

FILED

JUL 29 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

JASON M. KAYS,

Lawyer (Bar No. 20438).

Proceeding No. 14#00052

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 and Respondent lawyer Jason M. Kays.

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 Discipline

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

2 **I. ADMISSION TO PRACTICE**

3 1. Respondent Jason M. Kays was admitted to the practice of law in the State of
4 Washington on June 3, 1991.

5 **II. STIPULATED FACTS**

6 2. On October 13, 2012, police were called to a jewelry store in Port Townsend,
7 Washington, after Respondent poured beer over the display cases and carpet of the store.

8 3. Respondent committed Malicious Mischief, in violation of RCW 9A.48.090.

9 4. On November 16, 2012, Respondent entered into a pre-trial diversion agreement in
10 Jefferson County District Court, on the charge of Malicious Mischief in the Third Degree, a
11 misdemeanor.

12 5. A year later, on October 3, 2013, G.S. reported to police that, while driving on
13 Highway 305, another vehicle had struck his, causing a dent and scratch marks. He tried to get
14 the attention of the driver, but the driver ignored him. He provided the license plate of the
15 vehicle.

16 6. Respondent was the driver of the vehicle. Respondent committed Hit and Run, in
17 violation of RCW 46.52.020.

18 7. Police later found Respondent, passed out, in the driver's seat of the vehicle.
19 Respondent admitted to having consumed alcohol.

20 8. Respondent committed the crime of Driving Under the Influence (DUI), in
21 violation of RCW 46.61.502

22 9. Respondent was arrested and booked into jail.

23 10. On October 4, 2013, the Jefferson County District Court issued an order setting

1 bail. The court order prohibited Respondent from using or possessing any intoxicating liquor.

2 11. On October 12, 2013, Respondent drank alcohol at the Highway 20 Roadhouse
3 (the Roadhouse) bar in Port Townsend, in violation of the court's order.

4 12. A police officer observed Respondent drinking alcohol.

5 13. On October 14, 2013, based upon the State's motion to issue a bench warrant
6 because of the officer's observations of Respondent at the Roadhouse, the Jefferson County
7 District Court issued a warrant for Respondent's arrest.

8 14. On that same date, Respondent went back to the Roadhouse.

9 15. He consumed alcohol, in violation of the court's order prohibiting him from doing
10 so.

11 16. On the morning of October 15, 2013, officers found Respondent hiding in a ditch
12 in an attempt to avoid detection.

13 17. Respondent was uncooperative with police. Respondent committed the crimes of
14 Resisting Arrest, in violation of RCW 9A.76.040, and Obstructing a Law Enforcement Officer,
15 in violation of RCW 9A.76.020.

16 18. On November 1, 2013, the Jefferson County District Court revoked Respondent's
17 pre-trial diversion on the charge of Malicious Mischief (violation date of October 13, 2012), and
18 found him guilty of the misdemeanor.

19 19. On November 15, 2013, Respondent entered into a five year deferred prosecution
20 in Jefferson County District Court on the charge of DUI (violation date of October 3, 2013).

21 20. Respondent pleaded guilty and was sentenced for the misdemeanor of Resisting
22 Arrest (violation date of October 15, 2013).

23 21. The Obstructing charge was dismissed as part of the plea bargain.

1 22. On January 22, 2013, the charge in Poulsbo Municipal Court of Hit and Run
2 (violation date of October 3, 2013) was dismissed pursuant to RCW 10.22 (compromise of
3 misdemeanor).

4 III. STIPULATION TO MISCONDUCT

5 23. By committing the crimes of Malicious Mischief, Resisting Arrest, DUI, Hit and
6 Run, and Obstructing a Law Enforcement Officer, Respondent violated RPC 8.4(b) and/or RPC
7 8.4(i).

8 24. By consuming alcohol, in violation a court order directing him not to do so,
9 Respondent violated RPC 8.4(j) and/or RPC 8.4(i).

10 IV. PRIOR DISCIPLINE

11 25. On October 23, 1996, following a stipulation related to convictions in King County
12 Superior Court for Malicious Mischief in the Second Degree (a felony), Assault in the Fourth
13 Degree, and Harassment, the Supreme Court issued an order suspending Respondent from the
14 practice of law for 60 days, followed by two years of probation. Respondent was readmitted to
15 practice law on February 4, 1997.

