

FILED

JAN 28 2013

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

KEVIN L. GIBBS,

Lawyer (Bar No. 23990).

Proceeding No. 11#00106

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 Washington State Bar Association (Association), through disciplinary counsel Randy Beitel and Respondent lawyer Kevin L. Gibbs, pro se.

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

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1 **I. ADMISSION TO PRACTICE**

2 1. Respondent was admitted to practice law in the State of Washington on October
3 31, 1994. Respondent has been suspended for failure to pay his licensing fee since May 11,
4 2010.

5 **II. STIPULATED FACTS**

6 2. In November 2009, Daniel Gray-Brewer and his wife hired Respondent to bring a
7 stepparent adoption proceeding in order for Mr. Gray-Brewer to adopt his stepson.

8 3. The Gray-Brewers agreed to an hourly fee of \$200 per hour, with a maximum fee
9 of \$1,500 if the adoption was not contested by the birth father, with an advance fee of \$1,500
10 and a cost advance of \$300.

11 4. The Gray-Brewers paid Respondent \$1,800 on or about November 24, 2009. Re-
12 spondent did not deposit any of the \$1,800 received from the Gray-Brewers to a trust account.

13 5. Respondent prepared the adoption petition and other documents, which were
14 signed by the Gray-Brewers on or about March 31, 2010.

15 6. The birth father did not contest the adoption, and in March, 2010, Respondent ob-
16 tained the signature of the biological father to an adoption consent.

17 7. Respondent did not pay the filing fee or file the adoption petition with the court.

18 8. Respondent did not obtain the required post-placement report or schedule a court
19 hearing to consider the adoption petition.

20 9. On or around April 12, 2010, Respondent sent the Gray-Brewers an email advising
21 them that he was leaving the country on a two month trip to Uganda. Respondent had provided
22 no advance notice to the Gray-Brewers that he was planning to be away from his practice at this
23 time.

1 10. In the April 12, 2010 email, Respondent advised the Gray-Brewers that their pas-
2 tor or counselor could complete the required post-placement report and provided them with a
3 copy of the statute indicating what information must be in the report. He also indicated that he
4 would review the draft.

5 11. The Gray-Brewers obtained, on their own, a post-placement report and sent it to
6 Respondent for review on or about May 26, 2010.

7 12. Thereafter, the Gray-Brewers requested Respondent to advise them as to the status
8 of their matter, but Respondent did not contact the Gray-Brewers until July 27, 2010 when he
9 sent them an email advising them that he would not be back in the country until September 7,
10 2010.

11 13. In May 2010, Respondent was suspended for non-payment of his licensing fees.
12 Respondent had not advised the Association of his new address, and as a result did not receive
13 the notices advising him of the suspension.

14 14. Respondent did not advise the Gray-Brewers of his suspension and when he re-
15 turned to Washington State, he exchanged emails with them in September and October 2010
16 about scheduling a court hearing.

17 15. On or about November 1, 2010, after learning of Respondent's suspension, Mr.
18 Gray-Brewer confronted Respondent about the suspension and terminated the representation.
19 Upon being terminated, Respondent did not provide the Gray-Brewers with the pleadings they
20 had signed in March 2010, nor did Respondent provide them with the father's consent that he
21 had obtained in March 2010, nor did Respondent account for the advance fees and costs the
22 Gray-Brewers had paid, nor did Respondent refund the unearned fees or the un-expended costs.

1 16. The Gray-Brewers hired new counsel who started the adoption anew, including
2 obtaining a new consent from the biological father, as Respondent had neither filed nor returned
3 any documents to the Gray-Brewers.

4 17. The Gray-Brewers' adoption proceeding brought by their new counsel was com-
5 pleted on or about March 21, 2011.

6 18. On or about April 15, 2011, Respondent mailed to the Gray-Brewers the original
7 documents he had prepared for the adoption and the original consent to adoption that he had ob-
8 tained.

9 19. Respondent's April 15, 2011 mailing to the Gray-Brewers was returned to Re-
10 spondent because it was not properly addressed. Respondent did not further attempt to provide
11 the documents to the Gray-Brewers.

12 20. On or about June 6, 2011, Respondent provided to disciplinary the original docu-
13 ments he had prepared for the adoption and the original consent to adoption that he had ob-
14 tained. Disciplinary counsel then provided these documents to the Gray-Brewers.

15 21. The Gray-Brewers have requested Respondent provide an accounting of their
16 \$1,500 fee advance, but Respondent has not provided them one or made any refund of the ad-
17 vance fees. Because Respondent neither filed nor provided to the Gray-Brewers the pleadings
18 he had prepared and the consent he had obtained, the Gray-Brewers hired new counsel and pur-
19 sued and completed the adoption without any assistance from Respondent. They derived little if
20 any value from Respondent's work on their behalf.

