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3 Irvine CA 92620
4 Office: 949-645-4841

FILED

JUN - 4 2012

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

7 STATE BAR COURT
8 HEARING DEPARTMENT - LOS ANGELES

10 In The Matter of:

Case No. 12-N-11649

11
12 WILLIAM THOMAS HAYS SR.

**RESPONSE TO NOTICE OF
DISCIPLINARY CHARGES AND
MOTION TO ABATE PROCEEDINGS
PURSUANT TO 5.51(b)**

13
14 Bar No. 20286

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16
17 COMES NOW State Bar member, WILLIAM TO HAYS SR., by and through his
18 undersigned counsel, and pursuant to the Rules of Procedure of the State Bar of California,
19 hereby asserts Good Cause exists for a Motion to Abate proceedings due to the mental
20 incompetence of the State Bar member.
21

22 Based upon the privileged communications between William T. Hays Sr., and his
23 counsel, counsel reasonably believes that Mr. Hays is not competent to aid or assist in his own
24 defense because of mental illness. Specifically, Mr. Hays at 90 years of age has been diagnosed
25 with Alzheimer's disease and no longer recalls any of the events surrounding the disciplinary
26 proceedings in question. Rule 5.51[b] states, "The court may order any pending disciplinary
27 proceeding abated for any time and on terms it finds proper if the member is unable – or there is
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1 probable cause to believe that the member is unable to assist in or conduct a defense because of
2 mental illness or infirmity.”
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5 STATEMENT OF FACTS

6 This matter was set for an informal conference before the Honorable Judge Platel in the
7 hearing department of the State Bar Court on May 23, 2012. A verbal motion for abatement
8 pursuant to State Bar Rules was made by respondent’s counsel. The Court advised counsel to
9 file a written motion and a response to the initial Status Conference on or before June 4, 2012.
10 State Bar member intends this pleading to serve both purposes.
11

12 Mr. Hays is currently on suspension as a result of prior disciplinary proceedings and
13 failed to comply with Rule 9.20. Mr. Hays has no clients and has no law practice. Mr. Hays was
14 unable to comply with State Bar Rules and specifically the Supreme Court’s Order to file a
15 declaration in compliance with Rule 9.20 because of his mental incapacity.
16

17 State Bar counsel was previously notified by email August 26, 2011 that Mr. Hays’
18 mental condition was deteriorating and a request was made to pursue a determination of
19 competency at that time (**EXHIBIT “A”**). The State Bar has been notified that Mr. Hays is
20 disabled and unable to practice law. The undersigned has assisted in the winding up of Mr.
21 Hays’ affairs. An attempt was made to engage the legal services of Art Margolis’s office, the
22 undersigned appeared at the conference on behalf of Mr. Hays. Mr. Margolis was unable to
23 engage Mr. Hays apparently because Mr. Hays did not have the mental capacity to engage Mr.
24 Margolis. Mr. Hays did not understand who Mr. Margolis was or why he was being solicited to
25 perform legal services (**EXHIBIT “B”**).
26
27
28 /

1 Although Mr. Hays has both good days and bad days, Mr. Hays is generally unable to
2 recall the events related to his law practice or the nature and history of prior disciplinary
3 proceedings. After practicing law for over 60 years, Mr. Hays never had any disciplinary issues
4 until after the passage of SB 94. Other family members can attest to these facts. Mr. Hays' wife
5 Katherine Hays, his daughter Christina Hays, his son Michael Hays, personal assistant Melvin
6 (Pete) Peterson and the undersigned son can testify and affirm that Mr. Hays is not able to think
7 clearly or recall any pertinent or relevant information related to this case, the particulars of his
8 career, or what he had for dinner last night.
9
10

11 Mr. Hays' mental condition began to deteriorate after the death of his daughter Katherine
12 (Kit) Hays on February 3, 2011. His condition accelerated and he was diagnosed with
13 Alzheimer's by several Doctors. Mr. Hays is currently treating with Dr. Galarnik in Palm
14 Desert. Dr. Galarnik's phone number is 760-341-8341. An attempt was made to obtain a report
15 from Dr. Galarnik but he was not found in his office. His secretary told the undersigned over the
16 phone that Dr. Galarnik does not participate in forensic medicine and would not write a report.
17

18 Last year Mr. Hays received treatment from Dr. John Lalonde (phone 949-611-9009) in
19 Costa Mesa, California who confirmed Mr. Hays did not have sufficient mental capacity to
20 participate in disciplinary proceedings. Dr. Lalonde fell short of diagnosing Alzheimer's disease.
21 One year later, Mr. Hays' condition worsened.
22

23 Mr. Hays is now 90 years old and will be 91 on October 1, 2012. Mr. Hays is receiving
24 treatment for the diagnosis of Alzheimer's with Dr. Galarnik. Mr. Hays is not able to recollect
25 information and motion is hereby made for the abatement of proceedings until such time the
26 court deems appropriate under the circumstances.
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28 /

