DISCIPLINARY BOARD REPORTER

REPORT OF CASES

Decided by the
Disciplinary Board
of the
Oregon State Bar

George A. Riemer
Editor

Jana Fussell
Donna Hatfield
Assistant Editors

Volume 1

January 1, 1984 to December 31, 1987

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PREFACE

This Reporter contains final decisions of the Oregon State Bar Disciplinary Board. A decision of the Disciplinary Board is final if the charges against the accused are dismissed, a public reprimand is imposed, or the accused is suspended from practice for up to sixty (60) days and neither the Bar nor the accused have sought review by the Supreme Court. See Title 10 of the Oregon State Bar Rules of Procedure, p. 184-5 of the 1988 Membership Directory, and ORS 9.536.

It should be noted that the decisions printed herein have been re-set in what has been determined to be an appropriate format, taking care not to modify in any substantive way the decision of the Trial Panel in each case. Those interested in a verbatim copy of an opinion should contact Donna Hatfield, Executive Services Administrator, Oregon State Bar, at 620-0222 or 1-800-452-8260, extension 404.

Final decisions of the Disciplinary Board issued on or after January 1, 1988 are also available from Donna Hatfield at the Oregon State Bar upon request. Future issues of the Disciplinary Board Reporter will be available on a yet-to-be-determined basis, hopefully annually.

The Disciplinary Board Reporter should be cited, for example, as **1 DB Rptr 1 (1984).**

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*The Code of Professional Responsibility was amended effective June 1, 1986. References in this table are to the earlier code. When researching an ethics issue, check the revised code for the latest revision of the rule that you are examining.

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IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 82-140 [83-7]
	)	
OSCAR D. HOWLETT,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Barry M. Mount, Esq.

Counsel for Accused: Oscar D. Howlett, Esq., pro se

Disciplinary Board: David C. Landis, State Chairperson; and David A. Kekel, Region 5 Chairperson

Disposition: Disciplinary Board approval of no contest plea concerning violation of DR 1-102(A)(6), DR 6-101(A)(3), DR 9-102(B)(1), and DR 9-102(B)(4). Sixty-day suspension.

Effective Date of Opinion: July 11, 1984

OREGON STATE BAR DISCIPLINARY BOARD

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 82-140
	)	
OSCAR D. HOWLETT,	)	
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

A complaint has been filed against the accused which alleges as follows:

Sometime prior to August 25, 1980, Ronald L. Smith (hereinafter "Smith") was arrested in Lincoln County and charged with driving under the influence of intoxicants. When arrested, Smith gave the arresting officer the name of Robert W. Crain, who was another client of the accused. Smith was also charged with giving a false name to a police officer. On August 25, 1980, the accused was retained by Smith to defend Smith against the criminal charges.

The accused entered a not guilty plea in the Lincoln County District Court on behalf of Smith and requested a jury trial. On October 3, 1980, the accused was notified that trial had been scheduled for January 7, 1981, and that the call date was scheduled for December 22, 1980.

On October 8, 1980, Smith was indicted by a Lincoln County Circuit Court grand jury for felony charges of driving while suspended, for driving while under the influence of intoxicants, and for giving a false name to a police officer. All of the charges arose out of the same incident for which Smith had retained the accused in August 1980. The charges that had been pending in the district court were dismissed. The accused was notified that the charges pending in the district court had been dismissed and he notified Smith, advising Smith that he no longer needed to be concerned about the matter.

The Lincoln County District Attorney's office attempted, without success, to contact the accused to advise him that Smith had been indicted by the Lincoln County Circuit Court grand jury. The accused failed to inquire of the

district attorney as to the reason why the district court charges against his client had been dismissed.

A warrant was ultimately issued for Smith's arrest as a result of the grand jury indictment. Smith was arrested in April 1982 and was required to seek other counsel. Throughout the course of the events alleged in the complaint, the professional conduct of the accused was impaired by the use of alcohol. The accused is charged with violating DR 1-102(A)(6) and DR 6-101(A)(3) of the Code of Professional Responsibility.

In the second cause of complaint, the complaint alleges that following Smith's arrest on August 24, 1980, his mother, Mary M. Maruhn (hereinafter "Maruhn") posted bail in the amount of $632 to secure her son's release. The bail receipt was issued in the name of Robert W. Crain, the name Smith used upon his arrest. On July 16, 1981, the accused received the bail refund from Lincoln County in the form of a check made payable to Robert W. Crain in the amount of $632. The accused delivered the check to Crain when he knew that the money did not belong to Crain, but in fact belonged to Smith and Maruhn. The money was finally recovered from the accused after Smith and Maruhn filed a lawsuit against him. The accused is charged with violating DR 1-102(A)(6), DR 9-102(B)(1), and DR 9-102(B)(2) [DR 9-102(B)(4)] of the Code of Professional Responsibility.

The accused has submitted a plea of no contest in which he agrees to accept a suspension from the practice of law for 60 days for the violations of the Code of Professional Responsibility specified in the formal complaint. This procedure is provided for in Rule of Procedure 3.6(a), (b), and (c) [BR 3.6(a) and (b)]. The no contest plea has been reviewed by general counsel and has been approved by the SPRB as provided for in Rule of Procedure 3.6(d).

The undersigned have approved the plea of no contest and the imposition of a 60-day suspension from the practice of law.

By: /s/ David C. Landis
DAVID C. LANDIS,
STATE CHAIRPERSON

Dated: July 11, 1984

By: /s/ David A. Kekel
DAVID A. KEKEL,
REGION 5 CHAIRPERSON

Dated: July 11, 1984

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-7
	)	
OSCAR D. HOWLETT,	)	PLEA OF NO CONTEST
	)	
Accused.	)	
	)	

Comes now, Oscar D. Howlett, the accused, and states as follows:

I.

The accused was admitted to the practice of law in Oregon on September 18, 1950, and is presently an active member of the Oregon State Bar.

II.

A formal complaint was served on the accused on February 23, 1984, by the Oregon State Bar. A copy of the formal complaint is attached hereto and incorporated by reference herein as Exhibit A.

III.

The accused has no desire to defend against the formal complaint filed by the Oregon State Bar in this case.

IV.

The accused agrees to accept a suspension from the practice of law for sixty days for the violations of the Code of Professional Responsibility specified in the formal complaint.

V.

The accused has had no prior disciplinary sanction imposed against him by the supreme court or the disciplinary board.

VI.

This plea of no contest has been entered into freely and voluntarily by the accused as is evidenced by his verification.

Wherefore, the accused requests general counsel to submit this plea of no contest to the state professional responsibility board and the disciplinary board for approval pursuant to BR 3.6. The accused understands that if the SPRB or the disciplinary board declines to approve the accused's plea of no contest to the disciplinary charges pending against him, that upon notification of such action by general counsel, he will be required to file an answer to the formal complaint and the matter will proceed to hearing. If the plea is approved, the disciplinary board will set the effective date of the accused's suspension and notify him accordingly.

State of Oregon)
) ss.
County of Multnomah)

I, Oscar D. Howlett, being first duly sworn, say that I have entered into the foregoing plea of no contest as my free and voluntary act and that the contents of the plea are true as I verily believe.

/s/ Oscar D. Howlett, OSB #50056

Subscribed and sworn to before me this 25th day of June 1984.

/s/ Naomi Carey
Notary Public for Oregon
My commission expires: 5-29-87

Approved as to form:

/s/ George A. Riemer 6/26/84
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 83-7
OSCAR D. HOWLETT,	FORMAL COMPLAINT
Accused.	Exhibit A (Plea of No Contest)

For its first cause of complaint the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Oscar D. Howlett, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

III.

On or about August 25, 1980, the accused was retained by Ronald L. Smith (hereinafter "Smith") to defend Smith against criminal charges in Lincoln County arising out of Smith's arrest for driving under the influence of intoxicants and giving a false name to a police officer. When arrested, Smith had given the arresting officer the name of Robert W. Crain. Robert W. Crain was another client of the accused's.

IV.

Upon being retained, the accused entered a not guilty plea in Lincoln County District Court on behalf of his client and requested a jury trial. On or about October 3, 1980, the accused was notified by the court that trial had been scheduled for January 7, 1981, and that call day was scheduled for

December 22, 1980. Prior to trial, however, the charges pending in district court were dismissed and the accused notified Smith accordingly, advising Smith that he no longer needed to be concerned about the matter.

V.

On or about October 8, 1980, and prior to the time that the accused advised his client that all criminal charges had been dropped, Smith was indicted by a Lincoln County Circuit Court grand jury for felony charges of driving while suspended, driving under the influence of intoxicants, and giving a false name to a police officer, all arising out of the same incident for which Smith retained the accused in August of 1980. Smith did not become aware of the indictment until his arrest in April of 1982.

VI.

The accused acted unethically in one or more of the following particulars:

(a) The accused failed to inquire as to the reason why the district court charges against his client had been dismissed;

(b) Upon learning of the dismissal, the accused failed to determine or inquire if any other charges, misdemeanor or felony, were pending against his client in Lincoln County as a result of the incident for which the accused was retained;

(c) The accused failed to respond to phone calls and messages left by the Lincoln County District Attorney's office, the purpose of which was to advise the accused that his client had been indicted by the grand jury;

(d) The accused failed to appear in person on call day or file an affidavit of readiness with the court as required by local court rule. As a result, the accused was not made aware of the grand jury indictment against his client.

(e) The accused informed his client that "all charges had been dropped" and that he had "nothing to worry about," when the accused should have discovered that felony charges had been brought against Smith as a result of the same incident.

VII.

A warrant was ultimately issued for the arrest of Ronald L. Smith as a result of the grand jury indictment. Smith was arrested in April of 1982 and was required to seek other counsel to assist him in resolving his problems with the court.

VIII.

Throughout the course of events alleged herein, the professional conduct of the accused was impaired by the use of alcohol.

IX.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 1-102(A)(6) of the Code of Professional Responsibility; and

(2) DR 6-101(A)(3) of the Code of Professional Responsibility.

And, for its second cause of complaint against the accused, the Oregon State Bar alleges:

X.

Incorporates by reference as fully set forth herein paragraphs I through VII of its first cause of complaint.

XI.

Following the arrest of Ronald L. Smith on August 24, 1980, his mother, Mary M. Maruhn (hereinafter "Maruhn"), posted bail in the amount of $632 to secure her son's release. The bail receipt was issued in the name of Robert W. Crain, the name Smith had used upon his arrest. When the accused advised Smith that the criminal charges in Lincoln County had been dropped, he assured Smith he would secure the refund of the bail money posted on Smith's behalf. Subsequently, both Smith and Maruhn requested several times that the accused obtain and return the amount of the posted bail.

XII.

On or about July 16, 1981, the accused received the bail refund from Lincoln County in the form of a check made payable to Robert W. Crain in the amount of $632.00. The accused failed to notify Smith or Maruhn of the receipt of the refund check, but instead delivered the check to Robert

W. Crain when he knew that the money did not belong to Crain but in fact belonged to Smith and Maruhn. Smith and Maruhn never recovered this sum from Robert W. Crain and only recovered this sum from the accused after filing a lawsuit against him.

XIII.

Throughout the course of events alleged herein, the professional conduct of the accused was impaired by the use of alcohol.

XIV.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 1-102(A)(6) of the Code of Professional Responsibility;

(2) DR 9-102(B)(1) of the Code of Professional Responsibility; and

(3) DR 9-102(B)(4) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 21st day of February 1984.

OREGON STATE BAR

By: /s/ Robert J. Elfers
ROBERT J. ELFERS
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-4
	)	
WILLIAM P. HORTON,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Helen T. Smith, Esq.

Counsel for Accused: Paul Wonacott, Esq.

Trial Panel: Douglas S. Green, Trial Panel Chairperson; Thomas E. Cooney; and Joyce Tsongas (public member)

Disposition: Accused found not guilty of violation of DR 7-102(A)(1); guilty of violation of DR 7-104(A)(1). Reprimand.

Effective Date of Opinion: December 12, 1984

IN THE SUPREME COURT

FOR THE STATE OF OREGON

OREGON STATE BAR, Plaintiffs,	)	No. 84-4
vs.	)	FINDINGS OF FACT, CONCLUSIONS AND DISPOSITION
WILLIAM P. HORTON, Defendant.	)	

This is a bar discipline proceeding brought by the Oregon State Bar against William P. Horton, Esq., charging him with violating DR 7-102(A)(1) and DR 7-104(A)(1). The hearing took place on the 10th day of October 1984 at the offices of the Oregon State Bar. The accused, William P. Horton, appeared personally and through his attorney, Paul Wonacott; the Oregon State Bar appeared through Helen T. Smith, its attorney. Members of the trial board present were Thomas E. Cooney, Esq., Chairperson Douglas S. Green, Esq., and Joyce Tsongas. Exhibits one through seven were offered and received. The parties waived opening statement, offered witnesses and exhibits, and submitted briefs and supplemental briefs.

FINDINGS OF FACT

I.

The accused, William Patrick Horton, was admitted to the Oregon State Bar in 1979 and at the time of this occurrence was an associate with the firm of Parks, Montague, et al. His undergraduate training was at the University of Oregon, Fordham University, and Willamette University. He obtained his law degree from the University of Puget Sound Law School in 1979. At the time of the events relevant to this matter, he had practiced law approximately three years. The accused has never before been the subject of bar discipline or complaint.

II.

In his answer, the accused admits paragraphs I, II, III, IV, and VII of the bar's complaint.

III.

In August of 1982, Ingersoll-Rand, a financial corporation, was a client of the accused's law firm. Ingersoll-Rand held a security interest in equipment that was sold on August 27, 1982, at an auction conducted by Lawson & Lawson Auctioneers, Inc., of California. Lawson & Lawson's $23,419.48 check for the proceeds of the August auction was dishonored due to insufficient funds.

IV.

Mr. Lynch, an employee of Ingersoll-Rand, contacted the accused on Friday, October 22, 1982. Late Friday afternoon, October 22, 1982, the accused was able to contact Mr. Lawson by telephone. In that conversation, Mr. Lawson advised the accused that he was represented by attorney R. Scott Palmer of Eugene, Oregon. There is conflicting testimony as to the context of that telephone conversation between Lawson and the accused. Following that conversation, Lawson obtained a cashier's check for the exact amount owing Ingersoll-Rand and took it with him to Sutherlin, Oregon, where an auction was to be held on Saturday, October 23, 1982.

V.

Attorney R. Scott Palmer, after a telephone conversation with Mr. Lawson, contacted the accused around 5:00 p.m. on October 22, 1982. In that conversation, R. Scott Palmer told the accused he was the Oregon attorney for Lawson & Lawson. There is some disagreement between the accused and R. Scott Palmer as to what exactly took place during this telephone conversation.

It is the accused's version that he advised Mr. Palmer that he was going to appear at the auction in Sutherlin on Saturday. The accused had concerns about waiving any of his client's rights should the auction take place without notice to prospective purchasers of any possible lien that Ingersoll-Rand might have as a result of the prior auction. There was discussion between the two attorneys as to whether or not any such lien existed. The accused, in the short time allowed, had done some research but was unable to satisfy himself as to whether or not his client had a valid lien. The accused contends that he told Mr. Lawson and R. Scott Palmer that he would be at the Sutherlin

auction. Attorney R. Scott Palmer testified that he was under the impression that the accused would not be present at the auction.

VI.

The accused filed an action in the U.S. District Court on October 22, 1982, seeking collection of the debt (Exhibit 2). The accused made arrangements for the process to be served in Sutherlin, Oregon, by the sheriff of Douglas County. The accused prepared a document entitled "Notice to Secured Creditors" (Exhibit 5), which he took to Sutherlin to distribute to auction participants. The accused wanted to advise bidders of Ingersoll-Rand's potential claim against Lawson & Lawson so as to prevent any waiver of any lien that might exist. Legally, no such lien existed. However, testimony appears clear that the accused was uncertain and was acting out of caution to make sure that any rights his client may have might not be lost as a result of failing to give notice.

VII.

On Saturday morning, October 23, the accused and Mr. Lynch traveled to the auction grounds in Sutherlin and passed the sheriff, who had just served the complaint and summons upon Mr. Lawson. When the accused and Lynch arrived at the auction, they located Lawson and the accused introduced himself and Max Lynch and advised Lawson to talk to his lawyer, R. Scott Palmer. In response to that conversation, Lawson told the accused that he would listen to the accused and then decide if he needed an attorney. The accused erroneously believed he was ethically permitted to speak to Lawson under these circumstances. The accused then advised Lawson he would like all of the proceeds from the auction put in a trust account to secure the sums owed to Ingersoll-Rand. The accused stated he had notices that he wished to pass out at the auction. Lawson then decided he wanted to talk to his lawyer and called Eugene, but was unable to contact R. Scott Palmer.

VIII.

The commencement of the auction was fast approaching and the accused suggested that Lawson talk to Ward Greene, an attorney in Portland, who was a friend of the accused. The accused placed a call to Ward Greene explaining the situation and allowed Lawson to talk with Ward Greene. During this conversation, attorney Palmer called and was able to talk to Lawson. Palmer

told Lawson to request the owner of the premises to ask the accused and Lynch to leave. Thereafter, the accused talked to R. Scott Palmer on the phone and Palmer told the accused he didn't want him talking to his client. At that point the accused and Palmer discontinued their phone conversation and the accused asked Lawson, "Are you asking us to leave"? and Lawson said, "Yes." The accused and Lynch started to leave and the accused said he was going to distribute the notices. At that point Lawson said he would pay and went to the desk and handed the accused a cashier's check (Exhibit 3) in the exact amount of the claim. Lawson wanted a release so the accused drafted a mutual release (Exhibit 4). During this final conversation, there was discussion by the accused with Lawson as to payment of an additional sum to compensate for attorney fees and costs but Lawson refused. The mutual release was signed by Lawson and the accused in behalf of Ingersoll-Rand. The accused and Lynch then left without distributing the notices and gave them to Lawson.

CONCLUSIONS

I.

The bar has failed to prove by clear and convincing evidence that the accused violated DR 7-102(A)(1) by taking action on behalf of a client that he knew or it was obvious that such action would serve merely to harass or maliciously injure. The evidence supports the accused's position that he was acting in good faith for the purpose of protecting his client's rights even though his client's perceived legal position may not have been valid. The accused is, therefore, not guilty of violating DR 7-102(A)(1).

II.

In regard to the alleged violation of DR 7-104(A)(1), it is clear from the evidence that when the accused first met Lawson, he merely introduced himself and instructed Lawson that he should call his attorney. Lawson told the accused he would listen to the accused first and then decide if he wanted counsel. Without adverse counsel's consent, the disciplinary rule would appear to prohibit any communications with a represented adverse party even under the circumstances where the adverse party expressly invites the discussion. The only possible exception is the last phrase of the disciplinary rule, which allows nonpermissive contact if "authorized by law."

After Lawson had heard the accused's proposal, he then informed the accused he wanted to speak to counsel and attempted to contact Palmer. When he was unable to do so, the accused offered assistance in obtaining other counsel. We find no conversation taking place during these encounters that was not invited by Lawson after being admonished to talk to his lawyer. After Lawson contacted R. Scott Palmer and the accused was instructed not to talk to Lawson, the accused did not have any other conversation other than to say that if they were asked to leave they were going to leave and distribute the notices. Again, Lawson invited further conversation and produced the check and requested the release. At this point there were some negotiations between Lawson and the accused for attorney fees and costs which Lawson refused to pay. When the release was drafted, it not only released Ingersoll-Rand's claim against Lawson,. but purported to release any claim Lawson might have against Ingersoll-Rand.

The trial committee is troubled with the legality of an ethical rule that prohibits a lawyer who has fully informed the adverse party to seek out his counsel from speaking with the adverse party, if the party nonetheless wishes to discuss the case. However, when the accused drafted the mutual release, he went beyond the invited conversation and we find the accused then violated the disciplinary rule in more than a technical way and a public reprimand should be administered.

DISPOSITION

The accused is not guilty of a violation of DR 7-102(A)(1) and is guilty of a violation of DR 7-104(A)(1) and a public reprimand is hereby administered.

By: /s/ Thomas E. Cooney
THOMAS E. COONEY

By: /s/ Douglas S. Green
DOUGLAS S. GREEN

By: /s/ Joyce Tsongas
JOYCE TSONGAS

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-25
	)	
MICHAEL S. FRYAR,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Jack D. Hoffman, Esq.

Counsel for Accused: Gerald R. Pullen, Esq.

Trial Panel: Paul J. Kelly, Jr., Trial Panel Chairperson; Frank H. Lagesen; and Jeffrey S. Heatherington (public member)

Disposition: Accused found guilty of violation of DR 1-102(A)(4) and DR 6-101(A)(3). Charge under DR 7-101(A)(2) withdrawn. Sixty-day suspension stayed with six month probation.

Effective Date of Opinion: January 25, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-25
	)	
MICHAEL S. FRYAR,	)	OPINION AND DISPOSITION
	)	
Accused.	)	
	)	

This matter came before the trial panel of the disciplinary board, consisting of the undersigned members acting pursuant to the authority of ORS 9.534 and 9.536, for hearing on December 18, 1984; the Oregon State Bar appeared by and through Jack D. Hoffman, one of its attorneys, and the accused appeared in person and through Gerald R. Pullen, his attorney; counsel for the parties made opening statements, thereafter presented evidence through witnesses and exhibits, and made closing arguments; thereupon the trial panel adjourned the hearing and, following review of the evidence and deliberations, makes the following:

FINDINGS OF FACT

1. The bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times pertinent to this proceeding was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

2. The accused is, and at all times pertinent to this proceeding was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Multnomah County, Oregon.

3. In or about November 1980 Irma Greisel, Lawrence V. Lund, Gary Walcott, Sharon Kearsley, and Keith Kearsley (hereinafter "clients") consulted with the accused in his capacity as an attorney concerning a loss of view the clients had experienced on their property as a result of a housing complex constructed by L.J.P., Inc., an Oregon corporation.

4. Thereafter, the accused represented the clients before the City of Gresham Planning Commission and the city council in an unsuccessful effort

to obtain a remedy for the clients' losses of views from their residences. The accused performed legal services for the clients in that regard for the agreed fee of $75 per hour.

5. Between December 5 and December 16, 1980, the clients and the accused entered into written contingent fee agreements (Exhibits 1, 5) pursuant to which the clients employed the accused to pursue an action for damages and/or other remedies against L.J.P., Inc., arising out of the loss or obstruction of views from their residences.

6. Thereafter, pursuant to the employment agreements, the accused undertook the representation of the clients and did some legal research and, in approximately March 1981, prepared a rough draft of a prospective complaint for filing in Multnomah County Circuit Court (Exhibit 8).

7. In or about February 1981 accused hired an appraiser to perform an appraisal of the damage arising out of the loss or obstruction of view from the residence of one of the clients (Exhibit 6).

8. In June 1981, at the request of the accused, several of the clients deposited their funds with the accused for the purpose of paying circuit court filing fees for the proposed lawsuit.

9. Between approximately June 1981 and July 1983 the accused failed to initiate the proposed litigation or otherwise develop and prosecute the claims of the clients.

10. Between early fall 1981 and July 1983 the accused failed to return numerous phone calls from his clients, failed to keep them advised of the status of their claims, and by his statements and his conduct led the clients to believe that a complaint had been filed on their behalf against L.J.P., Inc., and that an action was pending in Multnomah County Circuit Court and awaiting notification of a trial date. On one or more occasions the accused specifically told one or more of the clients that he was awaiting notification of a court date when, in fact, the accused knew that no action had been commenced. The accused acknowledged that, at least by November 1982, based upon his conduct and representations to the clients, the clients believed that an action had been commenced on their behalf and that a case was pending in Multnomah County Circuit Court, and accused did not advise them otherwise.

11. In early July 1983 one of the clients made personal inquiry at Multnomah County Courthouse about the filing of an action on her behalf and, unable to locate one, telephoned the accused's office to obtain a case number but the accused was then away from his office on vacation.

12. On or about July 27, 1983, the accused filed a complaint in Multnomah County Circuit Court initiating an action on behalf of clients entitled Irma Greisel, et al v. L.J.P., Inc., No. A8307-04692 (Exhibit 10). The accused did not then notify clients that an action had just been commenced on their behalf.

13. Thereafter, the accused began to engage in discovery in the action and in October 1983 served a request for production and a notice of deposition on opposing counsel (Exhibits 12, 13).

14. In or about October 1983 the accused met with two of the clients to discuss preparation for depositions and at that meeting told the clients for the first time that he had not filed a complaint on their behalf until late July 1983.

15. On or about October 28, 1983, the clients sent a letter to the accused terminating their attorney-client relationship and discharging the accused (Exhibit 2).

16. On or about January 20, 1984, the accused presented a motion for order permitting his resignation as attorney of record for clients and obtained an order from Multnomah County Circuit Court allowing such resignation (Exhibits 19, 20).

17. On or about January 20, 1984, the accused wrote to the clients giving them notice of the order allowing his resignation (Exhibit 18).

18. Subsequently, the action in Multnomah County Circuit Court Case No. A8307-04692 was dismissed without costs to any party.

19. The accused currently holds in trust the sum of $69.50 of funds received from the clients in connection with the legal matter that was the subject of the contingent fee agreements.

20. Clients filed a written complaint with the bar regarding the conduct of the accused (Exhibit 4).

21. No evidence of prior bar complaints or disciplinary proceedings against the accused was presented to the trial panel.

22. At the conclusion of the hearing the Bar withdrew its allegation that the accused's conduct violated DR 7-101(A)(2).

Based upon the foregoing findings of fact, the trial panel makes the following:

CONCLUSIONS

(1) The accused violated DR 6-101(A)(3) by neglecting the legal matter of prosecuting a claim for damages and/or other relief arising out of the loss or obstruction of views from the residences of the clients as such matter was entrusted to him;

(2) The accused violated DR 1-102(A)(4) by deceiving the clients into believing that an action had been initiated on their behalf in Multnomah County Circuit Court for a period of almost two years during which time no such action had been commenced by the accused; and

(3) The accused did not violate DR 7-101(A)(2).

DISPOSITION AND OPINION

Based upon the foregoing findings of fact and conclusions, the trial panel recommends the imposition of the following sanctions against the accused:

1. The accused should be suspended from the practice of law for a period of 60 days;

2. Execution of the entire period of suspension shall be stayed and the accused shall be placed on probation for a period of up to six months, during which time he shall receive professional office practice and management counseling from the bar or a member thereof acceptable to the bar under terms determined by the bar, provided that such counseling does not unreasonably impede the accused's conduct of his law practice;

3. As further conditions of probation the accused shall refund to the appropriate client(s) the $69.50 now held in the accused's trust account and shall reimburse the clients all sums paid by them for filing and service fees incurred in connection with the commencement of the lawsuit in July 1983 and

the accused shall further cooperate with the bar in receiving the office practice and management counseling.

In imposing these sanctions, we have been mindful of the fact that the accused has no prior record of disciplinary complaints, that he candidly admitted the underlying facts that constitute the violations of the disciplinary rules, that he has obtained counseling in connection with personal problems which probably were a contributing cause of the conduct which constituted violations of the disciplinary rules, and that the clients have apparently not suffered any substantial damage from the accused's conduct, such as the loss of a right of action by the expiration of a period of limitations. We trust, based on the evidence, that the accused's conduct in this case constitutes an isolated lapse in his professional responsibilities and believe that the office practice and management counseling that we have recommended will help to avoid any similar incident in the future. Finally, our review of the following cases, among those cited to us by counsel, indicates that the sanctions imposed are warranted: In re Bridges, 298 Or 53, 688 P2d 1335 (1984); In re Morrow, 297 Or 808, 688 P2d 820 (1984); In re Loew, 292 Or 806, 642 P2d 1171 (1982); and In re Fuller, 284 Or 273, 586 P2d 1111 (1978).

Dated this 7th day of January 1985.

/s/ Paul J. Kelly, Jr.
PAUL J. KELLY, JR.
PANEL CHAIRPERSON

/s/ Frank H. Lagesen
FRANK H. LAGESEN

/s/ Jeffrey S. Heatherington
JEFFREY S. HEATHERINGTON

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-11
	)	
JACK C. OFELT, JR.,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Roger W. Gracey, Esq.

Counsel for Accused: Carrell F. Bradley, Esq.

Disciplinary Board: David C. Landis, State Chairperson; and David A. Kekel, Region 5 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 5-101(A), DR 5-104(A), and DR 5-105(A)-(C). Sixty-day suspension.

Effective Date of Opinion: April 26, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-11
	)	
JACK C. OFELT, JR.,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e). A complaint was filed against the accused and subsequently the accused and the bar executed an amended stipulation for discipline, which recites the facts as follows:

1. Jack Ofelt first met Brad and Sally Johnson when he contacted the Johnsons to purchase several horses for his children. This occurred in the early summer of 1981.

2. In July 1981, the Johnsons were served with an eviction notice requiring them to vacate the premises they leased from Mr. and Mrs. Jack Hansell to operate a horse boarding and training facility in Wilsonville, Oregon.

3. After trying to secure the services of several other attorneys, the Johnsons contacted Ofelt and he agreed to represent them in the FED action the Hansells had filed against them.

4. Ofelt and the Hansells' attorney initiated discovery in the FED case but a settlement was ultimately reached in early September which allowed the Johnsons to remain in possession of the property under the terms of the existing lease, as modified by the settlement.

5. In late August or early September 1981, Ofelt proposed and Sally Johnson agreed to an extramarital affair. Both Ofelt and Sally Johnson were married at the time, Ofelt to his wife, Shielah, and Johnson to her husband, Brad. The affair began in late August or early September 1981 and ended in the mid-part of October 1981. During that time, Ofelt and Sally Johnson traveled together on several occasions.

6. After resolving the FED action to the Johnsons' satisfaction, Ofelt assisted the Johnsons in attempting to negotiate a new lease with the Hansells. When that proved impossible, Ofelt assisted the Johnsons in determining whether they could purchase the property from the Hansells. By September 10, 1981, it was apparent to the Johnsons and Ofelt that the Johnsons did not have the resources to purchase the Hansells' property themselves.

7. Ofelt's interest in Sally Johnson precipitated Ofelt and Sally Johnson discussing the possibility that Ofelt would purchase

the property in question from the Hansells. An oral agreement was reached between the Ofelts and Sally Johnson to go into business together to operate the Hansell facility as Southridge Farms. Ofelt entered into a real estate purchase agreement with the Hansells on October 14, 1981. Prior to that date, Ofelt inquired of the Clackamas County planning authorities to determine if he could expand the boarding and training facility on the property and purchase an additional piece of property at the site. The Hansell-Ofelt purchase was contingent on Ofelt's being able to develop the property in a particular manner. Ofelt represents he did not receive notice of the county's negative response to his plans until early December 1981.

8. During the fall of 1981 Ofelt represented Sally Johnson on a traffic citation she received in Clackamas County, Oregon.

9. Ofelt and Sally Johnson frequently discussed the prospect of their development of Southridge Farms as a successful boarding and training facility. In these discussions, both parties discussed Brad Johnson's participation in the enterprise. While Brad Johnson was initially included in the partnership that was contemplated, Ofelt did not wish to include Brad Johnson in the partnership if that was at all possible.

10. In the latter part of October 1981, Brad Johnson and Shielah Ofelt discovered that Ofelt and Sally Johnson were having an affair. The two couples had discussions concerning this revelation and Ofelt and his wife went on vacation to discuss how they intended to proceed, both as to their own relationship and regarding the partnership that the Ofelts and the Johnsons had previously discussed entering into.

11. Upon the Ofelts' return, the parties determined that they would proceed to enter into a partnership for the operation of Southridge Farms. Ofelt prepared a partnership agreement for the parties to sign and in the meantime the partnership was operated under an oral agreement. A checking account for the business was established with Ofelt, his wife, and Sally Johnson as signators and the Ofelts deposited money into the account for the operation of the business.

12. In early November 1981, Ofelt met with the Johnsons to show them the partnership agreement he had prepared. The agreement required the Johnsons to contribute certain personal property to the partnership. Furthermore, the agreement did not include Brad Johnson. At that point Brad Johnson indicated a desire to consult with someone about the terms of the agreement. Ofelt did not object. Ofelt claims he told Sally Johnson to take the agreement to a lawyer. Both Johnsons deny that he so stated. Sally Johnson admits she called two lawyers and subsequently (date uncertain) Brad Johnson in fact retained a lawyer.

13. Following that meeting, Brad Johnson retained the services of Lon Bryant, an attorney. Brad and Sally Johnson terminated their partnership with the Ofelts. Ofelt made claim to the funds in the partnership account which he felt the Johnsons had improperly used.

14. In early 1982 Brad Johnson initiated a lawsuit against Ofelt which was ultimately settled by the payment of approximately $25,000 to Brad Johnson. Sally Johnson subsequently filed a lawsuit against Ofelt in 1983. That lawsuit is still pending at this time.

15. During the time the Ofelts and Sally Johnson were in the process of forming a business partnership in the fall of 1981, Ofelt and Sally Johnson also formed a separate partnership wherein Ofelt bought a horse that Sally Johnson agreed to train. The parties agreed to split the profits the horse brought on resale. The agreement was subsequently abrogated when Ofelt learned that the horse had a bone fracture that affected the value of the horse. Ofelt subsequently felt Sally Johnson had misrepresented the horse to Ofelt; Johnson denied Ofelt's claim.

The complaint alleges that the accused is guilty of violating DR 5-101(A), DR 5-104(A), and DR 5-105(A)-(C). In the stipulation, the accused admits violation as follows: that "his own financial interests affected or were reasonably likely to affect the exercise of his professional judgment on behalf of his clients, both as to matters involving others and between his two clients," DR 5-101(A); that "[p]rior to entering into said business ventures, [he] did not make the ethical disclosures or obtain the consent of his client as required by DR 5-104(A)"; that "his personal involvement with Sally Johnson affected or was reasonably likely to affect the exercise of his professional judgment on behalf of his client in the transactions [in which] he was involved," DR 5-101(A); and that "his personal and financial interests affected or were reasonably likely to affect the exercise of his professional judgment on behalf of his client." DR 5-101(A) and DR 5-104(A)-(C) [DR 5-105(A)-(C)].

The accused has agreed to accept a 60-day suspension from the practice of law for the violations set forth in the stipulation. This procedure is provided for in Rule of Procedure 3.6. The stipulation has been reviewed by general counsel and approved by the state professional responsibility review board.

The undersigned have reviewed the amended stipulation for discipline and approve it.

It is further provided that the 60-day suspension shall begin on May 1, 1985, and run through June 29, 1985.

By: /s/ David C. Landis
DAVID C. LANDIS,
STATE CHAIRPERSON

Dated: 4/26/85

By: /s/ David A. Kekel
DAVID A. KEKEL,
REGION 5 CHAIRPERSON

Dated: 4/20/85

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 83-11
JACK C. OFELT, JR.,	AMENDED STIPULATION FOR DISCIPLINE
Accused.	

Comes now, Jack C. Ofelt, Jr., attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Jack C. Ofelt, Jr., was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1968, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

III.

A formal complaint (No. 83-11) was filed by the Oregon State Bar on February 21, 1984, against the accused and served upon him on March 15, 1984. A copy of the bar's formal complaint is attached hereto as Exhibit A and a copy of the accused's answer to the bar's formal complaint is attached herewith as Exhibit B. Both documents are incorporated by reference herein. This stipulation represents the recommended disposition of the bar's formal complaint in this case.

IV.

The Oregon State Bar withdraws its first cause of complaint against the accused.

V.

The essential facts surrounding the matters complained of in counts two, three, and four of the bar's formal complaint are as follows:

1. Jack Ofelt first met Brad and Sally Johnson when he contacted the Johnsons to purchase several horses for his children. This occurred in the early summer of 1981.

2. In July 1981, the Johnsons were served with an eviction notice requiring them to vacate the premises they leased from Mr. and Mrs. Jack Hansell to operate a horse boarding and training facility in Wilsonville, Oregon.

3. After trying to secure the services of several other attorneys, the Johnsons contacted Ofelt and he agreed to represent them in the FED action the Hansells had filed against them.

4. Ofelt and the Hansells' attorney initiated discovery in the FED case but a settlement was ultimately reached in early September which allowed the Johnsons to remain in possession of the property under the terms of the existing lease, as modified by the settlement.

5. In late August or early September 1981, Ofelt proposed and Sally Johnson agreed to an extramarital affair. Both Ofelt and Sally Johnson were married at the time, Ofelt to his wife, Shielah, and Johnson to her husband, Brad. The affair began in late August or early September 1981 and ended in the mid-part of October 1981. During that time Ofelt and Sally Johnson traveled together on several occasions.

6. After resolving the FED action to the Johnsons' satisfaction, Ofelt assisted the Johnsons in attempting to negotiate a new lease with the Hansells. When that proved impossible, Ofelt assisted the Johnsons in determining whether they could purchase the property from the Hansells. By September 10, 1981, it was apparent to the Johnsons and Ofelt that the Johnsons did not have the resources to purchase the Hansells' property themselves.

7. Ofelt's interest in Sally Johnson precipitated Ofelt and Sally Johnson discussing the possibility that Ofelt would purchase the property in question from the Hansells. An oral agreement was reached between the Ofelts and Sally Johnson to go into business together to operate the Hansell

facility as Southridge Farms. Ofelt entered into a real estate purchase agreement with the Hansells on October 14, 1981. Prior to that date, Ofelt inquired of the Clackamas County planning authorities to determine if he could expand the boarding and training facility on the property and purchase an additional piece of property at the site. The Hansell-Ofelt purchase was contingent on Ofelt's being able to develop the property in a particular manner. Ofelt represents he did not receive notice of the county's negative response to his plans until early December 1981.

8. During the fall of 1981 Ofelt represented Sally Johnson on a traffic citation she received in Clackamas County, Oregon.

9. Ofelt and Sally Johnson frequently discussed the prospect of their development of Southridge Farms as a successful boarding and training facility. In these discussions, both parties discussed Brad Johnson's participation in the enterprise. While Brad Johnson was initially included in the partnership that was contemplated, Ofelt did not wish to include Brad Johnson in the partnership if that was at all possible.

10. In the latter part of October 1981, Brad Johnson and Shielah Ofelt discovered that Ofelt and Sally Johnson were having an affair. The two couples had discussions concerning this revelation and Ofelt and his wife went on vacation to discuss how they intended to proceed, both as to their own relationship and regarding the partnership that the Ofelts and the Johnsons had previously discussed entering into.

11. Upon the Ofelts' return, the parties determined that they would proceed to enter into a partnership for the operation of Southridge Farms. Ofelt prepared a partnership agreement for the parties to sign and in the meantime the partnership was operated under an oral agreement. A checking account for the business was established with Ofelt, his wife, and Sally Johnson as signators and the Ofelts deposited money into the account for the operation of the business.

12. In early November 1981, Ofelt met with the Johnsons to show them the partnership agreement he had prepared. The agreement required the Johnsons to contribute certain personal property to the partnership. Furthermore, the agreement did not include Brad Johnson. At that point Brad Johnson indicated a desire to consult with someone about the terms of the agreement. Ofelt did not object. Ofelt claims he told Sally Johnson to take

the agreement to a lawyer. Both Johnsons deny that he so stated. Sally Johnson admits she called two lawyers and subsequently (date uncertain) Brad Johnson in fact retained a lawyer.

13. Following that meeting, Brad Johnson retained the services of Lon Bryant, an attorney. Brad and Sally Johnson terminated their partnership with the Ofelts. Ofelt made claim to the funds in the partnership account which he felt the Johnsons had improperly used.

14. In early 1982 Brad Johnson initiated a lawsuit against Ofelt that was ultimately settled by the payment of approximately $25,000 to Brad Johnson. Sally Johnson subsequently filed a lawsuit against Ofelt in 1983. That lawsuit is still pending at this time.

15. During the time the Ofelts and Sally Johnson were in the process of forming a business partnership in the fall of 1981, Ofelt and Sally Johnson also formed a separate partnership wherein Ofelt bought a horse that Sally Johnson agreed to train. The parties agreed to split the profits the horse brought on its resale. The agreement was subsequently abrogated when Ofelt learned the horse had a bone fracture that affected the value of the horse. Ofelt subsequently felt Sally Johnson had misrepresented the horse to Ofelt; Johnson denied Ofelt's claim.

VI.

The second cause of complaint alleges that the accused is guilty of violating DR 5-101(A) and DR 5-104(A) of the Code of Professional Responsibility. The accused admits both these violations.

The accused admits his own financial interests affected or were reasonably likely to affect the exercise of his professional judgment on behalf of his clients, both as to matters involving others and between his two clients.

The accused also agreed to and actually entered into business transactions with Sally Johnson for a short period of time. The transactions involved a joint venture to own and operate Southridge Farms and a partnership relating to the purchase, training, and resale of a horse. Prior to entering into said business ventures, the accused did not make the ethical disclosures or obtain the consent of his client as required by DR 5-104(A).

VII.

The third cause of complaint alleges that the accused is guilty of violating DR 5-101(A) of the Code of Professional Responsibility. The accused, in conjunction with, and as a part of his admissions regarding the second cause of complaint, admits the violation of DR 5-101(A) alleged in the third cause of complaint. The accused admits his personal involvement with Sally Johnson affected or was reasonably likely to affect the exercise of his professional judgment on behalf of his client in the transactions he was involved in.

VIII.

The fourth cause of complaint alleges that the accused is guilty of violating DR 5-101(A), DR 5-105(A)-(C) and DR 7-101(A)(3) of the Code of Professional Responsibility. The accused, in conjunction with and as a part of his admissions regarding the second and third causes of complaint, admits the violation of DR 5-101(A) and DR 5-105(A)-(C). The accused admits his personal and financial interests affected or were reasonably likely to affect the exercise of his professional judgment on behalf of his client.

IX.

The Oregon State Bar withdraws the charge under DR 7-101(A)(3) in its fourth cause of complaint.

X.

The accused has no prior record of reprimands, suspensions, or disbarment.

XI.

The accused agrees to accept a 60-day suspension from the practice of law for the stipulated ethical violations set forth above, if accepted by the disciplinary board.

XII.

This stipulation has been fully and voluntarily made by the undersigned accused, Jack C. Ofelt, Jr., as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If

rejected by either body, the matters involving the bar's formal complaint will be referred to hearing.

Wherefore, the accused requests the general counsel of the Oregon State Bar to submit this matter to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 14th day of January, 1985.

/s/ Jack C. Ofelt, Jr.
JACK C. OFELT, JR.

I, Jack C. Ofelt, Jr., being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Jack C. Ofelt, Jr.
JACK C. OFELT, JR.

Subscribed and sworn to before me this 14th day of January 1985.

/s/ Diane Backer
Notary Public for Oregon
My commission expires: 10/23/88

Reviewed by general counsel and approved by the state professional responsibility board on the 9th day of February 1985.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL

Approved as to form:

/s/ Carrell F. Bradley
Counsel for Accused
CARRELL F. BRADLEY, ESQ.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 83-11
JACK C. OFELT, JR.,	FORMAL COMPLAINT
Accused.	Exhibit A (Amended Stipulation for Discipline)

For its first cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Jack C. Ofelt, Jr., is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

III.

Prior to July 1981, Bradley Johnson and Sally Johnson, husband and wife, were owners and operators of a business known as Southridge Farms. The business involved the purchase, sale, boarding, and training of horses and was located on leased property in Wilsonville, Oregon, owned by Jack Hansell, Rita Hansell, and R. Gene Singer. On or about July 27, 1981, Jack and Rita Hansell, through their attorney, gave Bradley and Sally Johnson a 24-hour notice to vacate the leased premises. An FED action was filed in Clackamas County District Court by the Hansells against the Johnsons shortly thereafter.

IV.

On or about July 27, 1981, the accused undertook to represent Bradley and Sally Johnson in defense of the FED action and for the purpose of

attempting to renegotiate the lease between the Hansells and the Johnsons. The accused was also to explore the possibility of the Johnsons' purchasing the leased premises from the Hansells and Mr. Singer. The accused subsequently undertook to represent both Bradley Johnson and Sally Johnson on other legal matters.

V.

During the course of his representation of the Johnsons, the accused advised the Johnsons that he had been successful in negotiating a favorable lease arrangement on their behalf with the Hansells. The accused further advised the Johnsons that he was working on an application to the county for a zoning variance which would facilitate the purchase of the Hansell property by Bradley and Sally Johnson.

VI.

In fact, the accused had not successfully negotiated a favorable lease arrangement between the Hansells and the Johnsons and was not seeking a zoning variance so that the Johnsons could purchase the Hansell property. The accused knew his representations to Bradley and Sally Johnson regarding the lease and variance were false when made.

VII.

The aforesaid conduct of the Accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) ORS 9.527(4); and

(2) DR 1-102(A)(4) of the Code of Professional Responsibility.

And, for its second cause of complaint against the accused, the Oregon State Bar alleges:

VIII.

Incorporates by reference as fully set forth herein paragraphs I, II, III, IV, V, and VI of this complaint.

IX.

During the course of the accused's ongoing representation of Bradley and Sally Johnson, the accused and his wife entered into a business transaction with the Johnsons which involved a joint venture for the ownership and

operation of Southridge Farms. The joint venture further contemplated the accused and his wife purchasing the real property upon which the business was located from Jack Hansell, Rita Hansell, and R. Gene Singer. The joint venture began to operate by oral agreement in mid-October 1981. The accused and his wife entered into a real estate contract for the purchase of the Hansell/Singer real property on or about October 14, 1981. The joint venture continued to operate until early December 1981.

X.

Bradley and Sally Johnson were relying upon the accused's professional judgment for the protection of their interests when they entered into the joint venture with the accused and his wife. The interests of the accused differed from those of the Johnsons. The accused failed to make any disclosure of those differing interests to the Johnsons. The accused also failed to disclose to them that his professional judgment, exercised on behalf of the Johnsons, would be or reasonably may have been expected to be affected by his own financial interests in the venture. No informed consent to the accused's continued representation was obtained from the Johnsons.

XI.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 5-101(A) of the Code of Professional Responsibility; and

(2) DR 5-104(A) of the Code of Professional Responsibility.

And, for its third cause of complaint against the accused, the Oregon State Bar alleges:

XII.

