent as any other approved
4 Stipulation.

5 48. Under ELC 3.1(b), all documents that form the record before the Hearing Officer for
6 his or her review become public information on approval of the Stipulation by the Hearing
7 Officer, unless disclosure is restricted by order or rule of law.

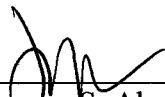
8 49. If this Stipulation is approved by the Hearing Officer, it will be followed by the
9 disciplinary action agreed to in this Stipulation. All notices required in the Rules for
10 Enforcement of Lawyer Conduct will be made.

11 50. If this Stipulation is not approved by the Hearing Officer this Stipulation will have
12 no force or effect, and neither it nor the fact of its execution will be admissible as evidence in
13 the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil
14 or criminal action.

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

17 
18 _____
Eric Jon Fjelstad, Bar No. 19633
Respondent

Dated: 4/27/15

19 
20 _____
Joanne S. Abelson, Bar No. 24877
21 Managing Disciplinary Counsel

Dated: 4/29/15

APPENDIX A

SELECTED ABA STANDARDS

ABA Standard 4.4 -- Lack of Diligence

- 4.41 Disbarment is generally appropriate when:
- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or
 - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
 - (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
 - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.
- 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.
- 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.

ABA Standard 7.0 -- Violations of Duties Owed as a Professional

- 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
- 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

- 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
- 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.