

FILED

Sep 30, 2024

Disciplinary
Board

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

Docket # 001

In re

Benjamin David Kerr,

Lawyer (WSBA No.41442).

Proceeding No. 24#00060

ORDER CONDITIONALLY APPROVING
STIPULATION (ELC 9.1(e))

ACTION REQUIRED

This matter came before the Disciplinary Board at its September 13, 2024, meeting.
On review of the July 10, 2024, Stipulation to a 12-month suspension,

IT IS ORDERED that the stipulation is approved¹ on the parties' agreement to add the following conditions:

- (1) During Respondent's suspension, Respondent shall take and complete ten (10) Continuing Legal Education (CLE) credits on the subject of ethics and professional responsibility.
- (2) Respondent shall provide ODC with proof that Respondent has completed all ten (10) CLE credits before being reinstated from suspension. Proof of completion shall include the program brochure or equivalent, evidence of payment (if applicable), and a written statement that includes the date and time of attendance. Completing the CLE credits shall constitute a condition to reinstatement from suspension.
- (3) As an additional condition of reinstatement, Respondent shall, at least 30 days before a request for reinstatement, undergo an independent examination by a licensed clinical psychologist or psychiatrist approved by ODC to evaluate Respondent's fitness to practice law.
- (4) Respondent shall pay all expenses associated with the examination.
- (5) Respondent shall execute all necessary releases and authorizations to permit

¹ The vote on this matter was 6:1. Sanders, Severson, Ashby, Devenport, Overby, Hayes voted to conditionally approve the stipulation. Atreya voted to approve the stipulation without additional conditions. Jones, Zeidel, Cohon, Tindell, Endter, Brangwin did not participate.

1 the evaluator and disciplinary counsel to obtain full access to all pertinent
2 health care and treatment records for the applicable period, and to permit the
3 evaluator to release information regarding the evaluation to disciplinary
4 counsel, including a written report of the evaluator's findings, diagnosis, and
5 recommended treatment plan, if any. Respondent shall provide disciplinary
6 counsel with a copy of the releases and authorizations.

7 (6) If the evaluator concludes there is reasonable cause to believe that Respondent
8 does not have the mental or physical capacity to practice law, then disciplinary
9 counsel may report to a review committee as provided in ELC 8.2.

10 (7) If the evaluator recommends treatment, then Respondent shall undergo
11 treatment with a treatment provider and be subject to probation for 12 months
12 beginning on the date Respondent is reinstated to the practice of law. The
13 Conditions of probation are listed in paragraphs 9 and 10.

14 (8) If the evaluator does not recommend treatment, then the Respondent will not
15 be required to undergo treatment and will not be subject to probation requiring
16 mental health treatment.

17 (9) Conditions of probation: These conditions of probation only apply if the
18 evaluator recommends treatment, as provided above. The Probation
19 Administrator of the Office of Disciplinary Counsel ("Probation
20 Administrator") shall monitor the Respondent's compliance with these
21 conditions. Failure to comply with a condition of probation listed here may be
22 grounds for further disciplinary action under ELC 13.8(b).

23 (10) Respondent will be subject to probation for 12 months, beginning when
24 Respondent is reinstated to the practice of law and shall comply with the
specific probation terms set forth below:

(a) If the evaluator, specified above, recommends mental-health
treatment, the following provisions will apply:

(i) Respondent shall undergo treatment with a treatment
professional approved by the Probation Administrator.

(ii) The Respondent shall comply with all the treatment
provider's requirements and recommendations.

(iii) Respondent shall continue participating in the
recommended treatment program throughout the probation
or until the treatment provider determines that further
participation is unnecessary.

(iv) Respondent shall execute authorization[s] allowing and
directing the treatment provider to take the following
actions:

a. on a quarterly basis, send written reports to the
Probation Administrator that include the dates of
treatment, whether the Respondent has been
cooperative with treatment, whether continued

1 treatment is recommended;

- 2 b. report immediately to the Probation Administrator if
3 the Respondent fails to appear for treatment or stops
4 treatment without the provider's agreement and consent
5 before either the treatment plan's termination or the
6 probation period's expiration as included in this order;
7 c. report immediately to the Probation Administrator if
8 the Respondent fails to comply with any of the
9 treatment provider's treatment recommendations;
10 d. report immediately to the Probation Administrator if
11 Respondent otherwise violates any of the terms or
12 conditions of the probation;
13 e. report immediately to the Probation Administrator if
14 the provider will no longer serve as a treatment provider
15 to Respondent before the termination of the treatment
16 plan or expiration of the probation period set forth in
17 this order; and
18 f. report to the Probation Administrator if the Respondent
19 completes treatment and is discharged from further
20 treatment.

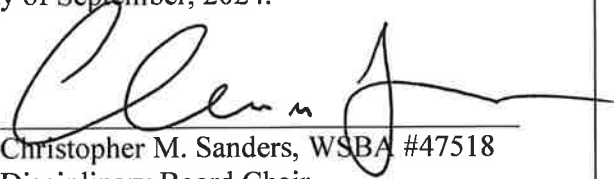
12 The respondent's conduct injured the lawyer's disciplinary system, which
13 depends on the lawyers' cooperation and honesty to function. Based on the
14 seriousness of the lawyer's conduct, the Board deems the listed conditions
15 necessary to accomplish the purposes of lawyer discipline (ELC 9.1(e)(2)) and
16 to protect the public. Therefore, the Board finds that the stipulation, as
17 submitted, would result in a manifest injustice given the Respondent's
18 violations of his duties owed as a legal professional.

18 This stipulation, as conditioned, will be deemed approved if both parties serve
19 written consent to the conditional terms. The written consent must be served
20 on the Clerk within 14 days of service of this order.

20 The Board will reconsider this decision if the parties file a joint motion
21 requesting reconsideration. This motion should be in writing and filed with the
22 Clerk within 14 days of service of this order. The parties may ask to address
23 the Board.

23 If either party fails to respond to this order in writing within 14 days, the Board
24 will enter a final order rejecting the stipulation.

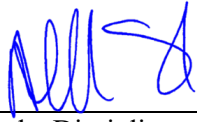
Dated this 30th day of September, 2024.



Christopher M. Sanders, WSBA #47518
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Order Conditionally Approving Stipulation to be emailed to the Office of Disciplinary Counsel and to Respondent's Counsel Todd Maybrown, at todd@ahmlawyers.com, on the 30th day of September, 2024.

A handwritten signature in blue ink, appearing to be "Nell", is written above a horizontal line.

Clerk to the Disciplinary Board