Incorporates by reference as fully set forth herein paragraphs I, II, III, IV, V, VI, IX, and X of this complaint.

XIII.

In or about the last week of August 1981, the accused solicited, and began to engage in, an extramarital affair with Sally Johnson, resulting in liaisons between the two of them until December of 1981. The accused represented Sally Johnson as a client during this same time period. No disclosure was made by the accused to Sally Johnson of the affect the affair

would have or reasonably may have been expected to have on the accused's ability to exercise his professional judgment on behalf of Sally Johnson. No informed consent to the accused's continued representation was obtained from Sally Johnson.

XIV.

The aforesaid conduct of the accused violated the following standard of professional conduct established by law and by the Oregon State Bar:

DR 5-101(A) of the Code of Professional Responsibility.

And, for its fourth cause of complaint against the accused, the Oregon State Bar alleges:

XV.

Incorporates by reference as fully set forth herein paragraphs I, II, III, IV, V, VI, IX, X, and XIII of this complaint.

XVI.

In or about the first week of November 1981, the accused began to exclude Bradley Johnson, a present client, as a participant in the Southridge Farms business venture. In this respect, the accused prepared a draft of a written agreement meant to memorialize the joint venture between the parties and presented it to Bradley and Sally Johnson for signature. Bradley Johnson was not named as a party to that agreement and the parties did not sign it. The accused further instructed Sally Johnson that all business revenues were to be placed in a bank account which Bradley Johnson would not be a signatory to. Such an account was then established.

XVII.

The accused did not disclose to either Sally Johnson or Bradley Johnson that his independent professional judgment on behalf of either of them was or reasonably may have been expected to be affected by his relationship, personal or professional, with the other, or by his own financial interests in the business venture. No informed consent to the accused's continued representation was obtained from either Sally Johnson or Bradley Johnson.

XVIII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 5-101(A) of the Code of Professional Responsibility;

(2) DR 5-105(A), (B), and (C) of the Code of Professional Responsibility; and

(3) DR 7-101(A)(3) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Dated this 21st day of February 1984.

OREGON STATE BAR

By: /s/ Robert J. Elfers
ROBERT J. ELFERS
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-11
	)	
JACK C. OFELT, JR.,	)	ANSWER
	)	
Accused.	)	Exhibit B (Amended Stipulation for Discipline)

Jack C. Ofelt, Jr., whose residence address is 24870 S.W. Mountain Rd., West Linn, Oregon, in Clackamas County, Oregon, and who maintains his principal office for the practice of law at 2828 S.W. Corbett, Portland, Oregon, in the County of Multnomah, State of Oregon, answers the formal complaint in the above-entitled matter as follows:

I.

Admits the following matters charged in the formal complaint as follows:

A. Admits paragraphs I, II, and III in their entirety.

B. Admits that he undertook to represent Brad and Sally Johnson in the defense against the FED action filed by the Hansells, and that subsequently he attempted to renegotiate their lease.

C. Admits that the accused and his wife entered into a business arrangement, probably a joint venture, with the Johnsons, that the accused and his wife attempted to purchase the property, and that the venture operated until early December 1981.

D. Admits that the interests of the accused differed from those of the Johnsons to the extent that the interests of one participant in a joint venture differ from the interests of another member of the joint venture.

E. With respect to the allegations of paragraph XIII, admits that he engaged in an extramarital affair, but denies that the affair spanned the period of time alleged.

F. With respect to the allegations of paragraph XVI, admits that he prepared a draft of a written agreement, that Brad Johnson was not named as

a party to the agreement, and that the agreement was not signed by the parties.

II.

Denies the following matters charged in the formal complaint as follows:

A. Denies all those matters contained in the complaint except that which is expressly admitted in paragraph I herein.

B. In particular, the accused denies that he failed to disclose any matter which he was under a duty to disclose.

C. Denies that he was representing the Johnsons at any time after September 10, 1981.

D. Denies that he failed to obtain the Johnsons' informed consent at any time when such consent was required to be obtained.

III.

Explains or justifies the following matters charged in the formal complaint:

When the Johnsons first contacted the accused regarding legal matters, an FED had been filed against them. Before that, the accused had known the Johnsons as the operators of Southridge Farms where the accused had purchased some horses for his children. The accused agreed to try to get them out of their immediate difficulties with their landlords and also attempted to persuade the landlords to renegotiate the lease. The Hansells made it clear at a meeting at their home attended by Sally Johnson that the lease would not be renegotiated before the present one expired. It was then decided to see if the Johnsons could buy the property. This effort culminated with a meeting attended by the Johnsons in the office of attorney Richards in Wilsonville on September 10, 1981, where it was determined without question or room for further discussion that the Johnsons could not purchase the property. The accused did not thereafter act as the Johnsons' attorney in connection with the barn business, although the accused did participate in some legal affairs of the business as a member of the joint venture, including a lawsuit filed by one Bloom against Sally Johnson doing business as Southridge Farms. At that time, the accused and his wife were named as parties in interest on the assumed business name registration.

After September 10, the accused and his wife undertook to purchase the property with the full knowledge and consent of the Johnsons. An earnest money agreement was made between the Ofelts and the Hansells, but the sale was contingent upon a zone change to permit the business to be conducted on a larger piece of property. At the time, it was the opinion of the accused that the purchase by the accused would be a benefit to the Johnsons, since it would allow them to continue living in the house and running their business. It also looked like a good real estate investment for the accused and his wife with the potential to produce some income. There is no question that the Johnsons' position would have improved under Ofelt's ownership, since the Hansells were very unhappy about the Johnsons as tenants and were refusing to renegotiate or promise to extend the lease beyond February of 1982.

In late August or early September 1981, Sally Johnson and the accused began having an affair. The affair basically consisted of Mrs. Johnson and the accused agreeing to accompany each other on some out-of-town trips. It was during this affair, and while the accused was under the influence of Sally Johnson, that the accused agreed to explore the possibility of buying the property and participating in the Johnsons' business in order to save them from losing their lease. The affair lasted for less than two months, and its existence was then fully aired at a meeting attended by the accused and his wife and the Johnsons. It was agreed after this meeting to try to continue the joint venture idea. A written agreement was drafted and Brad Johnson was not named as a party to this agreement after he himself indicated that he did not wish to be a party. They were advised to consult an attorney, which they did.

At no time did the accused misrepresent his dealings with the Hansells, the state of their lease, or his intentions with respect to the joint venture. The accused did encourage the Johnsons to have the documents reviewed by an attorney and did attempt to make an honest and fair joint venture agreement after several discussions among the parties as to how the agreement should be structured.

The accused concedes that his judgment may have been impaired by his affair with Sally Johnson, but denies that the Johnsons were harmed by his actions. His efforts were undertaken to improve the Johnsons' business, at a time when they were struggling, and were done with their consent and

encouragement. The affair placed a great amount of stress on the accused, but it did not cause him to do anything in connection with the business which was detrimental to the Johnsons' interest. If anything, the accused was influenced to enter into a business under terms that were unfavorable to himself. As a result the accused lost money, got sued, and has had to undergo counseling with a psychiatrist.

IV.

Sets forth new matter and other defenses not previously stated as follows:

Wherefore, the accused prays that the formal complaint be dismissed.

Dated this 23rd day of April 1984.

/s/ Jack C. Ofelt
JACK C. OFELT, JR., ACCUSED

/s/ Todd A. Bradley
TODD A. BRADLEY
ATTORNEY FOR ACCUSED

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-139
	)	
KENNETH A. WILLIAMS,	)	
	)	
Accused.	)	
	)	

Bar Counsel: H. Thomas Evans, Esq.

Counsel for Accused: Harold D. Gillis, Esq.

Disciplinary Board: David C. Landis, State Chairperson, and K. Patrick Neill, Region 2 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 1-102(A)(4). Sixty-day suspension.

Effective Date of Opinion: June 27, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-139
	)	
KENNETH A. WILLIAMS,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e). A complaint was filed against the accused and subsequently the accused and the bar executed a stipulation for discipline, which recites the relevant facts as follows:

> 1. The money in the savings account that the accused closed had been deposited out of his own sources, not his wife's. The money was an accumulation of savings from payroll checks, student loan proceeds, and distributions from a deceased relative's estate. The accused's former wife had never made deposits to or withdrawals from the account or its predecessor, and was not named on them.
>
> 2. The accused and his former wife were separated three times prior to the divorce proceeding. The accused anticipated a substantial financial burden on himself as a result of the dissolution. The last period of separation was extremely stressful and bitter for the accused and his spouse. There were ongoing disagreements over money and child custody. In this emotionally turbulent environment, the accused withdrew the $2,850 that he had saved and concealed its existence for about three months. When confronted by his wife's attorney, the accused immediately admitted the concealment and several days later voluntarily admitted it again in a sworn affidavit filed with the circuit court. The money was eventually divided between the parties.

The complaint alleges that the accused is guilty of violating DR 1-102(A)(3), DR 1-102(A)(4), and ORS 9.527(4). In the stipulation, the accused admits his violation of DR 1-102(A)(4) and based upon that admission, the bar has withdrawn its charges under DR 1-102(A)(3) and ORS 9.527(4).

In admitting his violation, the accused gives the following explanation, while at the same time acknowledging that his explanation does not justify his conduct and is not a defense to the charge that he acted dishonestly:

> The accused feels that his actions, while improper, were also irrational due to the high level of stress imposed on him at the time. The accused had previously disclosed the existence of the savings account in his 1983 income tax returns, copies of which were given to his wife and her attorney. He also withdrew the account's funds on the same day that the divorce petition was filed by means of a traceable cashier's check, rather than cash. A person not acting in an emotionally charged atmosphere would have taken different steps. This explanation is not offered in justification. The accused regrets his behavior, and recognizes that he did not live up to the standards expected of him as an attorney as well as a citizen.

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused has agreed to accept a 60-day suspension from the practice of law for the stipulated ethical violation. This procedure is provided for in Rule of Procedure 3.6. The stipulation has been reviewed by general counsel and approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and approve it.

It is further provided that the 60-day suspension shall begin on July 6, 1985, and run through September 4, 1985.

/s/ David C. Landis
DAVID C. LANDIS
TRIAL BOARD CHAIRPERSON

Dated: 6/27/85

/s/ K. Patrick Neill
K. PATRICK NEILL
REGION 2 CHAIRPERSON

Dated: 6/24/85

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-139
	)	
KENNETH A. WILLIAMS,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Kenneth A. Williams, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Kenneth A. Williams, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

III.

A formal complaint (No. 84-139) was filed by the Oregon State Bar on January 28, 1985, against the accused and served upon him on February 14, 1985. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and a copy of the accused's answer to the bar's formal complaint is attached herewith as Exhibit 2. Both documents are incorporated by reference herein. This stipulation represents the recommended disposition of the bar's formal complaint in this case.

IV.

The Oregon State Bar's first cause of complaint alleges that the accused is guilty of violating DR 1-102(A)(3), DR 1-102(A)(4), and ORS 9.527(4). The accused admits his violation of DR 1-102(A)(4). Based on that admission, the

bar withdraws its charges under DR 1-102(A)(3) and ORS 9.527(4) against the accused.

V.

The Oregon State Bar's second cause of complaint alleges that the accused is guilty of violating DR 1-102(A)(3), DR 1-102(A)(4), and ORS 9.527(4). The accused admits his violation of DR 1-102(A)(4). Based on that admission, the bar withdraws its charges under DR 1-102(A)(3) and ORS 9.527(4) against the accused.

VI.

The accused explains the circumstances surrounding his violation of DR 1-102(A)(4) as follows:

The money in the savings account that the accused closed had been deposited out of his own sources, not his wife's. The money was an accumulation of savings from payroll checks, student loan proceeds, and distributions from a deceased relative's estate. The accused's former wife had never made deposits to or withdrawals from the account or its predecessor, and was not named on them.

The accused and his former wife were separated three times prior to the divorce proceeding. The accused anticipated a substantial financial burden on himself as a result of the dissolution. The last period of separation was extremely stressful and bitter for the accused and his spouse. There were ongoing disagreements over money and child custody. In this emotionally turbulent environment, the accused withdrew the $2,850 that he had saved and concealed its existence for about three months. When confronted by his wife's attorney, the accused immediately admitted the concealment and several days later voluntarily admitted it again in a sworn affidavit filed with the circuit court. The money was eventually divided between the parties.

The accused feels that his actions, while improper, were also irrational due to the high level of stress imposed on him at the time. The accused had previously disclosed the existence of the savings account in his 1983 income tax returns, copies of which were given to his wife and her attorney. He also withdrew the account's funds on the same day that the divorce petition was filed by means of a traceable cashier's check, rather than cash. A person not acting in an emotionally charged atmosphere would have taken different steps.

This explanation is not offered as justification. The accused regrets his behavior, and recognizes that he did not live up to the standards expected of him as an attorney as well as a citizen.

VII.

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charge that he acted dishonestly.

VIII.

The accused has no prior record of reprimands, suspensions, or disbarment.

IX.

The Accused agrees to accept a 60-day suspension from the practice of law for the stipulated ethical violation set forth above.

X.

This stipulation has been fully and voluntarily made by the undersigned accused, Kenneth A. Williams, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the bar's formal complaint in this case will be referred to hearing.

Wherefore, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 6th day of May, 1985.

/s/ Kenneth A. Williams
KENNETH A. WILLIAMS

I, Kenneth A. Williams, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

Subscribed and sworn to before me this 6th day of May 1985.

/s/ Dorothy C. Chase
Notary Public for Oregon
My commission expires: 8/6/88

Reviewed by general counsel on May 10, 1985, and approved by the state professional responsibility board on the 1st day of June 1985.

/s/ George A. Riemer
GEORGE A. RIEMER

Approved as to form:

/s/ Harold D. Gillis
HAROLD D. GILLIS, ESQ.
COUNSEL FOR ACCUSED

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-139
	)	
KENNETH A. WILLIAMS,	)	FORMAL COMPLAINT
	)	
Accused.	)	Exhibit 1 (Stipulation for Discipline)
	)	

For its first cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Kenneth A. Williams, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Lane, State of Oregon.

III.

On or about March 5, 1984, a petition for dissolution of marriage was filed in the Circuit Court of the State of Oregon for Lane County, Case No. 15-84-01531. The petition named the accused as petitioner and named his wife, Carol Williams, as respondent.

IV.

On or about June 7, 1984, the accused's deposition (hereinafter "the deposition") was taken in connection with the accused's marriage dissolution proceeding. The accused was placed under oath at the commencement of the deposition.

V.

During the accused's deposition, in response to questioning by his wife's attorney, the accused testified that he had withdrawn funds in the approximate amount of $2,850 from a personal savings account on or about March 5, 1984. The accused also testified that he had spent all but approximately $200 of that money prior to the deposition.

VI.

The accused's testimony as paraphrased in paragraph V above was false in that the funds in question were, in fact, withdrawn by the accused in the form of a cashier's check, which had not been cashed or spent at the time of the deposition. At the time the accused testified as described in paragraph V above, the accused knew that said testimony was false.

VII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(A) DR 1-102(A)(3);

(B) DR 1-102(A)(4); and

(C) ORS 9.527(4).

And, for its second cause of complaint against the accused, the Oregon State Bar alleges:

VIII.

Incorporates by reference as fully set forth herein paragraphs I, II, and III of its first cause of complaint.

IX.

On or about May 7, 1984, the accused subscribed under oath a document entitled "Uniform Support Affidavit of Petitioner" (hereinafter "the affidavit"), a copy of which is attached hereto as Exhibit A and incorporated herein by this reference. The affidavit was filed with the Circuit Court of the State of Oregon for Lane County in connection with the accused's marriage dissolution proceeding on or about May 7, 1984.

X.

Item 11 on page 3 of the affidavit contains space for listing "all cash and deposit accounts (including bank savings, checking, credit union, certificates of deposit)." At the time the accused signed the affidavit, the accused knew the affidavit was false in that the information contained in item 11, page 3, of the affidavit did not disclose that the accused had in his possession approximately $2,850.00 that he had withdrawn by cashier's check from a personal savings account on or about March 5, 1984.

XI.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(A) DR 1-102(A)(3);

(B) DR 1-102(A)(4); and

(C) ORS 9.527(4).

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 28th day of January 1985.

OREGON STATE BAR

/s/ Donald W. Williams
DONALD W. WILLIAMS
ACTING EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-139
	)	
KENNETH A. WILLIAMS,	)	ANSWER
	)	
Accused.	)	Exhibit 2 (Stipulation for Discipline)
	)	

Kenneth A. Williams, whose residence address is 1415 East Briarcliff Lane, Eugene, Lane County, Oregon 97404, answers the formal complaint in the above-entitled matter as follows:

1. Admits the following matters charged in the formal complaint: Paragraphs I through VI (and as realleged in paragraph VIII), IX, X, and all of paragraphs VII and XI except subparagraphs (A) and (C).

2. Denies the following matters charged in the formal complaint: Subparagraphs (A) and (C) of paragraphs VII and XI.

Dated: March 4th, 1985.

/s/ Kenneth A. Williams
KENNETH A. WILLIAMS

HAROLD D. GILLIS, P.C.

/s/ Harold D. Gillis
HAROLD D. GILLIS
ATTORNEY FOR ACCUSED

State of Oregon)
) ss.
County of Lane)

I, Kenneth A. Williams, being first duly sworn, verify the answer as true.

/s/ Kenneth A. Williams
KENNETH A. WILLIAMS

Subscribed and sworn to before me this 4th day of March 1985.

/s/ Dorothy C. Chase
Notary Public for Oregon
My commission expires: 8/6/88

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-61
	)	
BURTON H. BENNETT,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Gary A. Rueter, Esq.

Counsel for Accused: Ferris F. Boothe, Esq.

Trial Panel: Paul J. Kelly, Jr., Trial Panel Chairperson; Chris L. Mullmann; and Edward Sims (public member)

Disposition: Accused found guilty of violation of DR 6-101(A)(3), DR 7-101 (A)(2), DR 2-110(A)(1), and DR 2-110(A)(2); not guilty of violation of DR 1-102(A)(4), DR 7-102(A)(5); not subject to discipline under ORS 9.460(4). Reprimand.

Effective Date of Opinion: July 9, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-61
	)	
BURTON H. BENNETT,	)	OPINION AND DISPOSITION
	)	
Accused.	)	
	)	

This matter came before a trial panel of the disciplinary board consisting of the undersigned members acting pursuant to the authority of ORS 9.534 and 9.536 for hearing on May 15, 1985. The Oregon State Bar appeared by and through Gary A. Rueter, its attorney, and the accused appeared in person and through Ferris F. Boothe, his attorney. The hearing was conducted upon the bar's formal complaint charging the accused in three counts with (1) neglecting a legal matter entrusted to him in violation of DR 6-101(A)(3) and intentionally failing to carry out a contract of employment with a client in violation of DR 7-101(A)(2); (2) improperly withdrawing from representation of a client in litigation pending before Multnomah County Circuit Court in violation of DR 2-110(A)(1) and (2); and (3) making a false statement to the court in the course of requesting a trial continuance in violation of DR 1-102(A)(4), DR 7-102(A)(5), and ORS 9.460(4).

Counsel for the parties made opening statements, thereafter presented evidence through witnesses and exhibits, and made closing arguments. Thereupon the trial panel adjourned the hearing and, following review of the evidence, now makes the following:

FINDINGS OF FACT

1. The bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times pertinent to this proceeding was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

2. The accused is, and at all times pertinent to this proceeding was, an attorney at law duly admitted by the Supreme Court of the State of Oregon

to practice law in this state and a member of the bar, having his office and place of business in Multnomah County, Oregon.

3. In or about September 1979, Mr. and Mrs. Kenneth Deckley retained the services of the accused relative to a medical malpractice claim which Kenneth Deckley felt that he had against a Dr. Jerry Giesy, who had performed surgery on Mr. Deckley in connection with a prostate condition Mr. Deckley had.

4. The accused accepted Mr. Deckley's case in or about October 1979 and agreed to file a medical malpractice action against Dr. Giesy. The accused filed such action against Dr. Giesy in April 1980 in Multnomah County Circuit Court as Kenneth Deckley v. Jerry D. Giesy, M.D., No. A8004-02224.

5. At or about the time of commencement of the action and prior thereto, the accused expressed his opinion to the Deckleys that Mr. Deckley appeared to have a good claim against Dr. Giesy.

6. On or about May 15, 1980, the accused met with Dr. Giesy and his attorney in the latter's law office for the purposes of interviewing Dr. Giesy and of reviewing Dr. Giesy's chart and other records regarding his treatment of Mr. Deckley. The accused did not take the deposition of Dr. Giesy then or at any other time.

7. On or about May 28, 1980, the accused advised the Deckleys that one of his law partners was a close personal friend of Dr. Giesy. However, the accused further advised the Deckleys that his partner's friendship with Dr. Geisy would not preclude his continued representation of Mr. Deckley and the Deckleys authorized such continuing representation of them.

8. On or about August 1, 1980, the accused advised the Deckleys that he was having difficulty finding a medical expert to provide consultation and testimony at trial in support of Mr. Deckley's claim against Dr. Giesy.

9. On April 15, 1981, Dr. Giesy's attorney took Kenneth Deckley's deposition.

10. On June 17, 1981, five days prior to the first trial setting in Deckley v. Giesy, the accused met with the Deckleys and advised them that he had been receiving pressure from one or more of his law partners to withdraw from or otherwise dispose of the case. The accused advised the Deckleys that he felt that he could not continue with the case but would find another

attorney to take over the case for them before withdrawing from his representation of Mr. Deckley.

11. Between June 17, 1981, and March 11, 1982, the accused consulted with a few other attorneys in an effort to secure substitute representation for Mr. Deckley. The accused had no contact with the Deckleys regarding the merits of the case or its trial status between those dates.

12. On or about February 19, 1982, the accused, or another attorney in his law firm, filed a Friday weekly call praecipe with the court in Deckley v. Giesy in which he represented to the court that plaintiff would not be ready for trial as scheduled on March 11, 1982, for the following reasons:

(1) The discovery is not complete;

(2) Plaintiff's attorney has discovered a conflict and must refer the case to other trial counsel;

(3) Additional time will be needed to prepare for trial.

13. On or about March 9, 1982, two days prior to the rescheduled trial in Deckley v. Giesy, the accused had hand-delivered to the Deckleys' residence a letter requesting that they call his office immediately upon their return home. On the same day the accused went to the Deckleys' residence and, finding them not at home, left his business card at the residence with a notation to the Deckleys to call him.

14. On the morning of March 11, 1982, the Deckleys, having returned home after a short absence and finding the accused's business card, called the accused at his office. The accused told the Deckleys of the trial setting and that they need not go to court and that the accused intended to dismiss their case. The Deckleys objected to the proposed dismissal. The Deckleys thereupon contacted another attorney in an attempt to obtain representation in Deckley v. Giesy.

15. At 1:30 p.m. on March 11, 1982, the time set for trial of Deckley v. Giesy, the accused appeared in court with the Deckleys to seek a further continuance of the trial in order to give the attorneys consulted by the Deckleys that morning an opportunity to review the case to determine if they would accept representation of the Deckleys and substitute for the accused. At that time, the accused represented to the court that he had a conflict and could not continue to represent the Deckleys because of the friendship

between one of his law partners and Dr. Giesy. The court rescheduled the case for trial on March 25, 1982, and advised the parties that, if the case was not then tried, it would be dismissed.

16. On or within several days after March 11, 1982, attorneys Michael Adler and Daniel Lorenz received and reviewed the accused's file on Deckley v. Giesy and conferred with the accused about the case and its state of preparation for trial. Based upon such review, Mr. Lorenz concluded that the case was not then ready for trial because, in their view, necessary discovery had not been completed, full medical records did not appear to have been obtained, and an expert medical witness had not been retained for trial. Having concluded that he could not be prepared for trial of the case on March 25, Mr. Lorenz advised the accused that he would not accept responsibility for the case and on March 24, 1982, confirmed that by letter to the accused.

17. On March 24, 1982, upon the advice of Mr. Lorenz, the Deckleys delivered to the accused's office a letter advising the accused that they had not relieved him as their attorney in the pending lawsuit and that they expected his continued representation.

18. On March 24, 1982, the accused served upon opposing counsel and at 9:00 a.m. on March 25 had filed with the Multnomah County Circuit Court clerk's office a notice of his resignation as attorney of record for plaintiff in Deckley v. Giesy. The Deckleys received notice of such resignation on or after March 25, 1982.

19. On March 25, 1982, the Deckleys appeared in court without counsel at the time set for trial and advised the court that they were not ready to proceed to trial and the court thereupon dismissed the action with prejudice. Neither the accused nor any member of his firm appeared in court with the Deckleys at that time.

20. The accused accepted Mr. Deckley's malpractice case against Dr. Giesy on a contingent fee basis and the Deckleys paid no attorney fees to the accused in connection with his representation.

21. Kenneth Deckley subsequently brought a legal malpractice action against the accused which was settled and dismissed upon payment of the sum of $500 by or on behalf of the accused to Mr. Deckley.

22. No evidence of prior bar complaints or disciplinary proceedings against the accused was presented to the trial panel.

Based upon the foregoing findings of fact, the trial panel reaches the following:

CONCLUSIONS

1. The accused violated DR 6-101(A)(3) and DR 7-101(A)(2) by neglecting the matter of the pending litigation of Deckley v. Giesy and by intentionally failing to carry out his contract of employment to represent Mr. Deckley in his malpractice action against Dr. Giesy.

2. The accused violated DR 2-110(A)(1) and (2) by withdrawing from his representation of Kenneth Deckley in the pending malpractice action against Dr. Giesy in violation of the rules of Multnomah County Circuit Court, without permission of the court and before taking reasonable steps to avoid foreseeable prejudice to the rights of Mr. Deckley in connection with the pending litigation.

3. The accused did not violate DR 1-102(A)(4), DR 7-102(A)(5), or ORS 9.460(4) in connection with representations made to the court in the Friday weekly call praecipe filed with the court on or about February 19, 1982.

OPINION AND DISPOSITION

The accused conceded in his opening statement to the trial panel at the hearing on May 15, 1985, that his attempted resignation as attorney of record for Mr. Deckley did not comply with local rule 7.01 of the Multnomah County Circuit Court which at that time prohibited an attorney of record from resigning from a pending case except upon order of the court duly entered of record after having given written notice of the proposed resignation to opposing counsel or any party who had made an appearance in the case. We agree that the accused's filing of his notice of resignation with the court on the morning of March 25, 1982, the final date set for trial of Deckley v. Giesy, and his mailing of that notice to counsel the prior day did not comply with the local rule. Furthermore, that resignation clearly violates DR 2-110(A)(1), which precludes a lawyer from withdrawing from employment in a proceeding pending before any tribunal which by rule requires the attorney to obtain the tribunal's permission to withdraw. More significantly, the accused's withdrawal under the circumstances set forth in our foregoing findings of fact

also violates DR 2-110(A)(2), which precludes an attorney from withdrawing from employment before taking reasonable steps to avoid prejudice to his client, which steps include giving due notice to the client with sufficient time to permit the client to obtain other counsel.

After advising the Deckleys on June 17, 1981, that he could not continue to represent Mr. Deckley in the pending lawsuit but assuring them that he would seek other counsel for them, the accused apparently did not have any direct contact with the Deckleys about the status of the case until the morning of March 11, 1982, when, in response to the accused's note left at the Deckleys' residence on March 9, 1982, the Deckleys telephoned the accused, who then advised them that trial was scheduled for that day but that he intended to dismiss the case. Given the condition of the accused's file and the short extension of time granted by the court to seek other counsel, the Deckleys did not then have adequate time to obtain substitute counsel to try the matter on March 25, 1982, as rescheduled. Although the accused testified that he made arrangements with one of his law partners to appear in court with the Deckleys in his absence on March 25, 1982, neither the accused nor anyone in his firm did so and the Deckleys were required to appear in court without the assistance of counsel to seek additional time, which the court did not grant.

We note that, although the bar did not charge the accused with violating DR 2-110(C), the rule prohibits an attorney from requesting permission to withdraw in a matter pending before a tribunal except upon certain stated grounds, none of which appears to us to apply in this case. Furthermore, we are guided in our decision by ethical consideration 2-32 of the ABA's Model Code of Professional Responsibility, which describes a standard that a lawyer contemplating withdrawal from employment of a client should aspire to meet. The accused's conduct in this case falls short of that standard.

By August 1980, almost a year after being retained by the Deckleys and four months after filing the action against Dr. Giesy, the accused apparently began to revise his opinion about the merits of Mr. Deckley's case and realized that he would have difficulty obtaining a medical expert to testify that Dr. Giesy had been guilty of any medical malpractice in his treatment of Mr. Deckley. Prior to that, in late May 1980, the accused told the Deckleys of the friendship between one of his partners and Dr. Giesy which was

apparently causing him some problems within his firm. Instead of attempting to withdraw as Mr. Deckley's attorney of record for either of those two reasons early in the course of the litigation, the accused waited until five days before the first trial setting in June 1981 to advise the Deckleys that he could not, or would not, continue to represent Mr. Deckley, citing primarily the conflict arising from his law partner's relationship with Dr. Giesy. Although at that time he advised the Deckleys that he would attempt to obtain substitute counsel, he waited until the eve of the March 11, 1982, trial setting to directly confront the Deckleys with his intention not to try the case despite no substitute counsel. The court's dismissal of Mr. Deckley's action with prejudice on March 25, 1982, was clearly a consequence of the accused's failure to either properly seek the court's permission to withdraw from the case well enough in advance of trial to enable the Deckleys to seek new counsel on their own or make adequate efforts to secure new counsel for the Deckleys as he had undertaken to do.

Although the accused apparently developed the opinion that he had little chance of prevailing at trial for Mr. Deckley, and although he was unable to obtain any meaningful settlement offer from the defendant which would afford Mr. Deckley the opportunity to conclude the case without going to trial, we conclude that the conflict within the accused's law firm arising out of the friendship between one of his law partners and Dr. Giesy was a motivating factor in the accused's reluctance to further develop and pursue Mr. Deckley's claim. It was certainly the primary reason that the accused cited to the court for seeking postponements of the trial. In any event, the accused unilaterally decided not to proceed to trial but to withdraw from his representation of Mr. Deckley in an untimely and improper way. As a result, Mr. Deckley did not get his "day in court" on his claim against Dr. Giesy. Although we are satisfied from the evidence presented that Mr. Deckley's claim against Dr. Giesy had limited merit at best, we cannot conclude that another attorney, given adequate time to evaluate and prepare the case, would not have taken it to trial with perhaps a remote hope of success. Under the circumstances, the accused's conduct violated DR 6-101(A)(3) and DR 7-101(A)(2).

Regarding the third claim by the bar that the accused engaged in dishonest or deceitful conduct and made false statements to the court in connection with the filing of the Friday weekly call praecipe, we simply do not find that the evidence supports that charge and we hereby dismiss it.

We conclude that the accused should be publicly reprimanded and we hereby recommend that this opinion constitute that sanction. In recommending this sanction, we take into account the doubtful merit of Mr. Deckley's claim against Dr. Giesy and the fact that the Deckleys incurred no expenses for legal fees as a result of the accused's representation of them or of their last minute efforts to obtain substitute counsel to try Deckley v. Giesy. Although more severe discipline was imposed in the case of In re Boland, 288 Or 133, 602 P2d 1078 (1979), for conduct that also violated DR 6-101(A)(3) and DR 7-101(A)(2), we do not find that the accused's conduct in this case is of the same caliber as the conduct involved in In re Boland. Although this case raises the issue of the extent of a lawyer's freedom, having taken on a case on a contingent fee basis believing it to have merit, to withdraw from that case after further discovery and evaluation lead the lawyer to conclude that the case is not likely to be successful, we need not attempt to definitively answer that question upon these facts. The accused had available to him prescribed methods for attempting to withdraw from the case, which required court approval, but he did not pursue them. Had he done so, the legal rug may not have been pulled out from under Mr. Deckley as abruptly and irreparably as it was when the court dismissed his case without any hearing on its merits.

Dated this 21st day of June 1985.

/s/ Paul J. Kelly
PAUL J. KELLY, JR.
TRIAL PANEL CHAIRPERSON

/s/ Chris L. Mullmann
CHRIS L. MULLMANN

/s/ Edward J. Sims
EDWARD SIMS

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-22; 84-48
	)	
JAMES C. JAGGER	)	
	)	
Accused.	)	
	)	

Bar Counsel: Laura Parrish, Esq.

Counsel for Accused: James C. Jagger, Esq., pro se

Trial Panel: Mark W. Perrin, Trial Panel Chairperson; Janet Amundson (public member); and Timothy J. Harold

Disposition: Accused found guilty of violation of DR 9-102(B)(4) in case no. 84-48; not guilty of violation of DR 9-102(B)(4) in case no. 84-22. Reprimand.

Effective Date of Opinion: August 26, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-22; 84-48
	)	
JAMES C. JAGGER,	)	TRIAL PANEL OPINION
	)	
Accused.	)	
	)	

This disciplinary proceeding was tried before the trial panel on July 15 and July 16, 1985. The Oregon State Bar appeared by Laura Parrish and the accused appeared pro se.

In both causes of complaint in this proceeding, the accused is alleged to have violated the standards of professional conduct established by DR 9-102(B)(4) of the Code of Professional Responsibility, in one instance with a former client named Russell (Case No. 84-22) and in another with a former client named McCormick (Case No. 84-48).

There were no objections to the documents offered by the bar and all 21 exhibits were received. There were no motions directed at the pleadings or the proceedings. One "conflict of interest" objection was raised but was resolved as set out in this opinion.

Russell Case

The accused represented Mr. Russell at a trial in Lane County Circuit Court, where defendant Russell was charged with criminal violations arising out of a serious automobile accident, which included a fatality. Russell was convicted. The bar charged that the accused failed to turn over materials acquired during the representation, which allegedly were the "property" of Russell, but not returned.

Mr. Russell and his wife testified in support of the charges; the accused testified for himself. Mr. Russell's testimony was short and to the point; he complained that (1) he had never received a copy of a report he claimed was prepared by the private investigator retained by the accused to assist in his defense, and (2) he was not sure that he had received all the photographs taken and developed by that same private investigator. Mrs. Russell testified

that, some period of time after her husband's sentencing, she did receive police reports, photographs, and other documentary material from the accused, which Russell wanted for post-conviction relief or other purposes.

The accused testified that he provided certain file copies of the police reports and other materials to Mrs. Russell when requested a month or more after Mr. Russell's sentencing. Other materials, which were exhibits at the trial and which remained in the custody of either the Lane County Circuit Court clerk or the court of appeals, were not turned over to the Russells until after the court of appeals affirmed the conviction and the exhibits were released by the appropriate clerk. Russell's principal complaint was that he had never received a copy of the private investigator's report and he was not satisfied that he had received all of the photographs that were taken and developed by the investigator.

The accused testified that at his direction, the private investigator had not produced a written report. The evidence was unclear on whether all the photographs were turned over to the Russells, but there were no photographs remaining in the accused's files associated with the Russell case.

It was clear from reading the various letters from the accused to the bar, responding to the complaints of Mr. Russell and of Mr. McCormick (Case No. 84-48), that the accused did not maintain a good file system, and that he did not review the situation carefully before responding to the bar. For example, the accused wrote several letters during the pre-complaint investigatory phase of this matter, to various investigative representatives of the bar, acknowledging that large portions of his files were destroyed, and left a clear implication that materials, which either might have or ought to have been turned over to the Russells, were destroyed. At the time of the hearing, the accused testified that his memory was now refreshed by the Russells' testimony at the hearing, and that he recalled that all of the photocopies of the police records and other materials that were in the Russell file were turned over to Mrs. Russell on one of her visits to his offices. The accused's testimony is inconsistent with his letters to the bar and other materials in evidence on the matter. However, Mr. Russell made it clear in his testimony that his only complaint was not receiving a report, a report which on this record never existed.

Although there were inconsistencies between the accused's communications with the bar and his trial testimony, on the destruction of materials in the Russell file, the trial panel makes the following findings of fact:

1. The private investigator retained by the accused to assist in the defense of Mr. Russell did not prepare a written report of his investigation.

2. The private investigator did take and develop certain photographs, which were delivered at one time or another by the accused to Mr. Russell through his wife.

3. The accused did not fail to provide file materials to Mr. Russell or his wife.

Based upon these findings of fact, it is the decision of the trial panel that the Oregon State Bar did not establish by clear and convincing evidence that the accused violated the standards of professional conduct established by DR 9-102(B)(4) of the Code of Professional Responsibility. The charges in Case No. 84-22 should be dismissed.

McCormick Case

The second cause of complaint alleges that the accused violated the standards of professional conduct established in DR 9-102(B)(4) based on the Code of Professional Responsibility in the representation of a Mr. McCormick. The accused was appointed in Lane County Circuit Court to defend Mr. McCormick, who was indicted for murder. The specifics of the alleged professional misconduct are that McCormick entrusted a file box containing personal property of various records, which he turned over to the accused for the trial, but were not returned; that a photograph belonging to McCormick's mother which was turned over to the accused for use in the trial was not returned; and that the accused destroyed all of the police reports, medical reports, military reports, and other documents he obtained in connection with the preparation and trial of the case, rather than turning them over to McCormick.

The principal portion of the two days of hearing on the combined complaint was spent on the McCormick allegations. A total of 21 exhibits, several of them of multiple pages, were admitted into evidence on the McCormick charges.

1. **The Photographs**

It is not disputed that Mr. McCormick was involved in the shooting; his planned defense was the post-traumatic stress disorder, based on his Vietnam military service. A part of that defense was to demonstrate that over a period of time there were demonstrable changes in the personal physical appearance of McCormick. As proof of this, a photograph of McCormick was obtained from his mother and put into evidence at trial. Mrs. McCormick testified that the photograph frame was returned to her, but the photograph was not. The evidence includes a letter from the mother of Mr. McCormick to the accused, requesting the return of the photograph or an explanation. The accused testified that the photograph was in evidence, and since the appeal was still pending before the court of appeals, the photograph was in custody of the court.

On the record, the trial panel finds that this photograph has not been destroyed, that upon the conclusion of the appeal the photograph will be available to be returned to Mr. McCormick's mother, and that there is no evidence that the accused violated any standard of professional conduct with respect to this property. A prompt and courteous response to Mr. McCormick's mother about the photograph would have prevented this confusion and her frustration. This may have also prevented the confusion between the accused's letter to the bar on this issue.

2. **The File Box**

During the opening statement of the accused, it was disclosed that a witness for the accused would be one Michael Whitney, a Eugene private investigator. The accused identified Mr. Whitney as having been the investigator appointed to assist in the defense of the McCormick case. Based on that information, panel member Harold disclosed that Mr. Whitney had on occasions served as a private investigator for his law firm in civil litigation. The panel chair disclosed that he knew Mr. Whitney and had worked with him several years before. Bar counsel indicated that she had no objections to trial panel proceeding on, but requested an opportunity to discuss the matters with McCormick. Mr. McCormick requested bar counsel to make an objection on the basis of "conflict of interest." Following discussion among the members, the chair determined to continue with the hearing and reserve any ruling until

an actual controversy arose or there was some need to determine if any conflict existed.

Mr. McCormick testified that he directed his family to take a file box, filled with medical records, military records, previous criminal problems, family records, military medals or service awards, and other personal items, to the accused for use in defending McCormick on the charge. According to his testimony the box was "stuffed full" with a number of documents.

Mr. McCormick's wife, father, and mother all testified about the file box. Mr. Whitney was called and testified about the file box. The file box was never produced into evidence, although the testimony was that it was then available in Toledo, Oregon.

Mr. McCormick's wife testified to her recollection of the contents of the file box, but she was less specific and indicated that the box, although full, was not "stuffed" as Mr. McCormick indicated. It must be pointed out that Mr. McCormick was in custody from the time that he was arrested, and that it was some time later before the file box was delivered by his family to the accused. Mr. McCormick's father and mother recalled the file box being "full." However, they never inventoried the contents of the file box, and neither was able to testify with any certainty to exactly what was in the box. Both repeated the assertion of Mr. McCormick that the complete file box was not returned; but neither could say what was missing. Clearly both his mother and father relied on Mr. McCormick's assertions of what was missing from his file box. Mr. McCormick's wife did not make an inventory, and was unable to clearly testify on exactly what was in the file box when delivered to the accused.

The accused testified that after the file box was delivered to him, he contacted Mr. Whitney and arranged to meet Whitney at the accused's home to go through the file box and see what records were there to assist in the defense.

Mr. Whitney testified that he was instructed not to make a written report in this case, and so he had no written report nor did he have any notes or tape recording or anything else to refresh his memory. He recalled that it was a metal file box, but he could not describe it further, except that the contents had a particularly strong odor. He testified that there were a number of documents in the file box, but he could not indicate the degree of

"fullness" of the contents. Mr. Whitney, who had a number of years of experience on the Eugene Police Department before becoming an independent private detective, testified that the documents were copies of parts of reports or other types of copies, and because they were copies he knew would not be independently admissible as evidence. He said he and the accused quickly decided that the contents of the box were of no help for the trial.

The accused testified that the file box was returned the next day to his office and placed in his law library, where it remained until after the trial. After trial the accused returned the file box to Mr. McCormick's family, and it was about two months before anyone looked at its contents. The accused testified that as far as he could recall, unless there were one or two papers used at trial, all the contents of the file box were returned exactly as delivered to him.

At the request of Mr. McCormick, one of his sisters photocopied the contents of the file box and sent it to Mr. McCormick, who was by then a resident at the Oregon State Penitentiary. Mr. McCormick's testimony was that in looking at the photocopies provided to him, he determined that a number of items that had been present in the file box when it was delivered to the accused were now missing. No photocopies were offered to prove the accuracy of that process.

The trial panel finds that there was no conflict of testimony on the file box between Mr. Whitney and any of the McCormick witnesses. Accordingly, there is no necessity for the trial panel to try to resolve any disputed facts in favor of either Mr. McCormick or Mr. Whitney. No one could ascertain what was in that file box at the time before the accused received it. No "conflict of interest" existed for the trial panel in this case.

The trial panel finds that the bar did not produce clear and convincing evidence that the accused violated the standards of professional conduct established by DR 9-102(B)(4); the bar did not prove by clear and convincing evidence that the accused failed to return the file box contents.

Despite making this finding, the trial panel must express its frustration with the failure of the accused to have maintained files on what he did with the McCormick client files. It is clear from the overall hearing that the accused had not reviewed the facts carefully enough before he responded, prior to the filing of the complaint in these proceedings, to the bar or to

Mr. McCormick or to Mr. McCormick's family on these issues. It was painfully clear that the accused was not fully prepared for this hearing, and that he has not accurately reviewed all the trial court records and other material available to him at the clerk's office or elsewhere to fairly reconstruct the situation.

3. **The "Reports" and "Documents"**

The rest of the bar's case against the accused is based on a number of intertwined allegations by Mr. McCormick that medical reports, military records, photographs, investigative reports, and other "documents" or "reports" were destroyed by the accused and not delivered to McCormick.

Obviously, the principal concern of DR 9-102 is that an attorney account for monies, securities, and other valuables belonging to a client. Within that language is included the concept that the documentary material accumulated by an attorney in the course of representing a client is property of the client and not of the attorney. It is also clear from the disciplinary rule that tangible things, regardless of how obtained by the attorney, must be turned over to the client, to the order of the client, or discarded only at client's direction or with the client's consent.

The language of DR 9-102 is not complete on what a lawyer must or must not do, but the trial panel finds persuasive the directions of Informal Opinion No. 1384 (March 14, 1977) of the American Bar Association Committee on Ethics and Professional Responsibility. As that committee pointed out, "good common sense should provide answers to most questions that arise" in this area. The trial panel finds that the opinion of that committee states the minimal standards of professional conduct on the issues in this case:

> 1. Unless the client consents, a lawyer should not destroy or discard items that clearly or probably belong to the client. Such items include those furnished to the lawyer by or in behalf of the client, the return of which could reasonably be expected by the client, and original documents (especially when not filed or recorded in the public records).
>
> 2. A lawyer should use care not to destroy or discard information that the lawyer knows or should know may still be necessary or useful in the assertion or defense of the client's position in a matter for which the applicable statutory limitations period has not expired.
>
> 3. A lawyer should use care not to destroy or discard information that the client may need, has not previously been given to the client, and is not otherwise readily available to the client,

and which the client may reasonably expect will be preserved by the lawyer.

4. In determining the length of time for retention of disposition of a file, a lawyer should exercise discretion. The nature and contents of some files may indicate a need for longer retention than do the nature and contents of other files, based upon their obvious relevance and materiality to matters that can be expected to arise.

5. A lawyer should take special care to preserve, indefinitely, accurate and complete records of the lawyer's receipt and disbursement of trust funds.

6. In disposing of a file, a lawyer should protect the confidentiality of the contents.

7. A lawyer should not destroy or dispose of a file without screening it in order to determine that consideration has been given to the matters discussed above.

8. A lawyer should preserve, perhaps for an extended time, an index for identification of the files that the lawyer has destroyed or disposed of.

We now apply these standards to the McCormick allegations on the reports and documents gathered by the accused during his representation.

Until the second day of the hearing on these charges, the record was quite complete that any number of contents in the client files maintained by the accused on Mr. McCormick had been destroyed. There is the affidavit filed before the Lane County Circuit Court (Exhibit 16); there is the letter from the accused to George A. Riemer, general counsel of the Oregon State Bar, dated March 7, 1984 (Exhibit 14); there is a conversation between the accused and David M. Logan, referred to in the letter from the accused to Mr. Logan dated June 22, 1984 (Exhibit 15); and there are two letters from the accused to Mr. McCormick dated August 22, 1983 (Exhibit 6), and dated December 14, 1983 (Exhibit 7). In all of these, the accused either swears or represents that he destroyed various contents of his client files associated with his representation of Mr. McCormick. In the accused's opening statement before this trial panel, he acknowledged that at least police agency reports provided to him in the McCormick representation had been destroyed (Tr. 14).

It was only on the second day of the hearing, after the complainants and their various witnesses had testified, that the accused began to explain how he was mistaken after all this period of time, and that everything either

had been returned or was in evidence in the McCormick trial record. This latter testimony is not credible. It comes too late in the controversy; it followed concessions by the McCormick witnesses that some materials had been returned; it followed production of various court files and records; and the trial panel is unanimously of the opinion, in passing on the demeanor and candor of the accused, that this testimony is not credible.