21 22. Until recently, Respondent has been without funds to refund either the unexpend-
22 ed \$300 cost advance or any unearned fees to the Gray-Brewers. Respondent paid the Gray-
23 Brewers \$300 on or about December 7, 2012 as restitution for the unexpended cost advance.

1 **III. STIPULATION TO MISCONDUCT**

2 23. By failing to deposit the Gray-Brewers' \$1,500 fee advance and \$300 cost ad-
3 vance into a trust account and hold such funds in trust until earned as fees or expended as costs,
4 Respondent violated RPC 1.15A(c).

5 24. By leaving for Uganda in April, 2010, with little advance notice to the Gray-
6 Brewers and failing to complete the adoption proceeding and promptly respond to their subse-
7 quent requests for information, Respondent violated RPC 1.3 and RPC 1.4.

8 25. By failing to notify the Gray-Brewers of his suspension and/or by failing to discon-
9 tinue their representation and return their signed original pleadings and consent agreement, Re-
10 spondent violated RPC 8.4(l) by violating ELC 14.1(a) and ELC 14.1(c).

11 26. By failing to provide the Gray-Brewers an accounting of their \$1,500 fee advance
12 when requested, Respondent violated RPC 1.15A(e).

13 27. By failing to promptly return the Gray-Brewers' signed original pleadings and
14 consent agreement and failing to promptly refund their unexpended cost advance and any un-
15 earned fees upon his termination from representing them, Respondent violated RPC 1.15A(f)
16 and RPC 1.16(d).

17 28. By retaining the full \$1,500 that had been agreed upon for a non-contested adop-
18 tion, when Respondent could not conclude the matter and did not provide the pleadings to the
19 Gray-Brewers until after they had already concluded the adoption using another attorney, Re-
20 spondent charged an unreasonable fee in violation of RPC 1.5(a).

21 **IV. PRIOR DISCIPLINE**

22 29. Respondent has no prior discipline.
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24

1 **V. APPLICATION OF ABA STANDARDS**

2 30. The following American Bar Association Standards for Imposing Lawyer Sanctions
3 (1991 ed. & Feb. 1992 Supp.) apply to this case:

4 ABA Standard 4.1 is most applicable to the duty to properly handle client funds:

5 4.1 Failure to Preserve the Client’s Property

6 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client
7 property and causes injury or potential injury to a client.

8 4.12 Suspension is generally appropriate when a lawyer knows or should know that he
9 is dealing improperly with client property and causes injury or potential injury to a cli-
10 ent.

11 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with cli-
12 ent property and causes injury or potential injury to a client.

13 4.14 Admonition is generally appropriate when a lawyer is negligent in dealing with
14 client property and causes little or no actual or potential injury to a client.

15 ABA Standard 4.4 is most applicable to the duty to have diligently represented the clients and to
16 have kept the clients reasonably informed as to the status of their matter:

17 4.4 Lack of Diligence

18 4.41 Disbarment is generally appropriate when:

19 (a) a lawyer abandons the practice and causes serious or potentially serious injury to a
20 client; or

21 (b) a lawyer knowingly fails to perform services for a client and causes serious or po-
22 tentially serious injury to a client; or

23 (c) a lawyer engages in a pattern of neglect with respect to client matters and causes se-
24 rious 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 poten-
tial 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 poten-
tial injury to a client.

1 ABA Standard 7.0 is most applicable to the duty to charge a reasonable fee. No ABA Standard
2 applies directly to violations of RPC 8.4(l) by Respondent failing to advise his clients of the
3 suspension of his law license and failing to cease his representation of clients upon his suspen-
4 sion. Nevertheless, it is our analysis that ABA Standard 7.0 applies here by analogy:

5 7.0 Violations of Duties Owed as a Professional

6 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct
7 that is a violation of a duty owed as a professional with the intent to obtain a benefit for
8 the lawyer or another, and causes serious or potentially serious injury to a client, the
9 public, or the legal system.

10 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct
11 that is a violation of a duty owed as a professional and causes injury or potential injury
12 to a client, the public, or the legal system.

13 7.3 Reprimand is generally appropriate when a lawyer negligently engages in conduct
14 that is a violation of a duty owed as a professional and causes injury or potential injury
15 to a client, the public, or the legal system.

16 7.4 Admonition is generally appropriate when a lawyer engages in an isolated instance
17 of negligence that is a violation of a duty owed as a professional, and causes little or no
18 actual or potential injury to a client, the public, or the legal system.

19 31. Respondent knew or should have known that he was dealing improperly with client
20 funds when he failed to keep the funds in a trust account. Respondent's client was injured when
21 upon his discharge Respondent was unable to refund the unexpended cost advance or any un-
22 earned fees. Under ABA Standard 4.12, the presumptive sanction is suspension.

