

FILED

Aug 22 2019

Disciplinary
Board

Docket # 013

1
2
3
4
5
6 BEFORE THE
7 DISCIPLINARY BOARD
8 OF THE
9 WASHINGTON SUPREME COURT

10 In re

11 **ERIK J. GRAEFF,**

12 Lawyer (Bar No. 48235).

Proceeding No. 18#00065

ODC File No. 18-00485

STIPULATION TO DISBARMENT

13 Under Rule 9.1 of the Washington Supreme Court's Rules for Enforcement of Lawyer
14 Conduct (ELC), the following Stipulation to disbarment is entered into by the Office of
15 Disciplinary Counsel (ODC) of the Washington State Bar Association (Association) through
16 Senior Disciplinary Counsel Scott G. Busby and Respondent Erik J. Graeff.

17 Respondent understands that he is entitled under the ELC to a hearing, to present
18 exhibits and witnesses on his behalf, and to have a hearing officer determine the facts,
19 misconduct and sanction in this case. Respondent further understands that he is entitled under
20 the ELC to appeal the outcome of a hearing to the Disciplinary Board and, in certain cases, the
21 Supreme Court. Respondent further understands that a hearing and appeal could result in an
22 outcome more favorable or less favorable to him. Respondent chooses to resolve this
23

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

3 **I. ADMISSION TO PRACTICE**

4 1. Respondent was admitted to the practice law of in the State of Washington on
5 October 29, 2014.

6 2. Respondent was suspended from the practice of law in the State of Washington
7 under ELC 7.1 (conviction of a crime) on November 8, 2018. Respondent remains suspended
8 as of this date.

9 **II. STIPULATED FACTS**

10 3. On December 21, 2017, Respondent and another lawyer, Terrance Hogan, had a
11 disagreement about Respondent's conduct in a case on which they worked together. Mr. Hogan
12 criticized Respondent's work on the case.

13 4. Respondent and Mr. Hogan exchanged a series of emails that day.

14 5. In an email Mr. Hogan sent to Respondent at about 4:19 p.m., Mr. Hogan wrote,
15 "We will let you explain your conduct to the Oregon State Bar, and [the Washington State Bar],
16 tough guy."

17 6. In an email Respondent sent to Mr. Hogan at about 4:31 p.m., Respondent replied,
18 "Sounds good. Fuck you and I'll be waiting. I'm tougher than you and both bars together."

19 7. In an email Mr. Hogan sent to Respondent at about 4:35 p.m., Mr. Hogan wrote,
20 "You know where I am, tough guy."

21 8. In an email Respondent sent to Mr. Hogan at about 4:38 p.m., Respondent replied,
22 "If the traffic wasn't such shit, I'd be there today."
23

1 9. Shortly before 7:00 p.m., Respondent went to an office building in Beaverton,
2 Oregon where Mr. Hogan worked.

3 10. At about 7:00 p.m., Respondent intentionally fired multiple shots from a firearm at a
4 window in the office building where Mr. Hogan worked.

5 11. One or more of the shots Respondent fired went through the window, passed through
6 an interior wall, and hit a computer monitor.

7 12. A person working inside the office at the time was sprayed with debris from the wall
8 that was hit by one or more of the shots Respondent fired.

9 13. Through his conduct, Respondent created a substantial risk of death or serious bodily
10 injury to another person.

11 14. On March 8, 2018, Respondent was charged in the Washington County, Oregon
12 Circuit Court with:

- 13 a) Unlawful use of a weapon, a felony in violation of Oregon Revised Statutes
14 (ORS) § 166.220(1)(a) (Count 1);
- 15 b) Unlawful use of a weapon, a felony in violation of ORS § 166.220(1)(b)
16 (Count 2); and
- 17 c) Recklessly endangering another person, a misdemeanor in violation of ORS §
18 163.195 (Count 3).

19 15. On October 26, 2018, Count 1 was dismissed, and Respondent pleaded guilty to:

- 20 a) Unlawful use of a weapon, as charged in Count 2; and
- 21 b) Recklessly endangering another person, as charged in Count 3.

22 16. On January 23, 2019, Respondent was sentenced to 18 months in prison.

23 17. The sentencing court found substantial and compelling reasons for an upward
24 dispositional departure from the sentencing guidelines based on: (a) threat of actual violence;

1 and (b) violation of public trust.