In addition to these inconsistencies, a careful consideration of the language used by the accused indicates an extreme equivocation. For example, on the second day the accused began to testify in a conditional historical tense, for example, saying such things as "I would have assumed that I" did this or that with the records (Tr. 357). A quick examination of this language shows that this is not direct testimony of what he assumed in the past erroneously and now correctly understands. Instead it is an equivocating, conditional kind of testimony that was not credible.

The trial panel finds that:

1. The accused did not destroy "his client's file materials" knowing that this would affect the McCormick appeal, as charged by the bar.

2. The police reports, military records, medical reports, and all the other documents and materials gathered by the accused during the representation of Mr. McCormick belonged to McCormick.

3. The accused destroyed or discarded police reports, military records, medical reports, and other information that the accused knew or should have known would be necessary or useful to Mr. McCormick following his conviction.

4. The various records of Mr. McCormick which the accused destroyed or discarded, even if filed with a circuit clerk or the clerk of the court of appeals, or if a record of a police or government agency, were not readily available to Mr. McCormick (whether because of the costs or because of his incarceration or because of the unwillingness to cooperate by a district attorney's office, a sheriff's office, or police department, or otherwise) and McCormick reasonably expected these would be preserved by the accused.

5. The accused failed to maintain an index for identification of the various client materials that were destroyed or disposed of.

Based upon these findings of fact, it is the decision of the trial panel that, taking all of the testimony, including the accused's, the Oregon State Bar established by clear and convincing evidence that the accused violated the standards of professional conduct established by DR 9-102(B)(4) of the Code of Professional Responsibility with respect to this aspect of the charges in Case No. 84-48.

DISPOSITION

The charges against the accused in Case No. 84-22 are dismissed.

The charges against the accused in Case No. 84-48, alleging violations of the standards of professional conduct with respect to the reports and documents obtained by the accused in the course of representing client McCormick are sustained. The remaining specifications of misconduct under Case No. 84-48 are dismissed.

SANCTIONS

The sanction imposed by the trial board against the accused is that of public reprimand.

Dated this 6th day of August 1985.

/s/ Janet B. Amundson
JANET AMUNDSON, PUBLIC MEMBEI

/s/ Timothy J. Harold
TIMOTHY J. HAROLD, MEMBER

/s/ Mark W. Perrin
MARK W. PERRIN, CHAIR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-65
	)	
JAMES P. BRADLEY,	)	
	)	
Accused.	)	
	)	

Bar Counsel: George A. Riemer, Esq.

Counsel for Accused: James P. Bradley, Esq., pro se

Disciplinary Board: David C. Landis, State Chairperson; and A. E. Piazza, Region 3 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 5-105(A)-(C), and DR 7-104(A)(1). Reprimand.

Effective Date of Opinion: October 9, 1985

OREGON STATE BAR DISCIPLINARY BOARD

In Re:	)	
	)	
Complaint as to the Conduct of	)	OSB No. 85-65
	)	
JAMES P. BRADLEY,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e). A complaint was filed against the accused and subsequently the accused and the bar executed a stipulation for discipline, which recites the relevant facts as follows:

IV.

Debi Debusk and Mary Baker were arrested in June 1984. Baker was a passenger in Debusk's car at the time they were arrested. Debusk was charged with DUII and resisting arrest. Baker was charged with assault and resisting arrest. The accused was appointed by the Josephine County District Court, through Josephine County Defense Lawyers, Inc., to represent Baker on June 28, 1984. Thereafter, Debusk retained the accused to represent her on July 2, 1984.

V.

At the time the accused agreed to represent Debusk he failed to properly evaluate the propriety of representing both Baker and Debusk at the same time. It was only in November 1984 that the accused decided that he should not continue to represent Baker while he was representing Debusk. While Baker was his first client, the accused chose to retain the case of Debusk who was a fee-paying client as opposed to Baker, who was court appointed.

VI.

Subsequent to accused's withdrawal from representation of Baker, the accused subpoenaed Baker on December 28, 1984, to appear at Debusk's trial on January 3, 1985. On the same day, December 28, 1984, the accused met with Debusk and Baker to prepare for Debusk's upcoming trial. The accused spoke with Baker about her contemplated testimony notwithstanding the fact that he knew that Baker was represented by other counsel and that he had not received permission from that attorney to speak directly to Baker. Furthermore, the accused failed to properly evaluate the propriety of continuing to represent Debusk when his former client, Baker, was to be called as a witness at Debusk's trial.

VII.

Just before the trial of Debusk's case, Baker consulted with the partner of her attorney (her attorney was on vacation) and was advised not to testify at Debusk's trial. At that time, the accused proceeded to represent Debusk. Baker was not called as a witness at Debusk's trial.

VIII.

While accused did mention to his clients a possible conflict of interest when he undertook to represent Debusk, he did not obtain their informed consent to his representation of both of their interests. Furthermore, the accused did not withdraw from representing Debusk when he determined that the potential conflict between the interests of Baker and Debusk prevented him from continuing to represent both of them. The accused did not pay strict attention to the requirements of DR 5-105(A)-(C) and admits his violation of these rules in this case. See In re O'Neal, 297 Or 258, 683 P2d 1352 (1984); In re Porter, 283 Or 517, 584 P2d 444 (1978).

IX.

The accused also admits to violating DR 7-104(A)(1) inasmuch as he spoke directly to Baker after he knew she was represented by independent counsel concerning the charges he had previously represented her on. The accused did not have consent of his former client's new attorney and concedes that he should have worked through that attorney in arranging for Baker to testify at the trial of Debusk.

X.

In mitigation, the accused has acknowledged his violation of these rules and he has been separately sanctioned by Josephine County Defense Lawyers, Inc., based on similar findings.

XI.

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused has agreed to accept a public reprimand for the stipulated ethical violations. This procedure is provided for in Rule of Procedure 3.6. A stipulation has been reviewed by general counsel and approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and approved it.

Dated this 9th day of October 1985.

By: /s/ A. E. Piazza
A. E. PIAZZA
REGION 3 CHAIRPERSON
DISCIPLINARY BOARD

By: /s/ David C. Landis
DAVID C. LANDIS
STATE CHAIRPERSON
DISCIPLINARY BOARD

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-65
	)	
JAMES P. BRADLEY,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, James P. Bradley, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, James P. Bradley, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

III.

The State Professional Responsibility Board, at a meeting held on August 3, 1985, approved for filing against the accused a formal complaint alleging his violation of DR 5-105(A)-(C) and DR 7-104(A)(1). The accused wishes to stipulate to the violation of these rules and accept the imposition of a public reprimand for these violations.

IV.

Debi Debusk and Mary Baker were arrested in June 1984. Baker was a passenger in Debusk's car at the time they were arrested. Debusk was charged with DUII and resisting arrest. Baker was charged with assault and resisting arrest. The accused was appointed by the Josephine County District Court, through Josephine County Defense Lawyers, Inc., to represent Baker on

June 28, 1984. Thereafter, Debusk retained the accused to represent her on July 2, 1984.

V.

At the time the accused agreed to represent Debusk he failed to properly evaluate the propriety of representing both Baker and Debusk at the same time. It was only in November 1984 that the accused decided that he should not continue to represent Baker while he was representing Debusk. While Baker was his first client, the accused chose to retain the case of Debusk who was a fee-paying client as opposed to Baker who was court appointed.

VI.

Subsequent to the accused's withdrawal from representation of Baker, the accused subpoenaed Baker on December 28, 1984, to appear at Debusk's trial on January 3, 1985. On the same day, December 28, 1984, the accused met with Debusk and Baker to prepare for Debusk's upcoming trial. The accused spoke with Baker about her contemplated testimony notwithstanding the fact that he knew that Baker was represented by other counsel and that he had not received permission from that attorney to speak directly to Baker. Furthermore, the accused failed to properly evaluate the propriety of continuing to represent Debusk when his former client, Baker, was to be called as a witness at Debusk's trial.

VII.

Just before the trial of Debusk's case, Baker consulted with the partner of her attorney (her attorney was on vacation) and was advised not to testify at Debusk's trial. At that time, the accused proceeded to represent Debusk. Baker was not called as a witness at Debusk's trial.

VIII.

While accused did mention to his clients a possible conflict of interest when he undertook to represent Debusk, he did not obtain their informed consent to his representation of both of their interests. Furthermore, the accused did not withdraw from representing Debusk when he determined that the potential conflict between the interests of Baker and Debusk prevented him from continuing to represent both of them. The accused did not pay strict attention to the requirements of DR 5-105(A)-(C) and admits his violation of

these rules in this case. See In re O'Neal, 297 Or 258, 683 P2d 1352 (1984); In re Porter, 283 Or 517, 584 P2d 744 (1978).

IX.

The accused also admits to violating DR 7-104(A)(1) inasmuch as he spoke directly to Baker after he knew she was represented by independent counsel concerning the charges he had previously represented her on. The accused did not have the consent of his former client's new attorney and concedes that he should have worked through that attorney in arranging for Baker to testify at the trial of Debusk.

X.

In mitigation, the accused has acknowledged his violation of these rules and he has been separately sanctioned by Josephine County Defense Lawyers, Inc., based on similar findings.

XI.

The accused has no prior record of reprimands, suspensions or disbarment.

XII.

The accused agrees to accept a public reprimand for the stipulated ethical violations set forth above.

XIII.

This stipulation has been freely and voluntarily made by the accused, James P. Bradley, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the bar shall proceed to file a formal complaint against the accused in this case and to conduct a hearing in this matter pursuant to the rules and procedure.

XIV.

Whereas, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 12th day of September 1985.

/s/ James P. Bradley
JAMES P. BRADLEY

I, James P. Bradley, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ James P. Bradley
JAMES P. BRADLEY

Subscribed and sworn to before me this 12th day of September 1985.

/s/ Violet Bishop
Notary Public for Oregon
My commission expires: 8/12/86

Reviewed by general counsel on September 28, 1985, and approved by the state professional responsibility board on September 28, 1985.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-116
	)	
LAWRENCE W. JORDAN,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Thomas J. Reuter, Esq.

Counsel for Accused: Lawrence W. Jordan, Esq., pro se

Trial Panel: Jackson L. Frost, Trial Panel Chairperson; Russell W. Tripp (public member); and George R. Duncan

Disposition: Accused found guilty of violation of DR 6-101(A)(3). Reprimand.

Effective Date of Opinion: November 1, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-116
	)	
LAWRENCE W. JORDAN,	)	OPINION AND DISPOSITION
	)	
Accused.	)	
	)	

This matter came before the undersigned trial panel upon the complaint alleging that the accused neglected a legal matter entrusted to him in violation of DR 6-101(A)(3). The trial panel conducted a hearing at Salem on September 24, 1985, attended by the accused, appearing in his own behalf, Mr. Thomas J. Reuter as counsel for the bar, and witnesses including the complaining party, during which testimony and other evidence were received. Upon conclusion of the hearing the accused was granted the opportunity to produce additional documentary evidence, which was promptly produced and distributed to the panel members and bar counsel. Without objection or further response, the panel again met in Salem on October 8, 1985, to confer and compose its opinion.

It is undisputed from the evidence that Norman Butler contacted and met with the accused in January 1984, seeking legal advice with regard to Butler's claim based upon a purchase contract to certain real property in Linn County. Although the validity and value of Butler's claim were disputed by the testimony, the accused by his testimony acknowledged Butler's claim had "nuisance value" and that he attempted to negotiate a settlement which was rejected. Subsequently a suit to quiet the title of the real property was filed, naming Butler as defendant, and the accused accepted service of the summons and complaint on behalf of Butler on or about March 19, 1984, as documented by the court record. By letter dated April 9, 1984, the plaintiff's attorney gave notice to the accused that a default order would be sought if no response was received from the defendant on or before noon, April 20. It is not clear from the evidence when the accused received notice that a default order had been entered on April 23, but the default was obtained promptly in keeping with the terms of the notice letter dated April 9. The accused testified that

he told Butler repeatedly of the need to respond to the summons, to provide information to support the response and to pay the accused funds for fees and costs. The accused also testified that he so notified Butler by letter. The time records submitted by the accused do indicate that the accused communicated with Butler by telephone and that on April 24, 1984, he advised Butler to "drop the case" but these records do not indicate any letter was forwarded to Butler, and no such letter has been introduced as evidence. The evidence is undisputed that by billing dated April 26, the accused charged Butler for services rendered, and that on May 3 a decree was entered based upon the earlier default order. Butler testified he was unaware that the default and decree were entered until he personally reviewed the court file after May 3, 1985.

The trial panel is clearly convinced by the evidence that after accepting service on behalf of Butler the accused neglected either to appropriately notify Butler of the need to respond to the court, or in the alternative, to enter an appearance in court. The panel concludes that under the circumstances the accused by his neglect violated DR 6 -101(A)(3).

Recognizing that Jordan has practiced law for fourteen years, that there is no evidence of any prior disciplinary action against the accused, and that the claim of his client to the property in question was not strongly supported by the evidence available to the accused, a public reprimand is hereby administered.

Dated this 10th day of October 1985.

/s/ Jackson L. Frost
JACKSON L. FROST
PANEL CHAIRPERSON

/s/ Russell W. Tripp
RUSSELL W. TRIPP
PANEL MEMBER

/s/ George R. Duncan, Jr.
GEORGE R. DUNCAN
PANEL MEMBER

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-45; 84-70
	)	
RICHARD W. COURTRIGHT,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Steven W. Kaser, Esq.

Counsel for Accused: Ervin B. Hogan, Esq.

Trial Panel: E. R. Bashaw, Trial Panel Chairperson; Duane G. Miner (public member); and Stephen H. Miller

Disposition: Accused found guilty of violations of DR 6-101(A)(3) and DR 7-101(A)(2). Reprimand.

Effective Date of Opinion: December 24, 1985

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	Nos. 84-45; 84-70
RICHARD W. COURTRIGHT,	FINDINGS OF FACT, CONCLUSIONS, AND SANCTIONS OF DISCIPLINARY BOARD PANEL
Accused.	

This matter was heard at Medford, Oregon, on October 11, 1985. Representing the bar was Steven W. Kaser of Roseburg. Representing the accused was Ervin B. Hogan of Medford. The bar presented the testimony of three witnesses. Defendant testified and presented the testimony of five other witnesses. Two exhibits were received, one of which (Exhibit 1) was a stipulation of facts by the parties, from which many of the findings are drawn.

The panel consisted of Stephen H. Miller of Reedsport, Duane Miner of Roseburg, and E. R. Bashaw of Medford, Chair.

FINDINGS OF FACT

The Oregon State Bar alleged six causes of complaint. Each cause of complaint alleged violations of (1) DR 6-101(A)(3) of the Code of Professional Responsibility and (2) DR 7-101(A)(2) of the Code of Professional Responsibility.

The attached stipulations (Exhibit 1) are adopted as part of the findings of fact as to each count. In addition, the following findings are made:

First Count: Nelson Estate. The work of the probate was substantially complete as of November 1, 1982, but 16 months later the accused had not completed the probate. The remaining items were so routine that the attorney who succeeded accused charged no fee. The accused's inaction resulted from his rapidly worsening condition below more particularly described and the duration of the neglect considering the accused's condition was not sufficient to justify a finding of intentional nonperformance of contract of employment.

Second Count: Bruse Estate. The legal work in the estate started December 1975 and was completed by August 1976 except for the fact that the state income tax clearance was not secured. This awaited a determination of liability resulting from the decedent's failure to report income during life, and the personal representative's lack of information concerning decedent's income. No evidence was presented as to how this impasse was to be solved, but the estate pended on the issue for eight years. The attorney who then took over the estate resolved the problem within four months. Taxes, penalties, and interest totaled $1,330. The bar offered no evidence as to how much of the $1,330 may be attributed to the delay, but the panel must infer that some interest accrued as a result of the delay. The delay was extreme and an inference of intent must be made.

Third Count: Fiske Estate. The estate opened in August 1976 and was not closed as of April 1984. The claims against the estate exceeded its assets, so that the only persons with an interest in it were the creditors. The accused and the personal representative compounded and settled with all creditors pro rata or according to priorities and this was completed by accused sometime after March 1978. When the other attorney took over in March 1984, six years later, all that remained was to secure current tax releases and make a final accounting. This was not accomplished by the succeeding attorney until 1985. The reason for the latter delay was not explained by the bar, but to delay six years in performing tasks requiring one year was extreme.

Fourth Count: Jones Estate. No substitute evidence was introduced by the bar or the accused beyond the stipulation. The accused in his answer admitted the conclusory allegation of neglect. There was no evidence from which the panel could draw any further inference regarding the intent, if any, from the two-year delay. The accused's evidence concerning his condition sufficiently explains the delay so that the burden of clear and convincing evidence was not carried on the issue.

Fifth Count: Gilinsky Estate. The Gilinsky Estate was undertaken by the accused in January 1983, filed in March 1983, and taken over by another attorney in March or April 1984, at which time it was necessary for the succeeding attorney to do the accounting, inheritance tax returns, get tax

clearances, and close. The succeeding attorney performed these remaining tasks in seven months.

The estate was one of 21 files accused had with the Gilinskys. Decedent died during the 60-day period after a dissolution decree, leaving the marital property interests in confusion by reason of parties' failure to complete the divisions provided in the settlement agreement, and the further complication that the "widow" remained the personal representative named in the will. The negotiation and settlement of these property issues had considerable priority and the accused accomplished this most difficult part of the matter. Considering the complexity of the issues involved, it is not possible to conclude that the total time required for the entire process was unreasonably prolonged. The fees charged by the accused and the succeeding attorney totaled less than the succeeding attorney would have charged had he dealt with the entire affair.

Sixth Count: Dunn Estate. The Dunn Estate opened December 29, 1982. It was an ancillary probate. As of March 1984, about 15 months later, the accounting and inheritance tax returns remained to be done. The attorney who took over this task completed it in April 1985, a year later. The accused had received $500 to apply on fees, expended $216 for publication and filing fees, sent $276.50 to the attorney who took over the probate, retaining only $7.50. The total cost of the probate, including costs and fees, was $716.50. There was no evidence of the value of the estate, nor did the evidence support a contract on the part of the accused to do the entire estate for $500. The accused admitted neglect in his answer.

CONCLUSIONS

Neglect in itself does not constitute intentional failure to perform. A specific intent to fail to perform duties undertaken is a necessary element of a violation of DR 7-101(A)(2), but this must be inferred if the neglect continues for an extreme period. In none of the cases did the evidence support an actual specific intent, but in two cases the period of neglect was extreme enough that it required an inference of intentional failure to perform.

First Count: Nelson Estate. Accused violated DR 6-101(A)(3), but did not violate DR 7-101(A)(2).

Second Count: Bruse Estate. Accused violated DR 6-101(A)(3) and DR 7-101(A)(2).

Third Count: Fiske Estate. Accused violated DR 6-101(A)(3) and DR 7-101(A)(2).

Fourth Count: Jones Estate. Accused violated DR 6-101(A)(3), but did not violate DR 7-101(A)(2).

Fifth Count: Gilinsky Estate. Accused committed no violation.

Sixth Count: Dunn Estate. Accused violated DR 6-101(A)(3), but did not violate DR 7-101(A)(2).

SANCTIONS -- FINDINGS

The accused had been a practicing attorney in Medford, Oregon, for 28 years, is highly regarded by his colleagues and the bench, and has had no other or prior complaint made against him.

The accused is an alcoholic, but because his alcoholism did not fit the stereotype he was not aware of the damage it was causing him over the decade leading up to February 1984. It caused him to become depressed, irrationally afraid to perform tasks well within his capabilities, alienated, exhausted, and unable to control his life. His testimony concerning the effect on him makes its own finding:

> I would go to sleep at ten and, God, I would go right to sleep, probably because I had some drinks and it was easy to do. If I would wake up in the middle of the night I got to the point I would wake up in the middle of the night with maybe not my whole body moist, not sweating, but my head wringing wet, just totally sopping the pillow, and every one of these problems I had was like a roulette wheel, it would go, those numbers would come around as I would be problem one, problem two, but that wheel would never stop long enough for me to decide about the first number or the second number problem, or the third number problem. My mind was just like that wheel, it was going around and this problem would go before I could think about how to handle that problem, then another problem would crop up and, God, it was just, you know, this problem, this problem, this problem, you wake up in the morning and you say, 'I haven't slept.' [Transcript page.]

Confronted by an intervention team from the bar working with a judge, on February 23, 1984, the accused suspended himself from practice for 33 days, went into the Rogue Valley Alcoholic Recovery Center (ARC) and has not

had alcohol since February 23, 1984. He serves as chairman of the board of directors of the ARC, secretary of a business and professional group of AA, and participates with evident enthusiasm in those and many related programs. His level of performance in the practice has been good. From the testimony of those skilled in the area of treating the alcoholism problem, his statistical chances at this point of remaining sober are excellent and the opinion of those expert in the problem is that whatever sanctions this panel may impose upon him at this point will neither help nor hurt him.

SANCTIONS -- CONCLUSION

The panel requested that the parties provide authority and argument on the question whether or not the effect of sanctions as a deterrent to others should properly be considered in determining what sanctions, if any, should be imposed in the instant case.

Counsel's responses are attached as Exhibit 2.

After due deliberation and a desire to eliminate as much as possible the need for any further review by the panel, we conclude as follows:

Any additional sanctions other than the already self-imposed voluntary suspension of practice for 33 days and voluntary regular attendance at ARC and AA meetings for the past one and one-half years would not be appropriate in this case.

However, BR 6.1(a) limits the panel in the disposition or sanctions which it may select. In view of this limitation, the choice is between dismissal and public reprimand. Dismissal of charges would be contrary to the evidence. Therefore, the panel, to serve the deterrent purpose urged by the bar, imposes a sanction of public reprimand.

The panel is unanimous in this decision.

Dated this 21st day of November 1985.

Respectfully Submitted,

/s/ Duane Miner
DUANE G. MINER, PUBLIC MEMBER

/s/ E. R. Bashaw
E. R. BASHAW, CHAIRPERSON
DISCIPLINARY BOARD PANEL

/s/ Stephen H. Miller
STEPHEN H. MILLER, MEMBER

EXHIBIT 1

ESTATE OF MILDRED BARNES NELSON

In or about March 1981, Claudia R. Spielbusch retained the services of the accused relative to the probate of the estate of Mildred Barnes Nelson, deceased. Claudia R. Spielbusch, daughter of the deceased, was subsequently appointed personal representative of the Mildred Barnes Nelson estate.

The accused, in proceeding with the probate, was advised on November 10, 1981, that an inheritance tax waiver was necessary to get 49 shares of United Income stock transferred from the estate of Steven Barnes in Idaho to the estate of Mildred Barnes Nelson. Despite repeated inquiries from Alda Hull, the Idaho attorney handling the Steven Barnes estate, the accused did not file the inheritance tax return until September 1, 1982.

A decree of final distribution was entered October 29, 1982. The estate remained open pending the filing of an order closing the estate, which filing was the responsibility of the accused.

Letters from the Jackson County Circuit Court requesting said order closing the estate were sent to the accused on February 15, 1983, and April 18, 1983. A show cause order on the same topic was served on the personal representative on May 15, 1983. The personal representative requested, and was granted, a 60-day extension from the court to make the necessary filings. The personal representative contacted the accused, who again agreed to take responsibility for closing the estate.

In early June 1983, the accused submitted to the Jackson County Circuit Court a petition to amend the decree of final distribution. The petition was accompanied by a letter stating that the accused had requested a new Department of Revenue certificate of release and that he proposed to file an amended decree within 60 days. The Jackson County Circuit Court again contacted the accused on September 21, 1983, and October 24, 1983, regarding his failure to take further action as proposed in June 1983.

The accused failed to respond to the personal representative's inquiries about the estate between October 24, 1983, and November 8, 1983. On November 8, 1983, the personal representative initiated a complaint with the Oregon State Bar regarding the accused's neglect of this matter.

Attached as Exhibits 1, 2, 3, and 4 are notices sent by the court to the accused concerning the Mildred Barnes Nelson estate. The accused received said notices. The personal representative was personally served by the sheriff's office with the exhibits, causing her extreme anxiety.

Although requested by the court, the accused never filed an order of discharge to close the estate. In March of 1984, the estate was transferred to another attorney who subsequently obtained an order of discharge.

The accused's conduct was neglectful and without good cause.

If called as a witness, Claudia R. Spielbusch would testify as set forth in her letter, Exhibit 5 attached hereto.

The accused's conduct did not result in pecuniary loss to the estate.

The accused's conduct did result in anxiety to the personal representative.

ESTATE OF GEORGE KILIAN BRUSE

In or about December 1975, the accused was retained to undertake the estate of George Kilian Bruse, Jackson County Circuit Court Case No. P-194-75.

Between December 1975 and February 1984, the estate's personal representative was Warren Christian Brewer. The estate was valued at approximately $36,470.00 in total inventory and real property.

The final accounting was filed August 23, 1976, reciting that all income tax and inheritance taxes had been paid, but no releases were filed. On March 15, 1979, an order was signed granting additional time to obtain income tax releases. The extension passed with no further filings by the accused.

The estate was turned over to another attorney in March of 1984. The new attorney subsequently closed the estate.

The accused's conduct was neglectful and without good cause.

The accused's conduct did result in anxiety to the personal representative.

ESTATE OF SIMON J. FISKE

The accused undertook the probate of the estate of Simon J. Fiske, Jackson County Circuit Court Case No. P-149-76, in or about August 1976. The

personal representative for the estate was Clarence Albert Millhouse and the total inventory value of the estate was approximately $6,401.53.

On September 21, 1977, the Circuit Court for the State of Oregon for Jackson County notified the accused that the annual report had not been filed. The accused failed to respond to said notice, requiring a second notice to be sent October 11, 1977. Having failed to respond or file an annual report, a citation for removal and an order to show cause dated November 9, 1977, was signed by Circuit Court Judge Mitchell Karaman.

On January 31, 1976, a notice of the court requiring an annual report was sent to the accused. The annual report was not filed and on February 23, 1978, another notice was sent to the personal representative.

On April 26, 1979, the Circuit Court for the State of Oregon of Jackson County sent the accused a notice that time had elapsed within which to file the annual report and on May 22, 1979, a similar notice was sent by the court to the personal representative. On June 27, 1979, a citation for removal and order to show cause was signed by Circuit Court Judge Mitchell Karaman requiring the personal representative to appear and show cause why he should not be removed as personal representative for failure to file the annual report.

On September 7, 1979, a notice was sent by the Circuit Court for the State of Oregon for Jackson County to the accused stating that time had elapsed in which to file an annual report. On October 5, 1979, Circuit Court Judge Mitchell Karaman signed a citation for removal and order to show cause requiring the personal representative to appear and show cause why he should not be removed as personal representative for failure to file the annual report.

On March 5, 1981, another citation for removal and order to show cause was signed requiring the personal representative to appear and show cause why he should not be removed for failure to file an annual report.

An order of Jackson County Circuit Court approving the first annual accounting was signed on March 3, 1978. The order indicated that the estate was not then ready for closing because the claims of creditors exceeded the assets of the estate.

The accused failed in his duty to file the necessary fiduciary tax returns and obtain the required tax clearances in order to close the estate.

The accused turned the estate over to another attorney in March or April of 1984 who subsequently closed the estate in 1985.

The accused's conduct was neglectful and without good cause.

The accused's conduct did not result in pecuniary loss to the estate.

ESTATE OF EDNA M. JONES

The accused undertook the probate of the estate of Edna M. Jones, Jackson County Circuit Court Case No. P-31-78, in or about March 1978. The personal representative of the estate was Dorothy Virtue.

An order was signed admitting the will to probate in Jackson County Circuit Court on March 10, 1978. Since that time the estate has not been closed.

The personal representative is deceased.

The accused turned over the estate to another attorney in March or April of 1984. The estate has not been closed.

The accused's conduct did not result in pecuniary loss to the estate except the delay caused by the accused has made it difficult for the new attorney and personal representative to recreate the required records.

ESTATE OF DOROTHY DUNN

Dorothy Dunn died in California on October 19, 1982. All of Ms. Dunn's property was in California except for some real property in Jackson County, Oregon. The accused was retained to handle an ancillary probate in Oregon in order to distribute the Oregon real property.

The personal representative, Thomas Baker, paid $500 to the accused. Subsequently, however, the accused failed to file the appropriate inheritance and income tax returns.

The estate was turned over to another attorney and subsequently closed in April of 1985.

ESTATE OF BENJAMIN GILINSKY

Benjamin Gilinsky died in October of 1982. The accused undertook the probate of Benjamin Gilinsky's estate in January of 1983.

Notice was sent by the court to the accused that an inventory in the estate was due. A subsequent notice was sent, a copy of which is attached as Exhibit 6. An amended inventory was subsequently signed October 15, 1983.

The accused did not file the necessary fiduciary and personal income tax returns for the decedent and the estate during his employment as an attorney for the estate.

The accused turned the estate over to another attorney in March or April of 1984.

EXHIBIT 2

October 29, 1985

Mr. Stephen H. Miller
P.O. Box 5
Reedsport, OR 97467-0005

Re: Richard W. Courtright

Dear Mr. Miller:

This is in response to your telephone call of last week in which you invited comment on the question as to whether or not the effect of sanctions as a deterrent to others should properly be considered in fixing the sanction to be imposed in this case. Mr. Kaser called me yesterday and advised that he was or would be citing to the panel three cases as bearing on the question. We agreed that we should communicate our views on the question by correspondence and we both trust this will be satisfactory to the panel.

Mr. Kaser tells me that he is citing three cases as having some bearing upon the question; namely, In re Lewelling, 298 Or 164, In re Paauwe, 298 Or 215, and In re Boyer, 295 Or 624.

I can find nothing in Lewelling or Paauwe which bears on the question posed, i.e., whether the deterrent effect on other members of the profession should be considered in fixing the sanction to be imposed. Each of those cases does involve a proceeding in which the accused attorney had been the subject of previous discipline and it may be that the Bar is suggesting that where there is a record of previous discipline, more serious sanctions are in order. Of course, the record here is that the accused has engaged in the practice for in excess of 25 years without any record of any prior disciplinary proceeding.

In re Lewelling is of some interest in that the court there found the accused not guilty of a violation of DR 7-101 (A) (2)--intentionally failing to carry out a contract of employment--where the evidence was simply of neglect and did not show a deliberate and intentional failure.

In re Boyer was a proceeding arising out of a somewhat aggravated conflict of interest situation which led to a substantial loss on the part of one of the accused's clients. The court took the occasion to list the conflict of

interest disciplinary proceedings which had occurred since In re Brown in 1977 and said:

> Since the purpose of sanctions is to protect the public and the punishment of the lawyer only incidental thereto, we believe seven months' suspension to be adequate in all of the circumstances here presented. We note, however, that this particular type of unethical conduct appears to be on the rise. Deterrence thereof for the public good may be accomplished by more severe penalties for this kind of unprofessional conduct which may occur after the date this opinion is published.

It would appear that the deterrent effect of sanctions was not considered in imposing the discipline in the Boyer case but the court did take the opportunity to announce that future violations would be more severely punished. The court's opinion, and not the sanction imposed in the particular case, was relied upon as having the desired deterrent effect.

The Boyer case involved conduct which was both intentional and deliberate. One might reasonably hope that the severity of a sanction would be included in the deliberations accompanying such conduct and have some deterrent effect. However, where as here, the offending conduct is neither intentional nor deliberate, but simply neglectful, there is less reason to suppose that the threat of sanction might be expected to deter.

However one might view the question, it is suggested that any deterrent effect of a sanction in this case would be as well accomplished by a public reprimand as by any other form of sanction which could conceivably be appropriate under the circumstances presented here.

Yours very truly,
/s/ Ervin B. Hogan
ERVIN B. HOGAN

EBH/fc

cc: Stephen W. Kaser
Duane Miner
E.R. Bashaw

October 30, 1985

E. R. Bashaw
Trial Panel Chairperson
Oregon State Bar
Jackson County Courthouse
Room 207
Medford, OR 97501

Re: Richard W. Courtright

Dear Mr. Bashaw:

I received a phone message that the trial board wished case authority concerning whether the panel's sanction should take into account the deterrent effect of any penalty. I received the following citations from the Oregon State Bar for your consideration:

In re Boyer, 295 Or 624, at 630
In re Lewelling, 298 Or 164
In re Paauwe, 298 Or 215, at 220

The language in Boyer at page 630 appears to be the most clear language on your question. I do not believe Lewelling and Paauwe are as helpful, although Lewelling may give you some help on the "intentional breach of contract" issue.

I have discussed these cases with Mr. Hogan and it is our understanding that he will be given a reasonable time in which to respond to this letter.

Sincerely,

/s/ Stephen W. Kaser

STEPHEN W. KASER

SWK/mk

cc: Steve Miller
cc: Mr. Miner
cc: Mr. Hogan

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-132
	)	
CHESTER SCOTT,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Kenneth B. Stewart, Esq.

Counsel for Accused: Charles D. Burt, Esq.

Trial Panel: Ron P. MacDonald, Trial Panel Chairperson; Russell Tripp (public member); and George R. Duncan, Jr.

Disposition: Accused found not guilty of violation of DR 5-104(A). Dismissal.

Effective Date of Opinion: January 17, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 83-132
	)	
CHESTER SCOTT,	)	OPINION
	)	
Accused.	)	
	)	

This matter came for hearing on December 11, 1985, before a trial panel consisting of Russell Tripp, George R. Duncan, Jr., and Ron P. MacDonald.

Kenneth B. Stewart appeared on behalf of the Oregon State Bar. The accused, Chester Scott, appeared in person and by and through Charles B. Burt, his attorney.

The accused has been charged with conduct that violated DR 5-104(A) of the Code of Professional Responsibility. Specifically, the complaint filed against the accused alleges that the accused, while acting as the attorney for Leroy Cline, entered into a business transaction with Leroy Cline in which the accused and Cline had differing interests and in which Cline expected the accused to exercise his professional judgment for Cline's protection. The accused is alleged to have entered into the business transaction without first obtaining his client's consent after a full disclosure of the accused's involvement in the business transaction.

Upon conclusion of the hearing the trial panel took the matter under advisement and, having considered the evidence presented, makes the following findings of fact, conclusions, and disposition:

FINDINGS OF FACT

1. Prior to March 1980, the accused had performed a variety of legal work for Leroy Cline and Cline's parents and that prior to March 1980, Leroy Cline reasonably considered the accused as his lawyer, and his family's lawyer, based upon past representations and reasonable expectations regarding

the accused's willingness to assist Cline or members of his family on future matters regarding legal assistance.

2. On or about March 1980, the accused entered into a business transaction with Cline and others wherein Cline contributed a sizeable amount of money. The partnership was known as IO&L, Ltd. The accused was a general partner therein, while Cline was a limited partner.

3. Prior to entering into the business partnership with Cline, the accused was required to make a full disclosure and obtain the consent of Cline after the full disclosure.

CONCLUSIONS

The trial panel is of the unanimous opinion that the Oregon State Bar failed to prove by clear and convincing evidence that the accused either:

1. Failed to make a full disclosure to Cline; or

2. Failed to obtain the consent of Cline after the full disclosure.

DISPOSITION

Based upon the above findings, the trial panel does hereby dismiss the charge against the accused.

Dated this 27th day of December 1985.

TRIAL PANEL:

/s/ Russell Tripp
RUSSELL TRIPP

/s/ George R. Duncan, Jr.
GEORGE R. DUNCAN, JR.

/s/ Ron P. MacDonald
RON P. MacDONALD
TRIAL CHAIRPERSON

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-30; 84-31
	)	
ROBERT W. NOWACK,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Peter M. Linden, Esq.

Counsel for Accused: Dean Heiling, Esq.

Trial Panel: Lynn Myrick, Trial Panel Chairperson; Duane Miner (public member); and Lynne McNutt

Disposition: Accused found not guilty of violation of DR 5-105(A)-(C) and DR 9-102(A). Dismissal.

Effective Date of Opinion: January 20, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-30; 84-31
	)	
ROBERT W. NOWACK,	)	DECISION OF TRIAL PANEL
	)	
Accused.	)	
	)	

The trial of the two causes of complaint alleged against the accused was held in Roseburg on December 10, 1985.

As to the first cause of complaint, the bar abandoned its charge that the accused's conduct violated DR 9-101(D)(3) [DR 9-102(B)(3)] of the Code of Professional Responsibility. The accused admitted all of the jurisdictional allegations of the first cause of complaint, leaving the issue for decision to be whether the $1,000 payment by Mr. Steward to the accused constituted funds and property of the client paid to the lawyer, the identity of which is required to be preserved through use of the trust account by DR 9-102(A).

FINDINGS

1. The prosecution witness Steward was not worthy of belief.

2. The $1,000 fund paid by Steward to the accused was not the property of the client when paid to the accused.

CONCLUSIONS

The accused is not guilty of the charge set forth in the first cause of complaint.

As to the second cause of complaint, the allegations of the complaint were largely admitted by the accused except that the accused claimed that prior representation of Mrs. Wilson in an excess insurance problem did not relate to any confidence that was disclosed to the accused by Mrs. Wilson. The accused also denied that such prior representation of Mrs. Wilson would not likely impair the independent judgment of the accused in representing the husband, Tom Wilson, in a later dissolution with Diane Wilson. The accused also contended that the representation of Diane Wilson in the excess

insurance matter had ended and the accused did not owe a continuing professional responsibility to Diane Wilson in that matter.

The accused, at the request of Tom Wilson, beginning in August 1983, exchanged phone calls and a letter with the attorney representing the Wilson liability insurance carrier after Tom and Diane Wilson had been advised that they could seek independent counsel to protect themselves against a possible excess judgment in a pending suit for damages against both Tom Wilson and Diane Wilson. The accused, through August and September of 1983, put the liability insurer on notice that Tom and Diane Wilson demanded that if the opportunity arose to make such settlement that any settlement within policy limits was to be effected. At this time, the accused charged Tom Wilson $25 for that service and regarded the transaction as closed because no further action was to be taken on behalf of either Tom Wilson or Diane Wilson unless there was a judgment against either of them which was in excess of their liability insurance limits. Diane Wilson had no contact with the accused about the excess insurance case unless it was to say something about the facts of the automobile accident in which Diane was driving the family car and Tom was not present.

FINDINGS

1. The accused represented both Tom Wilson and Diane Wilson in the excess insurance matter during August and September of 1983.

2. Diane Wilson filed suit for dissolution of marriage against Tom Wilson in October 1983 and the accused acted as Tom Wilson's attorney in that dissolution suit until December of 1983 when he resigned.

3. There was an attorney-client relationship between the accused and Diane Wilson during August and September of 1983 concerning the excess insurance matter.

4. The representation by the accused of Tom Wilson in the dissolution proceeding instituted by Diane Wilson put the accused in a position adverse to Diane Wilson.

5. The dissolution proceeding was not significantly related to the excess insurance matter in which the accused represented Diane Wilson.

6. Representation of Tom Wilson in the dissolution proceeding would not likely inflict damage upon Diane Wilson in the excess insurance matter.

7. Representation of Diane Wilson in the excess insurance matter did not provide the accused with any confidential information, the use of which would likely damage Diane Wilson in the dissolution proceeding.

8. The independent professional judgment of the accused would not likely be adversely affected by the accused's representation of Diane Wilson in the excess insurance matter.

CONCLUSION

The accused is not guilty of the second cause of complaint.

Dated this 2nd day of January 1985.

TRIAL PANEL

/s/ Lynn M. Myrick
LYNN M. MYRICK, CHAIRPERSON

/s/ Duane Miner
DUANE MINER

/s/ Lynne McNutt
LYNNE McNUTT

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-42
	)	
ERIC R. JENSON,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Barry Mount, Esq.

Counsel for Accused: Eric R. Jenson, Esq., pro se

Disciplinary Board: David C. Landis, State Chairperson, and David A. Kekel, Region 5 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 1-102(A)(4), (5), and (6); DR 7-102(A)(3), (4), (5), (6), (7), and (8); ORS 9.460(2) and (4); and ORS 9.527(5). Reprimand.

Effective Date of Opinion: March 10, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-42
	)	
ERIC R. JENSON,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to the Oregon State Bar Rule of Procedure 3.6(e).

A complaint was filed against the accused; the accused and the bar subsequently executed a stipulation for discipline. The stipulation recites that the accused wishes to stipulate to the facts as set forth in the complaint. The relevant facts alleged in the complaint are as follows:

> On or about April 5, 1984, the accused undertook the representation of Debra Burton, who was charged in Multnomah County District Court with the crime of failure to perform the duties of a driver at the scene of an accident.
>
> Trial of the aforesaid case, State of Oregon v. Debra Burton, Case No. M440451, was set for July 11, 1984, before the Honorable Kimberly F. Frankel, District Court Judge.
>
> On the day of trial, the accused escorted a female into the courtroom of Judge Frankel, and presented to the court a jury waiver which was in fact signed by Debra Burton. The female accompanying the accused was not the defendant, Debra Burton, but was in fact another person, named Laverne Jackson, which the accused well knew. The accused knew that Debra Burton was waiting in the courthouse outside the courtroom.
>
> Pursuant to ORS 136.001, the court asked the lady before the bar with the accused if the signature on the waiver form was hers, to which the accused replied, "Yes, your Honor," a statement which was false and known to the accused to be false. The court thereupon informed the accused that it was the "defendant" who must respond, and Ms. Jackson stated to the court that it was her signature, a statement which was false and known to the accused to be false.
>
> Judge Frankel relied upon the false representation alleged in paragraph VI, supra, consented to the jury trial waiver, and the state proceeded to trial, presenting three witnesses, including the victim. The victim of the hit and run misidentified Ms. Jackson as

> the driver of the vehicle. At the conclusion of the state's case, and not before, the accused disclosed the deception described in paragraphs V and VI, supra, to the court and prosecutor. [Formal complaint, paragraphs III, IV, V, VI, and VII.]

The complaint alleges that the accused is guilty of violating DR 1-102(A)(4), (5), and (6); DR 7-102(A)(3), (4), (5), (6), (7), and (8); ORS 9.460(2) and (4); and ORS 9.527(5).

In the stipulation the accused stipulates that his conduct violated the rules and statutes set forth in the bar's complaint.

In admitting his violations the accused explains the circumstances as follows:

> The accused sincerely believed that his client was not the party who perpetrated the crime for which she was charged and attempted to protect his client from being convicted for something she did not do. He now recognizes that he made a very serious error in the procedure he used to raise what he believed was a genuine issue. His motive in attempting to raise the issue was not to deceive the court. The accused sincerely regrets his conduct and has apologized to both the court and to the prosecutor. [Stipulation for discipline, paragraph IV.]

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charges brought against him.

The accused has no prior record of reprimand, suspension, or disbarment.

The accused has agreed to accept a public reprimand. This procedure is provided for in Rule of Procedure 3.6. The stipulation for discipline has been reviewed by general counsel and approved by the Oregon State Bar Professional Responsibility Board.

The undersigned have reviewed the stipulation for discipline and hereby approve it:

By: /s/ David C. Landis
DAVID C. LANDIS
STATE CHAIRPERSON

Dated: 3/10/86

By: /s/ David A. Kekel
DAVID A. KEKEL
REGION 5 CHAIRPERSON

Dated: 3/6/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-42
	)	
ERIC R. JENSON,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Eric R. Jenson, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Eric R. Jenson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

III.

A formal complaint (No. 85-42) was filed by the Oregon State Bar on October 9, 1985, against the accused and service was accepted by the accused on October 30, 1985. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. In lieu of filing an answer to the complaint the accused wishes to stipulate to his violation of the rules and statutes set forth in the bar's formal complaint and to accept a public reprimand for these violations.

IV.

The accused explains the circumstances surrounding his violation of the foregoing standards of professional conduct as follows:

The accused sincerely believed that his client was not the party who perpetrated the crime for which she was charged and attempted to protect his client from being convicted for something she did not do. He now recognizes that he made a very serious error in the procedure he used to raise what he believed was a genuine issue. His motive in attempting to raise the issue was not to deceive the court. The accused sincerely regrets his conduct and has apologized both to the court and to the prosecutor.

V.

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charges brought against him.

VI.

The accused has no prior record of admonitions, reprimands, suspensions, or disbarment.

VII.

This stipulation has been fully and voluntarily made by the undersigned accused, Eric R. Jenson, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the accused must answer the bar's formal complaint in this case and the matter will be referred to hearing.

VIII.

Whereas, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 16th day of January 1986.

/s/ Eric R. Jenson
ERIC R. JENSON

I, Eric R. Jenson, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the

statements contained in the stipulation are true and correct as I verily believe.

/s/ Eric R. Jenson
ERIC R. JENSON

Subscribed and sworn to before me this 16th day of January 1986.

/s/ Maggie Tough
Notary Public for Oregon
My commission expires: 12/18/89

Reviewed by general counsel on the 17th day of January 1986 and approved by the state professional responsibility board on the 15th day of February 1986.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-42
	)	
ERIC R. JENSON,	)	FORMAL COMPLAINT
	)	
Accused.	)	Exhibit 1 (Stipulation for Discipline)
	)	

For its first and only cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Eric R. Jenson, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Multnomah County, State of Oregon.

III.

On or about April 5, 1984, the accused undertook the representation of Debra Burton, who was charged in Multnomah County District Court with the crime of failure to perform the duties of a driver at the scene of an accident.

IV.

Trial of the aforesaid case, State of Oregon v. Debra Burton, Case No. M-440451, was set for July 11, 1984, before the Honorable Kimberly F. Frankel, District Court Judge.

V.

On the day of trial, the accused escorted a female into the courtroom of Judge Frankel, and presented to the court a jury waiver which was in fact signed by Debra Burton. The female accompanying the accused was not the defendant, Debra Burton, but was in fact another person, named Laverne Jackson, which the accused well knew. The accused knew that Debra Burton was waiting in the courthouse outside the courtroom.

VI.

Pursuant to ORS 136.001, the court asked the lady before the bar with the accused if the signature on the waiver form was hers, to which the accused replied, "Yes, your Honor," a statement which was false and known to the accused to be false. The Court thereupon informed the accused that it was the "defendant" who must respond, and Ms. Jackson stated to the court that it was her signature, a statement which was false and known to the accused to be false.

