

FILED

JUN 20 2014

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

KELLY MARIE Beissel,
Lawyer (Bar No. 29239).

Proceeding No. 14#00007

STIPULATION TO SIX MONTH
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 Linda B. Eide, Respondent's Counsel Kurt M. Bulmer and Respondent lawyer Kelly Marie Beissel.

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 Stipulation to Discipline

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risk, time, and expense attendant to further proceedings.

I. ADMISSION TO PRACTICE

1. Respondent was admitted to practice law in the State of Washington on October 13, 1999. On December 4, 2013, the Supreme Court suspended Beissel's license to practice law under ELC 7.2(a)(3) (failure to cooperate with investigation). She remains suspended under the order effective December 4, 2013.

II. STIPULATED FACTS

2. Denegal Grievance. In 2004, Arlene Denegal hired Beissel following a leg injury at her airport job. The Washington Department of Labor and Industries (L&I) assigned a claim number. Denegal received benefits, but had to reimburse L&I when the award was revoked. Beissel appealed and won. In October 2013, Denegal received \$13,000, plus continuing time loss payments of \$179 every two weeks. Until May 2013, Beissel mailed the time loss payments due Denegal to her.

3. After some miscommunication in the summer of 2013, when Denegal had difficulty reaching Beissel, L&I forwarded checks directly to Denegal.

4. On August 8, 2013, Denegal filed a grievance against Beissel. On August 15, 2013, ODC forwarded Denegal's grievance to Beissel seeking a response within 30 days. Beissel failed to respond.

5. On September 18, 2013, ODC sent Beissel a certified letter seeking a response within 10 days. Beissel failed to respond. That letter, sent to Beissel's official address, was returned to ODC marked "unclaimed."

6. On or about October 18, 2013, on behalf of Beissel, lawyer Kurt Bulmer accepted service of a Subpoena Duces Tecum dated October 3, 2013, requiring Beissel to appear for

deposition on October 29, 2013 and to produce the Denegal file.

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7. On October 29, 2013, ^{Beissel}~~Denegal~~ did not appear for the deposition.

8. Kraus Grievance. In 2011, Amelia Kraus injured her back at work. Beginning in August 2011, Beissel represented Kraus with L&I on Kraus's worker's compensation claim.

9. In June 2013, Kraus's mother emailed Beissel. In July 2013, Kraus sent Beissel a certified letter because she had been unable to reach Beissel since Beissel's December 2012 letter to her.

10. On July 17, 2013, Kraus filed a grievance with ODC. On July 23, 2013, ODC forwarded Kraus's grievance to Beissel seeking a response within 30 days. Beissel failed to respond.

11. On August 27, 2013, ODC sent Beissel a certified letter seeking a response within 10 days. Beissel failed to respond. That letter was sent to Beissel's official address, and was returned to ODC marked "unable to forward."

12. On September 11, 2013, ODC issued a Subpoena Duces Tecum compelling Beissel's appearance for an October 3, 2013 deposition and requiring her to produce the Kraus file. Beissel was personally served on September 17, 2013.

13. On October 2, 2013, Kurt Bulmer appeared for Beissel. ODC agreed to continue the deposition to October 15, 2013. On October 15, 2013, Bulmer called to cancel the deposition because his client called to say she was ill. ODC rescheduled the deposition for October 29, 2013.

14. On October 20, 2013, Beissel did not appear for the deposition. Bulmer withdrew.

15. Interim Suspension. Based on Beissel's failure to appear for her deposition or otherwise cooperate with ODC's investigation, on November 5, 2013, ODC petitioned the

Supreme Court for Beissel's immediate interim suspension under ELC 7.2(a)(3). Beissel failed to respond. On December 4, 2013, the Court granted the petition and suspended Beissel.

16. Formal Complaint and Default. On January 28, 2014, ODC filed a Formal Complaint against Beissel based on the Denegal and Kraus grievances and on Beissel's failure to cooperate with ODC's investigation. Beissel failed to respond to the Formal Complaint, which was personally served on Beissel at her home on February 14, 2014.

17. ODC filed for and received an Order of Default. On the date set for the default hearing, Kurt Bulmer appeared for Beissel. The Hearing Officer signed an Agreed Order Resetting Default Hearing Date. In the interim Beissel's lawyer filed a Motion to Vacate Order of Default with Beissel's Public Declaration (including a proposed Answer to the Formal Complaint) and Beissel's Private Declaration (describing serious health issues faced by her partner during the period Beissel failed to cooperate). The parties seek to resolve these proceedings with this stipulation.

III. STIPULATION TO MISCONDUCT

18. Beissel stipulates that she violated RPC 1.4 by failing to communicate adequately with clients Denegal and Kraus.

19. Beissel stipulates that she violated RPC 8.4(l) (through violation of former ELC 5.3(e), now ELC 5.3(f)) by failing to respond to written requests for responses to the Denegal and Kraus grievances and by failing to appear for her deposition.