2 18. On February 28, 2018, members of the Vancouver, Washington Police Department
3 executed a search warrant at Respondent's residence.

4 19. On March 9, 2018, Respondent was charged in the Clark County, Washington
5 Superior Court with:

6 a) Possession of ephedrine or pseudoephedrine with intent to manufacture
7 methamphetamine, a felony in violation of Revised Code of Washington (RCW) §
8 69.50.440 (Count 1); and

9 b) Manufacture of a controlled substance (methamphetamine), a felony in violation of
10 RCW § 69.50.401 (Count 2).

11 20. On July 5, 2019, Respondent was charged by amended information with one-count
12 of attempted manufacture of a controlled substance (methylenedioxymethamphetamine), a
13 felony in violation of RCW § 69.50.401.

14 21. On July 5, 2019, Respondent pleaded guilty as charged in the amended information.

15 22. On July 5, 2019, Respondent was sentenced to 180 days of confinement to run
16 concurrently with the sentence imposed by the Washington County, Oregon Circuit Court.

17 **III. STIPULATION TO MISCONDUCT**

18 23. By committing the crimes of (a) unlawful use of a weapon, in violation of ORS §
19 166.220(1)(b), (b) recklessly endangering another person, in violation of ORS § 163.195, and
20 (c) attempted manufacture of a controlled substance, in violation of RCW § 69.50.401; and by
21 engaging in the conduct described above, Respondent violated RPC 8.4(b), RPC 8.4(d), RPC
22 8.4(i), and RPC 8.4(n).

23 **IV. PRIOR DISCIPLINE**

24 24. Respondent has no prior discipline.

1 **V. APPLICATION OF ABA STANDARDS**

2 25. The Washington Supreme Court has adopted the American Bar Association
3 *Standards for Imposing Lawyer Sanctions* as a basic, but not conclusive, guide when imposing
4 sanctions for violations of Washington rules that are based on the *ABA Model Rules of*
5 *Professional Conduct. In re Disciplinary Proceeding Against Day*, 162 Wn.2d 527, 537, 540,
6 173 P.3d 915 (2007).

7 26. Respondent does not concede any application or legal analysis in regard to the ABA
8 *Standards*, and enters into this stipulation only to avoid the expense and time of litigation and
9 for purposes of settlement.

10 27. ABA *Standards* std. 5.1 applies to violations of RPC 8.4(b), which is based on Rule
11 8.4(b) of the *Model Rules*:

12 **5.1 Failure to Maintain Personal Integrity**

13 Absent aggravating or mitigating circumstances, upon application of the
14 factors set out in Standard 3.0, the following sanctions are generally appropriate
15 in cases involving commission of a criminal act that reflects adversely on the
16 lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in
17 cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

18 5.11 Disbarment is generally appropriate when:

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

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

5.12 Suspension is generally appropriate when a lawyer knowingly
engages in criminal conduct which does not contain the elements

1 listed in Standard 5.11 and that seriously adversely reflects on the
2 lawyer's fitness to practice.

3 5.13 Reprimand is generally appropriate when a lawyer knowingly
4 engages in any other conduct that involves dishonesty, fraud,
5 deceit, or misrepresentation and that adversely reflects on the
6 lawyer's fitness to practice law.

7 5.14 Admonition is generally appropriate when a lawyer engages in
8 any other conduct that reflects adversely on the lawyer's fitness to
9 practice law.

10 28. Respondent knowingly engaged in criminal conduct, in violation of (a) ORS §
11 166.220(1)(b) (unlawful use of a weapon), (b) ORS § 163.195 (recklessly endangering another
12 person), and (c) RCW § 69.50.401 (attempted manufacture of a controlled substance). The
13 necessary elements of those crimes do not include any of the elements listed in *ABA Standards*
14 std. 5.11.

15 29. Respondent's criminal conduct seriously adversely reflects on his fitness to practice
16 law.

17 30. Under *ABA Standards* std. 5.12, the presumptive sanction for Respondent's
18 violation of RPC 8.4(b) is suspension.