VII.

Judge Frankel relied upon the false representations alleged in paragraph VI, supra, consented to the jury trial waiver, and the state proceeded to trial, presenting three witnesses, including the victim. The victim of the hit and run misidentified Ms. Jackson as the driver of the vehicle. At the conclusion of the state's case, and not before, the accused disclosed the deception described in paragraphs V and VI, supra, to the court and prosecutor.

VIII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 1-102(A)(4), (5), and (6) of the Code of Professional Responsibility;

(2) DR 7-102(A)(3), (4), (5), (6), (7), and (8) of the Code of Professional Responsibility; and

(3) ORS 9.460(2) and (4), and ORS 9.527(5).

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and

pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 9th day of October, 1985.

OREGON STATE BAR

/s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-129
	)	
HAROLD F. WILLIAMS,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Leslie M. Swanson, Esq.

Counsel for Accused: Harold F. Williams, Esq., pro se

Trial Panel: Jill E. Golden, Trial Panel Chairperson; Janet B. Amundson (public member); and Donald A. Loomis

Disposition: Accused found guilty of violation of DR 1-102(A)(4) in regard to some charges but not others; guilty of violation of DR 1-102(A)(5), DR 6-101(A)(3), and DR 1-103(C). Sixty-day suspension followed by one year probation.

Effective Date of Opinion: April 19, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-129
	)	
HAROLD F. WILLIAMS,	)	OPINION AND DISPOSITION
	)	
Accused.	)	
	)	

A hearing was called before a trial panel of the disciplinary board pursuant to ORS 9.534 and ORS 9.536 on February 21, 1986. The trial panel members were Janet B. Amundson, Donald A. Loomis, and Jill E. Golden. The Oregon State Bar appeared by and through its attorney, Leslie M. Swanson, and the accused appeared in person representing himself. Witnesses testified at the hearing and Exhibits 1 through 4 were received.

FINDINGS OF FACT

1. At all times relevant hereto, the accused, Harold F. Williams, was an attorney at law, licensed to practice in the State of Oregon, having his office and place of business in Lane County.

2. In approximately July 1982, the accused was retained by Richard Thomas Merwin to represent him in a dissolution of marriage proceeding. Mr. Merwin's wife was represented by attorney Donald P. Thomsen.

3. On October 5, 1982, Donald P. Thomsen mailed a written notice of deposition of Richard Merwin to the accused, which deposition was scheduled for November 4, 1982. Neither the accused nor his client appeared for the deposition.

4. On November 4, 1982, attorney Donald Thomsen telephoned the accused concerning his failure to appear. The accused did not at that time know that there had been a deposition scheduled, and represented the same to attorney Donald Thomsen. The evidence does not support a finding that the accused intentionally misrepresented to attorney Thomsen that he had not received the notice of deposition, but rather that he was simply unaware of the scheduling of the deposition. The accused stated that he would be

meeting with his client, and would get back to Mr. Thomsen to reschedule the deposition. The accused never did get back to Mr. Thomsen.

5. On November 18, 1982, Donald Thomsen filed with the court a motion to strike the petition of Richard Thomas Merwin for failing to appear at the depositions which had been set for November 4, 1982.

6. On November 24, 1982, the accused filed a memorandum in opposition to the motion to strike supported by his own affidavit. In this affidavit, the accused made the following false representation: "That due to an office mix-up, I did not receive from my office the forwarded motion of deposition until after the scheduled date for the deposition." At the hearing, the accused testified that he did not recall when he did in fact receive the notice of deposition, that it might have been a couple of days after November 4, 1982, or before. He further testified that he made no effort to determine the exact facts as best he could recall them before he executed the affidavit.

7. The affidavit blames an "office mix-up" as the reason for the accused having failed to receive the notice of deposition. The accused was responsible for picking up his own mail at his former law office, for sorting it, filing it, and responding to it. There was no "office mix-up," and thus the affidavit was misleading.

8. On November 29, 1982, an order and judgment was entered striking Richard Thomas Merwin's pleadings and entering judgment against him for the sum of $175.00 for the respondent's expenses and attorney fees. This order further provided that if within 30 days thereafter Mr. Merwin satisfied the judgment and submitted to the court satisfactory proof thereof, the court would upon his motion set aside the portion of the order striking his pleading.

9. The judgment for fees and costs was not paid, and Mr. Merwin's pleadings were not reinstated.

10. On January 4, 1983, Mr. Thomsen wrote to the accused and advised that a default decree would be presented to the court on January 17, 1983. The accused took no steps to prevent this decree from being entered.

11. On January 26, 1983, the court entered a decree of dissolution of marriage awarding the parties' real property to Mr. Merwin's wife, and

imposing upon Mr. Merwin the requirement to pay all of the parties' debts and obligations, and awarding judgment against him in the sum of $300.00 as a contribution towards Mrs. Merwin's attorney fees and costs.

12. Mr. Merwin first learned that the decree of dissolution had been entered by reading about it in the newspaper. In April 1983, Mr. Merwin, through another attorney, sought to set aside the decree of dissolution of marriage, together with the November 29, 1982, order and judgment. This motion was unsuccessful.

13. Richard Thomas Merwin was clearly damaged by the actions of the accused.

14. The accused failed to respond to inquiries from and comply with the reasonable requests of general counsel and the LPRC in its investigation of this disciplinary matter.

CONCLUSIONS

I.

The bar has failed to prove by clear and convincing evidence that the accused violated DR 1-102(A)(4) with respect to the allegation that the accused made false representations to Donald Thomsen in their telephone conversation of November 4, 1982. DR 1-102(A)(4) provides that a "lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

At the hearing, the accused testified that he did not know at the time of the phone call that the deposition was set for November 4, 1982. He admitted that the notice might then have been in his office, because he had picked up a bundle of mail and had not dealt with it yet, or he might have read the notice after the phone call. Donald Thomsen testified that when he called the accused that day, the accused did seem surprised, and that he didn't seem to know the depositions were scheduled, for whatever reason. Mr. Thomsen could not specifically recall whether the accused had definitively stated that he had not received the notice of deposition, but rather that the accused had not seen it due to the fact that he had moved his office, or something of that nature.

The accused is therefore found not guilty of violating DR 1-102(A)(4) with respect to this conversation.

II.

When the accused signed and filed with the court his affidavit in support of the memorandum in opposition to the motion to strike, he engaged in conduct involving dishonesty and misrepresentation, which conduct was clearly prejudicial to the administration of justice in violation of DR 1-102(A)(4) and (5).

The accused testified that when he was retained by Mr. Merwin, he was sharing office space with Eugene attorney Eric Haws. He was not an associate of Mr. Haws, and he handled his own cases. Thereafter, in September 1982, the accused went to work for a company called Biosolar, taking Mr. Merwin's case and file with him. His arrangement with his former law office was that he alone was responsible for going there to pick up his mail, and he did so at infrequent intervals. There was no agreement that his mail would be forwarded to Biosolar, or opened and reviewed at his former law office. At some point, the accused picked up the notice of deposition that had been sent to his former office by Mr. Thomsen. The accused either picked it up before the deposition and had not opened and read it, or, possibly, picked it up shortly after November 4, 1982. The evidence is clear that there was no "office mix-up" as represented to the court in the accused's affidavit.

It is evident from the testimony of both the accused and Mr. Thomsen that the accused did not actually know about the deposition before Mr. Thomsen called him on November 4, 1982. The accused told Mr. Thomsen that he would speak with his client and get back to him regarding rescheduling of the deposition. The accused failed to do this, and on November 18, 1982, Mr. Thomsen filed the motion to strike Mr. Merwin's pleadings.

In his affidavit, the accused stated: "I did not receive from my office the forwarded motion of deposition until after the scheduled date for the deposition." The accused testified at the hearing that he had specifically arranged for his mail not to be forwarded, but rather, that he would come by and pick up the same. This statement was therefore misleading and false.

The accused further clearly represented in said affidavit that he had not received the notice until after the scheduled date for the deposition. At the hearing, the accused testified that he might have in fact received the notice prior to the date of deposition, but failed to read the same in time. When

asked by the panel whether or not he had made any effort to determine the exact facts as best he could with respect to this issue, and in preparation of the affidavit, the accused replied that he had not. Nonetheless, he made the bold statement to the court that he had not in fact received it until after the date of deposition, in the hopes that the court would rely upon this representation in denying Mr. Thomsen's motion to strike. This statement is therefore also misleading and false, and prejudicial to the administration of justice.

Accordingly, with respect to the bar's charge concerning the affidavit executed by the accused on or about November 24, 1982, the accused is found guilty of violating DR 1-102(A)(4) and (5).

III.

The accused has admitted violating DR 6-101(A)(3) by neglecting a legal matter entrusted to him. The evidence in support of this charge is overwhelming. There were numerous opportunities throughout the dissolution proceedings for the accused to have prevented the initial problem or to have rectified it thereafter, and saved his client from harm. The panel believes it is important to note these opportunities in this opinion:

1. First, the accused should certainly have made better arrangements with his former law office concerning his ongoing cases when he first moved his office over to Biosolar in September 1982. If he had decided to take his ongoing cases with him, then he should have written to opposing counsel (and his own clients) and advised them all of his new address. He should and easily could have made arrangements for all mail coming into his former office to be forwarded to his new address upon receipt. Upon receipt at his new address, the accused should have either made arrangements for someone else to open and review the mail or done so himself on a timely basis. The accused offered no valid reason for his failure to take such simple steps for the protection of his clients and his ongoing cases.

2. The accused could easily have rescheduled the deposition when Mr. Thomsen called on November 4, 1982, or shortly thereafter. If he was having a problem with making such arrangements, he should have so notified opposing counsel, or advised his client to seek other counsel. It is evident that Mr. Thomsen was willing to reschedule the deposition as a convenience to the accused, and all harm to his client from his failure to have read the

notice beforehand would have been prevented thereby. Again, the accused offered no valid reason or justification for his failure to simply reschedule the deposition.

3. Even after the motion to strike was filed, and upon receipt of the same from Mr. Thomsen, the accused should have attempted to call counsel and reschedule the deposition, and possibly avoid court proceedings concerning this matter.

4. In the order entered November 29, 1982, the court clearly gave the accused the opportunity to rectify the problem, by paying the $175.00 judgment and moving the court to reinstitute Mr. Merwin's pleadings. The accused should have arranged for his client to timely pay such sum, or he should have paid it to the court himself, and filed a motion to reinstate the pleadings. Again, for no valid reason, he chose to ignore this court order. It is inconceivable to the panel how he could have not seen this very clear opportunity to finally rectify the problem, or to anticipate the consequences of his failure to do so.

5. Mr. Thomsen testified (and Exhibit 3 reveals) that he wrote to the accused on January 4, 1983, advising that a default decree would be presented to the court on January 17, 1983. In fact, the decree was not entered until January 26, 1983. The accused again took no steps to prevent this occurrence when he received Mr. Thomsen's January 4, 1983, letter. In all likelihood, he could then have paid the judgment and sought reinstatement of his client's pleadings, and prevented the default decree, even though it would have been a few days beyond the 30-day period allowed by the court. The accused made no effort to appear at ex parte on either January 17, 1983, or January 26, 1983, to prevent the entry of the decree.

6. At any point during the proceedings, it would have been a simple enough matter for the accused to recognize his inability for whatever reason to properly handle this matter, and to refer his client to other counsel.

As a consequence of these actions, Mr. Merwin was clearly damaged. The long period of inattention to this matter evidences a blatant disregard by the accused to the duties and responsibilities imposed upon him as a lawyer by the disciplinary rules in this state, and erodes the community's respect for lawyers in general. We find the accused guilty of violating DR 6-101(A)(3).

IV.

DR 1-103(C) provides that a lawyer who is the subject of a disciplinary investigation "shall respond fully and truthfully to inquiries from and comply with reasonable requests of the general counsel, [and] the local professional responsibility committees." On October 26, 1984, the general counsel's office of the Oregon State Bar wrote to the accused enclosing a copy of Mr. Merwin's letter of complaint, and requesting a response from the accused by November 16, 1984. At the hearing of this matter, the accused testified that he got the letter from general counsel and failed to respond to the same. General counsel's letter of October 26, 1984, specifically advised the accused that failure to respond might subject him to discipline for a violation of DR 1-103(C). The accused offered no defense to this charge other than that he thought the matter would be referred down to Lane County if he failed to respond.

Again on December 4, 1984, assistant general counsel wrote to the accused and advised that the matter was being referred to the local professional responsibility committee. This letter further advised the accused that DR 1-103(C) imposed an affirmative ethical obligation on members of the bar to cooperate with disciplinary investigations, and urged him to cooperate with the LPRC relative to its investigation.

The LPRC referred the matter for investigation to attorney Eric Larsen sometime in late 1984 or early 1985. Mr. Larsen testified that beginning in February 1985, he called the accused at Biosolar to arrange for an interview, and left messages asking for a return call. Initially, Mr. Larsen did not leave a message with respect to the reason for his call. On March 19, 1985, Mr. Larsen left another message for the accused at Biosolar that he was working in connection with the Oregon State Bar's investigation, and he needed to schedule an interview. The accused failed to return this call also.

On March 22, 1985, Mr. Larsen called and left another message for the accused, which call was also unreturned. On March 23, 1985 (a Saturday), Mr. Larsen was able to reach the accused at his home. The accused told Mr. Larsen that he would call him back on Monday, March 25, 1985. The accused finally did return his call on Monday, March 25, 1985, and a meeting was scheduled between the parties on March 26, 1985.

Although the accused finally did cooperate with the LPRC by submitting to an interview with Mr. Larsen on that date, it appears that had Mr. Larsen not been lucky enough to reach the accused at home on the previous weekend, the interview might well have not taken place. The accused had been warned in general counsel's letters of October 26, 1984, and December 4, 1984, that failure to respond and comply with reasonable requests would be grounds for disciplinary action. The accused offered no valid reason for his failure to respond to general counsel, or to return the calls of Mr. Larsen. The accused is therefore found guilty of violating DR 1-103(C).

DISPOSITION

It is the decision of the panel that the accused be suspended from the practice of law for a period of 60 days, followed by a period of probation for one year thereafter. As a condition of his probation, the accused should be required to obtain professional office practice and management counseling.

In making its decision, the panel appreciated the fact that the accused cooperated at the hearing, and freely admitted his misconduct in connection with the violation of DR 6-101(A)(3). The panel was concerned, however, that the accused was more flip about the other charges, and apparently felt that the filing of a false affidavit and failure to cooperate with the bar were essentially "no big deal." Attorneys admitted to practice in this state are bound to abide by all of the disciplinary rules, which were adopted to ensure the public of the integrity of the bar. Dishonesty and conduct prejudicial to the administration of justice as is evident here deserve a serious sanction by the board.

At the hearing, the accused was given an opportunity to comment on the appropriateness of the sanction, and he testified that he felt some period of suspension was warranted. At the conclusion of the hearing, the accused was given a further period of 10 days within which to file a memorandum with respect to the issue of sanctions. Instead, the accused submitted a letter advising that he had nothing further to add.

Although it is apparent that the accused's violations of the disciplinary rules were not motivated by any thoughts of personal gain, his client was clearly harmed thereby. A review of recent cases involving similar conduct and violations supports the sanction imposed herein. See, e.g., In re Loew, 292 Or 806, 642 P2d 1171 (1982); In re Paauwe, 298 Or 215, 691 P2d 97 (1984); In

re Walker, 293 Or 297, 647 P2d 468 (1982); In re Morrow, 297 Or 808, 688 P2d 820 (1984); In re Collier, 295 Or 320, 667 P2d 481 (1983); and In re Berg, 276 Or 383, 554 P2d 509 (1976).

Dated this 20th day of March 1986.

/s/ Jill E. Golden
JILL E. GOLDEN
TRIAL PANEL CHAIRPERSON

/s/ Donald A. Loomis
DONALD A. LOOMIS

/s/ Janet B. Amundson
JANET B. AMUNDSON

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-41
	)	
MICKIE E. JARVILL,	)	
	)	
Accused.	)	
	)	

Bar Counsel: James H. Anderson, Esq.

Counsel for Accused: Daniel H. Rosenhouse, Esq.

Disciplinary Board: David C. Landis, State Chairperson, and Nancy S. Tauman, Region 6 Chairperson

Disposition: Disciplinary board approval of stipulation for discipline for violation of DR 5-105(A) and (B). Reprimand.

Effective Date of Opinion: May 19, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-41
	)	
MICKIE E. JARVILL,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

A complaint was filed against the accused; subsequently, the accused and the bar executed a stipulation for discipline. The stipulation recites that the facts contained in the complaint are accurate. The relevant facts alleged in the complaint are as follows:

> Prior to John Woodard's death in March 1980 the accused acted as his conservator. Upon Woodard's death, the accused undertook to represent Madeline Summers, one of Woodard's daughters who was appointed the personal representative of Woodard's estate. The accused filed a petition to probate the Woodard estate in Lane County Circuit Court in May 1980 and remained the personal representative's attorney until July, 1982.
>
> In or about May 1980 the accused arranged for a client, Medical Services, Inc. (MSI), through William Leonard, president and sole shareholder of MSI, to borrow $50,000 at 20% interest from the Woodard estate, through Madeline Summers, another client of the accused. The accused assisted Madeline Summers in preparing the paperwork necessary to close the loan.
>
> The accused represented multiple clients whose interests in the loan transaction described in paragraph IV [herein] were or were likely to be adverse to one another. The professional judgment of the accused on behalf of Madeline Summers in the loan transaction was or was likely to be adversely affected by her ongoing prepresentation of MSI on unrelated matters.
>
> The accused did not obtain the consent of each of her clients, after full disclosure, to her representation of Madeline Summers in the loan transaction described in paragraph IV [herein] while she continued to represent MSI on unrelated matters. Even with full disclosure and client consent, it was not obvious the accused could adequately represent the interests of Madeline Summers in the loan transaction in question in light of her ongoing representation of MSI. [Formal complaint, paragraphs III, IV, V, and VI.]

The complaint alleges the accused is guilty of violating DR 5-105(A) and (B). In the stipulation, the accused stipulates that her involvement in the loan transaction question violated DR 5-105(A) and (B).

In admitting her violation, the accused states by way of mitigation that she did advise Medical Services, Inc., to seek independent counsel in the loan transaction, and she advised that client that she could not represent it in that transaction. MSI did not retain other counsel to represent it in the transaction.

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused has agreed to accept a public reprimand. This procedure is provided for in Rule of Procedure 3.6. The stipulation has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it:

By: /s/ David C. Landis
DAVID C. LANDIS
STATE CHAIRPERSON

Dated: 5/19/86

By: /s/ Nancy S. Tauman
NANCY S. TAUMAN
REGION 6 CHAIRPERSON

Dated: 5/14/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-41
	)	
MICKIE E. JARVILL,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Mickie E. Jarvill, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Mickie E. Jarvill, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business, during the times associated with this case, in Lane County, Oregon.

III.

The state professional responsibility board, at a meeting held on August 3, 1985, approved for filing against the accused a formal complaint alleging her violation of DR 5-105(A) and (B). The accused wishes to stipulate to the violation of these rules and to accept the imposition of a public reprimand for their violation.

IV.

Attached to this stipulation as Exhibit A, and incorporated by reference herein, is the bar's formal complaint against the accused in Case No. 85-41. The accused stipulates that the facts contained therein are accurate and that

her involvement in the loan transaction in question violated DR 5-105(A) and (B).

V.

In mitigation, the accused states that she did advise Medical Services, Inc. (MSI), to seek independent counsel in the loan transaction and she advised that client that she could not represent it in the transaction. MSI did not retain other counsel to represent it in the transaction.

VI.

The accused has no prior record of reprimands, suspensions, or disbarment.

VII.

The accused agrees to accept a public reprimand for violation of DR 5-105(A) and (B) under the facts set forth in the bar's formal complaint.

VIII.

This stipulation has been freely and voluntarily made by the accused, Mickie E. Jarvill, as evidenced by her verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the bar shall proceed to file its formal complaint against the accused in this case and to conduct a hearing in this matter pursuant to the rules of procedure.

IX.

Whereas, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 7th day of January 1986.

/s/ Mickie E. Jarvill
MICKIE E. JARVILL

I, Mickie E. Jarvill, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing

stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Mickie E. Jarvill
MICKIE E. JARVILL

Subscribed and sworn to before me this 7th day of January 1986.

/s/ Geri Elefson
Notary Public for Washington
My commission expires: 12/22/89

Reviewed by general counsel on the 7th day of December, 1985 and approved by the state professional responsibility board on the 7th day of December, 1985.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-41
	)	
MICKIE E. JARVILL,	)	FORMAL COMPLAINT
	)	
Accused.	)	Exhibit A (Stipulation for Discipline)

For its first and only cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Mickie E. Jarvill, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar. During the events described in this complaint the accused had her office and place of business in the Lane County, Oregon.

III.

Prior to John Woodard's death in March 1980, the accused acted as his conservator. Upon Woodard's death, the accused undertook to represent Madeline Summers, one of Woodard's daughters, who was appointed the personal representative of Woodard's estate. The accused filed a petition to probate the Woodard estate in Lane County Circuit Court in May 1980 and remained the personal representative's attorney until July 1982.

IV.

In or about May 1980 the accused arranged for a client, Medical Services, Inc. (MSI), through William Leonard, president and sole shareholder of MSI, to borrow $50,000 at 20% interest from the Woodard estate, through

Madeline Summers, another client of the accused. The accused assisted Madeline Summers in preparing the paperwork necessary to close the loan.

V.

The accused represented multiple clients whose interests in the loan transaction described in paragraph IV were or were likely to be adverse to one another. The professional judgment of the accused on behalf of Madeline Summers in the loan transaction was or was likely to be adversely affected by her ongoing representation of MSI on unrelated matters.

VI.

The accused did not obtain the consent of each of her clients, after full disclosure, to her representation of Madeline Summers in the loan transaction described in paragraph IV while she continued to represent MSI on unrelated matters. Even with full disclosure and client consent, it was not obvious the accused could adequately represent the interests of Madeline Summers in the loan transaction in question in light of her on-going representation of MSI.

VII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

DR 5-105(A) and (B) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this _____ day of _____ 1985.

OREGON STATE BAR

By: CELENE GREENE
EXECUTIVE DIRECTOR

[Original not executed.]

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-139
	)	
RICHARD A. CARLSON,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Barry Mount, Esq.

Counsel for Accused: Ira Gottlieb, Esq.

Disciplinary Board: David C. Landis, State Chairperson, and David A. Kekel, Region 5 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 1-102(A)(4). Thirty-day suspension.

Effective Date of Opinion: June 3, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-139
	)	
RICHARD A. CARLSON,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

A complaint was filed against the accused. The accused and the bar subsequently executed a stipulation for discipline. The stipulation recites that the facts contained in the complaint are accurate, with the exception that the bar agrees to delete the word "intentionally" from paragraph IV of the complaint. The relevant facts alleged in the complaint are:

> In or about April 1985 the accused was employed by the Oregon State Department of Justice as an attorney in the Support Enforcement Division with responsibility for, among other things, filing requests for summary determination in support enforcement cases.
>
> On or about April 2, 1985, the accused intentionally misdated a request for summary determination in the matter of AFS v. Estate of Miriam L. Isaak, Washington County Circuit Court Case No. T/E 850028, as March 29, 1985. March 29, 1985, was the expiration date of the statute of limitations for filing the request in this matter. The accused knew the date was incorrect when he placed it on the request and had it filed with the Washington County Circuit Court on April 4, 1985. [Formal complaint, paragraphs V and VI.]

The complaint alleges that the accused is guilty of violating DR 1-102(A)(4). In the stipulation the accused stipulates that his conduct violated DR 1-102(A)(4).

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused agrees to accept a 30-day suspension from the practice of law for this violation. This procedure is provided for in Rule of Procedure

3.6. The stipulation has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it:

By: /s/ David C. Landis
DAVID C. LANDIS
STATE CHAIRPERSON

Dated: 6/3/86

By: /s/ David A. Kekel
DAVID A. KEKEL
REGION 5 CHAIRPERSON

Dated: 5/30/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-139
	)	
RICHARD A. CARLSON,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Richard A. Carlson, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Richard A. Carlson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

III.

A formal complaint (No. 85-139) was filed by the Oregon State Bar on March 24, 1986, against the accused and service was accepted by the accused on April 3, 1986. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. In lieu of filing an answer to the complaint the accused wishes to stipulate to his violation of DR 1-102(A)(4) as set forth in the bar's formal complaint except that the bar agrees to delete the word "intentionally" from paragraph IV of the complaint. The accused agrees to accept a 30-day suspension from the practice of law for this violation.

IV.

The accused explains the circumstances surrounding his violation of the foregoing standards of professional conduct as follows:

When the accused received a typed copy of the request for summary determination of claim from his secretarial staff on April 2, 1985, he filled in the number 29 in front of the typed date March. Even though he knew it was actually April 2, 1985, the accused did not correct his error because he felt it would only serve to highlight that the filing deadline had been missed. The accused did not dispute that the filing deadline had been missed when the issue was raised in Washington County Circuit Court on August 30, 1985, and defendant's motion to dismiss the request was granted.

V.

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charge that the accused's conduct violated DR 1-102(A)(4).

VI.

The accused has no prior record of reprimands, suspensions, or disbarment.

VII.

This stipulation has been freely and voluntarily made by the undersigned accused, Richard A. Carlson, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the accused must answer the bar's formal complaint in this case and the matter will be referred to hearing.

Wherefore, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 18th day of April 1986.

/s/ Richard A. Carlson
RICHARD A. CARLSON, OSB #76088

I, Richard A. Carlson, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Richard A. Carlson
RICHARD A. CARLSON, OSB #76088

Subscribed and sworn to before me this 18th day of April 1986.

/s/ Mark W. Williams
Notary Public for Oregon
My commission expires: 10/13/89

Reviewed by general counsel on the 30th day of April 1986 and approved by the state professional responsibility board on the 30th day of April 1986.

/s/ George A. Riemer 6/4/86
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 85-139
RICHARD A. CARLSON,	FORMAL COMPLAINT
Accused	Exhibit 1 (Stipulation for Discipline)

For its first cause and only cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS, Chapter 9, relating to the discipline of attorneys.

II.

The accused, Richard A. Carlson, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, residing in the County of Multnomah, State of Oregon.

III.

In or about April, 1985 the accused was employed by the Oregon State Department of Justice as an attorney in the Support Enforcement Division with responsibility for, among other things, filing requests for summary determination in support enforcement cases.

IV.

On or about April 2, 1985 the accused intentionally misdated a request for summary determination in the matter of AFS v. Estate of Miriam L. Isaak, Washington County Circuit Court Case No. T/E 850028, as March 29, 1985. March 29, 1985 was the expiration date of the statute of limitations for filing the request in this matter. The accused knew the date was incorrect when he placed it on the request and had it filed with the Washington County Circuit Court on April 2, 1985.

V.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 1-102(A)(4) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

EXECUTED this 24th day of March, 1986.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
Executive Director

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-40
	)	
GARY L. HILL,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Frank Alley III, Esq.

Counsel for Accused: Gary L. Hill, Esq., pro se

Trial Panel: E. R. Bashaw, Trial Panel Chairperson; Lee Wimberly (public member); and Stephen H. Miller

Disposition: Accused found not guilty of violation of DR 7-102 (A)(1), DR 7-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(7); not subject to discipline under ORS 9.460(3) and (4). Dismissal.

Effective Date of Opinion: June 20, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-139
	)	
GARY L. HILL,	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF
Accused.	)	DISCIPLINARY
	)	BOARD PANEL

The accused is an attorney admitted to the bar in 1974 and has practiced in Roseburg, Douglas County, Oregon, continuously since admission. This matter was heard at Roseburg, Oregon, on May 16, 1986.

The panel consisted of E. R. Bashaw, panel chairperson, Lee Wimberly, public member, and Stephen H. Miller, bar member.

Representing the bar was Frank Alley III of Medford, Oregon. The accused, Gary L. Hill of Roseburg, Oregon, represented himself. The bar presented its evidence by way of stipulation with the accused. The accused testified and presented the testimony of three witnesses. They were Randolph Slocum, an attorney from Roseburg; Phillip M. Suarez, an attorney with the Public Defenders Office in Roseburg, Oregon; and Ernest Beaber, also known as "Mac."

Twenty-two exhibits were received in evidence; all were admitted by stipulation of the parties. Those exhibits, together with the testimony received, form the basis of the following findings of fact and conclusions.

FINDINGS OF FACT

The Oregon State Bar alleged violations in one cause of complaint of four disciplinary rules and two revised statutes. It was the bar's contention that the accused violated those disciplinary rules and statutes when he prepared an affidavit for his client's signature which contained the following language: "That, during the last two (2) months [emphasis added], and particularly the last week, the Petitioner/Defendant has willfully and knowingly done whatever she could to utterly frustrate and prevent my visitation with the children," when it should have said "one month." Exhibit I, page 1, lines 18-22. The bar further charged the accused with initiating a

civil contempt proceeding for alleged failure to comply with "reasonable visitation" requirements of the decree, which was unduly harsh and unnecessary and was a misuse of the sanction.

The following exhibits are attached hereto and made a part hereof by this reference.

Exhibit A:	Decree of dissolution dated 1/31/72.
Exhibit B:	Order dated 3/7/75 reflecting custody, visitation, and support.
Exhibit C:	Affidavit dated 4/26/83 supporting motion to have decree modified to award custody to Mr. Beaber.
Exhibit D-1:	Petition under family abuse statute dated 4/25/83.
Exhibit D-2:	Restraining order based on motion under family abuse statute signed by court on 4/26/83.
Exhibit E-1:	Motion for change in restraining order to add grandfather to restraining order dated 4/27/83.
Exhibit E-2:	Order for change adding grandfather to restraining order dated 4/28/83.
Exhibit F:	Amended restraining order dated 4/28/83 restraining both father and grandfather.
Exhibit G:	Letter from Roseburg Public Schools dated 5/13/83.
Exhibit H:	Letter from Roseburg Public Schools dated 6/1/83.
Exhibit I:	Affidavit of father dated 5/9/83. (Contains language at issue.)
Exhibit J:	Motion to show cause why wife should not be held in contempt dated 5/10/83.
Exhibit K:	Order to show cause dated 5/10/83.
Exhibit L:	Counteraffidavit of wife dated 5/18/83.
Exhibit M:	Order dated 6/23/83 withdrawing contempt proceeding.
Exhibit N:	Stipulated order of amendment amending the present restraining order dated 6/27/83.
Exhibit O:	Indictment dated 6/22/83 charging Mr. Beaber.
Exhibit P:	Transcript of trial on indictment (perjury charge), dated 8/22/84 obtaining accused attorney Hill's testimony under oath.
Exhibit Q:	Complaint form filed by Mrs. Blanton, formerly known as Mrs. Beaber, existing [sic] of three pages.

Exhibit 1: Notice in dissolution case 36-232 regarding intent to exercise visitation.

Exhibit 2: Letter to Judge Woodrick, Gary Hill, and Verden Hockett.

Exhibit 3: Letter to Gary Hill from Verden Hockett dated 5/20/83.

The accused represented one Ernest "Mac" Beaber beginning in April 1983 regarding Beaber's visitation rights pursuant to a decree of dissolution dated February 1, 1972, which had later been modified to provide Mr. Beaber with reasonable visitation with his child. The accused had not represented Mr. Beaber on this matter before. The accused prepared an affidavit for Mr. Beaber's signature (Exhibit C dated 4/26/83) supporting his motion to have the decree modified. Thereafter, the accused prepared an affidavit for Mr. Beaber's signature (Exhibit I, attached hereto) to use in show cause proceeding to attempt to find Mrs. Beaber in contempt. The accused agrees that Exhibit I should have indicated one month, rather than two months during which Mr. Beaber had been having extreme difficulties in obtaining visitation with his child. It is clear from the first affidavit that the accused should have known that it should have read one month and not two months. The accused presented the motion together with the affidavit to the court for an order to show cause on or about May 10, 1983, and the matter was set on or about June 6, 1983. On June 6, 1983, the accused withdrew the motion for contempt. The panel finds that the accused advised the attorney representing Mrs. Beaber of the "one month/two month" discrepancy in the telephone conversation he had with that attorney prior to any court hearing on said affidavit and the motion is supported. The same attorney and the accused subsequent to that telephone conversation entered into negotiations which eventually resolved the issue that was pending before the court by a stipulation of the parties.

The accused's client, Mr. Beaber, was indicted by the Douglas County grand jury on June 22, 1983, for perjury concerning the statement involving "two (2) months" instead of "one (1) month." Mr. Beaber was tried without jury and during the trial the accused testified that he prepared the affidavit and admitted that he had done so in a manner that was careless, but not intentional. Mr. Beaber was found not guilty by reason of the district attorney's motion to dismiss the indictment, which was granted by the trial court in the perjury case. The next month Mrs. Beaber filed her complaint with the Oregon State Bar.

The facts show that the marriage of the Beabers' lasted for three years, but that there has been continuing litigation concerning the marriage for over 13 years.

We find the witnesses for the accused, Mr. Randolph Slocum and Mr. Phil Suarez, to be believable witnesses as to the accused's past and present conduct in his practice of law and find their representations that he is an ethical lawyer and has no history of abusing the process of the court to be believable.

We further find that the accused did not in any way try to hide the inaccuracy of the affidavit from Mrs. Beaber's attorney, but rather freely discussed it with that attorney. We further find that the accused consistently cooperated with the general counsel's office and bar counsel on this matter.

We further find the accused in his demeanor in testifying before the panel was observed to be candid, forthright, and honest. We further find that the accused was following what he felt was the current and correct practice in Douglas County, Oregon, involving the use of contempt citations in visitation matters. His explanation was certainly reasonable, and the panel has no other basis to find otherwise and further finds that the accused's client, Mr. Beaber, read the affidavit and signed it before a notary public without asking that any changes be made. There were some allegations that Mr. Beaber was illiterate, but in his testimony before the panel, we found him to be able to communicate his ideas, and in fact were advised he was attending college in the area of diesel mechanics. The evidence is unclear as to whether the accused and Mr. Beaber discussed the affidavit prior to Mr. Beaber's signature.

We further find that the initiation of the civil contempt proceeding served the legitimate purpose of resolving an issue that required resolution and there is no reason to believe it was done for an improper purpose.

The panel finds that, although nothing was done to correct the affidavit on file with the court, the accused in his conversations with Mr. Beaber's counsel agreed that there were inaccuracies and in fact that Mrs. Beaber's affidavit had inaccuracies but thought that it had been resolved by the joint efforts of counsel in agreeing to a stipulated order and that there was no need to file amended affidavits at that time. There was therefore no attempt by the accused to mislead the court concerning any allegations set forth in the

the accused to mislead the court concerning any allegations set forth in the affidavit.

CONCLUSIONS

DR 1-102(A)(4) [DR 7-102(A)(4)] provides: "In his representation of a client, a lawyer shall not knowingly use perjured testimony or false evidence." The panel finds that the bar has failed to prove by clear and convincing evidence that the accused knowingly used perjured testimony or false evidence in his representation of Mr. Beaber.

DR 7-102(A)(1) provides: "In his representation of a client, a lawyer shall not file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely [emphasis added] to harass or maliciously injure another."

The bar has failed to convince the panel by clear and convincing evidence that the accused has violated this disciplinary rule.

DR 7-102(A)(5) provides: "In his representation of a client, a lawyer shall not knowingly make a false statement of law or fact."

The bar has failed to carry its proof by clear and convincing evidence to show that the accused knowingly made a false statement of law or fact.

DR 7-102(A)(7) provides: "In his representation of a client, a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."

The bar has failed to carry its proof by clear and convincing evidence that the accused violated this disciplinary rule.

ORS 9.460(3) provides: "An attorney shall counsel or maintain such actions, suits, or proceedings or defenses only as may appear to him [emphasis added] legal and just, except the defense of a person charged with a public offense."

The bar has failed to prove by clear and convincing evidence that the accused violated this statute.

ORS 9.460(4) provides: "An attorney shall employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or

with truth, and never seek to mislead the court or jury by any artifice or false statement of law or fact."

The bar has failed to carry by clear and convincing evidence its burden of proof to show that the accused has violated this statute.

The accused satisfactorily explained his conduct and the panel feels that the actions of the accused were more of a careless nature than anything knowingly done.

It is the panel's conclusion that the complaint be dismissed. This conclusion of the panel is unanimous.

Dated this 27th day of May, 1986.

/s/ E. R. Bashaw
E.R. BASHAW
TRIAL CHAIRPERSON

/s/ Lee Wimberly
LEE WIMBERLY
PUBLIC MEMBER

/s/ Stephen H. Miller
STEPHEN H. MILLER
BAR MEMBER

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-16
	)	
DENNIS V. MESSOLINE,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Steven Wilgers, Esq.

Counsel for Accused: Steven Plinski, Esq.

Disciplinary Board: David C. Landis, Chairperson, and A. E. Piazza, Region 3 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 7-105(A). Reprimand.

Effective Date of Opinion: July 7, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-16
	)	
DENNIS V. MESSOLINE,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

A complaint was filed against the accused; subsequently, the accused and the bar executed a stipulation for discipline. The stipulation recites that the facts contained in the complaint are accurate. The relevant facts alleged in the complaint are as follows:

> On or about May 21, 1985, the accused sent a letter to Charles Edward Spoon, Jr. on behalf of the accused's clients, Renee and Phillip Goetschalckx, regarding a delinquent child support obligation.
>
> In his May 21, 1985, letter the accused requested Charles Edward Spoon to consent to the adoption of Michael Aaron Spoon by Renee and Phillip Goetschalckx in return for the discharge of all past and future child support obligations owed by Charles Edward Spoon to Renee Goetschalckx.
>
> The accused indicated to Charles Edward Spoon in his May 21, 1985, letter that if, but only if, Charles Edward Spoon refused to consent to the adoption, Renee Goetschalckx would initiate criminal proceedings against Charles Edward Spoon. The accused included this information in his May 21, 1985, letter solely in order to persuade Charles Edward Spoon to accept the accused's proposed resolution of the civil dispute between Charles Edward Spoon and Renee Goetschalckx. [Formal complaint, paragraphs III, IV, and V.]

The complaint alleges that the accused is guilty of violating DR 7-105(A) of the Code of Professional Responsibility. In the stipulation the accused states that his conduct violated the rules and statutes set forth in the bar's complaint.

In admitting his violations the accused explains the circumstances as follows:

> The letter to his client's former husband was written with the mistaken belief that the letter was in compliance with DR 7-105(A) and properly for the purpose of procuring his client's lawfully owed child support payments. [Stipulation for Discipline, page 2, paragraph IV.]

The accused acknowledges that his explanation in no way justifies his conduct, that his letter by all objective standards violated the specific language of the rule, and that his subjective intent is not a defense to the charge brought against him.

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused has agreed to accept a public reprimand. This procedure is provided for by Rule of Procedure 3.6.

The stipulation has been reviewed by general counsel and approved by the Oregon State Bar Disciplinary Review Board.

The undersigned have reviewed the stipulation and hereby approve it.

By: /s/ David C. Landis
DAVID C. LANDIS
STATE CHAIR
OREGON STATE BAR
DISCIPLINARY REVIEW BOARD

Dated: 7/7/86

By: /s/ A. E. Piazza
A. E. PIAZZA
REGION 3 CHAIR
OREGON STATE BAR
DISCIPLINARY REVIEW BOARD

Dated: 6/30/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-16
	)	
DENNIS V. MESSOLINE,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Dennis V. Messoline, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Dennis V. Messoline, was admitted by the Oregon Supreme Court to practice law in Oregon on September 14, 1984, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Coos County, Oregon.

III.

A formal complaint (No. 86-16) was filed by the Oregon State Bar on March 12, 1986, against the accused and service was accepted by the accused on March 17, 1986. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. The accused wishes to stipulate to his violation of the rules and statutes set forth in the bar's formal complaint and to accept a public reprimand for this violation.

IV.

The accused explains the circumstances surrounding his violation of the foregoing standards of professional conduct as follows: The letter to his client's former husband was written with the mistaken belief that the letter

was in compliance with DR 7-105(A) and properly for the purpose of procuring his client's lawfully owed child support payments.

V.

The accused acknowledges that his explanation in no way justifies his conduct, that his letter by all objective standards violated the specific language of the rule, and that his subjective intent is not a defense to the charge brought against him.

VI.

The accused has no prior record of reprimands, suspensions, or disbarment.

VII.

This stipulation has been fully and voluntarily made by the undersigned accused, Dennis V. Messoline, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the accused must answer the bar's formal complaint in this case and the matter will be referred to hearing.

VIII.

Wherefore, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 5th day of May 1986.

/s/ Dennis V. Messoline
DENNIS V. MESSOLINE

I, Dennis V. Messoline, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing

stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Dennis V. Messoline
DENNIS V. MESSOLINE

Subscribed and sworn to before me this 5th day of May 1986.

/s/ Frances D. Ching
Notary Public for Oregon
My commission expires: 7/21/89

Reviewed by General Counsel on the 15th day of May, 1986 and approved by the State Professional Responsibility Board on the 15th day of May 1986.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 86-16
DENNIS V. MESSOLINE,	FORMAL COMPLAINT
Accused.	Exhibit 1 (Stipulation for Discipline)

For its first and only cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Dennis V. Messoline, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Coos County, Oregon.

III.

On or about May 21, 1985, the accused sent a letter to Charles Edward Spoon, Jr., on behalf of the accused's clients, Renee and Phillip Goetschalckx, regarding a delinquent child support obligation.

IV.

In his May 21, 1985, letter the accused requested Charles Edward Spoon to consent to the adoption of Michael Aaron Spoon by Renee and Phillip Goetschalckx in return for the discharge of all past and future child support obligations owed by Charles Edward Spoon to Renee Goetschalckx.

V.

The accused indicated to Charles Edward Spoon in his May 21, 1985, letter that if, but only if, Charles Edward Spoon refused to consent to the

adoption, Renee Goetschalckx would initiate criminal proceedings against Charles Edward Spoon. The accused included this information in his May 21, 1985, letter solely in order to persuade Charles Edward Spoon to accept the accused's proposed resolution of the civil dispute between Charles Edward Spoon and Renee Goetschalckx.

VI.

The aforesaid conduct of the accused violated the following standard of professional conduct established by law and by the Oregon State Bar:

DR 7-105(A) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 12th day of March 1986.

By: /s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-43
	)	
JAMES W. KASAMEYER,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Kathleen Payne-Pruitt, Esq.

Counsel for Accused: Thomas H. Tongue, Esq.

Disciplinary Board: David C. Landis, State Chairperson, and David A. Kekel, Region 5 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 5-105(A) and (B), DR 5-101(B), and DR 5-102(B). Reprimand.

Effective Date of Opinion: July 16, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-43
	)	
JAMES W. KASAMEYER,	)	OPINION
	)	
Accused.	)	
	)	

This matter was submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

A complaint was filed against the accused; the accused and the bar subsequently executed a stipulation for discipline. The stipulation recites that the facts contained in the complaint are accurate.

The relevant facts alleged in the first cause of complaint set forth in the bar's complaint are as follows:

> In or about June 1984, the accused undertook to represent Teamsters Local 223 and its representative, James Barnes, in defense of an action brought by Charles Murphy against Lane County Peace Officers Association, an affiliate of Teamsters Local 223 (hereinafter "Local 223").
>
> Murphy was represented by an associate of the accused's law firm, David Lipton, from October 1983 to December 1983, concerning a workers' compensation claim. The workers' compensation case involved the same incident which provided the basis for Murphy's later action against Lane County and Local 223.
>
> Local 223 was served in the suit in early June 1984. The accused contacted David C. Force, attorney for Murphy, to inform Force that the accused was representing Barnes and Local 223 and to request an extension of time in which to answer the complaint.
>
> On or about August 10, 1984, Force wrote the accused to state his objection to the accused's representation of clients against the interest of the accused's firm's former client and requested the accused to withdraw from further representation adverse to Murphy's interests. The accused refused to withdraw from the case. The accused continued to represent his client Local 223 against his former client Murphy without obtaining his former client's consent after full disclosure when it was obvious he could not adequately represent the interests of each of his clients.

In or about September 1984, the accused filed a motion to dismiss Barnes and Local 223 as defendants in Murphy's suit. [Formal complaint, paragraphs III, IV, V, VI, and VII.]

The first cause of complaint alleges the accused is guilty of violating DR 5-105(A) and (B). In the stipulation, the accused stipulates that his conduct violated DR 5-105(A) and (B).

The relevant facts alleged in the second cause of complaint in the bar's complaint are:

[Paragraphs I-VII of the first cause of complaint are incorporated herein.]

The accused knew or reasonably should have known at the time he accepted employment in this matter that a lawyer in his firm, Lipton, ought to be called as a witness in the lawsuit the accused was defending.

After undertaking employment in this matter, the accused learned that a lawyer in his firm, Lipton, would be called as a witness other than on behalf of his client and that Lipton's testimony would likely be prejudicial to the interests of his client, Local 223.

The accused refused to withdraw from this employment after learning that a lawyer in his firm would be called as a witness in the litigation and that the lawyer's testimony would likely be prejudicial to the interests of his client, Local 223. [Formal complaint, paragraphs IX, X, XI, and XII.]

The second cause of complaint alleges that the accused is guilty of violating DR 5-101(B) and DR 5-102(B). In the stipulation the accused stipulates that his conduct violated DR 5-101(B) and DR 5-102(B).

In admitting his violations the accused explains the circumstances as follows:

When the accused was informed by opposing counsel of the conflict of interest in representing his present client against the interests of a former client of his firm, the accused felt that no conflict existed because (1) at the time the accused did not believe that the second case arose out of the same matter that the accused's firm had formerly handled; (2) the accused had not actually seen any of the contents of the former client's file; (3) the accused believed that his present client would have been subjected to a substantial hardship because of the distinctive value of his firm's representation thereby permitting his continued representation under DR 5-101(B)(4); (4) that the accused believed there was nothing that the present client had done that was adverse to the former client; (5) the accused believed that even if a conflict

> of interest existed in representing his present client at trial, representation of his client in pretrial matters such as the motion to dismiss which was filed and granted on a legal rather than factual basis was permissible; and (6) the dismissal was not obtained using any information from the former client. [Stipulation for discipline, paragraph IV.]