16 V. APPLICATION OF ABA STANDARDS

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

19 27. ABA Standard 5.1 applies to the commission of criminal acts:

20 5.11 Disbarment is generally appropriate when:

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

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

4 5.12 Suspension is generally appropriate when a lawyer knowingly engages in
5 criminal conduct which does not contain the elements listed in Standard 5.11 and
6 that seriously adversely reflects on the lawyer's fitness to practice.

7 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any
8 other conduct that involves dishonesty, fraud, deceit, or misrepresentation and
9 that adversely reflects on the lawyer's fitness to practice law.

10 5.14 Admonition is generally appropriate when a lawyer engages in any other conduct
11 that reflects adversely on the lawyer's fitness to practice law.

12 28. Respondent acted with a knowing disregard for the rule of law.

13 29. His conduct seriously reflected adversely on his fitness to practice law.

14 30. Respondent's actions injured the owners of the jewelry store and G.S. There was
15 also injury or potential injury to the public, police, and the profession because of Respondent's
16 refusal to refrain from drinking alcohol, driving while under the influence of alcohol, resisting
17 arrest and obstructing law enforcement.

18 31. The presumptive sanction is suspension.

19 32. The following aggravating factors apply under ABA Standard 9.22:

- 20 (a) prior disciplinary offenses [1996 suspension as noted above];
21 (c) a pattern of misconduct;
22 (d) multiple offenses;
23 (i) substantial experience in the practice of law [Respondent was admitted to
24 practice in 1991].

25 33. The following mitigating factors apply under ABA Standard 9.32:

- 26 (c) personal or emotional problems (Respondent has a documented history of
27 Bi-Polar Mood Disorder. This disorder significantly contributed to his
28 misconduct. Respondent is currently receiving medical treatment but has
29 not yet demonstrated a meaningful and sustained period of successful
30 rehabilitation);
31 (m) remoteness of prior offenses.

32 34. It is an additional mitigating factor that Respondent has agreed to resolve this matter

1 at an early stage of the proceedings.

2 35. Respondent has completed in-patient treatment for chemical dependency but has not
3 yet demonstrated a meaningful and sustained period of successful rehabilitation.

4 36. On balance the aggravating and mitigating factors do not require a departure from
5 the presumptive sanction.

6 **VI. STIPULATED DISCIPLINE**

7 37. The parties stipulate that Respondent shall receive a two year suspension for his
8 conduct.

9 38. Respondent will be subject to probation for a period of two years beginning when
10 Respondent is reinstated to the practice of law. Respondent shall comply with the specific
11 conditions preceding reinstatement and the probation terms set forth below. Respondent's
12 compliance with these conditions shall be monitored by the Probation Administrator of the
13 Office of Disciplinary Counsel ("Probation Administrator"). Failure to comply with a condition
14 of probation listed below may be grounds for further disciplinary action under ELC 13.8(b).

15 39. At least six months prior to reinstatement, Respondent shall provide the Probation
16 Administrator with the name and contact information of a proposed chemical-dependency
17 evaluator. The proposed evaluator must be a licensed chemical-dependency treatment provider.
18 The Probation Administrator will either approve or reject the proposed evaluator and will notify
19 Respondent of that decision in writing. If the evaluator is rejected, Respondent shall provide the
20 Probation Administrator with the name and contact information of another proposed evaluator
21 within three weeks of the date of the Probation Administrator's letter.

22 40. At least six months prior to reinstatement, Respondent shall undergo a chemical-
23 dependency evaluation.

1 41. At least six months prior to reinstatement, Respondent shall execute an authorization
2 allowing the evaluator to release information regarding the evaluation to the Probation
3 Administrator, to include a written report of the evaluator's findings, diagnosis, and
4 recommended treatment plan, if any. Respondent shall provide the Probation Administrator
5 with a copy of the authorization.

6 42. Any program of continued treatment shall include random toxicology monitoring.

7 43. At least six months prior to reinstatement, if the chemical-dependency evaluator
8 recommends treatment, Respondent shall undergo treatment with the evaluator or with another
9 treatment provider approved by the Probation Administrator. Respondent will not be required
10 to undergo chemical-dependency treatment if not recommended by a chemical-dependency
11 evaluator approved by the Probation Administrator.