IV. PRIOR DISCIPLINE

20. Beissel has no prior discipline.

V. APPLICATION OF ABA STANDARDS

21. The following American Bar Association Standards for Imposing Lawyer Sanctions

(1991 ed. & Feb. 1992 Supp.) apply to the failure to communicate and failure to cooperate, respectively:

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.

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.

22. Beissel acted knowingly. Her failure to communicate adequately with Denegal and Kraus caused stress for the clients. Her failure to cooperate caused additional work for ODC and impeded its investigation.

23. The presumptive sanction is suspension.

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

- (d) multiple offenses; and
- (i) substantial experience in the practice of law (admitted 1999).

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

- (a) absence of a prior disciplinary record; and
- (b) personal or emotional problems (applies to failure to cooperate only).

26. Given that the mitigating factors do not outweigh the aggravating factors, the presumptive minimum suspension of six months is appropriate.

VI. STIPULATED DISCIPLINE

27. The parties stipulate that Beissel shall receive a six month suspension for her conduct.

28. Reinstatement from suspension is conditioned on payment of costs.

29. Reinstatement is also conditioned on an evaluation by a licensed psychologist or psychiatrist finding Beissel fit to practice. Beissel may propose an evaluator, subject to ODC's approval. Beissel shall execute an authorization allowing the evaluator to release information regarding the evaluation to ODC, to include a written report of the evaluator's findings, diagnosis, and recommended treatment plan, if any. Beissel shall provide ODC with a copy of the authorization. Beissel is responsible for paying any and all fees, costs, and/or expenses of mental health evaluation and treatment.

30. In addition, Beissel will be subject to probation for a period of six months beginning when she is reinstated to the practice of law. The conditions of probation are set forth below. Respondent's compliance with these conditions shall be monitored by the

Probation Administrator of the Office of Disciplinary Counsel (Probation Administrator). Failure to comply with a condition of probation listed herein may be grounds for further disciplinary action under ELC 13.8(b).

- a) During the period of probation, Respondent's practice shall be supervised by a practice monitor. The practice monitor must be a WSBA member with no record of public discipline and who is not the subject of a pending public disciplinary proceeding.
- b) No later than 30 days before probation begins, Respondent shall provide to the Probation Administrator, in writing, the name and contact information of a proposed practice monitor, who must be approved by the Probation Administrator. If Respondent fails to propose a practice monitor, or if the Probation Administrator does not approve the proposed practice monitor, the Probation Administrator will request that a practice monitor be appointed by the Chair of the Disciplinary Board. See ELC 13.8(a)(2). Respondent shall cooperate with the appointed practice monitor.
- c) During the period of probation, Respondent shall meet with the practice monitor at least once per month, for a total of six meetings. At each meeting, the practice monitor will discuss with Respondent: each of Respondent's client matters, the status of each client matter, Respondent's communication with each client, upcoming deadlines, and Respondent's intended course of action. Meetings may be in person or by telephone at the practice monitor's discretion.
- d) The practice monitor will provide the Probation Administrator with monthly reports regarding Respondent's performance on probation.

e) If the practice monitor believes that Respondent is not complying with any of her 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.

f) Respondent shall be responsible for paying any and all fees, costs and/or expenses charged by the practice monitor for supervision.

VII. RESTITUTION

31. No restitution is required.

VIII. COSTS AND EXPENSES

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

IX. VOLUNTARY AGREEMENT

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

X. LIMITATIONS

34. This Stipulation is a compromise agreement intended to resolve this matter in accordance with the purposes of lawyer discipline while avoiding further proceedings and the

expenditure of additional resources by the Respondent and ODC. Both the Respondent lawyer and ODC acknowledge that the result after further proceedings in this matter might differ from the result agreed to herein.

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

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

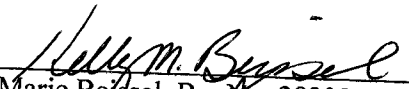
37. Under Disciplinary Board policy, in addition to the Stipulation, the Disciplinary Board shall have available to it for consideration all documents that the parties agree to submit to the Disciplinary Board, and all public documents. Under ELC 3.1(b), all documents that form the record before the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

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

39. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this Stipulation will have no force or effect, and neither it nor the fact of its execution will be


admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary proceeding, or in any civil or criminal action.

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



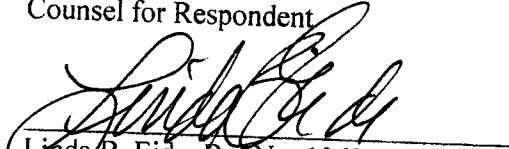
Kelly Marie Bejssel, Bar No. 29239
Respondent

Dated: 4/24/14



Kurt M. Bulmer, Bar No. 5559
Counsel for Respondent

Dated: 4/24/14



Linda B. Eide, Bar No. 10637
Senior Disciplinary Counsel

Dated: 4/25/14