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charges brought against him.

The accused has no prior record of reprimand, suspension, or disbarment.

The accused has agreed to accept a public reprimand. This procedure is provided for in Rule of Procedure 3.6.

The stipulation for discipline has been reviewed by general counsel and approved by the Oregon State Bar Professional Responsibility Board.

The undersigned have reveiwed the stipulation for discipline and hereby approve it.

By: /s/ David C. Landis
DAVID C. LANDIS
STATE CHAIRPERSON

Dated: 7/16/86

By: /s/ David A. Kekel
DAVID A. KEKEL
REGION 5 CHAIRPERSON

Dated: 7/16/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-43
	)	
JAMES W. KASAMEYER,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, James W. Kasameyer, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, James W. Kasameyer, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

III.

A formal complaint (No. 85-43) was filed by the Oregon State Bar on February 17, 1986, against the accused and service was accepted by the accused on March 13, 1986. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. In lieu of filing an answer to the complaint the accused wishes to stipulate to his violation of DR 5-105(A) and (B) as set forth in the first cause of complaint and DR 5-101(B) and DR 5-102(B) as set forth in the second cause of complaint in the bar's formal complaint and to accept a public reprimand for these violations.

IV.

The accused explains the circumstances surrounding his violation of the foregoing standards of professional conduct as follows:

When the accused was informed by opposing counsel of the conflict of interest in representing his present client against the interests of a former client of his firm, the accused felt that no conflict existed because (1) at the time the accused did not believe that the second case arose out of the same matter that the accused's firm had formerly handled; (2) the accused had not actually seen any of the contents of the former client's file; (3) the accused believed that his present client would have been subjected to a substantial hardship because of the distinctive value of his firm's representation thereby permitting his continued representation under DR 5-101(B)(4); (4) that the accused believed there was nothing that the present client had done that was adverse to the former client; (5) the accused believed that even if a conflict of interest existed in representing his present client at trial, representation of his client in pretrial matters such as the motion to dismiss which was filed and granted on a legal rather than factual basis was permissible; and (6) the dismissal was not obtained using any information from the former client.

V.

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charge that the accused's conduct violated DR 5-101(B), DR 5-102(B), and DR 5-105(A) and (B).

VI.

The accused has no prior record of reprimands, suspensions, or disbarment.

VII.

This stipulation has been freely and voluntarily made by the undersigned accused, James W. Kasameyer, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the accused must answer the bar's formal complaint in this case and the matter will be referred to hearing.

Wherefore, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 6th day of June 1986.

/s/ James W. Kasameyer
JAMES W. KASAMEYER

I, James W. Kasameyer, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ James W. Kasameyer
JAMES W. KASAMEYER

Subscribed and sworn to before me this 6th day of June 1986.

/s/ Barbara Hill
Notary Public for Oregon
My commission expires: 5/15/89

Reviewed by general counsel on the 18th day of April 1986 and approved by the state professional responsibility board on the 30th day of April, 1986.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 85-43
JAMES W. KASAMEYER,	FORMAL COMPLAINT
Accused.	Exhibit 1 (Stipulation for Discipline)

For its first cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, James W. Kasameyer, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Multnomah County, Oregon.

III.

In or about June 1984 the accused undertook to represent Teamsters Local 223 and its representative, James Barnes, in defense of an action brought by Charles Murphy against Lane County and the Lane County Peace Officers Association, an affiliate of Teamsters Local 223 (hereinafter "Local 223").

IV.

Murphy was represented by an associate of the accused's law firm, David Lipton, from October 1983 to December 1983 concerning a workers' compensation claim. The workers' compensation case involved the same incident which provided the basis for Murphy's later action against Lane County and Local 223.

V.

Local 223 was served in the suit in early June 1984. The accused contacted David C. Force, attorney for Murphy, to inform Force that the accused was representing Barnes and Local 223 and to request an extension of time in which to answer the complaint.

VI.

On or about August 10, 1984, Force wrote the accused to state his objection to the accused's representation of clients against the interest of the accused's firm's former client and requested the accused to withdraw from further representation adverse to Murphy's interests. The accused refused to withdraw from the case. The accused continued to represent his client, Local 223, against his former client Murphy without obtaining his former client's consent after full disclosure when it was obvious he could not adequately represent the interests of each of his clients.

VII.

In or about September 1984, the accused filed a motion to dismiss Barnes and Local 223 as defendants in Murphy's suit.

VIII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 5-105(A) of the Code of Professional Responsibility; and

(2) DR 5-105(B) of the Code of Professional Responsibility.

And, for its second cause of complaint against the accused, the Oregon State Bar alleges:

IX.

Incorporates herein by reference and realleges paragraphs I through VII of the first cause of complaint.

X.

The accused knew or reasonably should have known at the time he accepted employment in this matter that a lawyer in his firm, Lipton, ought to be called as a witness in the lawsuit the accused was defending.

XI.

After undertaking employment in this matter, the accused learned that a lawyer in his firm, Lipton, would be called as a witness other than on behalf of his client and that Lipton's testimony would likely be prejudicial to the interests of his client, Local 223.

XII.

The accused refused to withdraw from this employment after learning that a lawyer in his firm would be called as a witness in the litigation and that the lawyer's testimony would likely be prejudicial to the interests of his client, Local 223.

XIII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

(1) DR 5-101(B) of the Code of Professional Responsibility; and

(2) DR 5-102(B) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 17th day of February 1986.

OREGON STATE BAR

/s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-121
	)	
FRANK P. SANTOS,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Susan D. Isaacs, Esq.

Counsel for Accused: Frank P. Santos, Esq., pro se

Disciplinary Board: David C. Landis, State Chairperson, and Nancy S. Tauman, Region 6 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 7-106(A) and DR 9-102(A). Reprimand.

Effective Date of Opinion: July 18, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-121
	)	
FRANK P. SANTOS,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

At a meeting held on April 19, 1986, the state professional responsibility board approved the filing of a formal complaint against the accused alleging his violation of DR 7-106(A) and DR 9-102(A) of the Code of Professional Responsibility. Subsequently, the accused and the bar executed a stipulation for discipline. The stipulation recites the facts which are the basis of the decision to file a complaint. The relevant facts stated in the stipulation are as follows:

> The accused began acting as the attorney for the estate of Murray Miller on May 12, 1982, at the request of Ed Miller, the decedent's son and the personal representative of the estate. The accused and the personal representative entered into an oral fee agreement whereby the accused agreed to accept the statutory personal representative's fee of approximately $3,900 in total payment of his attorney fees.
>
> On or about December 11, 1983, the personal representative paid the accused the sum of $500 as a payment toward the accused's attorney fees with a check written on the estate's account. As of that date, the accused had worked between seven and eight hours on the probate of the estate.

In admitting his violations, the accused states by way of mitigation as follows:

> [H]e was experiencing difficulty with the personal representative in probating his father's estate. The accused also indicated that when he requested payment from the personal representative for legal work he had performed on behalf of the personal representative unrelated to the estate matter, which request arose after the accused had worked on the estate without remuneration for several years, the personal representative paid him with a check drawn on the estate's account instead. The accused accepted this payment

without paying proper attention to the requirements of the probate court's rules or his ethical responsibilities. [Stipulation for discipline, paragraph XII.]

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused has agreed to accept a public reprimand. This procedure is provided for in Rule of Procedure 3.6. The stipulation has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it:

By: /s/ David C. Landis
DAVID C. LANDIS

Dated: July 18, 1986

By: /s/ Nancy S. Tauman
NANCY S. TAUMAN

Dated: July 17, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-121
	)	
FRANK P. SANTOS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Comes now, Frank P. Santos, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Frank P. Santos, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1953, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

III.

At a meeting held on April 19, 1986, the state professional responsibility board approved the filing of a formal complaint against the accused alleging his violation of DR 7-106(A) and DR 9-102(A) of the Code of Professional Responsibility. The accused wishes to stipulate to the violation of these rules and to accept the imposition of a public reprimand for these violations.

IV.

The accused explains the circumstances surrounding his violation of the foregoing standards of professional conduct as follows:

The accused began acting as the attorney for the estate of Murray Miller on May 12, 1982, at the request of Ed Miller, the decedent's son and the personal representative of the estate. The accused and the personal

representative entered into an oral fee agreement whereby the accused agreed to accept the statutory personal representative's fee of approximately $3,900 in total payment of his attorney fees.

V.

On or about December 11, 1983, the personal representative paid the accused the sum of $500 as a payment toward the accused's attorney fees with a check written on the estate's account. As of that date, the accused had worked between seven and eight hours on the probate of the estate.

VI.

On or about June 20, 1984, the personal representative paid the accused the sum of $1,000 as a payment toward the accused's attorney fees with a check written on the estate's account. As of that date, the accused had recorded no more than nine hours of work on the probate of the estate.

VII.

The accused's regular hourly rate for handling probate matters is $100 per hour.

VIII.

Even though the accused had not earned part of the $1,000 payment he received from the personal representative on June 20 1984, the accused failed to deposit the payment he received into his client's trust account and deposited the payment into his office's general account instead.

IX.

No court approval was requested or received by the accused for either the $500 payment on December 11, 1983, or the $1,000 payment on June 20, 1984, as required by former Clackamas County Circuit Court Local Rule 43(3).

X.

By accepting two payments for his attorney fees without the approval of the court as required by Local Court Rule 43(3), the accused admits that he disregarded a standing rule of a tribunal in violation of DR 7-106(A).

XI.

By depositing the unearned portion of the funds he received in payment of his attorney fee directly into his office's general account rather than into

his client's trust account as required, the accused admits that he commingled his client's funds with his personal funds in violation of DR 9-102(A).

XII.

In mitigation, the accused indicated that he was experiencing difficulty with the personal representative in probating his father's estate. The accused also indicated that when he requested payment from the personal representative for legal work he had performed on behalf of the personal representative unrelated to the estate matter, which request arose after the accused had worked on the estate without remuneration for several years, the personal representative paid him with a check drawn on the estate's account instead. The accused accepted this payment without paying proper attention to the requirements of the probate court's rules or his ethical responsibilities.

XIII.

The accused has no prior record of reprimands, suspensions, or disbarment.

XIV.

The accused agrees to accept a public reprimand for the stipulated ethical violations set forth above.

XV.

This stipulation has been freely and voluntarily made by the accused, Frank P. Santos, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the bar shall proceed to file a formal complaint against the accused in this case and to conduct a hearing in this matter pursuant to the rules of procedure.

XVI.

Whereas, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for

approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 20th day of May 1986.

/s/ Frank P. Santos
FRANK P. SANTOS

I, Frank P. Santos, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Frank P. Santos
FRANK P. SANTOS

Subscribed and sworn to before me this 20th day of May 1986.

/s/ Dona Santos
Notary Public for Oregon
My commission expires: 12/13/86

Reviewed by general counsel on the 19th day of May 1986 and approved by the state professional responsibility board on the 28th day of June 1986.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-51
	)	
CRAIG D. WHITE,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Steven Moore, Esq.

Counsel for Accused: Craig D. White, Esq., pro se

Trial Panel: Lynda Nelson Gardner, Trial Panel Chairperson; Robert Schelegel (public member); and Larry Voth

Disposition: Accused found not guilty of violation of DR 1-102(A)(4); guilty of violation of DR 2-106(A). Reprimand.

Effective Date of Opinion: July 30, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-51
	)	
CRAIG D. WHITE,	)	OPINION
	)	
Accused.	)	
	)	

STIPULATED FACTS

Rose Ruhr filed a workers' compensation claim for occupational asthma on March 31, 1982. Ms. Ruhr's claim was denied by Argonaut Insurance Company on April 5, 1982. She then consulted Craig D. White, attorney at law, who was and is currently a member of the Oregon State Bar admitted to practice law in the state of Oregon, for representation. Mr. White requested a hearing on her behalf.

Ms. Ruhr's claim was thereafter referred to another attorney, Alan Reel, who assumed representation of Ms. Ruhr. Mr. White transferred his file to Mr. Reel, together with a brief cover letter dated July 7, 1982, in which he noted that he had expended approximately one and one-half hours on the matter to that date and should be credited "upon successful resolution of the claim." Both White and Reel recollect a brief conversation concerning the fee, during which Reel agreed to make such a payment if recovery was obtained. Both attorneys agree that they did not discuss how the fee was to be calculated, or whether it was to be paid on an hourly or a contingent basis.

Reel obtained approval of Ruhr's claim in 1983. Argonaut Insurance Company paid him a fee of $75.00 an hour for his legal services. On July 14, 1983, Reel sent a check to Craig White for $112.50, which represented payment for one and one-half hours of time at the hourly rate Argonaut had paid Reel.

Reel did not send a cover letter with his check, nor did he indicate how the fee had been calculated. The check itself indicates that it was for attorney fees in the Rose Marie Ruhr workers' compensation claim. The check

was not endorsed by White, but there is no dispute that it was cashed without being signed and then processed through Reel's office account.

Ms. Ruhr's claim was closed in early 1984. She received a permanent partial disability award of 40 percent. Reel appealed this award on behalf of Ms. Ruhr. She was then awarded a total permanent disability payment by a referee in August 1984. An award of attorney fees was made to Reel in the amount of $2,000.00. Argonaut informed Reel, however, that his fee would not be paid because it intended to appeal the award.

The Workers' Compensation Board thereafter affirmed the referee's opinion in April 1985. Reel was awarded an additional $800.00 fee for the second appeal.

In September 1984, Argonaut Insurance Company mistakenly sent White a check in the amount of $162.07 as partial payment of attorney Reel's fees for handling Ruhr's total disability claims. Although the check indicated that it was for attorney fees in Ms. Ruhr's workers' compensation claims, there was no cover letter indicating how the fee had been calculated or that future checks would be sent. The check was sent to White's post office box in Lake Oswego, although his office was in Beaverton at the time.

Thereafter, White received ten additional checks from Argonaut under similar circumstances in the total amount of $1,787.18.

White contends, and there is no evidence to the contrary, that he was unaware of the total amount he had received. He also claims to have had no knowledge of how workers' compensation fees were calculated, and that he assumed the claims procedure and resulting fees were similar to a large personal injury settlement. He claims to have assumed that Reel had obtained a large award for Ms. Ruhr, payable in monthly installments, and that the payments he received were a pro rata share of Reel's attorney fees. He also claims to have assumed that Argonaut, as a large insurance company, was unlikely to make a mistake regarding such payments and that if a mistake had been made, it would be discovered either by Reel or by Argonaut very quickly.

At no time did White ever discuss the checks or calculation of a workers' compensation fee with anyone else.

When Reel requested payment of both appeal fees from Argonaut Insurance Company, he received only $800.00. When he inquired further in

August 1985, he discovered that Argonaut had been sending monthly checks to White for almost a year. Reel telephoned White on August 22, 1985. White contends that this was his first knowledge that the checks sent to him by Argonaut should have been sent to Reel. White immediately asked Argonaut for confirmation that the checks had been improperly sent and for the exact amounts involved. Argonaut responded in a letter dated August 22, 1985, listing the checks sent and the amounts paid since September 28, 1984. It also stated that the attorney fees had erroneously been sent to White. Argonaut requested reimbursement in the amount of $1,787.18 for the total amount paid in error.

By letter of September 6, 1985, Mr. White returned the payment of $1,787.18 to Argonaut by way of return of two uncashed checks and his personal check for the balance. This letter stated that he had never requested payment and asked whether any attorney fees could properly be paid. It stated that if he determined any portion of the amount returned to Argonaut was properly due him, he would submit a request under separate cover. A request for the return of funds was never submitted to Argonaut.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The accused, Craig D. White, did not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of DR 1-102(4) [DR 1-102(A)(4)].

2. Mr. White received a clearly excessive fee for the legal work he performed for Ms. Ruhr.

3. Receipt of such a clearly excessive fee, under the circumstances presented by this case, constitutes collection of a clearly excessive fee in violation of DR 2-106(A).

OPINION

The bar has the burden of proving misconduct by clear and convincing evidence. Rule 5.2, Oregon State Bar Rules of Procedure. Mr. White claims he did not realize the extent of the fees he had been receiving and did not realize he was not entitled to these fees. The bar has presented no evidence directly contradicting Mr. White's description of his state of mind at the time of receipt of the payments from Argonaut. It has asked the trial board to find, instead, that Mr. White's testimony is so unlikely that it cannot be

believed. We find that the bar has not thereby sustained its burden of proving that Mr. White's conduct was dishonest, fraudulent, or deceitful or that Mr. White misrepresented anything. We find, therefore, that DR 1-102(4) [DR 1-102(A)(4)] was not violated by Mr. White.

DR 2-106(A) prohibits an attorney from entering into an agreement for, charging, or collecting a clearly excessive fee. DR 2-106(B) states that "a fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee," and sets out factors to be considered as guides in determining the reasonableness of a fee. The trial panel has applied those factors to the facts of this case and has determined that the fee received by Mr. White for legal representation of Ms. Ruhr is clearly excessive. For example, Mr. White's testimony indicates he devoted very little time and labor to the pursuit of Ms. Ruhr's claim, the issues involved were not novel and difficult, and the skills required to perform the legal services provided by Mr. White were minimal. Likewise, application of the other factors contained in DR 2-106(B), particularly "the fee customarily charged in the locality for similar legal services," has led the trial panel to conclude firmly that the fee received by Mr. White was clearly excessive.

The most troublesome legal issue to be decided in this case is, in view of the trial board's determination that Mr. White did not possess a fraudulent intent or intent to deceive anyone by receipt of these funds, whether his actions constituted "collection" of a clearly excessive fee. Mr. White's testimony and the stipulated facts indicate that he personally picked up from a post office box and cashed a total of nine checks within a one-year period. It is the trial board's unanimous conclusion that such actions constitute "collection" within the plain meaning of the word. We find it unnecessary to reach a conclusion at this time as to whether every receipt of excessive fees would constitute collection of clearly excessive fees in violation of the disciplinary rule.

SANCTIONS

The trial board panel has found a clear violation of DR 2-106(A). However, it also has found that Mr. White had no intention to defraud anyone. The evidence is uncontroverted that Mr. White promptly returned upon demand the excessive fees collected. Furthermore, it appears that

Mr. White was genuinely unaware of the total amount of fees received and the manner of calculating workers' compensation fees. Under the circumstances, it is the unanimous opinion of the trial panel that the appropriate sanction for this violation is a public reprimand of Mr. White.

RECOMMENDATION

The trial board hereby unanimously recommends to the Supreme Court of Oregon that the accused, Craig D. White, be adjudged not guilty of violating DR 1-104 [DR 1-102(A)(4)] and guilty of violating DR 2-106(A). The trial board recommends that Mr. White be publicly reprimanded for this violation.

/s/ Lynda Nelson Gardner
LYNDA NELSON GARDNER

/s/ Robert Schlegel
ROBERT SCHLEGEL

/s/ Larry Voth
LARRY VOTH

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-126; 84-127
	)	
ROBERT T. CHANDLER,	)	
	)	
Accused.	)	
	)	

Bar Counsel: John Tuthill, Esq.

Counsel for Accused: Robert T. Chandler, Esq., pro se

Trial Panel: Jules Drabkin, Trial Panel Chairperson; James T. Kulla; and Frank B. Price (public member)

Disposition: Accused found guilty of violation of DR 6-101(A)(3), DR 9-102(B)(4), and DR 1-103(C). Thirty-day suspension followed by 18 month probation.

Effective Date of Opinion: July 31, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 84-126; 84-127
	)	
ROBERT T. CHANDLER,	)	AMENDED OPINION
	)	
Accused.	)	
	)	

This matter came before Oregon State Disciplinary Board Region 4 members James T. Kulla, Frank B. Price, and Jules Drabkin, chairperson, on April 11, 1986. The Oregon State Bar was represented by John Tuthill. Robert T. Chandler appeared pro se.

After the filing of the formal complaint, Mr. Chandler chose not to file an answer to the formal complaint and the trial panel entered an order in the record finding the accused in default under the rule. The evidence presented before the trial panel left no doubt as to all four charges against the accused.

FIRST CAUSE OF COMPLAINT

In November 1982 the accused was requested to and in December 1982 the accused did accept employment to collect approximately $7,500 for an Illinois collection agency. By January 24, 1983, the accused had completed a preliminary investigation and inquired as to whether the collection agency wished him to commence suit. In February 1983 the accused was sent money for the payment of costs and asked to proceed immediately with the filing of the suit. From February 15 until the time the suit was actually filed on July 3, 1983, a period of four and one-half months, the accused received numerous letters and telephone calls requesting that he proceed with suit. By August 29, 1983, the accused had at least served one of the defendants who had retained counsel. There were negotiations between August 1983 and March 20, 1984. A settlement was then finalized on March 30, 1984, with both parties agreeing, leaving only settlement papers necessary to complete the agreement. On April 11, 1984, it was left up to the accused to draw up the necessary papers to conclude the matter. The papers were never drawn up by the accused. The client made numerous contacts between April 1984 and October 31, 1984. The accused was notified on October 22, 1984, by the

circuit court that the case would be dismissed within 30 days for want of prosecution if a certificate of readiness was not filed. On November 20, 1984, the accused filed a motion for continuance, which was granted by the court with the notation that the case would be dismissed on January 20, 1985, [unless] it was settled or a certificate of readiness was filed. Lane County Circuit Court dismissed the lawsuit on January 22, 1985, due to lack of prosecution. The settlement sum was $2,500, which was to be paid over a period of time. It appears that the sum was never paid. It is clear that the accused was, from the onset of the case, tardy in preparing the papers and in responding to client inquiries. However, the accused's failure to prepare the settlement papers in April 1984 or thereafter, resulting in the dismissal in January of the following year, is and was inexcusable and clearly a violation of DR 6-101(A)(3).

SECOND CAUSE OF COMPLAINT

In April 1983 the accused was asked by another collection agency to collect $17,700 and by April 12, 1983, the accused agreed to accept the employment. The costs of the suit were submitted to the accused on August 12, 1983. It appears that the lawsuit was finally filed in February 1984 (six months after the suit money had been sent). In March 1984 there was some negotiation with respect to the debtor's wanting to convey real property that was subject to debt in satisfaction of the debt. The creditor declined the offer in March 1984. By April 23, 1984, the creditor had advised the accused to take a default judgment against the debtor, but from April 1984 until March 7, 1985, the accused did nothing. In this second cause of action also, the accused clearly neglected the legal matter entrusted to him in violation of DR 6-101(A)(3).

THIRD CAUSE OF COMPLAINT

In the third cause of action the accused is accused of taking on legal work (a dissolution) for a Ms. W in December 1983. The accused put the matter on the back burner in May 1984 at the request of the client, but was contacted in July 1984 by the client to complete the work. The accused did nothing. Finally, in October 1984 he turned the file over to another attorney who apparently completed the matter. Even in turning the file over it appears the accused was tardy in violation of DR 6-101(A)(3).

FOURTH CAUSE OF COMPLAINT

In its fourth cause of complaint the bar accuses Mr. Chandler of failing to deliver the file to the attorney who had been substituted for Mr. Chandler, a violation of DR 9-102(B)(4).

Finally, the accused failed to respond to bar inquiries with regard to these problems. With respect to the first and second causes of complaint, Mr. Chandler was notifed by the bar in October 1984 of the complaint, requesting a response by November 14, 1984. No response was made. The matter was finally referred to the local professional responsibility committee. Likewise, with respect to the third and fourth causes of complaint, the general counsel's office of the Oregon State Bar advised the accused of the problem by letter dated November 6, 1984, requesting a response by November 27, 1984, and this matter was, as well, eventually referred to the local professional responsibility committee. Thus, the accused failed to respond to inquiries from and to comply with the reasonable requests of the general counsel's office in violation of DR 1 -103(C).

In explanation of his behavior, Mr. Chandler indicated to the disciplinary committee that:

a. He was a relatively inexperienced attorney. It does appear that Mr. Chandler, although a member of the bar (not only of Oregon, but of New York, Florida, District of Columbia, U.S. Supreme Court, U.S. Court of Appeals, U.S. District Courts for New York and Oregon, U.S. Tax Court, and U.S. Court of Claims) since 1976, had been an office lawyer, first for Internal Revenue Service, then for CPAs until April 1978. Between April 1978 and September 1980, he had been assistant district attorney in two counties. He had spent a period of about five months as an associate to an attorney in Springfield, Oregon, and had been out on his own alone from February 1981 until the present, so that during the period of his inattention to legal matters, he had been a practicing attorney in general practice for only about a year and a half. That, of course, does not excuse the behavior.

b. The accused argues that he was too busy, overworked, and underexperienced, and that he had taken on far too much work. The disciplinary review panel is convinced that the accused had taken more work than he could handle. The accused was overwhelmed by an excessive number

of files (on which he probably wasn't making any money). That, too, does not excuse the behavior.

c. Finally, the accused argues that he had secretarial problems with the quitting of one secretary and then the hiring and firing of numerous inexperienced secretaries so that he could not get the work out of the office. This was particularly true from May 1984 until the latter part of October 1984. In his testimony he detailed the loss of one secretary and then the hiring of eight additional secretaries, none of whom worked out. Nice as it might be for an attorney to be able to blame his problems on his secretary, clearly the full responsibility for the quality of legal work, as well as the promptness of legal work, falls on the attorney and it is simply no excuse, except, perhaps, in the most unusual circumstances, for an attorney to blame his or her secretarial staff.

Mr. Chandler has shown a definite pattern of being extremely tardy in attending to legal matters for which he is responsible.

In In re Paauwe, 294 Or 171, 654 P2d 1117 (1982), the accused delayed filing a complaint from January 1977 until October 1977, delayed getting an amended complaint filed for at least another year, and then later failed to communicate some offers of settlement. As in that case, this accused not only neglected the legal matter entrusted to him, but since litigation was involved, the delays in moving the case along once it was commenced were prejudicial to the administration of justice. However, in neither that case nor in this is there a finding that the accused intended to prejudice or damage his client's interest. The bar also cites the panel to In re Heath, 296 Or 683, 678 P2d 736 (1984), in which Mr. Heath basically abandoned his clients and left the state. In that case, Mr. Heath received a suspension of 60 days.

It appears to the panel that a suspension of 30 days would be more appropriate in this situation where the accused was tardy in handling legal matters and appeared to have trouble in completing legal matters. This, of course, does not allow him to call clients, see clients, give any legal advice, accept new work or retainers, make court appearances, or act as attorney for another. In addition, Mr. Chandler should be subject to a probationary period of 18 months, during which time Mr. Chandler would report to a supervisory attorney in Oregon every two weeks for professional office practice and management counseling. The attorney would report to the bar every two

months as to the status of Mr. Chandler's work load and files. This attorney should be approved by the state chairperson or the supreme court pursuant to Rule 6.2, Oregon State Bar Rules of Procedure.

/s/ Jules Drabkin
JULES DRABKIN
CHAIRPERSON

/s/ James T. Kulla
JAMES T. KULLA

/s/ Frank B. Price
FRANK B. PRICE

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-134
	)	
JOHN R. MILLER,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Charles L. Best, Esq.

Counsel for Accused: M. Chapin Milbank, Esq.

Trial Panel: James T. Kulla, Chairperson; Frank B. Price (public member); and Paul B. Osterlund

Disposition: Accused found guilty of violation of DR 5-105(A)-(C). Reprimand.

Effective Date of Opinion: September 17, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-134
	)	
JOHN R. MILLER,	)	OPINION
	)	
Accused.	)	
	)	

This matter came before the Oregon State Disciplinary Board Region 4 members Frank B. Price, Paul B. Osterlund, and James T. Kulla, chairperson, on the 7th day of August 1986. The Oregon State Bar was represented by Charles L. Best and the accused was represented by M. Chapin Milbank.

After the filing of the formal complaint, the accused filed an answer dated March 10, 1986, through his attorney.

On the date of the hearing the accused through his attorney verbally admitted paragraphs I, II, III, IV, and V of the complaint filed by the Oregon State Bar.

FINDINGS OF FACT

The trial panel makes the following specific findings of fact:

1. The formal complaint filed by the Oregon State Bar, No. 84-134, contained only one cause of complaint.

2. The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

3. The accused, John R. Miller, is, and at all times mentioned herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Polk County Oregon.

4. On or about October 18, 1981, Loretta C. Berning was involved in a collision between the automobile she was driving and an automobile driven by Jim Mentzer and owned by Connie Ann Klassen. Loretta C. Berning and her

three passengers, Raymond Treml, Loga Jean Treml, and Dan Graham, all sustained injuries to one degree or the other.

5. Within a few days after the date of the collision of the automobiles driven by Loretta C. Berning and Jim Mentzer, the accused accepted the representation of Loretta C. Berning concerning her physical injury claim against Mentzer and Klassen.

6. Within one or more days after accepting the representation of Loretta C. Berning concerning her personal injury claim against Mentzer and Klassen, the accused accepted the representation of Raymond Treml and his wife, Loga Jean Treml, and Dan Graham concerning their personal injury claims against Mentzer and Klassen arising out of the same collision that occurred on or about October 18, 1981.

7. At the time that the accused accepted the representation of Raymond Treml for his personal injury claim against Mentzer and Klassen, Raymond Treml sought to retain the accused to represent him in a personal injury claim against Loretta C. Berning as the driver of the vehicle in which Mr. Treml was a passenger. The accused declined to represent Mr. Treml concerning a claim against Loretta C. Berning on the basis that the facts agreed to by Loretta C. Berning, Raymond Treml, Loga Jean Treml, and Dan Graham established that the accident was caused solely by the negligence of Mentzer as the driver of the Klassen vehicle.

8. Beyond the accused's analysis of liability as herein-above set forth, the accused made no disclosure of an actual conflict or potential conflict of interest between Loretta C. Berning and her three passengers. The accused at no time made full disclosure to Loretta C. Berning or Raymond Treml that his independent professional judgment on behalf of any one of his clients could be, would be, or likely would be adversely affected by his representation of the other clients. In addition, no such disclosure was made to Loga Jean Treml or Dan Graham.

9. The testimony of Loretta C. Berning, Raymond Treml, Loga Jean Treml, and the accused clearly showed that the accused did not provide his clients, at the outset of the representation, any disclosure of the possible effect of his representation of all the parties on the exercise of his independent professional judgment on behalf of each client.

10. The testimony of Loretta C. Berning indicated that the first time that the accused told her about any possible conflict of interest was approximately 18 to 24 months after the date of the collision.

11. The testimony of Loretta C. Berning, Raymond Treml, Loga Jean Treml, and the accused showed that at the outset Raymond Treml told the accused he wanted to file a claim against Loretta C. Berning, the driver of the vehicle in which he was a passenger, as well as the driver of the other vehicle, in order that he might have a better chance to recover all his alleged damages.

12. The testimony of Raymond Treml and the accused indicated that in the summer or early fall of 1983, when the personal injury claims of the accused's clients were settled and the money was to be disbursed to the clients, Mr. Treml refused to sign the release provided by the State Farm Insurance Company adjuster inasmuch as the release purported to release any claims Mr. Treml had against anyone as a result of the collision and not just against the driver and the owner of the vehicle in which Mr. Treml was not a passenger. After some research by the accused and the State Farm Insurance Company adjuster, Warren Byers, a document entitled "Covenant" was prepared or produced which was satisfactory to Raymond Treml and his wife, Loga Jean Treml, and which they signed on August 22, 1983, which was accepted into evidence as Exhibit No. 22, which was a covenant not to sue Connie Ann Klassen and Jim Mentzer who were the owner and driver of the other vehicle involved in the collision. The document, as Raymond Treml understood it, reserved his right to file a claim for his personal injuries against the driver of the vehicle in which he was a passenger, Loretta C. Berning. Subsequent to the execution of the covenant by Raymond Treml and the receipt of his funds from the settlement against Klassen and Mentzer, he went to another attorney located in Salem who filed a personal injury claim against Loretta C. Berning shortly before the two-year statute of limitations. Since the summons and complaint were not served upon Loretta C. Berning within the time allowed by the statute, Raymond Treml's claim against Loretta C. Berning was dismissed with prejudice.

13. By a letter of August 15, 1984, which is identified as Exhibit No. 25 and accepted into evidence, Raymond Treml filed his conflict of interest complaint against the accused with the Oregon State Bar.

CONCLUSIONS

The accused was charged by the Oregon State Bar with the violation of DR 5-105(A) - (C), which provide as follows:

> DR 5-105 Refusing to Accept or Continue Employment if the Interest of Another Client May Impair the Independent Professional Judgment of the Lawyer.
>
> (A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).
>
> (B) A lawyer shall not continue employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).
>
> (C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The case of In re Shannon, 297 Or 168, 681 P2d 794 (1984), is instructional and dispositive of this case.

The Oregon Supreme Court in the case of In re Shannon, supra, 297 Or at 173, states as follows:

> An attorney should never represent in litigation multiple clients with conflicting interests. In re Jans, 295 Or 289, 295, 666 P2d 830 (1983); In re Porter, 283 Or 517, 584 P2d 744 (1978). There are, however, circumstances in which an attorney may represent in litigation multiple clients with potentially differing interests. DR 5-105(C) sets out when a lawyer may represent multiple clients. A lawyer may represent multiple clients "if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure."

In this case, the accused did not comply with the provisions of DR 5-105(C) inasmuch as the accused undertook multiple representation without obtaining the consent of each client following full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each. Therefore, the accused's conduct was unethical.

DISPOSITION

The trial panel hereby recommends that the accused be given a public reprimand as the sanction for his conduct in this matter.

By: /s/ James T. Kulla
JAMES T. KULLA
CHAIRPERSON

Dated: 8/27/86

By: /s/ Frank B. Price
FRANK B. PRICE

Dated: 8/27/86

By /s/ Paul B. Osterlund
PAUL B. OSTERLUND

Dated: 8/27/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-28
	)	
ORRIN L. GROVER III,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Lois O. Rosenbaum, Esq.

Counsel for Accused: Marc D. Blackman, Esq.

Trial Panel: George R. Duncan, Jr., Trial Panel Chairperson; Rev. Willis Steinberg (public member); and Ron P. MacDonald

Disposition: Accused found not guilty of violation of DR 1-102(A)(4); guilty of violation of DR 1-103(C) and DR 6-101(A)(3). Sixty-day suspension stayed subject to two year probation.

Effective Date of Opinion: September 19, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-28
	)	
ORRIN L. GROVER III,	)	OPINION
	)	
Accused.	)	
	)	

This matter was set for hearing in Salem, Oregon, on August 21, 1986, before the trial panel consisting of Rev. Willis Steinberg, Ron P. MacDonald, and George R. Duncan, Jr.

Lois O. Rosenbaum is the counsel on behalf of the Oregon State Bar.

Marc D. Blackman is counsel on behalf of the accused.

The accused has been charged with conduct that violates the Code of Professional Responsibility as follows:

First cause of complaint:

DR 1-102(A)(4) of the Code of Professional Responsibility; and
DR 6-101(A)(3) of the Code of Professional Responsibility.

Second cause of complaint:

DR 1-103(C) of the Code of Professional Responsibility.

On August 19, 1986, the trial panel received a stipulation of facts and stipulated recommendation of sanctions, the originals of both stipulations being hereto attached and by this reference made a part hereof; and thereafter the trial panel cancelled the hearing set for August 21, 1986, and, based upon said stipulations, took the matter under advisement and, having considered the same, makes the following findings of fact, conclusions, and disposition:

FINDINGS OF FACT

1. The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was,

authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

2. At all times mentioned herein the accused is and was an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Molalla, Clackamas County, Oregon.

3. The accused, through his attorney, consented to the hearing regarding the above-captioned matter to be held in Marion County, rather than Clackamas County, the original of which consent is hereto attached and by this reference made a part hereof.

4. In the fall of 1982, Patsy Hopkins retained the accused to represent her in her dissolution of marriage proceeding.

5. On numerous occasions from October 1983 until January 1985, the client of the accused contacted him and requested he complete her divorce, and the accused repeatedly failed to do so despite promises and assurances to his client that he would do so. On [or] about March 29, 1985, the accused permitted the divorce proceedings to be dismissed, even though he received notice from the court that such dismissal would take place for lack of prosecution.

6. Thereafter the accused obtained a judgment striking the dismissal and setting the same aside, and on June 11, 1985, did obtain a divorce for his client, but only after numerous contacts by his client, by the attorney for the other spouse, and by the bar after it received a filed complaint by the client of the accused.

7. Subsequent to the filing of said complaint and while the subject of disciplinary investigation, the accused failed to respond to the general counsel's office and the accused failed to respond fully to the inquiries from the investigator of the Clackamas/Linn/Marion County Local Professional Responsibility Committee.

8. The accused did not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Based upon the foregoing findings of fact, the trial panel makes the following:

CONCLUSIONS

1. The accused did not violate DR 1-102(A)(4).

2. The accused violated DR 6-101(A)(3) by his neglect of a legal matter entrusted to him.

3. The accused violated DR 1-103(C) in that he failed to cooperate with and respond fully to inquiries from and comply with reasonable requests of the general counsel and the investigator from the Clackamas/Linn/Marion County Local Professional Responsibility Committee.

DISPOSITION AND OPINION

Based upon the foregoing findings of fact and conclusions, the trial panel recommends that the accused be suspended from the practice of law within the state of Oregon for a period of 60 days, which period of suspension shall be fully stayed on the condition that the following probationary terms are satisfied:

1. Probation shall be for a period of two years from date of this opinion.

2. The accused is to be supervised by attorney Marc D. Blackman, 900 S.W. Fifth Avenue, Portland, Oregon 97204, to ensure that the law practice of the accused is being conducted in a proper and timely fashion.

3. The accused shall fully cooperate with attorney Marc D. Blackman in the supervision of his law practice.

4. The accused, through attorney Marc D. Blackman, shall file with the bar on a bimonthly basis, beginning within two weeks from the effective date of this decision, his written reports describing the status of the accused's activities in the practice of law and the progress the accused is making in avoiding problems that may affect his ability competently and diligently to practice law.

5. Any and all fees for such supervision or for costs connected therewith shall be paid by the accused.

6. Should the accused fail to comply with these provisions of probation and if general counsel of the bar determines that the law practice of the accused is not being conducted in a proper and timely fashion, the bar

shall forthwith move for revocation of the stay of the accused's suspension pursuant to BR 6.2.

Dated this 29th day of August 1986.

/s/ Willis H. Steinberg
REV. WILLIS STEINBERG

/s/ Ron P. MacDonald
RON P. MacDONALD

/s/ George R. Duncan, Jr.
GEORGE R. DUNCAN, JR.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-28
	)	
ORRIN L. GROVER III,	)	STIPULATION OF FACTS
	)	
Accused.	)	Attachment 1 (Opinion)
	)	

The Oregon State Bar and Orrin L. Grover III, the accused, stipulate that the following facts are accurate and true:

1. The accused, Orrin L. Grover III, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Clackamas, State of Oregon.

2. In the fall of 1982 Patsy Hopkins retained the accused to represent her in her dissolution of marriage proceeding. On December 2, 1982, the accused filed a petition for dissolution of marriage on Mrs. Hopkins' behalf in Clackamas County Circuit Court entitled "Patsy Jean Hopkins, Petitioner, and Robert Bruce Hopkins, Respondent" and numbered as 82-12-39. By a letter dated December 17, 1982, attorney Gordon E. Price advised the accused that he represented Mr. Hopkins in the above-mentioned divorce proceeding, requested written notice of application for default in order to file a response on behalf of Mr. Hopkins, and proposed the terms of a settlement between the parties.

3. After receiving no response to his December 17, 1982 written settlement proposal or his phone calls to the accused, Mr. Price again communicated with the accused by a letter dated February 10, 1983, enclosing a copy of Mr. Hopkins' response to the petition. Thereafter, the accused and Mr. Price entered into negotiations concerning the parties' property settlement, finally reaching a settlement agreement on or about October 4, 1983. Thereafter, the matters necessary to complete the divorce and obtain a final decree included the signing by the parties of various documents pertaining to the property involved and preparing the proposed decree of dissolution for submission to the court for signature and filing.

4. On numerous occasions from October 1983 until January 1985, Mrs. Hopkins contacted the accused and requested that he complete her divorce, which he repeatedly failed to do despite promises and assurances to Mrs. Hopkins that he would do so.

5. In an effort to have the accused complete her divorce, Mrs. Hopkins scheduled appointments with the accused on or about January 10, 17, and 22, 1985, all of which the accused cancelled. On or about January 25, 1985, the accused kept a scheduled appointment with Mrs. Hopkins, at which time he promised her that he would complete her divorce within 10 days. Again, the accused failed to take the steps necessary to complete Mrs. Hopkins' divorce despite promises and assurances to her that he would do so.

6. On or about February 15, 1985, at which time she still had not received any information to indicate that the accused had completed her divorce as promised, Mrs. Hopkins went to the accused's office and requested a copy of her entire file from the accused's secretary, who promised to place copies of the contents of Mrs. Hopkins' file in the mail that same day. After receiving nothing from the accused or his office, Mrs. Hopkins filed a complaint about the accused with the Oregon State Bar.

7. Mrs. Hopkins' complaint was received by the bar on February 20, 1985. Mrs. Hopkins complained about the accused's repeated failure to complete her divorce as promised and about the accused's failure to send her copies of her file materials as she had requested. A copy of Mrs. Hopkins' letter was forwarded to the accused by the Oregon State Bar with a letter dated February 26, 1985, requesting a response thereto by March 19, 1985. Despite receiving information that Mrs. Hopkins was complaining about his failure to complete her divorce and requesting copies of her file materials, the accused failed to take any steps to complete her divorce or forward copies of her file materials to her.

8. On or about February 27, 1985, the Clackamas County Circuit Court's file in the Hopkins' dissolution contained only the petition for dissolution of marriage filed by the accused on December 2, 1982; the response filed by Mr. Price on May 17, 1983; and a notice of change of address filed by the accused on October 17, 1983. On or about February 27, 1985, Presiding Judge Patrick Gilroy, after determining that there had been no

activity on the Hopkins' dissolution since October 17, 1983, as reflected by the court's file, signed an order of dismissal to become effective the day following the 30th day after the date of the order. A copy of the order was served upon the accused. Despite receiving notice from the court of the pendency of the court's order of dismissal of the case, the accused failed to take the steps necessary to complete the divorce, which resulted in the court's dismissing the case for lack of prosecution on or about March 29, 1985.

9. On or about April 10, 1985, the accused exchanged settlement documents with Mr. Price and advised Mr. Price that he would take the final divorce decree. The accused failed again to complete Mrs. Hopkins' divorce as promised.

10. After the bar referred Mrs. Hopkins' complaint to the Clackamas/Linn/Marion County Local Professional Responsibility Committee for investigation on April 10, 1985, due to the accused's failure to respond to the bar's inquiry, the LPRC investigator, David Knower, Esq., requested a response from the accused. By a letter dated May 13, 1985, to Mr. Knower, the accused stated that he had performed the appropriate work to finalize Mrs. Hopkins' decree and would contact her that week to do so.

11. On or about May 30, 1985, when Mr. Price contacted the Clackamas County clerk's office to inquire as to the status of the Hopkins' dissolution, he learned for the first time that the case had been dismissed by the court for lack of action. Also on or about May 30, 1985, Mr. Knower and Mrs. Hopkins learned for the first time that Mrs. Hopkins' dissolution proceeding had been dismissed by the court for lack of prosecution by the accused. The accused's communications with Mr. Price, Mr. Knower, and Mrs. Hopkins from the date of the court's dismissal of the case on March 29, 1985, through May 30, 1985, when they learned of the dismissal of the case, failed to disclose this information.

12. By a letter dated June 3, 1985, to the accused, Mrs. Hopkins discharged the accused from representing her, requested her complete file from him, and requested a refund of the money she had paid to him. Upon receipt of Mrs. Hopkins' letter, the accused went to Mrs. Hopkins' residence in the evening and asked her not to discharge him and to allow him to complete her divorce. At that point, Mrs. Hopkins acquiesced in both the accused's requests.

13. On or about May 30, 1985, Mr. Price filed a motion to set aside dismissal with supporting affidavit based on his lack of notice of the dismissal from the court even though he was listed as attorney of record for Mr. Hopkins in the court's file. On or about June 10, 1985, the accused filed a motion to strike dismissal. On the same date, acting upon the accused's motion, the court struck and set aside the judgment of dismissal and a decree of dissolution was entered on June 11, 1985, terminating the marital relationship of the Hopkinses effective July 11, 1985.

14. By failing to complete Mrs. Hopkins' divorce from October 1983, when the negotiated settlement between the parties was reached, until June 1985, despite numerous requests from his client that he do so, with which he repeatedly promised but failed to comply, and by allowing Mrs. Hopkins' divorce case to be dismissed by the court based on his lack of action despite 30 days' notice from the court, the accused neglected a legal matter entrusted to him.

15. The aforesaid conduct of the accused violated the following standard of professional conduct established by law and by the Oregon State Bar:

DR 6-101(A)(3) of the Code of Professional Responsibility.

16. On February 20, 1985, a complaint concerning the conduct of the accused as described above was filed with general counsel's office of the Oregon State Bar by Patsy Hopkins. On February 26, 1985, a letter was sent to the accused from the general counsel's office enclosing a copy of Mrs. Hopkins' letter of complaint and requesting a response from the accused by March 17, 1985. On or about March 20, 1985, the accused contacted the general counsel's office to request until March 29, 1985, to respond, which request was allowed. After receiving no response from the accused, the general counsel's office referred the matter to the Clackamas/Linn/Marion County Local Professional Responsibility Committee of the Oregon State Bar on April 10, 1985, for investigation.

17. On or about April 11, 1985, the LPRC investigator, Mr. Knower, wrote to the accused requesting a written response to Mrs. Hopkins' complaint within a week. On or about April 25, 1985, the accused called Mr. Knower and promised to send him a written response by either April 29 or 30, 1985. After not hearing from the accused by May 2, 1985, Mr. Knower

wrote him another letter again requesting a response to Mrs. Hopkins' complaint.