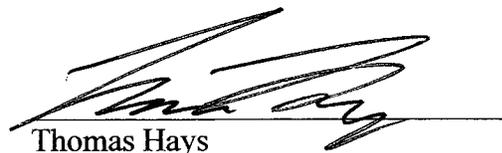
1 Business and Professions Code §6007[b][3] state, "After notice and opportunity to be
2 heard before the Board or a committee, the Board finds that the member, because of mental
3 infirmity or illness, or because of the habitual use of intoxicants or drugs, is [1] unable or
4 habitually fails to perform his or her duties for undertaking competently, or [2] unable to practice
5 law without substantial threat or harm to the interest of his or her clients or the public. No
6 proceeding pursuant to this paragraph shall be instituted unless the Board or a committee finds,
7 after preliminary investigation, or during the course of disciplinary proceedings, that a probable
8 cause exists therefore. The determination of probable cause is administrative in character and no
9 notice of hearing is required."
10
11

12 The State Bar Court Judge has discretion to abate proceedings pursuant to Rule 5.51[b]
13 and Business and Professions Code §6007[b][3] upon the showing of good cause. Good cause
14 exists based upon the member's age and diagnosis of Alzheimer's. The requirement for
15 neurological or psychiatric testing would be oppressive and put Mr. Hays at risk. The need for
16 an expert opinion based upon examination by a certified medical examiner may be appropriate.
17 However, funds are not available to pay for such forensic evaluations by the Mr. Hays at this
18 time.
19

20 For the foregoing reasons, motion is hereby made for abatement of all proceedings until
21 such time as Mr. Hays' condition can be determined by a medical practitioner to be competent to
22 understand the nature of these proceedings and participate in such proceedings.
23

24 I declare under penalty of perjury that the foregoing is true and correct to the best of my
25 knowledge.
26

27 Dated: 6-4-2012
28


Thomas Hays

Subject: RE: William T. Hays Sr. Stipulation
From: Sitton, Riza (Riza.Sitton@calbar.ca.gov)
To: thlevity@yahoo.com;
Date: Friday, August 26, 2011 4:40 PM

Mr. Hays,

The Stipulation, as you know, has been filed. I received notice this morning from the court that it has been approved and signed by the judge.

Rizamari C. Sitton

Deputy Trial Counsel

(213)9 765-1364

From: Hays Tom [mailto:thlevity@yahoo.com]
Sent: Friday, August 26, 2011 4:32 PM
To: Sitton, Riza
Cc: Tom Hays
Subject: William T. Hays Sr. Stipulation

Dear Mrs. Sitton:

After further discussions with my client and in consideration of the his deteiriorating capacity, we respectfully withdraw the stipulation which was provided. We need to proceed with the competency hearings. I will be in touch with you next week and will send you a more formal letter.

Thank You

Thomas Hays



Subject: William T. Hays Sr. - Cancellation
From: Hays Tom (thlevity@yahoo.com)
To: agnes.mina@calbar.ca.gov; Riza.Sitton@calbar.ca.gov;
Cc: randall.marquis@gmail.com;
Bcc: ajapotier1016@aol.com; thlevity@yahoo.com;
Date: Wednesday, February 22, 2012 11:17 AM

Dear Mrs Mina and Mrs. Sitton:

This email shall confirm my voice message left yesterday concernaing the cancellation of our meeting today. My father is not able to attend.

I am making arrangments for my father to have new counsel. I have engaged Mr Art Margolis and we are determining whether he can assume legal representation. Please allow Mr. William Hays Sr. an extension of time to respond to State Bar complaints until formal notice of representation can be sent to you under separate cover. I anticipate this can be done by monday or tuesday next week. Mr. Margolis asked me not to send any files until he has a chance to review the matter futher.

As metioned previously, my fathers mental condition is worsening. He has been diagnosed with Alzeheimers by a treating phyciatrist in the desert. Upon the retention of new counsel, my father will be moving for a competency hearing. I am unable to represent my father at this time for serveral reasons.

We have major issues with Mr. Rick Elkins, my fathers former buisness manager. A formal complaint has been filed with Hugo Gonzalez in the UPL department at the State Bar. The complaint was prepared by Mr. Randal Marquis who has been assisting my office as a special investigator/ assistant concerning Fraud by Mr. Elkins. We are working with Law Enforcement. Please feel free to rewiew the materials from Mr. Gonzalez, or let me know and I can send you a copy. I promised Attorney Erin Joyce my statement and explanation of events. I am still in a buble of disbelief. I have been buisy working to prevent Mr. Elkins from doing more harm, parenting my two kids, and running my practise which includes the files i took over from my disbarred half brother William Jr. Its a twighlight zone.

Thank You for your patience and understanding.

Sincerely Tom Hays

DECLARATION OF SERVICE

I, the undersigned, over the age of eighteen, declare that [] I am / [] am not a party to the within action, in the City and County of Los Angeles, on 6-4-12, served the following document(s):

by personal delivery:

*Response to Notice of
Disciplinary Proceedings
and Motion for Abatement.*

[] other:

*to Rizin Sittai
1149 So. Hill St.
LA CA 90005*

I declare under penalty of perjury at Los Angeles, California, on the date shown below, that the foregoing is true and correct.

Dated: 6-4-12

