

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
JAMES K. GAZORI,
Lawyer (Bar No. 19900).

Proceeding No. 15#00097
STIPULATION TO 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 Erica Temple, Respondent's Counsel Brett Andrews Purtzer and Respondent lawyer James K. Gazori.

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

048

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

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

8 I. ADMISSION TO PRACTICE

9 1. Respondent was admitted to practice law in the State of Washington on November
10 13, 1990.

11 II. STIPULATED FACTS

12 2. Respondent represented Diana Kasch in Mason County Superior Court No. 14-1-
13 00167-3.

14 3. Ms. Kasch was charged with possessing heroin with intent to deliver, a felony.

15 4. On April 17, 2014, the court entered a pretrial order releasing Ms. Kasch on her
16 personal recognizance on certain conditions, including that she not "use or possess any drugs
17 except those prescribed to [her] by a physician" and that she "[c]ommit no crimes."

18 5. Respondent filed his notice of appearance on April 29, 2014.

19 6. During the course of the representation, Respondent and Ms. Kasch exchanged
20 numerous text messages of a personal, non-professional, nature.

21 7. Many of the text messages used coded language that appeared to refer to the
22 delivery of controlled substances between Respondent and Ms. Kasch.

23 8. On October 21, 2014, police seized Ms. Kasch's mobile phone following a

1 controlled buy of illegal drugs.

2 9. Police obtained a search warrant for the data on Ms. Kasch's mobile phone and
3 discovered the text messages between Respondent and Ms. Kasch.

4 10. The text messages were submitted to a judicial special master, who redacted all
5 privileged communications relating to Respondent's representation of Ms. Kasch.

6 11. The redacted text messages were submitted to the Mason County Prosecuting
7 Attorney.

8 12. After learning that the police and the prosecuting attorney had obtained the text
9 messages, Respondent withdrew from the representation of Ms. Kasch.

10 13. Respondent filed his notice of withdrawal on April 10, 2015.

11 14. At the request of the Mason County Prosecuting Attorney, on April 16, 2015,
12 Respondent self-reported his conduct to the Office of Disciplinary Counsel.

13 III. STIPULATION TO MISCONDUCT

14 15. By representing Ms. Kasch where the representation involved a concurrent conflict
15 of interest, Respondent violated RPC 1.7(a).

16 IV. PRIOR DISCIPLINE

17 16. Respondent has no prior discipline.

18 V. APPLICATION OF ABA STANDARDS

19 17. The following American Bar Association Standards for Imposing Lawyer Sanctions
20 (1991 ed. & Feb. 1992 Supp.) apply to this case:

21 18. ABA Standard 4.3 is most applicable to the duty to avoid conflicts of interest:

22 4.31 Disbarment is generally appropriate when a lawyer, without the informed
23 consent of client(s):

- 1 (a) engages in representation of a client knowing that the lawyer's interests
2 are adverse to the client's with the intent to benefit the lawyer or another,
3 and causes serious or potentially serious injury to the client; or
4 (b) simultaneously represents clients that the lawyer knows have adverse
5 interests with the intent to benefit the lawyer or another, and causes
6 serious or potentially serious injury to a client; or
7 (c) represents a client in a matter substantially related to a matter in which
8 the interests of a present or former client are materially adverse, and
9 knowingly uses information relating to the representation of a client with
10 the intent to benefit the lawyer or another and causes serious or
11 potentially serious injury to a client.

12 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest
13 and does not fully disclose to a client the possible effect of that conflict, and
14 causes injury or potential injury to a client.

15 4.33 Reprimand is generally appropriate when a lawyer is negligent in determining
16 whether the representation of a client may be materially affected by the lawyer's
17 own interests, or whether the representation will adversely affect another client,
18 and causes injury or potential injury to a client.