18. The accused responded to Mr. Knower's request for information by a letter dated May 13, 1985, and received by Mr. Knower on May 20, 1985. By a letter dated May 21, 1985, Mr. Knower requested that the accused supply additional information and documentation. By a letter dated May 30, 1985, Mr. Knower reiterated his previous requests for additional information and documentation from the accused and advised that he had learned that day of the previous dismissal of Mrs. Hopkins' case by the court, which information the accused had failed to disclose voluntarily at any time. On or about June 12, 1985, the accused mailed his file in Mrs. Hopkins' case to Mr. Knower.

19. While the subject of a disciplinary investigation, the accused failed to respond to general counsel's office and thereafter failed to respond fully to inquiries from and reasonable requests of the investigator from the Clackamas/Linn/Marion County LPRC. The accused did not have and did not exercise any applicable right or privilege to justify his failure to respond to or cooperate with the general counsel's office or the investigator from the local professional responsiblity committee.

20. The aforesaid conduct of the accused violated the following standard of professional conduct established by law and by the Oregon State Bar:

DR 1-103(C) of the Code of Professional Responsibility.

Approved as to form:

/s/ Lois O. Rosenbaum
LOIS O. ROSENBAUM
OF ATTORNEYS FOR
OREGON STATE BAR

By: /s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

Dated: 8/18/86

/s/ Marc Blackman
MARC BLACKMAN
OF ATTORNEYS FOR
ORRIN L. GROVER III

/s/ Orrin L. Grover III
ORRIN L. GROVER III

Dated: 8/15/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	No. 85-28
ORRIN L. GROVER III,	STIPULATED RECOMMENDATION OF SANCTIONS
Accused.	Attachment 2 (Opinion)

The Oregon State Bar and Orrin L. Grover III, the accused, respectfully submit the following recommendation for sanctions in accordance with the stipulated facts filed herewith:

1. Grover is to be suspended for a period of 60 days, which period of suspension shall be fully stayed on the condition that the following probationary terms are satisfied:

A. Probation shall be for a period of two years from the date the trial panel's decision becomes effective.

B. Grover is to be supervised by a lawyer appointed by the trial panel to ensure that his law practice is being conducted in a proper and timely fashion.

C. Grover is to cooperate with the lawyer appointed to supervise his law practice.

D. The lawyer appointed by the trial panel to supervise Grover will agree to maintain the attorney-client privilege that exists between Grover and his clients, provided that such agreement shall not restrict in any manner such lawyer's right and duty to report such information fully to the Oregon State Bar about Grover's compliance with the terms of his probation and shall not restrict in any manner the use of such information by the bar pursuant to BR 6.2(d). Such supervising lawyer is to report back to the bar as to Grover's cooperation with his suggestions and instructions.

E. Grover is to file with the bar on a bimonthly basis, beginning within two weeks from the effective date of the trial panel's decision, a report by the lawyer appointed to supervise his practice describing the status

of Grover's activities in the practice of law and the progress he is making in avoiding problems that may affect his ability competently and diligently to practice law.

F. Grover's failure to comply with any of these provisions will result in the bar's moving for the revocation of the stay of Grover's suspension pursuant to BR 6.2.

In submitting this recommendation for stipulated sanctions, the Oregon State Bar and Grover each agree that if the panel imposes the sanctions set forth herein, neither party will appeal from that decision by the panel.

The parties stipulate further that in the event the panel requests additional information from either of the parties, such information will be provided, whether or not it is in stipulated form.

Approved as to form:

/s/ Lois O. Rosenbaum
LOIS O. ROSENBAUM
OF ATTORNEYS FOR OREGON STATE BAR

By: /s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

Dated: 8/18/86

/s/ Marc Blackman
MARC BLACKMAN
OF ATTORNEYS FOR
ORRIN L. GROVER III

/s/ Orrin L. Grover III
ORRIN L. GROVER III

Dated: 8/15/86

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-121
	)	
JAY W. WHIPPLE,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Tomas F. Ryan, Esq.

Counsel for Accused: Walter H. Sweek, Esq.

Trial Panel: Garry L. Kahn, Trial Panel Chairperson; Joyce Tsongas (public member); and Frank Lagesen

Disposition: Accused found guilty of violation of DR 1-102(A)(4) and DR 9-102(A). Sixty-day suspension followed by two year probation.

Effective Date of Opinion: September 29, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-121
	)	
JAY W. WHIPPLE,	)	FINDINGS OF FACT,
	)	CONCLUSIONS, AND
Accused.	)	DISPOSITION
	)	

A hearing was held at the offices of the Oregon State Bar on August 18, 1986, before the undersigned trial panel, which was appointed by the Region 5 Disciplinary Board. The Oregon State Bar was represented by Tomas F. Ryan, and the accused, who appeared in person, was represented by Walter H. Sweek. After hearing all the evidence and receiving the exhibits, the trial panel requested counsel for the parties to present written memorandums of law and closing arguments, which were submitted by August 26, 1986. The trial panel makes the following findings of fact, conclusions, and disposition of the complaint of the Oregon State Bar regarding the conduct of Jay W. Whipple, the accused.

FINDINGS OF FACT

1.

Jay W. Whipple (hereinafter "Whipple") is a member of the Oregon State Bar and was admitted to the bar in 1963. He has been in the practice of law since 1963, except for a period from December 20, 1983, until May 4, 1984. He was suspended from the practice of law for 90 days by the Oregon Supreme Court commencing December 20, 1983, and was unconditionally reinstated on May 4, 1984.

2.

Whipple maintained a client's trust acount at the South St. Helens branch of the U.S. National Bank of Oregon (hereinafter "client's trust account") from about January 1, 1979, through 1985.

3.

Prior to the accused's suspension from the practice of law in December 1983, Whipple made deposits of personal funds into his client's trust account

and wrote checks for personal obligations on the client's trust account. At least one check written by Whipple on the client's trust account, to pay a personal obligation, was returned by the bank for insufficient funds. Whipple used the client's trust account to deposit personal funds and pay personal obligations during his suspension from the practice of law. Whipple also used the client's trust account after his reinstatement to the practice of law for the deposit of personal funds and to write checks for personal obligations.

4.

Whipple concedes that he used the client's trust account to deposit personal funds and to write checks on the account for personal obligations. Whipple was subject to garnishment by judgment creditors prior to his suspension from the practice of law, and the debts remained unsatisfied during the period of time relating to the charges against him in connection with this complaint. Whipple admits that a motive for using the client's trust account for personal deposits and writing checks for personal obligations was to hide assets from his creditors, and that the client's trust account would be less likely to be garnished.

5.

Whipple contends, and the bar agrees, that none of his clients suffered any loss or damage as a result of any commingling of funds in the client's trust account. All money owed to or on behalf of clients was paid accordingly.

CONCLUSIONS

The bar has alleged that Whipple's conduct violated DR 1-102(A)(4) and DR 9-102(A) of the Code of Professional Responsibility. DR 1-102(A)(4) states:

> A lawyer shall not:
>
> . . .
>
> (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

DR 9-102(A) states:

> (A) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or

> more identifiable trust accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows: . . . . [None of the exceptions apply.]

It is clear, even from Whipple's own testimony and records, that he violated DR 9-102(A) with respect to the handling of his trust account. He clearly deposited his own funds into the client's trust account and used such account for writing checks for personal obligations. Whipple has practiced law since 1963 and knows or should know that he should not put his own personal funds into a client's trust account. This is a fundamental rule of professional conduct, and even when the attorney has acted in good faith, such misconduct has been punished by suspension from practice for a period of up to two years. See In re Windsor, 231 Or 349, 350, 373 P2d 612 (1962).

The trial panel concludes that Whipple also violated DR 1-102(A)(4). Based on all the evidence submitted, the trial panel concludes that one of the reasons Whipple put his personal funds into his client's trust account was to keep such funds beyond the reach or hidden from any creditors or judgment creditors that may seek collection. Although Whipple testified that he was not trying to conceal his assets from creditors, he did testify that one of his motives for placing his personal funds in his client's trust account was to keep his funds hidden from his creditors. Whipple testified as follows:

> Q: Did you tell him that you had twice been garnished prior to your suspension and that you conceded that you used the trust account to conceal assets from your creditors, although you had not been garnished during the suspension?
>
> A: I probably did answer yes as to the first part. As to the last -- my answer would be yes as to the first part. I don't remember saying to him that I was using, intentionally using the trust account to hide from my creditors.
>
> Q: Were you intentionally using the trust account to hide assets from your creditors?
>
> A: Well, that would have been a very minor intent but I possibly may have, but that wasn't, that never happened.
>
> Q: Could you explain your answer?
>
> A: Well, I didn't have any garnishments or anything run on me for a long time prior to the suspension and during the suspension and after the suspension.

Q: Can you elaborate on what you mean when you say it was a minor intent?

A: Well, I think that my intent to use the trust account as I did, which was another personal account, in addition to being a depository for clients' funds, that intent consisted of a number of things. And I know that I was aware, also, that it would be less likely to be garnished, personal funds being in there, but I don't think that was one of my major motives. I know that was not one of my major motives. [Hearing transcript, page 21, line 13, through page 22, line 13.]

The trial panel concludes that by using the client's trust account for this purpose, Whipple engaged in conduct involving dishonesty, deceit, or misrepresentation.

The bar also has charged that Whipple violated DR 1-102(A)(4) because he wrote a check on the client's trust account for $18.26 to Pioneer Pies Restaurant and Bakery, Inc., when he knew the account had insufficient funds to cover the check. Whipple admits in his answer that he issued checks on the trust account that were returned by the bank for insufficient funds, including the check issued on April 3, 1984, to Pioneer Pies Restaurant and Bakery, Inc. This constitutes a violation of DR 1-102(A)(4).

DISPOSITION

The trial panel has found that Whipple violated the rules as alleged by the Oregon State Bar. The trial panel has given considerable thought to the recommendation it should make with respect to sanctions. The panel has reviewed the recent case of In re Luebke, 301 Or 321, 722 P2d 1121 (1986), as that case appears to indicate that the standards set forth in that opinion are designed to provide an analytical framework for deciding what should be an appropriate sanction for violation of the disciplinary rules. The trial panel has considered the duty violated, Whipple's mental state, the potential or actual injury caused by the violation, and the existence of aggravating or mitigating factors. There are some aggravating factors in this case, including a prior disciplinary offense, and at least some indication of a dishonest or selfish motive in the manner in which he transacted business through his client's trust account. It is also clear that Whipple has been practicing law for approximately 23 years, and should have known better.

The trial panel has also considered some factors in mitigation. Whipple has certainly had a considerable amount of personal problems dealing with

severe financial distress and his child that was born with Down's syndrome. He has been heavily in debt over the past several years. At the time of the hearing, it appeared that Whipple had made a full and free disclosure to the disciplinary board and had a cooperative attitude toward the proceedings. However, the trial panel is not totally convinced that Whipple was being candid regarding the purpose for using his client's trust account as a personal account. The trial panel has taken into consideration that no client was apparently caused any harm or damage by Whipple's conduct in connection with these violations.

It is the recommendation of the trial panel that Whipple be suspended from the practice of law for 60 days. The trial panel further recommends that thereafter Whipple be on probation for a period of two years on the following conditions:

(1) That Whipple's client's trust account and office account be subject to inspection, without notice, by a person designated by the Oregon State Bar, at any time during his period of probation. Any reasonable costs incurred by the Oregon State Bar in connection with such inspection shall be reimbursed by Whipple, but such reimbursement shall not exceed the cost of four inspections each year; and

(2) As a special condition precedent to reinstatement on the suspension ordered herein, Whipple shall be required to pass an examination on professional responsibility administered by the Board of Bar Examiners.

Dated this 11th day of September 1986.

/s/ Garry L. Kahn
GARRY L. KAHN
CHAIRPERSON

/s/ Joyce Tsongas
JOYCE TSONGAS

/s/ Frank Lagesen
FRANK LAGESEN

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-30
	)	
WILLIAM G. BENJAMIN,	)	
	)	
Accused.	)	
	)	

Bar Counsel: William H. Stockton, Esq.

Counsel for Accused: Brad Littlefield, Esq.

Trial Panel: Jerry K. McCallister, Trial Panel Chairperson; William R. Canessa; and Joan C. Johnson (public member)

Disposition: Accused found not guilty of violation of DR 1-102(A)(4), DR 6-101(A)(3), and DR 7-102(A)(5). Dismissal.

Effective Date of Opinion: November 3, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No.. 85-30
	)	
WILLIAM G. BENJAMIN,	)	OPINION
	)	
Accused.	)	
	)	

This matter came on for hearing on September 29, 1986, at the Washington County Courthouse. The accused was present in person and represented by his attorney, Brad Littlefield. The Oregon State Bar was represented by William H. Stockton. The trial panel consisted of Jerry K. McCallister, trial panel chairperson, William R. Canessa, and Joan C. Johnson.

The causes for complaint against the accused arose out of the accused's representation of Gail Visage in a dissolution of marriage proceeding. The accused began representing Mrs. Visage in June 1983. The respondent in the suit, Greg Visage, was representing himself for a period of time and there were some negotiations between the accused and Mr. Visage that resulted in perhaps as many as four property settlement agreements being drafted. Greg Visage came to be represented by attorney Marva Graham. This began some time in September or October 1983.

A property settlement agreement was negotiated between the parties and their attorneys and was signed in October 1983. Among other things, the parties particularly negotiated that the petitioner would pay her own costs involved in the dissolution, and there were some back taxes that were in the form of employer taxes that were to be the obligation of the respondent. The parties did not pay particular reference to these taxes and the payment thereof in the property settlement agreement, but generally dealt with them under the heading of each party was to be responsible for his or her own bills.

Among the assets of the parties was a piece of real property upon which was situated a house. The payments on that house were in default and there was also some other billing that was delinquent. Mrs. Visage's father loaned $3,200.00 to Mrs. Visage so that she could clear up those debts against the

house. Before loaning the money, however, Mrs. Visage's father, Mr. Kinney, insisted that there be a deed prepared that would convey any interest in the property from Mr. Visage to Mrs. Visage. In addition, a promissory note was drafted that was signed by Mrs. Visage only as evidence of the debt. That signed deed and the property settlement were brought by the accused to attorney Graham's office on or about October 26, 1983. The accused also presented a check to attorney Graham for the recording costs of the deed. For some reason, the deed was returned by the recording office, unrecorded. There was apparently an irregularity regarding transfer taxes, that made it unacceptable. The deed was corrected and sent to the recording office and, once again, was rejected. Thereafter the accused held that deed in his file and did nothing more with it from November 1983 until January 1985.

Once the property settlement agreement was signed, there was little action on the dissolution proceeding until late April 1984. The accused's client did not want to consummate the dissolution until the respondent had completed some repairs to the house. The accused prepared all the necessary documents to complete the dissolution by the affidavit process. The documents were sent to attorney Graham in mid-April 1984. She had her client sign them and then they were returned to the accused on or about April 23, 1984, and he sent them to the courthouse for processing. Thereafter, attorney Graham called the accused on or about May 21, 1984, inquiring about the status of the dissolution. The accused replied that he thought that all the papers had been filed but, upon contacting the courthouse, he learned that the papers had been returned to him, date of which is unknown, because of certain deficiencies. The accused thereafter decided immediately to request a hearing to put on his prima facie showing and conclude the dissolution in that manner and he relayed that information to attorney Graham on May 21, 1984. The accused scheduled a prima facie hearing for May 29, 1984, and the understanding between the accused and attorney Graham was that the matters contained in the property settlement agreement would be introduced into evidence and that document would be incorporated by reference into the decree and, accordingly, attorney Graham did not attend the prima facie showing. At the prima facie hearing, the accused elicited testimony from his client that was contrary to the provision regarding payment of costs, and further elicited testimony regarding the obligation to pay the taxes that were due. This latter question regarding the taxes was an attempt, as explained by the accused, to clarify the

matter of the unpaid taxes. The accused explained that he inadvertently read from a prior unsigned property settlement agreement that the respondent was to pay the costs of the suit. That provision was in the earlier property settlement agreement but was not in the one that was ultimately executed by the parties.

Upon completion of the prima facie hearing, the accused immediately sent a proposed form of decree to attorney Graham for her approval before submission to the court. Graham immediately informed the accused that the provision on costs was not accurate, and there was some discussion between them regarding the taxes. The ultimate result was that the parties scheduled a further hearing on July 20, 1984, and the matter was concluded by informal conference with Judge Lund.

In count one of the complaint, the bar has charged that the accused was guilty of a violation of DR 1-102(A)(4) involving dishonesty, fraud, deceit, and misrepresentation, alleging that the conduct concerning the prima facie showing, as well as the events that preceded it, were deceitful. The bar was unable to find either Mr. or Mrs. Visage or Mrs. Visage's father, Mr. Kinney, for testimony at the hearing, and all of the bar's testimony was evidence from attorney Graham and the accused.

We conclude that the bar has not sustained its burden of proving this alleged violation by clear and convincing evidence. It is important to note that the accused is a relatively new lawyer, having been admitted to the bar in 1982, and this was among the first dissolution cases that he had handled. In addition, this was the first prima facie showing that he had handled.

In conjunction with an alleged violation as set forth above, the bar further alleged that the accused had violated DR 7-102(A)(5) regarding knowingly making a false statement of law or fact. This arose out of the questions of attorney Graham regarding the status of the documents submitted for decree by affidavit and scheduling of a prima facie hearing. We conclude that there was no false statement of law or fact made by the accused to attorney Graham. We further conclude that there was no dishonesty, fraud, deceit, or misrepresentation involved in the accused's conduct regarding the submission of the documents to the court or the later prima facie showing. No evidence was introduced to counter the accused's testimony that the questions elicited at the prima facie hearing were at the urging of the

accused's client and that his mistake in referring to an earlier draft of the property settlement agreement led to the confusion. Accordingly, we find the accused not guilty of violation of either provision as set forth in count one of the complaint.

At the conclusion of the evidence, the accused, by and through his attorney, moved for an order of dismissal on the second cause of complaint and the bar conceded that that should be allowed and, accordingly, the second cause of complaint was dismissed.

The third cause of complaint concerned an alleged violation of DR 6-101(A)(3), having to do with neglecting a legal matter entrusted to the accused. This arose out of the failure of the accused to correct whatever deficiencies there were in the recording of the deed referred to earlier. The deed lay in the accused's file for approximately 13 or 14 months. There were various explanations given for the reason that the deed was there that we need not discuss. The importance of this matter is that the accused testified that, when he got the deed back the second time, he informed the client that the deed was in his file and that she was protected whether or not he recorded the deed and, accordingly, she relied on him and did not instruct him to record the deed. The accused was simply going to hold the deed until the closing of the escrow regarding the sale of the real property and had advised his client that the recording of the ultimate decree of dissolution was sufficient protection for her. Whether or not that was true, we need not pass judgment on it.

The only evidence on this issue was the accused's testimony that he informed his client that the deed was not recorded and that he had her authorization and approval not to record the same. The bar introduced no evidence to the contrary. Accordingly, we conclude that the bar has failed to prove by clear and convincing evidence that the accused neglected a legal matter that had been entrusted to him and we find him not guilty on that count.

In summation, we conclude that the bar has failed to prove by clear and convincing evidence any of the violations as set forth in the complaint and all counts should be dismissed.

Dated this 14th day of October 1986.

/s/ Jerry K. McCallister
JERRY K. McCALLISTER

/s/ Joan C. Johnson
JOAN C. JOHNSON

/s/ William R. Canessa
WILLIAM R. CANESSA

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-111
	)	
STANLEY E. CLARK,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Carl W. Hopp, Jr., Esq.

Counsel for Accused: Max Merrill, Esq.

Trial Panel: James V. Hurley, Trial Panel Chairperson; Emery J. Skinner (public member); and William M. Ganong

Disposition: Accused found not guilty of violation of DR 5-101(A); guilty of violation of DR 6-101(A)(3). Sixty-day suspension stayed subject to two year probation.

Effective Date of Opinion: November 5, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-111
	)	
STANLEY E. CLARK,	)	FINDINGS OF FACT,
	)	CONCLUSIONS, AND
Accused	)	DISPOSITION OF THE
	)	TRIAL BOARD

This matter came before the undersigned members of a trial panel of the disciplinary board of the Oregon State Bar for hearing on August 22, 1986. The Oregon State Bar was represented by Carl W. Hopp, Jr. Stanley E. Clark was represented by Max Merrill.

PLEADINGS

The bar's formal complaint sets out two counts of misconduct by the accused to which the accused filed his answer. The answer admitted many of the factual allegations of the complaint but denied that the facts admitted constituted misconduct by the accused. The answer also contained three affirmative defenses.

FIRST CAUSE OF COMPLAINT

At the outset of the hearing the accused withdrew his denial of the misconduct alleged in the bar's first cause of action and admitted that he did violate DR 6-101(A)(3) of the Code of Professional Responsibility. The trial panel finds that there is clear and convincing evidence that the accused neglected a legal matter entrusted to him, thereby failing to act competently.

SECOND CAUSE OF COMPLAINT

The bar's second cause of complaint alleges that the accused violated DR 5-101(A) of the Code of Professional Responsibility. DR 5-101(A) states:

> Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

FINDINGS OF FACT

The trial panel finds the following findings of fact:

1. The accused, Stanley E. Clark, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and is a member of the Oregon State Bar, having his office and place of business in Deschutes County, Oregon.

2. On July 17, 1978, Annette Lands retained the accused to represent her in a personal injury action based on injuries she sustained in an automobile accident on April 28, 1977, in Deschutes County, Oregon. On April 27, 1979, the accused filed a complaint on behalf of Mrs. Lands entitled Lands v. Marvin, Deschutes Circuit Court Case No. 25021.

3. The accused began assembling medical reports and specifically requested a report from Dr. Roger Stack, who was Mrs. Lands' personal treating physician. On or about March 14, 1979, the accused wrote to Dr. Stack requesting a medical report detailing his medical treatment of Mrs. Lands and setting forth his prognosis of her condition. Dr. Stack did not respond to the accused's request.

4. On or about September 23, 1980, the accused sent a letter to Cascade Medical Clinic, where Dr. Stack's office is located. In the letter the accused requested that either Dr. Stack or another doctor of Mrs. Lands' choice examine Mrs. Lands' back and neck at the accused's expense. In his letter, the accused did not request that a written report of the examination be sent to him and none was sent.

5. On or about December 29, 1982, the accused wrote to Dr. Stack requesting that Dr. Stack familiarize himself with Mrs. Lands' file and then call him to discuss her condition. A written report was not requested. Dr. Stack did not contact the accused by telephone or other form of communication to discuss Mrs. Lands' condition.

6. On or about March 11, 1983, the accused wrote to Dr. Stack requesting that either the doctor or his nurse contact him to arrange a time to discuss Mrs. Lands' condition after the doctor had had an opportunity to review Mrs. Lands' file. A written report was not requested. Neither Dr.

Stack nor his nurse contacted or communicated with the accused in response to his letter.

7. On or about January 18, 1985, the accused wrote to Dr. Stack requesting that the doctor review Mrs. Lands' file and call him to discuss her condition. A written report was not requested.

8. On or about February 13, 1985, Dr. Stack sent the accused a written medical report concerning Mrs. Lands.

9. In or about August 1979 attorney Ronald L. Bryant advised the accused that he had been retained by an insurance company to represent defendant Terry Marvin. On or about October 23, 1979, Mr. Bryant wrote to the accused requesting copies of medical bills and reports concerning Mrs. Lands and indicating that his client would like to settle the case if the parties could reach an agreement as to value. Mr. Bryant advised that liability was not an issue and that the defendant was prepared to settle once medical documentation to substantiate Mrs. Lands' claim for injuries was received. At that time, remaining insurance funds available to pay the claim were approximately $10,300.00.

10. Subsequently, Mr. Bryant sent four written requests to the accused requesting medical reports. In January 1985 Mr. Bryant filed a motion to compel the accused to provide medical reports. On or about January 17, 1985, the accused complied with Mr. Bryant's motion to compel.

11. On or about January 31, 1980, Mr. Bryant wrote to the accused asking whether there was a possibility of settling the case. On or about January 15, 1981, Mr. Bryant again wrote to the accused indicating that the file had been dormant for nearly a year and that he would like to resolve the matter by way of settlement if possible. The accused replied that he was having difficulty obtaining a report from Dr. Stack.

12. On or about April 28, 1982, notice was mailed to the accused by the Deschutes County Circuit Court clerk advising that the case of Lands v. Marvin would be dismissed for want of prosecution on June 8, 1982, unless good cause was shown on or before that date why the case should be continued as a pending case.

13. On or about June 8, 1982, an order of dismissal of the case of Lands v. Marvin was signed by Circuit Court Judge Walter I. Edmonds, Jr. On

or about June 18, 1982, the order of dismissal was revoked pursuant to a motion filed by the accused on June 9, 1982.

14. On or about January 23, 1984, notice was mailed to the accused by the Deschutes County Circuit Court clerk advising that the case of Lands v. Marvin would be dismissed for want of prosecution on March 5, 1984, unless good cause was shown on or before that date why the case should be continued as a pending case.

15. On or about March 2, 1984, the accused filed a motion to continue the case of Lands v. Marvin as an active case, which motion was granted by order of the court dated March 5, 1984.

16. A stipulated order of dismissal was entered on August 21, 1985, on the grounds that the Lands v. Marvin case had been fully compromised and settled for $5,000, of which Mrs. Lands received $4,500. Pursuant to the settlement agreement, Mrs. Lands remained responsible for her medical expenses and the accused did not receive any portion of the settlement proceeds except as reimbursement for his out-of-pocket expenses.

17. At all times material hereto Dr. Stack was a staff member of the Central Oregon District Hospital.

18. With the exception of a short period of time in 1981, at all times material hereto the accused has been a member of the board of directors of the Central Oregon District Hospital. The accused receives no compensation for this service.

19. The relationship between Dr. Stack and the accused was very casual. Dr. Stack did not generally attend the hospital board meetings and there was no previous business contact between Dr. Stack and the accused. The accused, as a hospital board member, may have reviewed the credentials of Dr. Stack to practice in the hospital.

20. The expert medical testimony needed to support Mrs. Lands' claim against Mr. Marvin was very limited. The damages portion of Mrs. Lands' claim was weak. The accused recognized this weakness in Mrs. Lands' claim early in the litigation process.

21. Both the accused and Dr. Stack were dilatory in their respective duties to Mrs. Lands in this matter.

CONCLUSIONS

During the local professional responsibility committee's hearing in this matter, the accused indicated that he did not want to use his position as a hospital board member to pressure Dr. Stack to prepare a report concerning Mrs. Lands' condition. Said remark is the basis for the bar's second cause of complaint.

Mrs. Lands had a poor medical basis for her claim against Mr. Marvin. A strong report from Dr. Stack was necessary if Mrs. Lands was to prevail.

During the hearing before the trial panel the accused testified that he does not remember considering that he could possibly pressure Dr. Stack until he made said statement to the LPRC members. It is doubtful that the accused could have used his board position to pressure Dr. Stack. It is clear that the accused did not use his position to pressure Dr. Stack and that he did not refrain from pressuring Dr. Stack because of his board position.

The exercise of the accused's professional judgment on behalf of Mrs. Lands was not affected by his membership on the hospital board. The accused's said comment was apparently caused by frustration, and was not based on fact.

The trial panel finds that the bar has failed to prove its second cause of complaint by clear and convincing evidence.

SANCTION

The commentary on page 17 of Standards for Imposing Lawyer Sanctions (ABA 1986) notes that the primary purpose for lawyer discipline is to protect the public. The commentary states:

> A final purpose of imposing sanctions is to educate other lawyers and the public, thereby deterring unethical behavior among all members of the profession.

The bar advocates the suspension of the accused, while the accused does not believe that suspension is merited.

Section 4.42 (p. 32) of the above said standards states:

Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Section 4.43 states:

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.

The trial panel finds the following mitigating factors:

1. The client suffered no injury. Mrs. Lands' claim lacked medical support and the probability that she would prevail was small.

2. The accused waived any fee to which he may have been entitled.

3. The accused has no prior disciplinary record.

4. The accused fully and freely participated in the investigation and trial of the complaint.

5. The medical expert was neglectful of his duty to the client.

The trial panel finds the following aggravating factors:

1. The accused's neglect of his client's interest spans approximately six years.

2. The accused neglected this matter despite repeated notices from the opposing attorney and the court.

3. Even though he withdrew his defense to the first cause of complaint, the accused continues to blame Dr. Stack for the delay and fails to recognize the wrongful nature of his own neglect of this matter.

4. The accused has been practicing law since November 1, 1967, and has the experience to recognize the potential injury to his client.

Having considered the evidence and the mitigating and aggravating factors set forth herein, the trial panel hereby orders that the accused be suspended from the practice of law in the state of Oregon for a period of 60 days commencing on November 1, 1986; provided, however, that the execution of the suspension is suspended and that the accused shall be placed on probation for a period of two years commencing on November 1, 1986, on the following conditions:

1. The accused shall immediately request that the Professional Liability Fund review his office docket control and client relation systems;

that he implement any recommended changes; and that he reimburse the fund for its expenses in reviewing the accused's said systems and assisting in the implementation of any changes.

2. The accused shall prepare quarterly caseload reports which shall include schedules documenting the work each file requires and the time line for completing each component of the work. Those reports shall contain detailed explanations for any failure to adhere to the time lines. The accused shall use his best efforts to handle matters entrusted to him in a timely manner.

3. The accused shall cooperate fully with any person or persons appointed by the state disciplinary board chairperson or the supreme court to supervise the probation. The accused shall reimburse the probation supervisors for their actual expense incurred in supervising the accused's probation.

Dated this 29th day of September 1986.

/s/ James V. Hurley
JAMES V. HURLEY
TRIAL PANEL CHAIRPERSON

/s/ Emery J. Skinner
EMERY J. SKINNER
PUBLIC MEMBER

/s/ William M. Ganong
WILLIAM M. GANONG
MEMBER

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 83-78; 84-15;
	)	84-58; 84-144
LINDA J. WILSON,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Paul D. Clayton, Esq.

Counsel for Accused: Kenneth A. Morrow, Esq.

Trial Panel: Timothy J. Harold, Trial Panel Chairperson; N. Ray Hawk (public member); and K. Patrick Neill

Disposition: Accused found not guilty of violation of DR 1-102(A)(4), DR 1-103(C), DR 2-106(A) and (B), DR 6-101(A)(3), DR 7-101(A)(2), and DR 9-102(B)(3); guilty of violation of DR 2-110(A)(2), DR 7-104(A)(1), DR 9-102(A), and DR 9-102(B)(4). Thirty-day suspension stayed subject to nine month probation.

Effective Date of Opinion: November 25, 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 83-78; 84-15; 84-58; 84-144
	)	
LINDA J. WILSON,	)	
	)	OPINION
Accused.	)	
	)	

This matter came for hearing before the trial panel of the disciplinary board consisting of the undersigned, which was acting pursuant to the authority of ORS 9.534 and 9.536. A hearing was held on the 19th, 20th, and 27th days of March 1986. The Oregon State Bar appeared by and through Paul D. Clayton, and the accused Linda J. Wilson appeared in person and by and through her attorney, Kenneth A. Morrow. The formal complaint on file contained nine causes of complaint against the accused involving her representation of five clients (one client being herself) on five unrelated cases. The panel having heard the testimony and having considered the evidence presented makes the following:

PRELIMINARY FINDINGS OF FACT

1. The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and was at all pertinent times authorized to carry out the provisions of ORS Chapter 9 relating to discipline of attorneys.

2. The accused, Linda J. Wilson, was at all pertinent times an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar. Linda J. Wilson maintained her law practice in Lane County, Oregon.

OPINION

The trial panel heard two full days of testimony, received 48 exhibits, and heard four hours of argument by counsel for the bar and the accused. There were nine specific causes of complaint against the accused. It is the opinion of the trial panel as concluded above that the bar sustained its burden of proof on four of the causes of complaint.

The complaints arose out of the accused's representation of four clients (Louis[e] J. Couch, Laural LaFavor, Cleone Palmer, and Junction City Recreation Center) and the accused representing herself in the controversy with Eugene Nail.

A. LOUIS[E] J. COUCH

Under an employment contract the accused undertook to represent Louis[e] J. Couch in a dissolution of marriage proceeding in the Circuit Court of the State of Oregon for Lane County. The husband of Louis[e] J. Couch filed a response in that proceeding and the proceeding was a contested proceeding. Louis[e] J. Couch agreed to pay the accused not less than $75.00 per hour for legal services in said proceeding, and further that the total fee would be based upon the total time spent by the attorney, the work required due to legal position taken by the opposing party, and to the occurrence of any extraordinary, unanticipated legal problems.

The accused and/or associate attorneys in the accused's office represented Louis[e] J. Couch from approximately July 14, 1982, through October 11, 1982, at which time the accused withdrew as attorney of record for Louis[e] J. Couch. During the time the accused represented Louis[e] J. Couch a show cause hearing was held in the Lane County Circuit Court on the issue of temporary use of a family automobile. The accused charged Louis[e] J. Couch the total sum of $2,095 for legal representation from July 14, 1982, through October 11, 1982.

The accused withdrew as attorney of record for Louis[e] J. Couch 23 days before the date set for trial of the dissolution proceedings. The reason for withdrawal of the accused was that Louis[e] J. Couch, in the accused's opinion, was in poor mental health and unable to assist the accused in preparation for her upcoming trial. The accused did not feel competent to represent a client in Louis[e] J. Couch's state of mental health. The accused advised Louis[e] J. Couch to seek other legal counsel at the time of her withdrawal.

In the accused's representation of Louis[e] J. Couch, it was the opinion of the trial panel that the bar did not sustain its burden of proof that the accused had charged a clearly excessive fee. There was no evidence as to the actual hours expended by the accused or the accused's associates in the representation of Louis[e] J. Couch, nor any expert testimony that the fee for

the services performed was clearly excessive. The trial panel was of the opinion that the accused should have presented to Louis[e] J. Couch more detailed billings showing actual hours expended as the employment agreement between the accused and Louis[e] J. Couch clearly would have given Louis[e] J. Couch the impression that she was going to be billed on an hourly basis. Opinion No. 360 (1977) of the Committee on Legal Ethics requires an attorney who was billing a client on an hourly basis to present an itemized statement to the client and states that the refusal to present an itemized statement violates the letter and spirit of EC 2-23.

The panel did find that the accused's withdrawal in the Louis[e] J. Couch matter was a violation of DR 2-110(A) [DR 2-110(A)(2)] due to Louis[e] J. Couch's mental condition. It is the opinion of the panel that the accused did not take reasonable steps to avoid foreseeable prejudice by withdrawing as counsel 23 days before the trial of the dissolution matter without determining as a matter of fact that Louis[e] J. Couch was going to be represented in the dissolution matter. The opinion of the Committee on Legal Ethics, Opinion No. 229 (1972), would indicate that when an attorney becomes convinced that a client is mentally incapable of understanding the nature of the proceedings, the attorney may not abandon the client. The opinion indicates the attorney may have the responsibility to initiate guardian or conservatorship proceedings for the benefit of the client, and this panel finds that the accused was required at least to see that Louis[e] J. Couch was going to be represented by legal counsel prior to her withdrawal and in not doing so she failed to take the reasonable steps to avoid foreseeable prejudice to the client.

B. LAURAL LaFAVOR

On May 5, 1983, the accused deposited in her trust account a check in the amount of $595.00, which was the check of one Laural LaFavor. On May 6, 1983, the accused withdrew $350.00 from her trust account to be applied upon her fees for the representation of Laural LaFavor. On May 9, 1983, the accused withdrew $80.30 from her trust account to pay the filing fee in the Lane County Circuit Court for the filing of a dissolution proceeding on behalf of Laural LaFavor. On May 13, 1983, the accused withdrew $84.50 from her trust account to be applied on fees for legal services performed on behalf of Laural LaFavor.

After May 13, 1983, the check of Laural LaFavor was returned to the accused by Laural LaFavor's bank marked "NSF." On June 2, 1983, the accused contacted Jeffrey D. Sapiro, assistant general counsel of the Oregon State Bar, and asked his advice as to what to do concerning the withdrawal of funds from the trust account that were the funds of other clients. On June 2, 1983, the accused returned all funds withdrawn as fees on the Laural LaFavor matter to the trust account and on June 15, 1983, after receiving the money from Laural LaFavor, returned the sum of $80.30 representing the filing fee to her trust account.

The trial panel did find a violation of DR 9-102(A) in the Laural LaFavor matter. By drawing on the funds deposited in the accused's trust account prior to the check of Laural LaFavor clearing the bank, the accused drew on funds of other clients. After determining that the check of Laural LaFavor had been returned marked "NSF" the accused did contact the bar for advice and made reasonable efforts to remedy the situation. The trust account guidelines as published by the Oregon State Bar in Volume 46, No. 3, December 1985 Oregon State Bar Bulletin were published after the fact of the present incident, but it does establish that trust account disbursements should be made only after clients' checks deposited in a lawyer's trust account have cleared through the banking process. Though the panel found a violation of the disciplinary rule, the panel did not find intentional conversion of clients' funds by the accused.

C. CLEONE PALMER

Concerning the accused's representation of Cleone Palmer, the testimony and evidence were confusing and conflicting. The panel did not find a violation of disciplinary rules concerning the representation of Cleone Palmer on the tax deferral issue or dishonesty on the part of the accused in responding to the bar during the investigation. However, the panel did find a violation of the disciplinary rule concerning the accused's handling of the trust account which she held for the benefit of Cleone Palmer.

The accused represented Cleone Palmer in the years 1981 and 1982 on debtor/creditor problems and on senior citizens tax deferral applications and homeowners and renters relief program applications. The accused relied on a pamphlet published by the Oregon Department of Revenue entitled "Senior Citizens Property Tax Deferral" in advising Cleone Palmer that she was not

eligible for senior citizens property tax deferral for the reason that she had only a life estate in her home. The pamphlet relied on by the accused was published in 1981, designated I.C. 101-81. At the time of the bar's investigation of the Palmer matter the accused had turned a substantial portion of her files, including the pamphlet relied on, over to Cleone Palmer's new lawyer. The accused obtained another copy of the "Senior Citizens Property Tax Deferral" pamphlet that was published in 1983, Form No. 150-310-675 (8-83) and presented that to the investigators for the bar, advising them that was the pamphlet she relied on in giving advice to Cleone Palmer. Both pamphlets were substantially the same as to the information they contained.

Concerning this senior citizens tax deferral pamphlet issue, the bar did not prove that the accused intentionally misled the bar investigator.

With respect to the claim that the accused neglected the legal matters entrusted to her, the panel is aware from the testimony and evidence that the Professional Liability Fund settled a malpractice claim made by Cleone Palmer against the accused for the accused's failure to apply for senior citizen's tax deferral. However, there was no competent testimony, in the opinion of the panel, that would indicate that the accused neglected the tax deferral matter entrusted to her by Cleone Palmer in that the accused testified in her opinion the tax deferral could only have been obtained if the property was placed in fee ownership of Cleone Palmer and that would have jeopardized the property in leaving it subject to claims of Cleone Palmer's creditors. The bar did not present competent expert testimony that the failure to apply for tax deferral was malpractice or was in fact neglecting a legal matter entrusted to the accused or failure by the accused to carry out the employment contract entered into between the accused and Cleone Palmer.

The panel did find a violation of DR 9-102(B)(4) in that the accused without authorization by Cleone Palmer applied money held in her trust account for the benefit of Cleone Palmer to the accused's fees. The accused held in the accused's trust account on February 26, 1982, funds belonging to Cleone Palmer in the sum of $1,435.00. Cleone Palmer by letter dated February 11, 1982, authorized the accused to withdraw from those trust account funds sufficient money to pay the accused's fees for which the accused had billed Cleone Palmer in the amount of $242.67. The accused withdrew from the funds of Cleone Palmer and the accused's trust account

additional sums to pay Cleone Palmer's attorney fees on March 31, 1982, May 12, 1982, June 17, 1982, August 5, 1982, and September 9, 1982. Cleone Palmer did not authorize the withdrawal of those funds for the payment of the accused's attorney fees. On September 20, 1982, the date that Cleone Palmer terminated the accused as her attorney, the accused delivered $322.03 to Cleone Palmer from her trust account, which sum represented the balance of money held in trust for Cleone Palmer less $246.20, which the accused had applied to fees due her from Cleone Palmer without authority of Cleone Palmer.

The accused interpreted a letter from Cleone Palmer authorizing the payment of Cleone Palmer's February 1982 bill from the trust account as authorizing the accused to pay future bills from the trust account money. The panel found that the accused was not so authorized. Because the accused did not have authority to pay fees after February 1982 out of the trust account, the accused did not promptly deliver all the money held in trust to Cleone Palmer upon Cleone Palmer's termination of the accused's employment.

D. JUNCTION CITY RECREATION CENTER AND EUGENE NAIL

From May 1981 through March 1983 the accused represented Junction City Recreation Center, an Oregon corporation. The panel found that the bar did not sustain its burden of proof in showing that the accused neglected legal matters entrusted to her or failed to carry out her employment contract within Junction City Recreation Center. There was no competent expert testimony presented to prove that the accused's failure to file a certificate of readiness was in fact neglecting a legal matter or failing to carry out an employment agreement. Had the bar presented competent expert testimony in the nature of testimony from a practicing attorney to the effect that the accused had neglected a matter entrusted to her or failed to carry out the employment agreement, the panel may have found otherwise.

On the 12th day of January 1983, the accused prepared and presented to Eugene Nail and obtained Eugene Nail's signature on a mutual release releasing the accused of any claims arising out of a construction contract involving Eugene Nail's construction and remodeling of an office structure owned by the accused. At the time of the preparation of the mutual release and presenting the same to Eugene Nail and obtaining his signature, the accused knew that Eugene Nail was represented by Charles Gudger, attorney at

law, on the matter of the construction contract. The accused had correspondence and at least three telephone conversations (on October 15, October 21, and December 13, 1982) with Charles Gudger concerning the construction contract. Prior to the preparation of the mutual release and obtaining Eugene Nail's signature thereon, the accused did not contact or attempt to contact Charles Gudger, the attorney representing Eugene Nail in the controversy, concerning the construction contract.

The panel did find that the accused violated the provisions of DR 7-104(A) [DR 7-104(A)(1)] in that she communicated on behalf of herself as a party to a controversy with another party to a controversy, namely Eugene Nail, when she knew that Eugene Nail was represented by a lawyer. The accused not only communicated with Eugene Nail, but presented Eugene Nail with and obtained his signature on a mutual release concerning the controversy when the accused knew that Eugene Nail was represented by another lawyer and the accused in fact had been negotiating with the other lawyer concerning settlement of the controversy. The panel found that the fact the accused was representing herself in that controversy had no bearing upon the matter.

Concerning the ninth cause of complaint against the accused that the accused was engaged in conduct involving dishonesty by being dishonest with her client, Eugene Nail, an officer of Junction City Recreation Center, and further that the accused was not truthful with the bar during the bar's investigation of the accused's representation of Junction City Recreation Center and the accused's representation of herself in the controversy with Eugene Nail, the panel found that the bar did not sustain its burden of proof. The testimony and evidence were confusing at best concerning statements made or not made to Eugene Nail on the construction controversy and to Eugene Nail on the matter of the accused's representation of Junction City Recreation Center. The bar did not establish misconduct on the part of the accused on those issues by clear and convincing evidence.

Based upon the foregoing, the trial panel reaches the following:

CONCLUSIONS

First cause of complaint. The bar did not prove that the accused violated DR 2-106(A) and (B) by charging an illegal or clearly excessive fee for legal services.

Second cause of complaint. The accused did violate DR 2-110(A)(2) by withdrawing as attorney for Louis[e] J. Couch without taking reasonable steps to avoid foreseeable prejudice of the rights of Louis[e] J. Couch.

Third cause of complaint. The accused did violate DR 9-102(A) in withdrawing funds from her client's trust account belonging to other clients because the check of her client Laural LaFavor was not honored by Laural LaFavor's bank and returned to the accused marked "NSF." Funds should not have been drawn upon the check of Laural LaFavor until it had been honored by Laural LaFavor's bank.

Fourth cause of complaint. The bar did not prove that the accused violated DR 1-103(C) by intentionally being untruthful to the investigators for the bar concerning the senior citizens tax deferral pamphlet that she relied on in advising Cleone Palmer.

Fifth cause of complaint. The bar did not prove that the accused violated DR 6-101(A)(3) or DR 7-101(A)(2) in neglecting the legal matter of Cleone Palmer entrusted to her or failing to carry out the contract of employment between herself and Cleone Palmer.

Sixth cause of complaint. The accused did violate DR 9-102(B)(4) in without authority applying money held in trust for the benefit of the client to her attorney fees. In light of the fact that the accused had no authority to make those withdrawals, she failed to deliver promptly all money held in trust to Cleone Palmer upon Cleone Palmer's termination of the accused's employment. The bar did not prove that the accused violated DR 9 -102(B)(3).

Seventh cause of complaint. The bar did not prove that the accused violated DR 6-101(A)(3) or DR 7-101(A)(2) in neglecting the legal matter entrusted to her by Junction City Recreation Center or failing to carry out a contract of employment with Junction City Recreation Center.

Eighth cause of complaint. The accused did violate DR 7-104(A)(1) by communicating with and obtaining Eugene Nail's signature on a mutual release when Eugene Nail was a person she knew to be represented by a lawyer on the subject matter of the release without the consent of the lawyer representing Eugene Nail.

Ninth and final cause of complaint. The bar did not prove that the accused violated DR 1-102(A)(4) or DR 1-103(C) by engaging in conduct

involving dishonesty, fraud, deceit, or misrepresentation, or failing to respond truthfully to inquiries from the Oregon State Bar.

SANCTIONS

Based upon the panel's findings of fact and conclusions the panel imposes the following sanctions:

1. The accused shall be suspended from the practice of law for a period of 30 days.

2. The execution of the entire period of suspension shall be stayed and the accused shall be placed on probation for a period of nine months upon the following conditions:

a. The accused shall receive professional office practice and management counseling acceptable to and under the terms determined by the state chairperson of the disciplinary board.

b. The accused shall take and successfully pass the Oregon State Bar professional responsibility examination.