12 44. Respondent shall comply with all requirements and recommendations of the
13 treatment provider, including but not limited to the completion of any period of in- or out-
14 patient treatment and aftercare, the taking of any prescribed medications, abstinence/sobriety as
15 required, and compliance with any toxicology monitoring.

16 45. Respondent shall continue to participate in the recommended treatment program
17 throughout the period of probation or until such time as the treatment provider determines that
18 further participation is not needed.

19 46. For at least six months prior to reinstatement, and during the period of probation,
20 Respondent shall maintain sobriety.

21 47. Respondent shall participate in a support group, such as Alcoholics Anonymous or
22 Narcotics Anonymous, if participation in such a group is recommended or required by the
23 treatment provider. Respondent shall provide the Probation Administrator with documentation

1 of participation.

2 48. Respondent shall execute an authorization[s] allowing and directing the treatment
3 provider to take the following actions:

- 4 a) on a quarterly basis, send written reports to the Probation Administrator that include
5 the dates of treatment, whether Respondent has been cooperative with treatment,
6 whether continued treatment is recommended, and results of any random toxicology
7 reports;
- 8 b) on a quarterly basis, Respondent shall provide the results of a toxicology report
9 (taken by Respondent within the previous 30 days) to the Probation Administrator.
- 10 c) report immediately to the Probation Administrator incidences of relapse or if
11 Respondent fails to appear for treatment or stops treatment without the provider's
12 agreement and consent prior to either termination of the treatment plan or expiration
13 of the probation period set forth in this stipulation;
- 14 d) report immediately to the Probation Administrator if Respondent fails to comply
15 with any treatment recommendations of the treatment provider;
- 16 e) report immediately to the Probation Administrator if Respondent otherwise violates
17 any of the terms or conditions of probation;
- 18 f) report immediately to the Probation Administrator if the provider will no longer
19 serve as treatment provider to Respondent prior to termination of the treatment plan
20 or expiration of the probation period set forth in this stipulation; and
- 21 g) report to the Probation Administrator if Respondent successfully completes
22 treatment and is discharged from further treatment.

23 49. Respondent shall provide a copy of the authorization[s] to the Probation

1 Administrator upon execution.

2 50. Respondent is responsible for paying any and all fees, costs and/or expenses of
3 chemical dependency and/or mental health evaluation and treatment.

4 51. Respondent shall comply with his physician's recommendations relating to his
5 mental health treatment.

6 52. Respondent shall continue to participate in any recommended mental health
7 treatment program throughout the period of probation or until such time as the treatment
8 provider determines that further participation is not needed.

9 53. Respondent shall not commit any criminal acts.

10 54. Respondent shall not be convicted of any crimes.

11 **VII. RESTITUTION**

12 55. An order of restitution is not appropriate.

13 **VIII. COSTS AND EXPENSES**

14 56. In light of Respondent's willingness to resolve this matter by stipulation at an early
15 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
16 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
17 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
18 suspension is conditioned on payment of costs.

19 **IX. VOLUNTARY AGREEMENT**

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

1 this Stipulation except as provided herein.

2 **X. LIMITATIONS**

3 58. This Stipulation is a compromise agreement intended to resolve this matter in
4 accordance with the purposes of lawyer discipline while avoiding further proceedings and the
5 expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer
6 and ODC acknowledge that the result after further proceedings in this matter might differ from
7 the result agreed to herein.

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

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

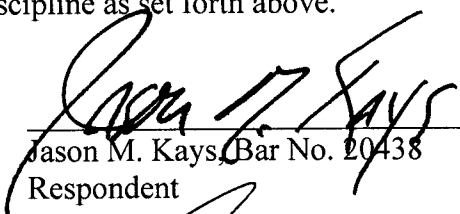
18 61. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary
19 Board shall have available to it for consideration all documents that the parties agree to submit
20 to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that
21 form the record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

23 62. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will


1 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
2 Rules for Enforcement of Lawyer Conduct will be made.

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

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

9 
10 _____
11 Jason M. Kays, Bar No. 20438
12 Respondent

Dated: 4/16/14

13 
14 _____
15 Erica Temple, Bar No. 28458
16 Disciplinary Counsel

Dated: 4/16/14

PROTECTIVE ORDER START

PROTECTIVE ORDER END