19 4.34 Admonition is generally appropriate when a lawyer engages in an isolated
20 instance of negligence in determining whether the representation of a client may
21 be materially affected by the lawyer's own interests, or whether the
22 representation will adversely affect another client, and causes little or no actual
23 or potential injury to a client.

24 19. Respondent acted knowingly in engaging in conduct that presented a conflict of
interest. His personal interests exposed his client to potential criminal liability.

20. Respondent's conduct caused potential injury to the administration of justice,
because it called into question the validity of Ms. Kasch's criminal conviction in Mason County
Superior Court.

21. The presumptive sanction is suspension.

22. The following aggravating factors apply under ABA Standard 9.22:

- 23 (b) dishonest or selfish motive;
24 (c) a pattern of misconduct;
(i) substantial experience in the practice of law [Respondent was admitted to
practice in 1990].

23. The following mitigating factor applies under ABA Standard 9.32:

- (a) absence of a prior disciplinary record.

1 24. On balance the aggravating and mitigating factors do not require a departure from
2 the presumptive sanction but support a lengthy suspension.

3 **VI. STIPULATED DISCIPLINE**

4 25. The parties stipulate that Respondent shall be suspended from the practice of law for
5 two years.

6 26. Before Respondent is eligible for reinstatement he must have a one-year period of
7 sobriety as demonstrated by monthly clean urinalysis examinations (UAs), to be obtained at his
8 own expense. Respondent shall execute any necessary releases to allow disciplinary counsel
9 full access to the results of the UAs to monitor compliance with this stipulation.

10 27. As a further condition of reinstatement, Respondent shall, at least 30 days prior to a
11 request for reinstatement, undergo an independent examination by a licensed clinical
12 psychologist or psychiatrist to be approved by disciplinary counsel. Respondent shall execute
13 all the necessary releases to permit this evaluator to obtain all necessary treatment records and
14 make a report to disciplinary counsel addressing whether Respondent has recovered from any
15 issues identified by the evaluator as influencing Respondent's performance as a lawyer.

16 28. If the evaluator concludes that Respondent is not currently fit to practice law, the
17 report shall recommend a course of treatment necessary to enable Respondent to return to the
18 practice of law.

19 29. Respondent agrees to execute any necessary releases to allow disciplinary counsel
20 and the evaluator full access to all health and treatment records and reports.

21 30. If the evaluator concludes that Respondent is not currently fit to practice law,
22 Respondent (or Respondent's counsel, if Respondent is then represented) and disciplinary
23 counsel shall meet to discuss the evaluator's report and what steps can be taken to address the

24 Stipulation to Discipline

Page 5

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

1 evaluator's concerns. If Respondent and disciplinary counsel cannot reach an agreement, both
2 parties shall present written materials and arguments to the Disciplinary Board. The
3 Disciplinary Board shall decide whether and the conditions under which Respondent shall
4 return to the active practice of law.

5 31. Respondent shall be subject to probation for a period of 24 months beginning on the
6 date Respondent is reinstated to the practice of law.

7 32. The conditions of probation are set forth below. Respondent's compliance with these
8 conditions shall be monitored by the Probation Administrator of the Office of Disciplinary
9 Counsel ("Probation Administrator"). Failure to comply with a condition of probation listed
10 herein may be grounds for further disciplinary action under ELC 13.8(b).

- 11 a) Within 60 days after probation begins, Respondent shall provide the Probation
12 Administrator with the name and contact information of a proposed chemical-
13 dependency evaluator. The proposed evaluator must be a licensed chemical-
14 dependency treatment provider. The Probation Administrator will either approve or
15 reject the proposed evaluator and will notify Respondent of that decision in writing.
16 If the evaluator is rejected, Respondent shall provide the Probation Administrator
17 with the name and contact information of another proposed evaluator within three
18 weeks of the date of the Probation Administrator's letter.
- 19 b) Within 60 days of the date of the Probation Administrator's written approval of an
20 evaluator, Respondent shall undergo a chemical-dependency evaluation.
- 21 c) Respondent shall execute an authorization allowing the evaluator to release
22 information regarding the evaluation to the Probation Administrator, to include a
23 written report of the evaluator's findings, diagnosis, and recommended treatment
24 plan, if any. Respondent shall provide the Probation Administrator with a copy of
the authorization.
- d) Any program of continued treatment shall include random toxicology monitoring.
- e) If the chemical-dependency evaluator recommends treatment, Respondent shall
undergo treatment with the evaluator or with another treatment provider approved
by the Probation Administrator. Respondent will not be required to undergo
chemical-dependency treatment if not recommended by a chemical-dependency
evaluator approved by the Probation Administrator.