3. Upon the completion of the requirements set out in (a) and (b) above, the probationary period shall end.

In imposing this sanction we are mindful of the fact that the accused contacted the bar association and asked for advice concerning the LaFavor matter and did not intentionally convert other clients' funds to her own use in the LaFavor matter. However, the bar sustained its burden of proof and proved misconduct on the part of the accused by clear and convincing evidence in representing three separate clients and representing herself in the Eugene Nail matter.

Dated this 12th day of June 1986.

/s/ N. Ray Hawk
N. RAY HAWK

/s/ K. Patrick Neill
K. PATRICK NEILL

/s/ Timothy J. Harold
TIMOTHY J. HAROLD, CHAIRPERSON

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-75
	)	
CHRISTINE E. MORAN,	)	
	)	
Accused.	)	
	)	

Bar Counsel: George A. Riemer, Esq.

Counsel for Accused: Christine E. Moran, Esq., pro se

Disciplinary Board: David A. Kekel, State Chairperson; and Chris L. Mullmann, Region 5 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 2-104(A) and DR 5 -105(A). Reprimand.

Effective Date of Opinion: January 29, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-75
	)	
CHRISTINE E. MORAN,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

The accused and the bar have executed a stipulation for discipline wherein the accused stipulates to a violation of DR 2-104(A) and DR 5-105(A), which recites the following relevant facts:

> The accused concedes that she could not ethically initiate personal contact with Cu for purposes of obtaining professional employment as the circumstances of her contact with him did not fit within the exceptions contained in DR 2-104(A).
>
> Furthermore, the accused concedes that her undertaking to represent Cu after having previously represented Yen in the same matter violated the terms of DR 5-105(A).

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused agrees to accept a public reprimand for this violation. The stipulation has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it.

/s/ David A. Kekel
DAVID A. KEKEL
STATE CHAIRPERSON

Dated: 1/29/87

/s/ Chris L. Mullmann
CHRIS L. MULLMANN
REGION 5 CHAIRPERSON

Dated: 1/27/87

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-75
	)	
CHRISTINE E. MORAN,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now Christine E. Moran, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Christine E. Moran, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1980, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

III.

The state professional responsibility board of the Oregon State Bar, at a meeting on November 1, 1986, approved for filing against the accused a formal complaint alleging her violation of DR 2-104(A) and DR 5-105(A) and (B) of the Code of Professional Responsibility. Prior to the filing of the bar's formal complaint, the accused contacted the Oregon State Bar and advised the bar of her desire to stipulate to her violation of DR 2-104(A) and DR 5-105(A) and to accept formal discipline for having committed said violations.

IV.

This matter relates to a complaint filed with the bar on February 10, 1986, by Nguyen Van Cu. The bar's investigation of Mr. Cu's complaint revealed the following:

1. Paul Duong of U.S. Catholic Resettlement Services in Portland, Oregon, brought Nguyen Thi Yen to the accused's office on or about May 21, 1985. Yen did not speak English and used Duong as an interpreter. Yen wanted assistance from the accused in obtaining a divorce from Nguyen Van Cu. She advised the accused that she had no money but said that her husband was in agreement concerning the divorce and had also agreed to support her and her children. Yen and the accused reached an agreement that the accused would represent her in a dissolution proceeding against Nguyen Van Cu.

2. The following week the accused determined, mistakenly, that she could not file a divorce for Nguyen Thi Yen as petitioner since she had not lived in Oregon for six months. As a result of this, the accused contacted Duong and asked him to tell Yen of the accused's findings and to tell Yen that the accused could file with Cu as petitioner, and thereby represent him, if Yen and Cu wished. The accused also asked Duong to tell Yen of the potential conflict the accused saw if the parties ended up in disagreement over the terms of the dissolution. Duong informed the accused that Yen agreed that she could represent Cu to resolve the matter.

3. The accused subsequently called Cu directly on June 13, 1985, and told him that the accused had been retained by Yen to represent her in a divorce, told him of the "problem" about representing Yen, and said that the accused could represent him and file with him as petitioner if he wished. Cu agreed and set up an office appointment to discuss the divorce. At their meeting on June 20, 1985, a retainer agreement was signed between Cu and the Accused.

4. The accused proceeded to file a petition for dissolution of marriage for Cu. In subsequent conversations with Cu and Yen (through Duong), it became apparent that the parties were not in agreement regarding the amount of support to be paid by Cu. The accused advised Yen to consult with another attorney. Yen then consulted with an attorney, Herbert Trubo, who contacted the accused to advise her that Yen was uncomfortable with the accused's representing her husband after initially representing her in the matter. The

accused thereafter withdrew from representation of Cu and kept the $200 retainer he had paid the accused for work done prior to her withdrawal from the case.

5. After having contacted the bar with his complaint, Cu elected to utilize the bar's fee arbitration process to object to the accused's charge for handling his divorce. By opinion dated March 31, 1986, the sole arbitrator in the fee arbitration proceeding determined that Cu was not responsible for payment of any fee to the accused due to her conflict of interest.

V.

The accused concedes that she could not ethically initiate personal contact with Cu for purposes of obtaining professional employment as the circumstances of her contact with him did not fit within the exceptions contained in DR 2-104(A).

VI.

Furthermore, the accused concedes that her undertaking to represent Cu after having previously represented Yen in the same matter violated the terms of DR 5-105(A). See In re Brandsness, 299 Or 420, 702 P2d 1098 (1985); In re Jayne, 295 Or 16, 663 P2d 405 (1983). While the accused did withdraw from representing Cu when challenged, she should not have undertaken the representation of Cu after having previously consulted with, and obtaining confidential information from, Yen. The accused had an actual conflict of interest in undertaking to represent Cu which could not be cured by obtaining a waiver after full disclosure from Yen under the terms of DR 5-105(C). Cf. In re Bristow, 301 Or 194, 721 P2d 437 (1986).

VII.

The accused has no prior record of reprimands, suspensions, or disbarment.

VIII.

The accused agrees to a public reprimand for her violation of DR 2-104(A) and DR 5-105(A).

IX.

Wherefore, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for

approval and, if approved, to the Oregon State Bar Disciplinary Board for consideration pursuant to the terms of BR 3.6.

Executed this 8th day of December 1986.

/s/ Christine E. Moran
CHRISTINE E. MORAN

I, Christine E. Moran, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and that I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Christine E. Moran
CHRISTINE E. MORAN

Subscribed and sworn to before me this 8th day of December 1986.

/s/ Michelle L. Inglis
Notary Public for Oregon
My commission expires: 12/9/89

Reviewed by general counsel on the 9th day of December 1986 and approved by the state professional responsibility board for submission to the disciplinary board on the 10th day of January 1987.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 85-130; 85-145
	)	
DANIEL E. McCABE,	)	
	)	
Accused.	)	
	)	

Bar Counsel: William Youngman, Esq.

Counsel for Accused: Alan R. Beck, Esq.

Disciplinary Board: David A. Kekel, State Chairperson, and Paul B. Osterlund, Region 4 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 1-103(C) and DR 6-101(A)(3). Reprimand.

Effective Date of Opinion: March 11, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 85-130; 85-145
	)	
DANIEL E. McCABE,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

A complaint was filed against the accused; the accused and the bar subsequently executed a stipulation for discipline. The stipulation recites that the accused wishes to stipulate to his violation of DR 1-103(C) as set forth in the bar's second cause of complaint and to his violation of former DR 6-101(A)(3) as set forth in the bar's third cause of complaint.

The accused acknowledged that his failure to cooperate with general counsel's office during the pendency of its disciplinary investigation of his conduct is not justified by his belief that he had explained the matter to his client or been exonerated by his cooperation with the local professional responsibility committee. The accused also acknowledged that his failure to close the probate of the estate of Ruth E. Hanson's deceased husband for a period of more than five years constitutes neglect and is not excused by the fact that a life estate was held by another individual in a parcel of real property involved in the estate.

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused has agreed to accept a public reprimand. This procedure is provided for in Rule of Procedure 3.6. The stipulation for discipline has been reviewed by general counsel and approved by the Oregon State Bar Professional Responsibility Board.

The undersigned have reviewed the stipulation for discipline and hereby approve it.

By: /s/ David A. Kekel
DAVID A. KEKEL
STATE CHAIRPERSON

Dated: 3/11/87

By: /s/ Paul B. Osterlund
PAUL B. OSTERLUND
REGION 4 CHAIRPERSON

Dated: 3/10/87

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 85-130; 85-145
	)	
DANIEL E. McCABE,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Daniel E. McCabe, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Daniel E. McCabe, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington County, Oregon.

III.

The State Professional Responsibility Board of the Oregon State Bar, at a meeting on April 19, 1986, approved for filing against the accused a formal complaint alleging his violation of DR 1-103(C) and former DR 6-101(A)(3) of the Code of Professional Responsibility. The formal complaint (Nos. 85-130 and 85-145) was filed by the Oregon State Bar on July 21, 1986, against the accused and service was accepted by the accused on August 7, 1986. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. A copy of Mr. McCabe's answer filed on September 4, 1986, is attached hereto as Exhibit 2 and is incorporated by reference herein.

IV.

The accused wishes to stipulate to his violation of DR 1-103(C) as set forth in the bar's second cause of complaint and to his violation of former DR 6-101(A)(3) as set forth in the bar's third cause of complaint and to accept a public reprimand for these violations. The accused and the bar agree that the charge of a violation of former DR 6-101(A)(3) as set forth in the bar's first cause of complaint should be dismissed.

V.

The accused acknowledges that his failure to cooperate with general counsel's office during the pendency of its disciplinary investigation of his conduct is not justified by his belief that he had explained the matter to his client or been exonerated by his cooperation with the local professional responsibility committee. The accused also acknowledges that his failure to close the probate of the estate of Ruth E. Hanson's deceased husband for which he was retained on April 13, 1981, for a period of more than five years constitutes neglect and is not excused by the fact that a life estate was held by another individual in a parcel of real property involved in the estate.

VI.

The Oregon State Bar acknowledges that its first cause of complaint alleging that the accused neglected the legal matter of Sharon L. Sysel should be dismissed based on information obtained by the bar following the filing of its formal complaint which supports the accused's explanation that he had advised his client that he would not undertake her foreclosure proceeding until certain costs to be incurred in the process were paid by her in advance. These facts establish that there was no meeting of the minds between attorney and client as to the commencement of legal services and thus no neglect of the client's legal matter.

VII.

The accused has no prior record of reprimands, suspensions, or disbarment.

VIII.

This stipulation has been freely and voluntarily made by the undersigned accused, Daniel E. McCabe, as evidenced by his verification below, with the

knowledge and understanding that this stipulation was approved by the state professional responsibility board at a meeting on January 15, 1987, but is subject to further approval by the disciplinary board. If rejected by the disciplinary board, the matter will be referred to hearing.

IX.

Whereas, the accused requests that general counsel of the Oregon State Bar submit this stipulation to the disciplinary board for consideration and further approval pursuant to the terms of BR 3.6.

Executed this 16th day of February 1987.

/s/ Daniel E. McCabe
DANIEL E. McCABE

I, Daniel E. McCabe, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Daniel E. McCabe
DANIEL E. McCABE

Subscribed and sworn to before me this 16th day of February 1987.

/s/ Mary E. Salus
Notary Public for Oregon
My commission expires: 12/21/90

Reviewed by general counsel on the 23rd day of February 1987 and approved by the state professional responsibility board on the 15th day of January 1987.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	Nos. 85-130; 85-145
DANIEL E. McCABE,	FORMAL COMPLAINT
Accused.	Exhibit 1 (Stipulation for Discipline)

For its first cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Daniel E. McCabe, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Washington County, Oregon.

III.

In or about June 1979, Sharon L. Sysel, formerly Walter, retained the accused to represent her in her dissolution proceeding. The accused assisted his client in obtaining a decree of dissolution dated August 25, 1980, in Washington County Circuit Court Case No. D 14-832, which awarded Sysel two judgment liens against her ex-husband in the amount of $48,750 and $50,000, respectively. The judge's opinion letter of July 14, 1980, recited that both liens were due and payable in full no later than June 15, 1985. The divorce decree failed to include the deadline for the payment of the $50,000 lien.

IV.

When neither judgment had been paid by June 4, 1985, Mrs. Sysel employed the accused to foreclose the liens on her behalf. During telephone conversations on or about June 19, 1985, June 26, 1985, and July 22, 1985, Mrs. Sysel instructed the accused to institute foreclosure proceedings. As of

the date of Mrs. Sysel's complaint to the Oregon State Bar about the accused on October 10, 1985, the accused had not commenced foreclosure proceedings on his client's behalf.

V.

The accused negotiated with the attorney for Mrs. Sysel's former husband regarding the payment of the liens. On or about December 4, 1985, Mrs. Sysel authorized the accused to present a counterproposal to a settlement offer by Mr. Walter's attorney. Mrs. Sysel was not made aware that her counterproposal had been conveyed to opposing counsel until mid-January 1986 during a telephone conversation with the accused. In a subsequent telephone conversation in mid-January 1986, the accused told Sysel to consider her counterproposal refused based on lack of response by opposing counsel.

VI.

On March 13, 1986, the accused advised Mrs. Sysel that matters were moving forward to a potential settlement. The accused nevertheless advised Mrs. Sysel of his intention to seek leave to withdraw from representing her by letter dated May 12, 1986, due to her complaint about him to the Oregon State Bar.

VII.

Despite repeated requests from his client to institute foreclosure proceedings on her behalf, the accused failed to do so for almost one year after the two judgment liens became due and payable, thereby neglecting a legal matter entrusted to him.

VIII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

DR 6-101(A)(3) of the Code of Professional Responsibility.

And, for its second cause of complaint, the Oregon State Bar alleges:

IX.

Incorporates by reference as fully set forth herein paragraphs I and II of the first cause of complaint.

X.

On October 15, 1985, a complaint dated October 10, 1985, concerning the conduct of the accused as described in the first cause of complaint was filed with general counsel's office of the Oregon State Bar by Sharon L. Sysel. On October 18, 1985, a letter was sent to the accused from general counsel's office enclosing a copy of Mrs. Sysel's complaint and requesting a response from the accused by November 8, 1985. After receiving no response from the accused, the general counsel's office referred the matter to the Oregon State Bar's Washington/Yamhill County Local Professional Responsibility Committee on November 13, 1985, for investigation.

XI.

While the subject of a disciplinary investigation, the accused failed to respond to an inquiry from general counsel's office. The accused did not have and did not exercise any applicable right or privilege to justify his failure to respond to general counsel's office.

XII.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

DR 1-103(C) of the Code of Professional Responsibility.

And, for its third cause of complaint, the Oregon State Bar alleges.

XIII.

Incorporates by reference as fully set forth herein, paragraphs I and II of the first cause of complaint.

XIV.

Ruth E. Hanson retained the accused on April 13, 1981, to probate the estate of her deceased husband. Mrs. Hanson requested a written progress report from the accused on July 21, 1981, but none was provided. During the fall of 1981, Mrs. Hanson's son, Ronald, inquired as to the accused's progress on probating the estate without success. Finally, on February 8, 1982, both Mrs. Hanson and her son went to the office of the accused to see him about the status of the probate. The accused, at that meeting, blamed his earlier lack of action on his secretary.

XV.

On October 5, 1983, Mrs. Hanson requested that the accused sell some shares of stock the estate held in a dairy association. Thereafter, having

heard nothing from the accused by October 1984, Mrs. Hanson attempted to establish telephone contact with him to no avail. Consequently, on October 12, 1984, Mrs. Hanson wrote a letter to the accused requesting that he complete the unfinished business concerning the sale of shares of stock in the dairy association and complete the probate of her husband's estate.

XVI.

After continuing to receive no reply from the accused, Mrs. Hanson sent him a certified letter on May 28, 1985, ordering him to complete the work and return her documents to her within 14 days. Thereafter, the accused and Ronald Hanson exchanged phone messages but never made contact. Mrs. Hanson thereafter filed a complaint about the accused with the Oregon State Bar on June 21, 1985.

XVII.

On March 4, 1986, the accused met with Mrs. Hanson to have Mrs. Hanson sign the documents required to file a small estate in Oregon and informed her for the first time that an ancillary probate in Washington was also necessary.

XVIII.

By failing to take the steps necessary to complete the probate of Mrs. Hanson's deceased husband's estate for almost five years, the accused neglected a legal matter entrusted to him.

XIX.

The aforesaid conduct of the Accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

DR 6-101(A)(3) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and,

pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 21st day of July 1986.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	Nos. 85-130; 85-145
DANIEL E. McCABE,	ANSWER
Accused.	Exhibit 2 (Stipulation for Discipline)

Daniel E. McCabe, whose residence address is 1991 Brookwood Hills, Hillsboro, Oregon 97123, in the County of Washington, State of Oregon, and who maintains his principal office for the practice of law at 17955 S.W. T.V. Highway, in the County of Washington, State of Oregon;

For answer to the first cause of complaint, the accused answers as follows:

I.

The accused denies each and every allegation contained therein and the whole thereof, except the accused admits paragraphs I and II. The accused further admits that he represented Sharon L. Sysel in her dissolution proceeding, which resulted in a decree of dissolution dated August 25, 1980 in Washington County Circuit Court Case No. 14-832.

II.

By way of explanation or justification, the accused alleges that Mrs. Sysel was told that certain costs would be incurred in the foreclosure process. She was told by the accused that those costs would have to be paid prior to commencement of any foreclosure action. Those funds were never paid, which is the reason that the foreclosure action was not commenced as alleged.

III.

By way of further explanation and justification, the accused alleges that he sought leave to withdraw from representing Mrs. Sysel, based on the advice the accused received from Mr. Williams, the assistant general counsel to the Oregon State Bar.

For answer to the second cause of complaint, the accused answers as follows:

IV.

The accused denies each and every allegation contained therein and the whole thereof, except the accused readmits paragraphs I and II, and further admits that he received a letter from general counsel's office enclosing a copy of Mrs. Sysel's complaint, and requesting a response from the accused. The accused did not respond to the letter within the time allowed.

V.

By way of explanation and justification, the accused alleges that he had told Mrs. Sysel that he could not undertake the foreclosure until she had paid the necessary costs. Since he had already explained to Mrs. Sysel his basis for not undertaking the foreclosure, he did not give the letter received from the general counsel the attention it deserved, and the time for the accused to respond therefore had expired. It was his understanding that after the date to respond to the bar had passed that he was to wait to be contacted by the local professional responsibility committee. When the accused was contacted by the LPRC, he took his files and made all information known to him available to the LPRC. He met with the LPRC on two occasions.

For answer to the third cause of complaint, the accused answers as follows:

VI.

Denies each and every allegation contained therein and the whole thereof, except the accused admits that he was retained to represent Ruth E. Hanson on April 13, 1981, with respect to the probate of the estate of her deceased husband.

VII.

By way of explanation and justification, the accused alleges that when he reviewed this matter with Mrs. Hanson, it was the accused's opinion that there were very few assets, the major one being a one-quarter interest in a parcel of real property located in the state of Washington. The Washington property was given to Mr. Hanson by a member of his family along with three other beneficiaries. The possession of that property was deferred as a life estate was maintained in the property. It was explained to Mrs. Hanson by the accused that she would take her husband's interest in the property,

subject to the life estate. The individual holding the life estate is now deceased, so that the probate of Mr. Hanson's estate can now be completed.

Wherefore, the accused prays that the formal complaint be dismissed.

Dated this 4th day of September 1986.

/s/ Daniel E. McCabe
DANIEL E. McCABE

/s/ Alan R. Beck
ALAN R. BECK
OF ATTORNEYS FOR THE ACCUSED

Trial Attorney:
Thomas E. Cooney

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-89
	)	
JONATHAN L. McGLADREY,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Susan D. Isaacs, Esq.

Counsel for Accused: Charles J. Merten, Esq.

Disciplinary Board: David A. Kekel, State Chairperson, and Nancy Tauman, Region 5 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 5-104(A). Thirty-day suspension.

Effective Date of Opinion: April 16, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-89
	)	
JONATHAN L. McGLADREY,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

The accused and the bar have executed a stipulation for discipline wherein the accused stipulates to a violation of DR 5-104(A), which recites the following relevant facts:

> In or about the spring of 1980 the accused undertook to represent Barbara and Franklin Jorgensen (hereinafter "Jorgensens") in dealing with the Internal Revenue Service and regarding their personal and corporate financial affairs.
>
> As the owners of a company headquartered in Hayden Lake, Idaho, which possessed a distributorship for Fisher stoves, the Jorgensens formed a Washington corporation named Fisher Stoves, Inc., and an Idaho corporation named Fisher Stoveworks, Inc., for the purpose of effectuating the distribution of Fisher stoves. In or about May 1981, the accused became the chief executive officer of the Jorgensens' stove operations.
>
> In or about March 1982, the accused proposed, and the Jorgensens agreed to, the formation of a new corporation named Northwest Home Energy Products, Inc. (hereinafter "NWHEP"), as a joint venture between the accused and the Jorgensens, which proposal included, among other things, the transfer by the Jorgensens of their stove distributorship license to NWHEP, which assumed the responsibility of payment of the balance due on the license and the ownership of 75% of the stock by the accused and 25% of the stock by the Jorgensens.
>
> The accused performed all legal services and accounting services for NWHEP from its inception in March 1982 up to and through a Chapter 11 bankruptcy proceeding the accused, as a majority shareholder, filed in 1983 for the protection of NWHEP.
>
> The accused entered into the above-described business transaction to form NWHEP with the Jorgensens, in which the accused and the Jorgensens had differing interests and in which the

Jorgensens expected and relied upon the accused to provide them advice on the legal aspects of NWHEP's formation and operation and to exercise his independent professional judgment therein for their protection.

The accused failed to adequately advise the Jorgensens to seek independent legal counsel, failed to disclose to them the reasons why independent legal advice from separate counsel would be necessary or advisable, and failed to obtain the Jorgensens' consent, after full disclosure, to his participation in the business transaction.

The accused has no prior record of reprimands, suspensions, or disbarment.

The accused agrees to accept a 30-day suspension from the practice of law for this violation.

The stipulation for discipline has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it.

/s/ David A. Kekel
DAVID A. KEKEL
STATE CHAIRPERSON

Dated: April 16, 1987

/s/ Nancy S. Tauman
NANCY S. TAUMAN
REGION 5 CHAIRPERSON

Dated: April 7, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 84-89
	)	
JONATHAN L. McGLADREY,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, Jonathan L. McGladrey, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Jonathan L. McGladrey, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion and Multnomah Counties, Oregon.

III.

A formal complaint (No. 84-89) was filed by the Oregon State Bar on June 11, 1985, against the accused and service was accepted by the accused's attorney on September 26, 1985. A copy of the bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. The accused stipulates to his violation of DR 5-104(A) as set forth in the first cause of complaint in the bar's formal complaint and agrees to accept a 30-day suspension from the practice of law for this violation.

Specifically, the accused stipulates that:

1. In or about the spring of 1980, the accused undertook to represent Barbara and Franklin Jorgensen (hereinafter "Jorgensens") in dealing with the

Internal Revenue Service and regarding their personal and corporate financial affairs. The accused is licensed as a certified public accountant (CPA) and acted as both CPA and attorney for the Jorgensens in various matters from the spring of 1980 through 1983.

2. As the owners of a company headquartered in Hayden Lake, Idaho, which possessed a distributorship for Fisher stoves, the Jorgensens formed a Washington corporation named Fisher Stoves, Inc., and an Idaho corporation named Fisher Stoveworks, Inc., for the purpose of effectuating the distribution of Fisher stoves. In or about May 1981, the accused became the chief executive officer of the Jorgensens' stove operations. At or about the same time a computer system for use in their business was purchased by the Jorgensens for approximately $70,000, which amount was evidenced by a promissory note signed by the Jorgensens personally. During this same time period the books and records of the Jorgensens' corporation were moved to Salem, Oregon, for the convenience of the accused.

3. In or about March 1982, the accused proposed, and the Jorgensens agreed to, the formation of a new corporation named Northwest Home Energy Products, Inc. (hereinafter "NWHEP"), as a joint venture between the accused and the Jorgensens, which proposal included, among other things, the transfer by the Jorgensens of their stove distributorship license to NWHEP, which assumed the responsibility of payment of the balance due on the license, and the ownership of 75% of the stock by the accused and 25% of the stock by the Jorgensens.

4. The accused performed all legal services and accounting services for NWHEP from its inception in March 1982 up to and through a Chapter 11 bankruptcy proceeding the accused, as a majority stockholder, filed in 1983 for the protection of NWHEP.

5. The accused entered into the above-described business transaction to form NWHEP with the Jorgensens, in which the accused and the Jorgensens had differing interests and in which the Jorgensens expected and relied upon the accused to provide them advice on the legal aspects of NWHEP's information and operation, and to exercise his independent professional judgment therein for their protection.

6. The accused failed to adequately advise the Jorgensens to seek independent legal counsel, failed to disclose to them the reasons why

independent legal advice from separate counsel would be necessary or advisable, and failed to obtain the Jorgensens' consent, after full disclosure, to his participation in the business transaction described in subparagraphs 3 and 5 above.

IV.

The accused has no prior disciplinary record of reprimands, suspensions, or disbarment.

V.

The accused explains his conduct described herein as follows: He personally considered at the time that he was not acting as attorney for the Jorgensens with respect to the transactions described in subparagraphs III(3) and (5).

VI.

This stipulation has been freely and voluntarily made by the undersigned accused, Jonathan L. McGladrey, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the matter will be referred for a hearing.

VII.

Whereas, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

Executed this 20th day of March 1987.

/s/ Charles J. Merten, Attorney for:
JONATHAN L. McGLADREY

I, Jonathan L. McGladrey, being first duly sworn, say that I am the accused in the above-entitled proceeding and that I have entered into the foregoing stipulation for discipline freely and voluntarily and I further attest

that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Charles J. Merten, Attorney for:
JONATHAN L. McGLADREY

Subscribed and sworn to before me this 17th day of March 1987.

/s/ Sharon R. Luke
Notary Public for Lake Co., Florida
My commission expires: 10/10/88

Reviewed by general counsel on the 26th day of March 1987 and approved by the state professional responsibility board on the 18th day of March 1987.

/s/ George A. Riemer
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 84-89
Complaint as to the Conduct of	)	
	)	FORMAL COMPLAINT
JONATHAN L. McGLADREY,	)	
	)	Exhibit 1 (Stipulation
Accused.	)	for Discipline)
	)	

For its first cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, Jonathan L. McGladrey, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in Marion County, Oregon.

III.

In or about the spring of 1980, the accused undertook to represent Barbara and Franklin Jorgensen (hereinafter "Jorgensens") in dealing with the Internal Revenue Service and regarding their personal and corporate financial affairs. The accused is licensed as a certified public accountant (CPA) and acted as both CPA and attorney for the Jorgensens in these matters from the spring of 1980 through 1983.

IV.

As the owners of a company headquartered in Hayden Lake, Idaho, which possessed a distributorship for Fisher stoves, the Jorgensens formed a Washington corporation named Fisher Stoves, Inc., and an Idaho corporation named Fisher Stoveworks, Inc., for the purpose of effectuating the distribution of Fisher stoves. In or about May 1981, the accused became the

chief executive officer of the Jorgensens' stove operations. At or about the same time a computer system for use in their business was purchased by the Jorgensens for approximately $70,000, which amount was evidenced by a promissory note signed by the Jorgensens personally. During this same time period the books and records of the Jorgensens' corporation were moved to Salem, Oregon, for the convenience of the accused.

V.

In or about March 1982, the accused proposed, and the Jorgensens agreed to, the formation of a new corporation named Northwest Home Energy Products, Inc. (hereinafter "NWHEP"), as a joint venture between the accused and the Jorgensens, which proposal included, among other things, the transfer by the Jorgensens of their stove distributorship license to NWHEP, which assumed the responsibility of payment of the balance due on the license, and the ownership of 75% of the stock by the accused and 25% of the stock by the Jorgensens.

VI.

The accused performed all legal services and accounting services for NWHEP from its inception in March 1982 up to and through a Chapter 11 bankruptcy proceeding the accused, as the majority stockholder, filed in 1983 for the protection of NWHEP.

VII.

During his representation of the Jorgensens in various personal and corporate matters, the accused entered into the above-described business transaction to form NWHEP with his client, in which the accused and the Jorgensens had differing interests and in which the Jorgensens expected and relied upon the accused not only to provide them advice on the legal aspects of NWHEP's formation and operation, but also to exercise his independent professional judgment therein for their protection.

VIII.

The accused failed to adequately advise the Jorgensens to seek independent legal counsel, failed to disclose to them the reasons why independent legal advice from separate counsel would be necessary or advisable, and failed to obtain his clients' consent, after full disclosure, to his

participation in the business transaction described in paragraphs V and VII above.

IX.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

DR 5-104(A) of the Code of Professional Responsibility.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly, and legally determined; and, pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 11th day of June 1985.

OREGON STATE BAR

/s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-109
	)	
MARTIN W. VAN ZEIPEL,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Steven P. Rickles, Esq.

Counsel for Accused: Gerald R. Pullen, Esq.

Trial Panel: Joseph C. Arellano, Trial Panel Chairperson; John P. Kneeland; and George M. Ray, Jr. (public member)

Disposition: Accused found not subject to discipline under ORS 9.527(2). Dismissal.

Effective Date of Opinion: May 13, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-109
	)	
MARTIN W. VAN ZEIPEL,	)	DECISION OF TRIAL PANEL
	)	
Accused.	)	
	)	

This matter came on for hearing on January 12, 1987 and was concluded on March 26, 1987 at 2600 Pacwest Center, 1211 S.W. Fifth, Portland, Oregon, before Joseph C. Arellano, chairperson, John P. Kneeland, and George M. Ray, Jr., the duly appointed and constituted trial board of the Oregon State Bar. The accused appeared in person and by Gerald R. Pullen, his attorney, and the Oregon State Bar appeared by and through its counsel, Steven P. Rickles. Robert J. Lehmann was duly sworn as reporter and thereupon preceded and did take down, report and reduced into writing all the testimony and proceedings in this matter. The trial board kept a complete record of all the proceedings in this matter, including the evidence and exhibits offered and received; and the trial board transmits herewith its written decision of its findings of fact, conclusions, and disposition, and the record of all proceedings before it in this matter, with the original pleadings filed herein.

The trial board, having taken this matter under advisement, and having considered all of the evidence and exhibits, and being fully advised, hereby makes the following:

FINDINGS OF FACT

The accused, Martin W. Van Zeipel, is, and at all times mentioned herein was, an attorney at law, duly admitted to the Supreme Court of the State of Oregon to practice law in this state, and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

On March 7, 1986 the accused was found guilty by the Clackamas County, Oregon, Circuit Court of the crime of Promoting Gambling in the First Degree (ORS 167.127), a class "C" felony. At the sentencing of the accused, the

Honorable Sid Brockley granted the accused's motion for misdemeanor treatment.

CONCLUSION

The issue before the trial panel is whether the accused is subject to discipline pursuant to ORS 9.527(2). It is the unanimous conclusion of the panel that the accused's conviction, having been reduced to misdemeanor status pursuant to ORS 161.705, does not subject the accused to discipline because the conviction neither constitutes a misdemeanor involving moral turpitude nor a felony under the laws of this state.

The bar contends that the accused is subject to discipline pursuant to ORS 9.527(2) because the accused's conviction "constitutes a conviction of a class "C" felony under ORS 167.127." Amended formal complaint, paragraph 4. The panel concludes that it is bound to treat the accused's conviction as a misdemeanor. See, ORS 161.705(1); In re Carstens, 297 Or 155, 683 P2d 992 (1984); In re Sonderen, 303 Or 129, 734 P2d 348 (1987).

The bar contends, in the alternative, that if the accused's conviction is considered a misdemeanor, it was a misdemeanor involving moral turpitude for which the accused was subject to discipline pursuant to ORS 9.527(2). Amended formal complaint paragraph 6.

In determining whether a crime involves moral turpitude, the panel is not free to look behind the record of conviction. This determination is made by referring to the specific crime and its elements. The facts and circumstances in this case are irrelevant in determining whether the crime for which the accused was convicted involves moral turpitude under ORS 9.527(2). In re Drakulich, 299 Or 417, 419, 702 P2d 1097 (1985). The panel cannot impose its own judgment on the propriety of the conduct for which the accused was convicted.

The crime of promoting gambling in the first degree is defined in ORS 167.127 as follows:

> (1) A person permits the crime of promoting gambling in the first degree if the person violates ORS 167.122 by engaging in book making to the extent that the person receives or accepts in any one day more than five bets totalling more than $500 or by receiving in connection with a lottery or numbers scheme or enterprise:

(a) Money or written records from a person other than a player whose chances or plays are represented by such money or records; or

(b) More than $500 in any one day played in the scheme or enterprise.

ORS 167.122(1) provides that "[a] person commits the crime of promoting gambling in the second degree if the person knowingly promotes or profits from unlawful gambling."

In order to involve moral turpitude, a crime must require intent, and must include, as one of its elements, fraud, deceit, dishonesty, harm to a specific victim, or illegal activity undertaken for personal gain. In re Chase, 299 Or 391, 401, 702 P2d 1082 (1985); In re Sonderen, supra. While the crime of promoting gambling in the first degree requires an intentional mental state, it does not contain any of the other elements necessary to establish moral turpitude. Moreover, the Bar admits that there is no evidence that the accused profited from the illegal activity.

In summary, the panel concludes that, after being reduced to misdemeanor status pursuant to ORS 161.705, a conviction for promoting gambling in the first degree is not a felony conviction for the purpose of attorney discipline under ORS 9.527(2). The panel also concludes that the crime of promoting gambling in the first degree is not a crime involving moral turpitude for the purpose of ORS 9.527(2).

DISPOSITION

The accused is found not guilty. The disciplinary proceedings against him are dismissed.

DATED this 15th day of April, 1987.

/s/ Joseph C. Arellano
JOSEPH C. ARELLANO
TRIAL PANEL CHAIRPERSON

/s/ John P. Kneeland
JOHN P. KNEELAND
TRIAL BOARD MEMBER

/s/ George M. Ray, Jr.
GEORGE M. RAY, JR.
TRIAL BOARD MEMBER

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-20
	)	
JOHN OTTING,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Barry M. Mount, Esq.

Counsel for Accused: John Otting, Esq., pro se

Trial Panel: Steven M. Rose, Trial Panel Chairperson; Edward Sims (public member); and Laura J. Walker

Disposition: Accused found guilty of violation of former DR 6-101(A)(3) [current DR 6-101(B)] and DR 1-103(C). Thirty day suspension stayed subject to six month probation.

Effective Date of Opinion: June 10, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-20
	)	
JOHN OTTING,	)	TRIAL PANEL DECISION
	)	
Accused.	)	
	)	

INTRODUCTION

The complaint charges the accused with two violations:

(1) Neglecting a matter entrusted to him, the probation of the estate of James Harris Murphy, in violation of former DR 6-101(A)(3), current DR 6-101(B);

(2) Failure to respond to a disciplinary investigation by the bar in violation of DR 1-103(C).

The accused answered by denying the material allegations of the complaint and further set forth three affirmative defenses, each respectively alleging in essence:

(1) The accused was not negligent in working on the estate.

(2) An heir of the deceased and her attorney initiated this bar action against the accused to embarrass the personal representative and him.

(3) The personal representative has no complaints regarding the accused's handling of the estate.

On April 30, 1987, a hearing was held before the trial panel.

SUMMARY OF TESTIMONY

The accused has been a member of the Oregon State Bar since 1964. He has had one previous client complain of his conduct, for which the bar took no action.

On November 19, 1984, James Harris Murphy committed suicide in Athena, Umatilla County, Oregon, where he had resided. He died intestate. In December, 1985, Mr. Murphy's niece, Peggy Murphy, of Portland, retained the

accused to handle the probate of the estate. At the time, the accused was a practicing attorney with an office in downtown Portland.

On April 1, 1985, the accused filed a petition for appointment of personal representative and letters of administration, in which he requested that Peggy Murphy be appointed personal representative, with the Umatilla County Circuit Court. On April 1, 1985, the circuit judge signed the order appointing Peggy Murphy as personal representative and wrote the accused a letter advising him that the court required a bond in the amount of $10,000. On April 26, 1985, a bond was filed in this amount. On or about April 26, 1985, the circuit court issued letters testamentary.

ORS 113.145 requires that the personal representative provide written notice and additional information to the heirs that an estate proceeding is pending. Within 30 days of the personal representative's appointment, the personal representative must file an affidavit showing compliance with ORS 113.145. ORS 113.155 requires the personal representative to cause notice to interested persons of the estate to be published in an appropriate newspaper for three consecutive weeks and, after doing so, file an affidavit of publication. ORS 113.165 requires the personal representative to file an inventory within 60 days after appointment. These are not necessarily pro forma requirements. For example, the failure of a personal representative to fulfill the requirements of ORS 113.155 as soon as possible may be detrimental to the estate as doing so sets the time for cutting off claims of creditors of the estate.

The evidence further indicates that the estate assets were placed in a bank account or bank accounts. The trial panel takes judicial notice of ORS 116.083, which requires the personal representative to file an annual accounting.

The accused, on behalf of the personal representative, never fulfilled the requirements of ORS 113.145, ORS 113.165 and ORS 116.083. On April 16, 1986, a proof of publication of notice required by ORS 113.155 was executed. This, however, was not filed at the Umatilla County Circuit Court until December 22, 1986. The estate remains open. Two motor vehicles, apparently of little value, and the residence of the deceased remain to be sold, before the estate can be closed.

Prior to June, 1985, Betty Svancara, the sister of the deceased and an heir who resides in Blackfoot, Idaho, attempted to speak to the accused by telephone. The purpose of these calls was to inquire about the status of the estate. She was unsuccessful in reaching the accused by telephone and she left messages. The accused never returned her calls. She hired an attorney, Stephen J. Blaser, also of Blackfoot, Idaho, to assist her in inquiring about the estate.

Mr. Blaser, on behalf of Mrs. Svancara and other heirs, sent letters to the accused on June 13, 1985, September 19, 1985, and on November 21, 1985. Between June 10, 1985 and September, 1985, Mr. Blaser also made a number of telephone calls to the accused's office and, when the accused was not available, left messages. The accused failed to respond to any of these letters or telephone calls. The letter of November 21, 1985, also informed the accused that the funeral bill remained unpaid. There were funds available in the estate to pay for this cost. Since the accused did not respond to this letter, Mrs. Svancara paid this bill with the intent of obtaining reimbursement from the estate.

On December 17, 1985, Mr. Blaser sent another letter to the accused inquiring concerning the estate. In that letter, he advised the accused that Betty Svancara paid for the funeral bill in the amount of $952.34. On December 19, 1985, the accused called Mr. Blaser to discuss the status of the estate. On December 9, 1986, Mr. Blaser sent a letter to the accused in an attempt to discharge him of further representing the estate. The accused wrote a letter to Mr. Blaser, dated December 19, 1986, in response, which detailed the affairs of the estate. This was the last communication between the accused and Mr. Blaser.

The evidence indicates that there is no ill feeling between Betty Svancara and Peggy Murphy. The evidence further indicates that Betty Svancara and Mr. Blaser did not undertake any action against the accused to embarrass him. The action they took was merely to ascertain what the status of the estate was and to expedite its closing.

An expert witness testified that the accused's conduct in handling the estate was below that expected of a competent attorney in Multnomah County and in Umatilla County. She indicated that the Oregon statutory scheme set forth a statewide standard. She indicated that this is so, irrespective of any

lack of complaints by the personal representative, Peggy Murphy. She also indicated that, as a matter of courtesy, a lawyer handling an estate should respond to the inquiries of the heirs.

On behalf of Mrs. Svancara, Mr. Blaser filed a complaint with the Oregon State Bar, which in turn was directed to Mark Williams, assistant general counsel. Mr. Williams wrote a letter to the accused dated December 11, 1985 advising him that the bar had received a complaint from Stephen J. Blaser and requesting the accused to inform the bar of the status of the probate of the estate. The accused failed to respond to this letter. On January 17, 1986, Mr. Williams again requested a response from the accused, and advised him that he had a duty to cooperate pursuant to the provisions of DR 1-103(C). The accused failed to respond to this letter. On March 5, 1986, Blaser's complaint was referred to the Multnomah County Local Professional Responsibility Committee of the Oregon State Bar for further investigation because of the accused's failure to respond. Only after being contacted by the investigator did the accused provide the bar with information about his handling of the probate of the estate. Mr. Williams testified that the accused's conduct was below the standard expected of a practicing attorney.

The accused indicated he was not negligent in handling the estate. Both he and the personal representative testified that the personal representative was satisfied with his representation of her. There was no evidence that the accused engaged in any financial impropriety, or that the estate was damaged by his conduct.

The accused indicated he was delayed in handling the estate as he had difficulty obtaining the needed information. In this regard, the personal representative testified that she provided the accused with all the information requested of her three to four months after the request. The accused failed to bring his file to the hearing and kept no time records. The accused further indicated that he was delayed in handling the matter because of the breakup of his law partnership and the subsequent move to a new location.

With regard to his failure to respond to the bar's inquiry, the accused indicated he chose not to do so because he felt that the complaint was "nit-picking" and became extremely angry that the bar was pursuing it. He also indicated that the bar was a "middle-class modern day American mediocrity."

The accused's feelings about the bar and the disciplinary proceeding against him were made more evident to the trial panel. During much of the hearing, the accused read a magazine and appeared disinterested in the proceeding.

FINDINGS AND CONCLUSIONS

First cause of complaint: The trial panel finds that the allegations contained in paragraphs 1-5 of the first cause of complaint are true, by clear and convincing evidence. With regard to paragraph 5, although the accused may have done some work on the estate, he did not do what was required by the Oregon statutory scheme. The trial panel further finds that the accused violated former DR 6-101(A)(3), current DR 6-101(B), as alleged in paragraph 6 of the complaint, by clear and convincing evidence.

DR 6-101(A) [DR 6-101(A)(3)] states:

A lawyer shall not neglect a legal matter entrusted to him.

Isolated instances of ordinary negligence are not sufficient to warrant disciplinary action. In re Gygi, 273 Or 443, at 450 through 451, 541 P2d 1392 (1975). The accused's conduct in this case demonstrates a pattern of negligence which constitutes a violation of the applicable disciplinary rule.

In essence, after filing the initial papers to begin the probate of the estate, the accused failed to follow the Oregon statutory scheme in its entirety. He never provided notice to the heirs as required by ORS 115.145, he never filed an inventory as required by ORS 115.165 and he never filed an accounting as required by ORS 116.083. The notice given to the creditors, pursuant to ORS 115.155, was not filed until almost a year and eight months after the appointment of the personal representative. The accused also did not pay a legitimate expense of the estate, the funeral bill.

The fact that the accused may have had some difficulty in obtaining information because of the distances involved and because of the deceased's state of financial affairs does not provide an excuse for failure to follow the statutory scheme. The accused's failure to follow the statutory scheme and failure to demonstrate what efforts he took on behalf of the estate indicates a pattern of negligence which constitutes a violation of the disciplinary rule.

The panel is in no way basing this decision on the fact that the estate is still open. Difficulty in selling the estate's assets may provide a justifiable basis for leaving an estate open.

Further, the personal representative's failure to complain about the accused's conduct and the absence of financial damage to the estate are not determinative factors. Compliance with the statutory scheme is largely for the benefit and protection of the personal representative. The absence of damage is a mere fortuity.

Second cause of complaint:

DR 1-103(C) states:

> A lawyer who is subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of the general counsel, the local professional responsibility committees, the state professional responsibility board and the board of governors as requested, subject only to the exercise of any applicable right or privilege.

There is absolutely no question that the accused violated this provision.

The accused's failure to respond was not the result of his negligence. He made an intentional decision to ignore the bar's inquiries.

SANCTION

In analyzing what is the appropriate sanction, we refer to the Standards for Imposing Lawyer Sanctions adopted by the American Bar Association. In re Willer, 303 Or 241, 735 P2d 594 (1987). The analytical framework calls for review of the following considerations:

(1) What ethical duty was violated?

(2) What was the lawyer's mental state?

(3) What was the extent of the actual or potential injury caused by the lawyer's misconduct?

(4) Are there aggravating or mitigating circumstances?

1. Duty to client violated: The evidence indicates that the accused engaged in a pattern of negligence in handling the probate of the estate. The accused further failed to respond to the bar's inquiries, which, although not a direct duty owed to the client, reflects on his lack of professionalism.

2. Mental state: With regard to the first cause of complaint, the accused acted negligently. With regard to the second cause of complaint, the accused acted intentionally.

3. Injury: In this case, it appears that there was little or no injury.

4. Aggravating and mitigating circumstances: With regard to the first cause of complaint, there are mitigating circumstances. The accused had difficulty obtaining information and had recently broken up a law partnership and then moved. Further, there was no damage to the estate and the personal representative remained satisfied with the accused's efforts on her behalf. The only real aggravating circumstance was the accused's discourtesy in ignoring the reasonable inquiries of other heirs.

With regard to the second cause of complaint, there are no mitigating circumstances. The accused's attitude concerning the bar and the disciplinary proceeding is a serious aggravating circumstance.

With regard to the both causes of complaint, the absence of prior disciplinary proceedings is a mitigating circumstances.

Based on this analysis, the trial panel imposes the following sanction:

The accused is suspended from the practice of law for 30 days. The suspension shall be stayed and the accused is placed on probation for six months. The conditions of probation are:

(1) The accused must take and pass the Multistate Professional Responsibility Examination. The accused shall obtain and provide to the bar written verification that this was done.

(2) The accused shall meet with James V. McGoodwin, Probate Court Supervisor, for a thorough explanation of the requirements of the statutory scheme for probating an estate in Oregon and an explanation why each step must be timely made. The accused shall obtain and provide the bar with written verification from Mr. McGoodwin that this has been done.

If the accused fails to timely fulfill the conditions of his probation, the 30-day suspension shall be imposed immediately. Notwithstanding any comments to the contrary by the trial panel chairperson, this sanction shall commence when the decision of the trial panel becomes final, pursuant to BR 10.3. See also ORS 9.536.

Dated this 12th day of May, 1987.

/s/ Steven M. Rose
STEVEN M. ROSE
TRIAL PANEL CHAIRPERSON

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-149
	)	
WILLIAM J. STATER,	)	
	)	
Accused.	)	
	)	

Bar Counsel: H. Thomas Evans, Esq.

