

FILED

Oct 9, 2024

Disciplinary
Board

Docket # 003

DISCIPLINARY BOARD
WASHINGTON STATE BAR ASSOCIATION

In re

BENJAMIN DAVID KERR,

Lawyer (Bar No. 41442).

Proceeding No. 24#00060

ODC File 23-01464

STIPULATION TO 12-MONTH
SUSPENSION

Under Rule 9.1 of the Washington Supreme Court's 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 Francesca D'Angelo, Respondent's Counsel Todd Maybrown and Respondent lawyer Benjamin David Kerr.

Respondent understands that Respondent is entitled under the ELC to a hearing, to present exhibits and witnesses on Respondent's behalf, and to have a hearing officer determine the facts, misconduct and sanction in this case. Respondent further understands that Respondent 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 Respondent. Respondent chooses to resolve this

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 practice law in the State of Washington on May 29, 2004.

5 **II. STIPULATED FACTS**

6 2. On October 12, 2023, Respondent sent a third party a lewd, sexually explicit message
7 via Facebook messenger.

8 3. Although Respondent was “Facebook friends” with the third party, the two have never
9 met in person. The message was entirely unsolicited.

10 4. The third party, who was frightened and offended by the message, filed a grievance
11 on October 13, 2023. Respondent responded to the grievance on October 25, 2023, denying that
12 Respondent had sent the message. The response was sent with an email that stated, “I swear and
13 affirm that the information I am providing is true and accurate to the best of my knowledge.”

14 5. In interviews on November 15, 2023, and December 6, 2023, with ODC’s investigator,
15 Respondent continued to maintain that Respondent did not send the Facebook message to the
16 third party and that Respondent’s Facebook account had been hacked.

17 6. Respondent’s statements to ODC that Respondent had not sent the message to the third
18 party and that Respondent’s Facebook account had been hacked were false.

19 7. On March 5, 2024, ODC scheduled Respondent’s deposition. On March 14, 2024,
20 lawyer Todd Maybrown appeared for Respondent. Prior to the deposition, Respondent admitted,
21 though Maybrown, that Respondent had sent the October 12, 2023 message to Kurtz.

22 **III. STIPULATION TO MISCONDUCT**

23 8. By providing ODC with false information about a grievance investigation, Respondent

1 violated RPC 8.1(a) and 8.4(c).

2 IV. PRIOR DISCIPLINE

3 9. Respondent has no prior discipline.

4 V. APPLICATION OF ABA STANDARDS

5 10. The following American Bar Association Standards for Imposing Lawyer Sanctions
6 (1991 ed. & Feb. 1992 Supp.) apply to this case:

7 *7.0 Violations of Duties Owed as a Professional*

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

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

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

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

22 11. Respondent acted knowingly with the intent to benefit Respondent.

23 12. Respondent's conduct caused injury to the lawyer disciplinary system as a whole,
24 which depends on lawyer cooperation and honesty to function.

13. The presumptive sanction is disbarment.

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

(b) dishonest or selfish motive; and

(i) substantial experience in the practice of law [Kerr was admitted to practice law in Washington in 2009].

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

(a) absence of a prior disciplinary record;

- 1 (c) personal or emotional problems [See Confidential Addendum, filed Under Seal];
2 (g) character or reputation; and
(l) remorse.

3 16. It is an additional mitigating factor that Respondent has agreed to resolve this matter
4 at an early stage of the proceedings. Respondent is entering into this stipulation before the matter
5 is reported to a review committee of the disciplinary board.

6 17. Based on the factors set forth above, the presumptive sanction should be mitigated to
7 a 12-month suspension.

8 VI. STIPULATED DISCIPLINE

9 18. The parties stipulate that Respondent shall receive a 12-month suspension.

10 VII. CONDITIONS OF REINSTATEMENT

11 19. Reinstatement from suspension is conditioned on payment of costs and expenses, as
12 provided below.

13 VIII. RESTITUTION

14 20. No restitution is required by this Stipulation.

15 IX. COSTS AND EXPENSES

16 21. In light of Respondent's willingness to resolve this matter by stipulation at an early
17 stage of the proceedings, Respondent shall pay attorney fees and administrative costs of \$2,000
18 in accordance with ELC 13.9(i). The Association will seek a money judgment under ELC 13.9(l)
19 if these costs are not paid within 30 days of approval of this stipulation. Reinstatement from
20 suspension is conditioned on payment of costs.

21 X. VOLUNTARY AGREEMENT

22 22. Respondent states that prior to entering into this Stipulation Respondent has consulted
23 independent legal counsel regarding this Stipulation, that Respondent is entering into this

1 Stipulation voluntarily, and that no promises or threats have been made by ODC, the Association,
2 nor by any representative thereof, to induce the Respondent to enter into this Stipulation except
3 as provided herein.

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

6 **XI. LIMITATIONS**

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

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

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

21 27. Under ELC 9.1(d)(4), the Disciplinary Board reviews a stipulation based solely on the
22 record agreed to by the parties. Under ELC 3.1(b), all documents that form the record before the
23 Board for its review become public information on approval of the Stipulation by the Board,

1 unless disclosure is restricted by order or rule of law.

2 28. If this Stipulation is approved by the Disciplinary Board and Supreme Court, it will
3 be followed by the disciplinary action agreed to in this Stipulation. All notices required in the
4 Rules for Enforcement of Lawyer Conduct will be made. Respondent represents that, in addition
5 to Washington, Respondent also is admitted to practice law in the following jurisdictions, whether
6 current status is active, inactive, or suspended: Pennsylvania.

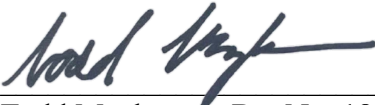
7 29. If this Stipulation is not approved by the Disciplinary Board and Supreme Court, this
8 Stipulation will have no force or effect, and neither it nor the fact of its execution will be
9 admissible as evidence in the pending disciplinary proceeding, in any subsequent disciplinary
10 proceeding, or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

11 WHEREFORE the undersigned being fully advised, adopt and agree to this Stipulation to
12 a 12-month suspension as set forth above.

13 

14 Benjamin David Kerr, Bar No. 41442
15 Respondent

Dated: 7/9/2024

16 

17 Todd Maybrown, Bar No. 18557
Counsel for Respondent

Dated: July 9, 2024

18 

19 Francesca D'Angelo, Bar No. 22979
20 Managing Disciplinary Counsel

Dated: July 10, 2024