- 1 f) Respondent shall comply with all requirements and recommendations of the
2 treatment provider, including but not limited to the completion of any period of in-
3 or out-patient treatment and aftercare, the taking of any prescribed medications,
4 abstinence/sobriety as required, and compliance with any toxicology monitoring.
- 5 g) Respondent shall continue to participate in the recommended treatment program
6 throughout the period of probation or until such time as the treatment provider
7 determines that further participation is not needed.
- 8 h) Respondent shall maintain sobriety.
- 9 i) Respondent shall participate in a support group, such as Alcoholics Anonymous or
Narcotics Anonymous, if participation in such a group is recommended or required
10 by the treatment provider. Respondent shall provide the Probation Administrator
11 with documentation of participation.
- 12 j) Respondent shall execute an authorization[s] allowing and directing the treatment
13 provider to take the following actions:
- 14 i) on a quarterly basis, send written reports to the Probation Administrator that
15 include the dates of treatment, whether Respondent has been cooperative
16 with treatment, whether continued treatment is recommended, and results of
17 random toxicology reports;
 - 18 ii) report immediately to the Probation Administrator incidences of relapse or
19 if Respondent fails to appear for treatment or stops treatment without the
20 provider's agreement and consent prior to either termination of the
21 treatment plan or expiration of the probation period set forth in this
22 stipulation;
 - 23 iii) report immediately to the Probation Administrator if Respondent fails to
24 comply with any treatment recommendations of the treatment provider;
 - iv) report immediately to the Probation Administrator if Respondent otherwise
violates any of the terms or conditions of probation;
 - v) report immediately to the Probation Administrator if the provider will no
longer serve as treatment provider to Respondent prior to termination of the
treatment plan or expiration of the probation period set forth in this
stipulation; and
 - vi) report to the Probation Administrator if Respondent successfully completes
treatment and is discharged from further treatment.

Respondent shall provide a copy of the authorization[s] to the Probation
Administrator upon execution.

1 k) Respondent is responsible for paying any and all fees, costs and/or expenses of
2 chemical dependency evaluation and treatment.

3 **VII. RESTITUTION**

4 33. An order of restitution is not appropriate in this case.

5 **VIII. COSTS AND EXPENSES**

6 34. Respondent shall pay attorney fees and administrative costs and expenses of \$2,490
7 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC
8 13.9(l) if these costs are not paid within 30 days of approval of this stipulation. Reinstatement
9 from suspension is conditioned on payment of costs.

10 **IX. VOLUNTARY AGREEMENT**

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

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

18 **X. LIMITATIONS**

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

24 38. This Stipulation is not binding upon ODC or the respondent as a statement of all
Stipulation to Discipline

1 existing facts relating to the professional conduct of the respondent lawyer, and any additional
2 existing facts may be proven in any subsequent disciplinary proceedings.


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

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


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

17 42. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
18 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
2 to Discipline as set forth above.

3 
4 James K. Gazori, Bar No. 19900
5 Respondent

Dated: 22 JUNE 2017

6 
7 Brett Andrews Purtzer, Bar No. 17283
8 Counsel for Respondent

Dated: June 22, 2017

9 
10 Erica Temple, Bar No. 28458
11 Disciplinary Counsel

Dated: 6/23/17