19 31. RPC 8.4(d) is based on Rule 8.4(d) of the *Model Rules*. *ABA Standards* std. 7.0 is
20 most applicable to violations of RPC 8.4(d) based on a lawyer's harassment or intimidation of a
21 party or a party's counsel:

22 **7.0 *Violations of Duties Owed as a Professional***

23 Absent aggravating or mitigating circumstances, upon application of the
24 factors set out in Standard 3.0, the following sanctions are generally appropriate
in cases involving false or misleading communication about the lawyer or the
lawyer's services, improper communication of fields of practice, improper
solicitation of professional employment from a prospective client, unreasonable
or improper fees, unauthorized practice of law, improper withdrawal from
representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly
engages in conduct that is a violation of a duty owed as a

1 professional with the intent to obtain a benefit for the lawyer or
2 another, and causes serious or potentially serious injury to a
3 client, the public, or the legal system.

4 7.2 Suspension is generally appropriate when a lawyer knowingly
5 engages in conduct that is a violation of a duty owed as a
6 professional and causes injury or potential injury to a client, the
7 public, or the legal system.

8 7.3 Reprimand is generally appropriate when a lawyer negligently
9 engages in conduct that is a violation of a duty owed as a
10 professional and causes injury or potential injury to a client, the
11 public, or the legal system.

12 7.4 Admonition is generally appropriate when a lawyer engages in an
13 isolated instance of negligence that is a violation of a duty owed
14 as a professional, and causes little or no actual or potential injury
15 to a client, the public, or the legal system.

16 32. In firing multiple shots into the office building where Mr. Hogan worked,
17 Respondent acted intentionally and caused potentially serious injury to the public.

18 33. Under *ABA Standards* std. 7.1, the presumptive sanction for Respondent's violation
19 of RPC 8.4(d) is disbarment.

20 34. The *ABA Standards* do not apply directly to Respondent's violations of RPC 8.4(i)
21 and RPC 8.4(n), as those rules are not based on the ABA Model Rules. *Day*, 162 Wn.2d at 547.

22 35. Reacting to a disagreement with another lawyer by going to the lawyer's office and
23 intentionally firing multiple shots with a firearm through a window into the lawyer's office is
24 "repugnant to the basic standards of our legal profession" and merits disbarment. *Day*, 162
Wn.2d at 543-47 (quoting *In re Disciplinary Proceeding Against McGrath*, 98 Wn.2d 337, 345,
655 P.2d 232 (1982)).

36. The following aggravating factor applies under *ABA Standards* std. 9.22:

(b) Selfish motive.

37. Additional aggravating factors are (a) that Respondent's criminal conduct was

1 directly related to the practice of law, and (b) that Respondent created a substantial risk of death
2 or serious bodily injury in excess of what is required to commit the crime of recklessly
3 endangering another person.

4 38. The following mitigating factors apply under *ABA Standards* std. 9.32:

- 5 (a) Absence of a prior disciplinary record;
- 6 (l) Remorse.

7 39. The aggravating and mitigating factors do not require a departure from the
8 presumptive sanction of disbarment.

9 **VI. STIPULATED DISCIPLINE**

10 40. The parties stipulate that Respondent shall be disbarred for his misconduct.

11 **VII. COSTS AND EXPENSES**

12 41. In light of Respondent's willingness to resolve this matter by stipulation at an early
13 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$750 in
14 accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
15 if these costs are not paid within 120 days of approval of this stipulation.

16 **VIII. VOLUNTARY AGREEMENT**

17 42. Respondent states that prior to entering into this Stipulation he had an opportunity to
18 consult independent legal counsel regarding this Stipulation, that he is entering into this
19 Stipulation voluntarily, and that no promises or threats have been made by ODC, the
20 Association, or by any representative thereof, to induce Respondent to enter into this Stipulation
21 except as provided herein.

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

1 **IX. LIMITATIONS**

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

7 45. This Stipulation is not binding upon ODC or Respondent as a statement of all
8 existing facts relating to Respondent's professional conduct, and any additional existing facts
9 may be proven in any subsequent disciplinary proceedings.

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

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

21 48. If this Stipulation is approved by the Disciplinary Board and the Supreme Court, it
22 will be followed by the disciplinary action agreed to in this Stipulation. All notices required in
23

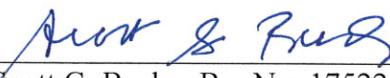
1 the Rules for Enforcement of Lawyer Conduct will be made.

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

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

8 
9 _____
Erik J. Graeff, Bar No. 48235
Respondent

Dated: 7-12-19

10
11 
12 _____
Scott G. Busby, Bar No. 17522
Senior Disciplinary Counsel

Dated: 7-17-19