23 32. Respondent engaged in a pattern of neglect, by: (1) failing to conclude the work
24 the Gray-Brewers had hired him to do; (2) failing to give the Gray-Brewers adequate or accu-
rate information about his unavailability to complete the matter; and (3) failing to notify the
Gray-Brewers that he had been suspended and could no longer represent them. The Gray-
Brewers were injured by this pattern of neglect in that their matter was unreasonably delayed
and they had to hire other counsel to start over on the adoption. Under ABA Standard 4.42 , the
presumptive sanction is suspension.

1 33. Respondent knowingly engaged in conduct in violation of his duty as a profession-
2 al by retaining a fee that was unreasonable, and negligently engaged in conduct in violation of
3 his duty as a professional by failing to withdraw from his representation of the Gray-Brewers
4 upon the suspension of his law license. The legal system was harmed by a lawyer attempting to
5 continue practicing when his law license had been suspended. The Gray-Brewers were harmed
6 by having to hire other counsel to accomplish the adoption. Under ABA Standard 7.2 the pre-
7 sumptive sanction is a suspension.

8 34. The following aggravating factors apply under ABA Standards Section 9.22:

9 (d) multiple offenses; and

10 (e) bad faith obstruction of the disciplinary agency (Respondent did not keep the WSBA
11 advised of his mailing address as required by Admission to Practice Rule 13(b), causing the Of-
12 fice of Disciplinary Counsel to expend investigator resources to locate Respondent);

13 35. The following mitigating factors apply under ABA Standards Section 9.32:

14 (a) absence of prior disciplinary record; and

15 (c) personal or emotional problems (Respondent was going through a divorce, which
16 made it difficult for him to receive mail from his clients and from the WSBA).

17 36. It is an additional mitigating factor that Respondent has agreed to resolve this matter
18 prior to hearing.

19 37. On balance the aggravating and mitigating do not require a departure from the pre-
20 sumptive sanction suspension, but do warrant a suspension of a substantial length.

1 **VI. STIPULATED DISCIPLINE**

2 38. The parties stipulate that Respondent will receive a Thirty-Month Suspension.

3 39. As a condition of reinstatement from suspension, Respondent must pay the restitu-
4 tion agreed to in Paragraph 39, below.

5 **VII. RESTITUTION**

6 40. In addition to the \$300 in restitution that Respondent paid to the Gray-Brewers on
7 December 7, 2012, Respondent is required to make restitution to the Gray-Brewers in the addi-
8 tional amount of \$1,500. Respondent shall pay to the Gray-Brewers interest on those funds, at a
9 rate of 12%, calculated from the date of his discharge on November 1, 2010. Reinstatement is
10 conditioned on full payment of restitution, with interest.

11 **VIII. 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 in the re-
14 duced sum of \$500 in accordance with ELC 13.9(i). The Association will seek a money judg-
15 ment under ELC 13.9(l) if these costs are not paid within 30 days of approval of this stipulation.
16 Reinstatement from suspension is conditioned on payment of costs.

17 **IX. VOLUNTARY AGREEMENT**

18 42. Respondent states that prior to entering into this Stipulation he had an opportunity to
19 consult independent legal counsel regarding this Stipulation, that Respondent is entering into
20 this Stipulation voluntarily, and that no promises or threats have been made by the Association,
21 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
22 as provided herein.

1 **X. LIMITATIONS**

2 43. This Stipulation is a compromise agreement intended to resolve this matter in ac-
3 cordance with the purposes of lawyer discipline while avoiding further proceedings and the ex-
4 penditure of additional resources by the Respondent and the Association. Both the Respondent
5 lawyer and the Association acknowledge that the result after further proceedings in this matter
6 might differ from the result agreed to herein.

7 44. This Stipulation is not binding upon the Association or the respondent as a state-
8 ment of all existing facts relating to the professional conduct of the respondent lawyer, and any
9 additional existing facts may be proven in any subsequent disciplinary proceedings.

10 45. This Stipulation results from the consideration of various factors by both parties, in-
11 cluding 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 Stipula-
16 tion.


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

22 47. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
23 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
24

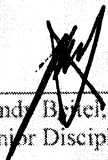
1 Rules for Enforcement of Lawyer Conduct will be made.

2 48. If this Stipulation is not approved by the Disciplinary Board and 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 Discipline as set forth above.

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9 _____
Kevin L. Gibbs, Bar No. 23990
Respondent

Dated: Dec. 10, 2012

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11 _____
12 Randy Byriel, Bar No. 7177
13 Senior Disciplinary Counsel

Dated: 12/10/12

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