Counsel for Accused: William J. Stater, Esq., pro se

Disciplinary Board: David A. Kekel, State Chairperson, and Mark W. Perrin, Region 2 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 6-101(B) [former DR 6-101(A)(3)]. Reprimand.

Effective Date of Opinion: June 15, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-149
	)	
WILLIAM J. STATER,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

The accused and the bar have executed a stipulation for discipline wherein the accused stipulates to a violation of DR 6-101(B) (former DR 6-101(A)(3) -- neglecting a matter entrusted to him) as set forth in the bar's amended formal complaint, which recites the following relevant facts:

> The accused filed a complaint on behalf of the Honochicks against Katherine Mitchell on or about October 10, 1984 in Lane County Circuit Court, Case No. 16-84-07786.
>
> The accused failed to take any further action regarding the Honochicks' case.

The accused has no prior record of reprimands, suspensions or disbarments, and terminated his law practice effective December 31, 1985.

The accused agrees to accept a public reprimand for this violation. The stipulation has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it.

/s/ David A. Kekel	/s/ Mark W. Perrin
DAVID A. KEKEL	MARK W. PERRIN
STATE CHAIRPERSON	REGION 2 CHAIRPERSON
June 15, 1987	June 11, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-149
	)	
WILLIAM J. STATER,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Comes now, William J. Stater, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

II.

The accused, William J. Stater, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 1977, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

III.

A formal complaint (No. 85-149) was filed by the Oregon State Bar on June 16, 1986 against the accused and the accused accepted service of the formal complaint on August 11, 1986. The accused filed an answer to the complaint on August 28, 1986. An amended formal complaint was filed by the bar on March 11, 1987 and is attached hereto as Exhibit 1 and is incorporated by reference herein. The accused wishes to stipulate to his violation of Dr 6-101(B) (former DR 6-101(A)(3)) as set forth in the bar's amended formal complaint and to accept a public reprimand for this violation.

IV.

The accused explains the circumstances surrounding his violation of the foregoing standard of professional conduct as follows:

The accused indicates that he has experienced a variety of serious personal problems. As a result of these difficulties, the accused believes his ability to practice law was adversely affected during the period of time mentioned in the bar's formal complaint. Regardless of the outcome of this disciplinary proceeding, the accused terminated his law practice effective December 31, 1985 and is no longer practicing law.

V.

The accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charge that the accused's conduct violated DR 6-101(B) (former DR 6-101(A)(3)).

VI.

The accused has no prior record of reprimands, suspensions or disbarment.

VII.

This stipulation has been fully and voluntarily made by the undersigned accused, William J. Stater, as evidenced by his verification below, with the knowledge and understanding that this stipulation is subject to the approval of the state professional responsibility board and the disciplinary board. If rejected by either body, the matter will be referred to hearing.

VIII.

Whereas, the accused requests the general counsel of the Oregon State Bar to submit this stipulation to the state professional responsibility board for approval and, if approved, to the disciplinary board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 26th day of May, 1987.

/s/ William J. Stater
WILLIAM J. STATER

Subscribed and sworn to me this 26th day of May, 1987.

/s/ Irene Bridwell
Notary Public for Oregon
My commission expires: 4-13-91

Reviewed by general counsel on the 28th day of February, 1987 and approved by the state professional responsibility board on the 28th day of February, 1987.

/s/ George A. Riemer
GEORGE A. RIEMER
GENERAL COUNSEL
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re: Complaint as to the Conduct of WILLIAM J. STATER, Accused.	No. 85-149 AMENDED FORMAL COMPLAINT Exhibit 1 (Stipulation for Discipline)

For its first and only cause of complaint, the Oregon State Bar alleges:

I.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS, Chapter 9, relating to the discipline of attorneys.

II.

The accused, William J. Stater, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Lane, State of Oregon.

III.

In or about April 1984, the accused undertook to represent the interests of Robert P. and Becky C. Honochick regarding a landlord/tenant dispute with Katherine Mitchell.

IV.

The accused filed a complaint on behalf of the Honochicks against Katherine Mitchell on or about October 10, 1984 in Lane County Circuit Court, Case No. 16-84-07786.

V.

The accused failed to take any further action regarding the Honochicks' case. The court requested a certificate of readiness be submitted by the accused by August 14, 1985 or the Honochicks' case would be dismissed by the court for want of prosecution.

VI.

The accused informed the Honochicks of his inaction in their behalf on or about August 8, 1985 and suggested the Honochicks seek other counsel. On August 14, 1985 the Honochicks, by substituted counsel, obtained a 90-day extension from the court in which to file an amended complaint and obtain service on the defendant. The Honochicks were not successful in meeting the court's deadline and the complaint filed by the accused in Case No. 16-84-07786 was dismissed on or about November 15, 1985 for want of prosecution.

VII.

The aforesaid conduct of the accused violated the following standard of professional conduct established by law by the Oregon State Bar:

DR 6-101(B) (former DR 6-101(A)(3)) of the Code of Professional Responsibility

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 11th day of March, 1986.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-73
	)	
STEVEN L. SWARTSLEY,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Peter M. Linden, Esq.

Counsel for Accused: William V. Deatherage, Esq.

Trial Panel: Lynne W. McNutt, Trial Panel Chairperson; Duane G. Miner (public member); and Stephen H. Miller

Disposition: Accused found guilty of violation of DR 6-101(B) [former DR 6-101(A)(3)]; not guilty of violation of DR 6-101(A) [former DR 6-101(A)(2)], DR 1-102(A)(3) [former DR 1-102(A)(4)], DR 7-101(A)(1), (2) and (3), DR 1-103(C), and DR 7-102(A)(5). Reprimand.

Effective Date of Opinion: July 27, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-73
	)	
STEVEN L. SWARTSLEY,	)	AMENDED OPINION
	)	
Accused.	)	
	)	

The complaint against the accused arises from events beginning about June 1982 through June 1983 involving events occurring because an apartment house subject to a basic construction mortgage to JCF and a second mortgage to the original owner, Schipper, was transferred to Brooks, then to Tyler, then to Rothell. The transfers apparently were recorded except for the transfer to Rothell. Rothell employed Ball to manage the apartments, collect the rents and pay the bills, including payment to an escrowee which would then distribute monthly payments upon the prior mortgages.

Regardless of the exact type of security interest, we refer to it as a mortgage. Accused was admitted to practice in 1972.

Ball, a realtor and former employer of Mrs. Rothell, managed the apartments for Rothell. About April 1982, the Rothells apparently quit their marriage, their jobs, their home address, directed their manager, Ball, to make no payments from the apartment rentals that could be avoided and send all monies to the Rothells.

Brooks had been in New Guinea, where his work took him for a year at a time. In May 1982, Brooks returned to Medford, the location of the apartment house, and was told the payments were delinquent on the first and second mortgages. It was also known that Tyler was filing bankruptcy.

Brooks engaged the accused about June 16, 1982, "to take care of everything." Brooks and accused went to the escrowee, which had formerly received payments from Rothells through Ball, and transmitted funds to meet the monthly payment requirements of the first and second mortgage. Brooks and accused then closed that escrow.

On Brooks' first visit to accused, Brooks introduced his friend Gaylord, who could be receiver for the apartments. Accused never visited the apartments, never talked to Ball, and took Gaylord's word that the apartments were vacant.

Among the things to be done "to take care of everything" were·

1. Reinstate the first and second mortgages by curing JCF and Schipper delinquencies plus penalties plus costs;

a. Accused cured the second mortgage to Schipper with a blank check left by Brooks who had now returned to New Guinea;

2. Reinstate the first mortgage by curing the defaults.

a. This was finally done by Brooks arranging for transfer of funds from savings. Brooks claims he was damaged by penalties imposed and other costs incurred that wouldn't have been necessary if accused had promptly handled this matter. In the malpractice suit against accused, the jury agreed with Brooks;

3. Foreclose the Brooks position against Tyler and Rothell;

4. Get a receiver appointed in the Brooks foreclosure suit to preserve rents from the apartment house.

To "take care of everything" for Brooks, accused:

1. Didn't notify Brooks to cure the first mortgage defaults until about September 1982;

2. Did not get a receiver appointed until about April 1983. Accused says receiver could not be appointed until Rothells were served and accused didn't know of the Rothell interest until October 20, 1982. Accused filed an amended complaint on November 19, 1982 to add Rothell as a defendant.

a. It is apparent that accused would have known of the Rothell interest if he read the Grantland letter of June 1982, had returned any of Judy Ball's phone calls, or used common sense about interests of persons in possession in his procedure with the Brooks foreclosure suit or if he read the Jensen letter enclosed with Brooks' letter in late August 1982.

3. Received an offer from IFG to pay about $32,000 to Brooks, apparently to assume Brooks' position in the foreclosure proceeding. Accused

never communicated the offer to Brooks between October 1982 and April 1983, when IFG withdrew its offer;

a. Accused responds that IFG would not assume payment of the first and second mortgages as part of its offer and accused made the judgment that therefore the IFG offer was no offer at all and not worth communicating. Accused says the details of the IFG offer were relayed between himself and IFG by phone conversation. No document supports accused's statements. In the malpractice suit, the jury resolved this claim against accused and awarded Brooks damages for all the claimed losses resulting from accused's procedure in "taking care of everything."

Brooks filed a lengthy complaint against accused with the general counsel of the bar on November 19, 1984. At that time, accused was a defendant in the malpractice suit brought by Brooks. The complaint is obviously composed by a lawyer and mirrored the civil litigation.

The bar office demanded definitive reply to the allegation in Brooks' complaint. Accused responded on January 20, 1985, with the same information given to PLF in the pending malpractice suit against accused and included accused's statements:

1. Denying learning of Rothell's interest prior to October 29, 1982;

2. Denying knowledge that Ball managed the apartments for Rothells prior to either October 29, 1982;

3. Stated that the apartments were vacant.

Accused recognized Rothell's interest of October of 1982; amended the foreclosure complaint to add Rothell as defendant, tried to have Rothells served at former work place and former home. Accused got "not found" returns and proceeded to serve Rothell by publication. The order to publish required an affidavit of diligence concerning the inquiry of Rothell. Accused composed and signed the affidavit which said:

> I have contacted the plaintiffs in this matter and they have no information as to the whereabouts of the Rothells or any information as to persons or relatives that might be able to provide the address or whereabouts of the Rothells.
>
> I have no further sources of information as to aid in the locating of the defendants, Rothell.

The circuit court gave accused authority to serve by publication based on that affidavit. Defaults were taken against defendants, a foreclosure decree taken, a judicial sale arranged and Brooks bought in a sheriff's sale.

The local title company refused to insure the title to the property in Brooks because accused's affidavit was inadequate to base a publication of service on Rothell.

We are aware that the accused must be shown to be in violation of the charges by clear and convincing evidence. There is very little evidence here that is of that caliber.

We answer the causes of complaint in our own chosen order as follows:

FINDINGS

Second Cause of Complaint.

In summary this charges that accused's handling of the IFG matter, which included failure to inform Brooks of the offer, violated 5 disciplinary rules:

DR 6-101(A) [former DR 6-101(A)(2)]

A lawyer shall not handle a legal matter without preparation adequate in the circumstances.

Not guilty.

We think this means undertaking representation of a client where the attorney has no law background for the job. Accused or any other lawyer was educated to do the Brooks foreclosure job.

DR 6-101(B) [former DR 6-101(A)(3)]

A lawyer shall not neglect a legal matter entrusted to him.

Guilty.

We think this means a type of action which is more than a negligent act. Accused was negligent and neglectful over a year's time in his procedure in the foreclosure case.

DR 7-101(A)(1)

A lawyer shall not intentionally fail to seek the lawful objects of his client through reasonably available means . . .

Not guilty.

Accused did not accomplish his clients objects but accused did not intentionally do so.

DR 7-101(A)(2)

A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services.

Not guilty.

Accused did not intentionally fail.

DR 7-101(A)(3)

A lawyer shall not intentionally prejudice or damage his client during the course of the professional relationship.

Not guilty.

There is no evidence that accused intentionally caused damage to his client.

Third Cause of Complaint.

DR 1-102(A)(3) [former DR 1-102(A)(4)]

A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Not guilty.

DR 1-103(C)

A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of general counsel . . .

Not guilty.

This is an example of a lawyer-advised client using the bar's disciplinary process to enhance a malpractice case. Any answer that accused makes is fuel for complainant's counsel's jury argument.

First Cause of Complaint.

DR 1-102(A)(3) [former DR 1-102(A)(4)]

A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Not guilty.

Not proved. Accused's conduct did not amount to dishonesty, fraud or deceit.

DR 7-102(A)(5)

In representation of a client, a lawyer shall not knowingly make a false statement of law or fact.

Not guilty.

Not proved.

SANCTIONS

Accused should receive a public reprimand

/s/ Lynne W. McNutt
LYNNE W. MCNUTT

/s/ Frank B. Price
FRANK B. PRICE

/s/ Stephen H. Miller
STEPHEN H. MILLER

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-141
	)	
STANLEY E. ERICKSON,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Larry W. Stuber, Esq.

Counsel for Accused: Mark McCulloch, Esq.

Trial Panel: Jerry K. McCallister, Trial Panel Chairperson; Joan C. Johnson (public member); and James. T. Kulla

Disposition: Accused found guilty of violation of DR 1-102(A)(3) [former DR 1-102(A)(4)]; not guilty of violation of DR 5-105(A) and (B). Reprimand.

Effective Date of Opinion: August 10, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-141
	)	
STANLEY E. ERICKSON,	)	OPINION OF TRIAL PANEL
	)	
Accused.	)	
	)	

This matter came on for hearing on the 2nd day of July, 1987 at the Oregon State Bar offices in Lake Oswego, Oregon. The accused was present in person and represented by his attorney, Mark McCulloch. The Oregon State Bar was represented by Larry W. Stuber. The trial panel consisted of Jerry K. McCallister, trial panel chairperson, Joan C. Johnson and James T. Kulla. The court reporter was Carl DePerro. The hearing was concluded on July 2, 1987.

The formal complaint of the bar charges the accused with three separate violations of the Code of Professional Responsibility. Each of the alleged violations arose out of relationship of the accused with Charles and Elizabeth Bastin.

The evidence demonstrated that the accused began representing Charles Bastin sometime prior to 1979 in various business matters. The accused did not represent Mrs. Bastin until September of 1979. This representation dealt with a family real property matter in the State of Michigan. The accused essentially acted as a go-between for Mrs. Bastin in her dealings with the Michigan lawyer who represented her there. This case ultimately led to a settlement of the dispute and that occurred in late 1981. In September of 1982, the accused redrafted Mr. Bastin's will. Mr. Bastin was in the habit of changing his will at various times. In September of 1982 the accused drafted a will for Mrs. Bastin and mailed it out to her for review. This was not done at Mrs. Bastin's request, but at the request of Mr. Bastin. The will was never signed and there was no communication between the accused and Mrs. Bastin regarding this.

In April of 1983, Mr. Bastin consulted the accused regarding a contemplated dissolution of marriage between the Bastins. Mr. Bastin told the

accused that he wanted a low key, low budget divorce and that everything had been agreed upon. He presented a sheet of assets to the accused showing values thereon and a contemplated distribution between the parties (See OSB Exhibit 17). Mr. Bastin represented to the accused that all matters had been settled between the parties and requested that the accused prepare a property settlement agreement to evidence the agreement reached. The accused agreed to handle the matter. At the time of the accused's deposition, he apparently testified that he was merely acting as a scrivener in preparing the necessary documents to effect the dissolution. However, at the time of the hearing his testimony was that he only represented Mr. Bastin. He had no verbal contact with Mrs. Bastin at any time during the dissolution proceeding. After drafting the property settlement agreement, the accused mailed copies thereof to Charles and Elizabeth Bastin at their address in Tualatin (see OSB Exhibit 2). In the contents of the cover letter, the accused wrote as follows:

> "I suggest we all get together to see if the enclosed is close to your thoughts, or if modification is in order."

Apparently there was one change made thereafter in the property settlement agreement. Final drafts were prepared and sent to the parties for execution. Thereafter the accused filed the petition to dissolve the marriage wherein Charles Bastin was listed as the petitioner and Elizabeth Bastin was listed as the respondent. The matter ran its natural course and a decree of dissolution was entered August 17, 1983 which ratified the provisions of the property settlement agreement.

The essential question to be resolved with regard to the first cause of complaint in the bar's complaint is whether or not there was a joint representation by the accused of both Mr. and Mrs. Bastin, and if so, was that proper under all the circumstances existing in the Bastin marriage. The bar and the accused agree that there were substantial marital assets to be distributed. In addition, there was a question of spousal support and custody and support of the minor child of the parties. The parties had been married since August of 1968 and their minor child was 13 years of age. The accused testified that he only represented Mr. Bastin and had absolutely no contact with Mrs. Bastin. Mrs. Bastin testified that she felt that the accused was representing both her and her husband and that she relied on him to protect her interests regarding the dissolution. It is our conclusion that the accused was in fact representing both parties in this dissolution. It is our further

conclusion that in so doing, it was not with the informed consent of Elizabeth Bastin. It is our further conclusion that the accused in this situation should have either declined the representation of either party at the outset or having accepted the representation of Mr. Bastin, that he, because of all the circumstances in the marriage, should have obtained the consent of Mrs. Bastin to represent Mr. Bastin. Thereafter, he should have advised her, because of the magnitude of the assets and the other issues involved, to seek independent counsel for herself so that she could be adequately and independently represented concerning the dissolution. It is our further conclusion that Mrs. Bastin had every right to believe that the accused was representing her interests in the dissolution. He had been her attorney in whatever legal matters she had had before that time. Mrs. Bastin considered him to be the family attorney. The correspondence addressed to both parties with the property settlement agreement would surely have led Mrs. Bastin to the conclusion that the accused was protecting her interests. These matters, coupled with the proposed values and distribution of assets would further have led Mrs. Bastin to believe that his financial interests were being protected by the accused.

We find that this conduct by the accused violates DR 5-105(A) and DR 5-105(B) of the Code of Professional Responsibility.

The property settlement agreement provided that certain stock in a closely held corporation known as "FBC" was to be distributed to Mrs. Bastin. Mr. Bastin, however, remained on the board of directors. There were essentially two stockholders in the corporation, Mrs. Bastin and Cynthia J. Cardwell. In April of 1984, a dispute arose between Mrs. Bastin and Cynthia Cardwell regarding corporate activities and negotiations began wherein Mrs. Cardwell was going to buy the interests of Mrs. Bastin. The accused at that time undertook representation of Mrs. Cardwell. He had previously been hired to be the corporate attorney and this representation began in December of 1983.

The bar does not charge the accused with any conflict regarding his representation of the corporation and one of the shareholders, in a dispute with the remaining shareholders. Rather, the bar charges that the accused was in a position of conflict because he had previously represented Mrs. Bastin on other matters including the Michigan property matter, the will, and

as we find to be the case, the representation in the dissolution. The bar further charges that this representation placed the accused in a position where he was aware of certain confidential financial information concerning Mrs. Bastin and therefore placed him in a position of conflict regarding a contemplated purchase of Mrs. Bastin's stock by the corporation and/or Mrs. Cardwell. We find that the bar has failed to prove by clear and convincing evidence this allegation and consequently, we find the accused not guilty on the second cause for complaint.

The third cause of complaint by the bar deals with the purchase of Mrs. Bastin's stock by FBC and Mrs. Cardwell. Mrs. Bastin had gone to an attorney for representation regarding this. The attorney was Elaine Johnson, who testified at the hearing. The accused and Elaine Johnson were negotiating and discussing possible resolutions of the dispute regarding the sale of the stock. A meeting of the FBC board of directors was scheduled for April 27th, 1984. However, sometime before that, the accused and Elaine Johnson were discussing a settlement and they believed that they had arrived at some potential settlement. The accused advised Elaine Johnson that in view of that, the board meeting would be cancelled as there was no necessity for it. Elaine Johnson relied on that and told Mrs. Bastin that there would be no directors meeting. The accused testified that he believed the meeting would not be held.

On the day of the board meeting, April 27, 1984, the accused had been out of his office at a court matter in Corvallis. Upon his return to the office, he was notified, at approximately three or four o'clock in the afternoon that the meeting was going to be held. He went to the meeting, which lasted about 15 minutes and at which time Mrs. Bastin's employment with the corporation was terminated and she was removed as an officer in the corporation. Upon learning that the meeting was going to be held, the accused did nothing to attempt to notify Elaine Johnson, and in fact did not do so until Monday of the following week, when he directed a letter to her advising her that the meeting had been held and of the action taken by the two directors there, which constituted the quorum. The April 27th, 1984 date was the preceding Friday.

The bar charges the accused with a violation of DR 1-102(A)(3) [former DR 1-102(A)(4)], regarding engaging in conduct involving dishonesty, fraud,

deceit or misrepresentation. It is our conclusion that the accused believed that the contemplated board of directors meeting was not going to be held on the April 27, 1984 date. When he learned that the meeting was going to be held, we believe that he was surprised. While we do not necessarily believe that the accused's conduct thereafter, in failing to make any contact with Elaine Johnson, was appropriate, we do not believe that he was guilty of any dishonesty, fraud, deceit or misrepresentation and accordingly, find the accused not guilty regarding the third cause of complaint in the bar's complaint.

We do not believe that the accused's conduct regarding the first cause in the complaint of which we have found him guilty is sufficient to warrant a suspension. We have considered whether or not a public or private reprimand is appropriate. We have concluded that a public reprimand is the appropriate sanction. It is our conclusion that the accused, an attorney of 19 years experience, including domestic relations, should have been aware of the pit falls of dual representation of the Bastins in the dissolution and should have taken steps to avoid it. The publication of this opinion should act as the public reprimand for the accused.

Respectfully submitted,

/s/ Jerry K. McCallister
JERRY K. MCCALLISTER
CHAIRPERSON

/s/ Joan C. Johnson
JOAN C. JOHNSON

/s/ James T. Kulla
JAMES T. KULLA

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-18
	)	
RAYMOND R. SMITH,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Steven L. Wilgers, Esq.

Counsel for Accused: William V. Deatherage, Esq.

Trial Panel: E. R. Bashaw, Trial Panel Chairperson; Lynn M. Myrick; Duane Miner (public member)

Disposition: Accused found guilty of violation of DR 9-101(B)(3) [former DR 9-102(B)(3)]; not guilty of violation of DR 9-101(A) [former DR 9-102(A)], DR 9-101(B)(4) [former DR 9-102(B)(4)], and DR 1-102(A)(3) [former DR 1-102(A)(4)]. Reprimand.

Effective Date of Opinion: August 25, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	
Complaint as to the Conduct of	No. 86-18
RAYMOND R. SMITH,	FINDINGS AND CONCLUSIONS AND DISPOSITION
Accused.	

The bar asserted that the accused violated the following disciplinary rules:

First Count: DR 9-101(A) [former DR 9-102(A)] "All funds of clients paid to a lawyer . . . shall be deposited and maintained in . . . trust accounts except as follows: . . . (2) funds belonging in part to a client and in part presently or potentially to a lawyer . . . must be deposited therein but the portion belonging to the lawyer may be withdrawn when due unless the right of the lawyer . . . to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is resolved."

Second Count: DR 9-101(B)(3)[1] [former DR 9-102(B)(3)] "A lawyer shall . . . maintain complete records of all funds of a client . . . coming into the possession of the lawyer and render appropriate accounts to the . . . client regarding them."

DR 9-101(B)(4) [former DR 9-102(B)(4)] "A lawyer shall . . . promptly pay . . . to a client as requested by the client the funds . . . in the possession of the lawyer which the client is entitled to receive. . . . The undisputed portion of funds held by the lawyer shall be disbursed to the client."

Third Count: DR 1-102(A)(3) [former DR 1-102(A)(4)] "It is professional misconduct for a lawyer to . . . engage in conduct involving fraud, dishonesty, deceit or misrepresentation."

FINDINGS: COUNTS 1 AND 2

1. On March 4, 1985, accused contracted in writing to represent client in connection with felony charges pending in circuit court and misdemeanor

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1 Miscited as DR 9-101(A)(3).

charges pending in district court, agreeing to charge at the rate of $60 per hour, and client agreed to pay a nonrefundable retainer of $500 which was to be payment in full of the first eight hours. Client was at all times in custody. Client gave accused a power of attorney to withdraw funds from his savings account primarily to apply on attorney's fees but also to deposit to cover various needs.

2. Pursuant to the power of attorney, accused withdrew $300 on March 5, $300 on April 17, and $300 on May 6. In addition, he cashed and retained, with client's consent, an insurance check in the amount of $55 in March. The March withdrawal, the insurance check, and $145 of the April withdrawal made up the $500 retainer to which accused was absolutely entitled. He discussed each withdrawal with client,[2] but maintained no contemporaneous record of time spent on the case and made no written accounting to client related to the time spent on the case and the amounts due based thereon. On November 15, in response to a demand from the bar, accused produced for the bar a detailed statement of time spent, more specifically below described.

3. No part of the $955 so received was deposited to a trust account. Accused's office did not make a contemporary record of $355 of the amounts so received. However, the evidence does not support any inference that the failure to record was intentional.

4. On August 20, 1985, pursuant to a telephone conversation with client on August 16, accused withdrew $1,340.96 from client's account, with client's consent.[2] Of that amount, accused retained $800 as payment in full for services rendered and remitted the remaining $504.96 to the client. The transaction was not run through any trust account. With the remittance to the client, the accused rendered his first actual account.

5. The account took the form of a letter dated August 20, 1985. In it, the accused did not directly advise the client of the total amount received by accused, but the letter implies that the total amount received by the

---

2 Client, as complainant, declined the bar's express invitation to appear and testify.

accused was $1,300. In fact, the total was $1,755. The accused had asked his secretary to develop the figures for the letter, and she was unable to find records of receipts given for $455 and developed the figure $1,300 by adding up such of the posting or receipts as she did find, and then showed that as a payment in full for services rendered to that date.

6. Accused did not read the August 20 letter before it was sent, but authorized the secretary to fill in the figures and to sign his name. Accused did not undertake to ascertain the number of hours chargeable in arriving at the $1,300 fee. The evidence was conclusive that the client had been an extremely difficult client, and the accused fully explained why accused was more motivated by desire to be rid of the matter than by desire to claim any specific amount as a fee. Client had had several prior conflicts with the law, had a mental problem, was frequently irrational, and was frequently unpleasant to those with whom he came in contact. After August 20, 1985, accused withdrew from the pending cases and rendered no further services to the client, other than motions to withdraw.

7. After receiving notice from the bar that the client had complained, the accused:

(a) Ascertained that the amount for which he should have accounted was $1,755 and so advised the bar;

(b) Offered to arbitrate the disputed fee; and

(c) Prepared for the bar on November 15, 1985, a detailed account of the time spent in performance of services rendered between February 26 and September 10, showing a total of 42 hours at $60 per hours, or $2,520.

8. The November 15 accounting made to the bar is based upon estimated time consumed by each letter or document prepared by accused and found in the file, and for each telephone call from client. Calls from the jail are "collect" calls, creating a record. The compilation also included an estimated time spent for specific investigations or conferences and other documents prepared. Accused testified that he was satisfied that it was a reasonable reconstruction at the time he compiled it.

CONCLUSIONARY FINDINGS: COUNTS 1 AND 2

9. The question of whether the sums withdrawn in March, April, and May should have been deposited in accused's trust account depends upon

whether they were the "funds of" a client. Ordinarily, money secured by an attorney in fact by the exercise of his power of attorney is held in trust and should be so deposited. However, the $300 received in March and $200 of the money received in April were clearly accused's. If reasonable credence is given to the statement of time spent, there was enough asserted time expended by April 17 that the money withdrawn in the first three months belonged to the accused and not the client.

10. Accused's obligation to promptly pay to client amounts due him must depend upon the amount of the fee to which accused was entitled. This determination could not be made by the disciplinary panel on the evidence submitted and is more properly the subject of an arbitration. The bar urges that the August 20 "accounting" was binding and limited accused to a fee of $1,300, on a theory of account stated or accord; and, that being true, the remaining $455 should have been promptly refunded. The ethical obligation to refund promptly that which is due arises at the point when the amount is unquestionably due. The bar may be right that the accused is limited to $1,300, but the issue is not so free from doubt as to become an ethical question.

11. Accused did not fulfill his ethical duty to "maintain complete records" and "render appropriate accounts." Where money was being appropriated from client's account by the accused in a fiduciary capacity and applied to a claim based on time spent, it became accused's duty to maintain a complete contemporary record of that time and to let the client know how he stood at each appropriation. It also was the accused's duty to render the client a complete and accurate account of the total amount appropriated by him and how it was applied. The August 20 account did not accomplish this, and was not an "appropriate account." The disciplinary rule does not allow for secretarial mistakes; it is mandatory.

FINDINGS: COUNT 3

12. On May 21 accused submitted his own sworn affidavit to the court in support of a motion to have client psychiatrically examined at public expense by reason of client's indigence. In the affidavit the accused said:

> "It is also my finding . . . that (client) is without sufficient funds . . . to pay for such a psychiatric examination, his sole source of income being a Veterans Administration pension which he advises is

reduced to the sum of $64 per month during the time he is in jail. . . ."

13. In fact, it appears that the imprisonment of the client did not result in a reduction of his V.A. pension to $64 per month. However, there is no dispute that the client in fact advised the accused that his pension would be so reduced.[2] Also, the court was invited to take the word of the client, and, having believed that the client was telling the truth, authorized the examination. Everything in the affidavit is technically true. It is possible to infer that accused should have known that the client was not telling the truth. As of the date of the affidavit, client had been in jail three months, accused had drawn three monthly payments of $300, and the account had a balance of $390. The bank statements of the accused were sent to client, and the accused denies knowing the state of the bank account as of March, April, and May, 1985, but in May, 1985, took client's word that the monthly income would be thus reduced.

CONCLUSIONARY FINDING: COUNT 3

14. The question is whether accused engaged in conduct "involving dishonesty, fraud, deceit, or misrepresentation." The court was relying in part upon accused's assessment of the situation and in part upon the truth of what the client had said. There is no clear evidence that accused knew or should have known that the pension would not be reduced, except that it had not yet been reduced. This is not sufficient to charge accused with taking part in client's dishonesty.

CONCLUSIONS OF LAW

15. There was insufficient evidence that the funds received prior to August 20, 1985, were funds of the client and accused did not violate DR 9-101(A) [former DR 9-102(A)] in regard to them.

16. With regard to the funds received by accused from the bank account, and insurance proceeds of his client, accused failed to maintain complete records and failed to render appropriate accounts to the client in violation of DR 9-101(B)(3) [former DR 9-102(B)(3)]. Accused violated that section.

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2 Client declined bar's express invitation to appear and testify, and was beyond the range of subpoena.

17. Accused's failure to promptly pay to his client the amount of $455, claimed by his client to be an overpayment, did not violate DR 9-101(B)(4) [former DR 9-102(B)(4)].

18. Accused's representations to the court in the form of the affidavit above-quoted did not constitute conduct "involving fraud, deceit, dishonesty, or misrepresentation," and did not violate DR 1-102(A)(3) [former DR 1-102(A)(4)].

SANCTIONS

Accused's violations were caused primarily by lack of attention to the requirements of the disciplinary rules involved and he has assured the panel that the incidents above described have caused a very substantial change in his practices and procedures since 1985. The bar has not indicated any prior disciplinary problem with the accused. The panel unanimously agrees that the accused should be publicly reprimanded.

Respectfully submitted this 27th day of July, 1987.

/s/ E. R. Bashaw
E. R. BASHAW

/s/ Lynn M. Myrick
LYNN M. MYRICK

/s/ Duane Miner
DUANE MINER

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-86
	)	
LORIN M. RICKER,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Timothy J. Helfrich, Esq.

Counsel for Accused: Alex M. Byler, Esq.

Disciplinary Board: David A. Kekel, State Chairperson, and Douglas A. Shepard, Region 1 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 5-104(A) and former DR 9-102(A) [current 9-101(A)]. Sixty-day suspension.

Effective Date of Opinion: November 20, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-86
	)	
LORIN M. RICKER,	)	OPINION
	)	
Accused.	)	
	)	

This matter has been submitted for review by the undersigned pursuant to Oregon State Bar Rule of Procedure 3.6(e).

The accused and the bar have executed a stipulation for discipline wherein the accused stipulates, to a violation of DR 5-104(A) and DR 9-102(A) (since renumbered DR 9-101(A)) which recites the following relevant facts:

> The accused made the investment of estate funds in the gas well by means of a check drawn on the estate bank account and made payable to the accused. This check was deposited to the accused's personal checking account thereby constituting commingling of client funds with the accused's personal funds. The funds were transferred by wire on the same day to the oil drilling company in Kentucky.
>
> On February 1, 1985, the accused filed his final account and petition for distribution in the Lewis estate. In it he listed the gas well as an asset to be distributed to Goodwin.

The stipulation further recites that there was a dispute as to whether the investment had been authorized, which resulted in an order being entered by the Wallowa County Circuit Court directing the accused to pay the sum of $30,000 to the claimant. The accused paid the sum as ordered.

The accused was previously reprimanded by the supreme court (see In Re Gooding and Ricker, 254 Or 38, 456 P2d 998 (1969)).

The accused agrees to accept a 60-day suspension from the practice of law for the violation.

The stipulation has been reviewed by general counsel and has been approved by the state professional responsibility board.

The undersigned have reviewed the stipulation for discipline and hereby approve it.

November 20, 1987

/s/ David A. Kekel
DAVID A. KEKEL
STATE CHAIRPERSON
DISCIPLINARY BOARD
OREGON STATE BAR

November 18, 1987

/s/ Douglas A. Shepard
DOUGLAS A. SHEPARD
REGION 1 CHAIRPERSON
DISCIPLINARY BOARD
OREGON STATE BAR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-86
	)	
LORIN M. RICKER,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Pursuant to BR 3.6, the Oregon State Bar and the accused stipulate as follows:

FACTS

1.

The accused, a member of the Oregon State Bar since 1953, has practiced law in Enterprise, Oregon, since 1953. He was previously reprimanded by the supreme court. See In re Gooding and Ricker, 254 Or 38, 456 P2d 998 (1969).

2.

In January of 1981, the accused began representing Francis Goodwin ("Goodwin") in a will contest in the estate of Edith I. Lewis ("Lewis estate"). The will contest was successful resulting in a 1979 will, which left the estate to charity, being set aside and the 1971 will, which left the estate to Goodwin, being admitted to probate.

3.

The accused became personal representative of the Lewis estate on April 1, 1983. He also acted as attorney for the personal representative.

4.

Goodwin and the accused were social friends with Goodwin visiting the accused and his wife in their home prior to this controversy arising.

5.

Prior to December, 1983, the accused made personal investments in oil and gas wells in the State of Kentucky. One of the accused's investments was the purchase of a lease interest of certain gas and oil rights on property known as the "Hardison property." The accused paid for the drilling of two

oil and gas wells on the Hardison property prior to December of 1983. Following the drilling of a well for the accused personally in 1983, the drilling company was planning to move its equipment off the Hardison property. If the company had moved its equipment, the accused could have been exposed to a possible greater expense for future drilling if he had chosen to drill future wells. It was of benefit to the accused to have further drilling on his property.

6.

Goodwin was interested in gas well investments the accused and his son had made. While visiting in the home of the accused during Thanksgiving of 1983, they discussed such an investment for the Lewis estate. Goodwin claims there was only a general discussion on the subject and that she gave no consent to such an investment. The accused claims that the discussion was specific and that Goodwin authorized an investment of $30,000 in a gas well for the Lewis estate. In December of 1983, the accused invested $30,000 of Lewis estate funds to drill a gas well on the Hardison property in which the accused had the leased interest.

7.

The accused made the investment of estate funds in the gas well by means of a check drawn on the estate bank account and made payable to the accused. This check was deposited to the accused's personal checking account thereby constituting commingling of client funds with the accused's personal funds. The funds were transferred by wire on the same day to the oil drilling company in Kentucky.

8.

No certificate of title to such gas wells was issued to the Lewis estate, Goodwin or the accused.

9.

On February 1, 1985, the accused filed his final account and petition for distribution in the Lewis estate. In it he listed the gas well as an asset to be distributed to Goodwin.

10.

Thereafter Goodwin, through an attorney, filed objections to the final account demanding, in part, that the gas well either be sold and the proceeds

of sale be paid to the estate or that the accused be ordered to pay the sum of $30,000 plus interest to the estate.

11.

After hearing the objections, a Wallowa County Circuit Judge ordered that the accused:

> ". . . shall . . . remit to the above estate the sum of $30,000 representing the gas well investment and any and all interest in and to said gas well shall hence forth belong to said Lorin M. Ricker."

12.

On July 31, 1985, the accused paid the Wallowa County Circuit Court Trial Clerk $30,000 in satisfaction of the court's order.

13.

Prior to investing in the gas well, the accused did not inform Goodwin how her interests or the interests of the Lewis estate differed from the accused's interest in the gas well or advise Goodwin that she or the Lewis estate should obtain independent legal advice concerning such investment.

VIOLATION

14.

The foregoing conduct of the accused constitutes a violation of DR 5-104(A) and DR 9-102(A) of the Code of Professional Responsibility.

DISCIPLINE

15.

The accused should receive a 60 day suspension for the violation. The accused agrees to accept such form of discipline in exchange for the stipulation which is freely and voluntarily made by the accused.

16.

The Oregon State Bar agrees to withdraw and dismiss its second cause of complaint alleging a violation of DR 9-102(B)(3) and that portion of its third cause of complaint alleging a violation of DR 9-102(B)(4).

DATED this 29th day of October, 1987.

OREGON STATE BAR

By: Susan D. Isaacs 11/2/87
SUSAN D. ISAACS
ASSISTANT GENERAL COUNSEL

/s/ Lorin M. Ricker
LORIN M. RICKER
ACCUSED

State of Oregon)
) ss.
County of Union)

I, Lorin M. Ricker, being first duly sworn, depose and say: I am the accused named in the captioned matter; I have read the foregoing stipulation for discipline which I have freely and voluntarily signed and that the same is true as I verily believe.

/s/ Lorin M. Ricker
LORIN M. RICKER

Subscribed and sworn to before me this 29th day of October, 1987.

/s/ Alex M. Byler
Notary Public for Oregon
My Commission expires: 11-3-89

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 85-86
	)	
LORIN M. RICKER,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

For its first cause of complaint, the Oregon State Bar alleges:

1.

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS, Chapter 9, relating to the discipline of attorneys.

2.

The accused, Lorin M. Ricker, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his officer and place of business in the County of Wallowa, State of Oregon.

3.

In or about January, 1981 the accused undertook the representation of Francis Goodwin to contest the will and probate the estate of Edith I. Lewis (Lewis estate).

4.

On or about March 4, 1981 the accused filed a petition to revoke the probate of a 1979 will offered by the First National Bank of Oregon on January 19, 1981 regarding the Lewis estate. The accused petitioned the court to probate the Lewis will of October 12, 1971 which named Francis Goodwin as the sole devisee of the Lewis estate.

5.

The petition referred to in paragraph IV was allowed by the Wallowa County Circuit Court and affirmed by the court of appeals on March 16, 1983.

The accused was appointed personal representative of the Lewis estate on April 1, 1983 by the Wallowa County Circuit Court.

6.

The accused was awarded a contingent fee of 25% of the gross value of the Lewis estate on June 1, 1983 by the Wallowa County Circuit Court.

7.

The accused continued as personal representative of the Lewis estate until March 28, 1985. The accused continuously represented Francis Goodwin from January, 1981 until January, 1985.

8.

On or about November 25, 1982 the accused discussed with Goodwin, in general terms, the possibility of investing Lewis estate funds in a Kentucky oil and gas venture (oil and gas venture) in which the accused was financially involved. Subsequent to this conversation, the accused, without further consultation with or authorization from Goodwin, invested $30,000 of Lewis estate funds in the oil and gas venture. In making the investment, the accused did not obtain any documentation reflecting the Lewis estate's interest in the oil and gas venture. The accused did not inform Goodwin how her interests or the interests of the Lewis estate differed from the accused's interest in the oil and gas venture prior to the investment being made. The accused did not obtain Goodwin's informed consent after full disclosure prior to entering into this business transaction with her and the estate.

9.

The aforesaid conduct of the accused violated the following standard of professional conduct established by law by the Oregon State Bar:

DR 5-104(A) of the Code of Professional Responsibility.

And, for its second cause of complaint, the Oregon State Bar alleges:

10.

Incorporates by reference as fully set forth herein paragraphs 1 through 8 of the first cause of complaint.

11.

In or about March, 1983 the accused informed Goodwin of his investment of Lewis estate funds in the oil and gas venture. Goodwin requested further information about the investment and an accounting of the expended estate

funds repeatedly from March, 1983 to January, 1985. The accused failed to supply Goodwin with specific information regarding the investment and failed to prove her with any accounting regarding the estate funds which had been invested.

12.

The aforesaid conduct of the accused violated the following standard of professional conduct established by law by the Oregon State Bar:

Former DR 9-102(B)(3), current DR 9-101(B)(3) of the Code of Professional Responsibility.

And, for its third and final cause of complaint, the Oregon State Bar alleges:

13.

Incorporates by reference as fully set forth herein paragraphs 1-8 and 11 of the first and second causes of complaint.

14.

Goodwin repeatedly requested from March, 1983 to January, 1985 that the accused sell the Lewis estate's interest in the oil and gas venture and return the funds to the Lewis estate's trust account. The accused refused to do so until required by order of the Wallowa County Circuit Court on November 21, 1985.

15.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and the Oregon State Bar:

Former DR 9-102(A), current DR 9-101(A) of the Code of Professional Responsibility; and

Former DR 9-102(B)(4), current DR 9-101(B)(4) of the Code of Professional Responsibility.

16.

Wherefore, the Oregon State Bar demands that the accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

Executed this 1st day of October, 1986.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
EXECUTIVE DIRECTOR

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-88
	)	
ROBERT L. WOLF,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Christopher Hardman, Esq.

Counsel for Accused: Mark Smolak, Esq. and Susan Cohen, Esq.

Trial Panel: Frank H. Lagesen, Trial Panel Chairperson; Ronald I. Gevurtz; and George M. Ray, Jr. (public member)

Disposition: Accused found not guilty of violation of DR 1-102(A)(2) [former DR 1-102(A)(6)], ORS 9.460(1), ORS 9.527(1), ORS 9.527(5), ORS 9.220(2)(b). Dismissal.

Effective Date of Opinion: December 15, 1987

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re: Complaint as to the Conduct of ROBERT L. WOLF, Accused.	No. 86-88 FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATIONS OF THE TRIAL PANEL

This matter came on regularly for trial at the offices of the Oregon State Bar, 5200 S.W. Meadows Road, Lake Oswego, Oregon, on October 19, 1987 before Frank H. Lagesen, chairperson; Ronald I. Gevurtz and George M. Ray, the duly appointed and constituted trial panel of the Oregon State Bar.

The accused appeared in person and by Mark Smolak, his attorney, and Susan Cohen, his attorney; and the Oregon State Bar appeared by and through its counsel, Christopher Hardman. Frances Galisky was the court reporter and took down, reported and reduced into writing all the testimony and proceedings in this matter. Witnesses were duly sworn and testified, and exhibits were introduced. The trial panel kept a complete record of all proceedings, including the evidence and exhibits offered and received; and hereby transmits its written memorandum opinion and its findings of fact, conclusions, and recommendations, together with the original pleadings and the complete record of all proceedings before it.

The trial panel, having taken this matter under advisement, having considered all the evidence and exhibits, and being fully advised in the premises, makes the following:

FINDINGS OF FACT

The trial panel makes the following findings of fact, based on the testimony and evidence:

1. At approximately 1:50 p.m. on April 4, 1986, Officer Fred Steen ("Steen") of the Beaverton Police Department observed the accused and an unknown woman who were seated in the accused's 1983 Porsche 911 Turbo automobile preparing a substance thought by Steen to be cocaine for ingestion.

2. On or about 1:50 a.m. on April 4, 1986, Officer Steen placed the accused and the unknown woman under arrest.

3. The unknown woman fled and escaped, and the accused denies knowledge as to her identity and has made no efforts to locate her.

4. The accused, upon learning of Officer Steen's presence, attempted to destroy the evidence by sweeping the substance, thought to be cocaine, from the glove compartment lid of his automobile with his hand and arm.

5. Officer Steen attempted to stop the accused from attempting to destroy the evidence, and a very brief struggle ensued, during which Officer Steen took physical control over the accused, pulling him from his car by his hair and placing him face down on the pavement beside his car, where he was handcuffed.

6. After handcuffing the accused, Officer Steen placed the accused into a patrol car.

7. Officer Steen searched the accused's vehicle and found a "bindle" of cocaine beneath the driver's seat.

8. No fingerprint tests were performed on the bindle, although it would have been feasible to do so.

9. No attempt was made to retrieve the substance that had been brushed from the glove compartment lid, although it would have been feasible to do so.

10. The accused denies providing cocaine, but acknowledges that he assumed that the white substance placed on the glove compartment lid was cocaine because the unknown woman had asked the accused if he would mind if she "did a line."

11. The accused was taken by Officer Steen to the Beaverton Police Department, where the accused was held in a holding cell until released on his own recognizance.

12. On May 6, 1986, the accused, through his attorney, Mark Smolak, entered a plea of no contest to a charge of attempted possession of a controlled substance, to-wit: cocaine.

13. There was no evidence that the accused has been convicted of any felonies or any misdemeanors involving moral turpitude.

DISCUSSION

In its amended formal complaint, the Oregon State Bar has charged that the acts of the accused in knowingly allowing a bindle of cocaine to be brought into and subsequently found in his vehicle, coupled with acts suggesting that the accused was preparing the cocaine for ingestion by himself or another person, raise substantial doubts about the accused's respect for the laws of the State of Oregon. The bar further charges that the accused's response, when detected by Officer Steen, of attempting to destroy the evidence while physically confronting the officer, as well as statements made by the accused following his arrest, also raised substantial doubts as to the accused's respect for the law of the State of Oregon, as does the accused's conviction for attempted possession of a controlled substance.

The bar withdrew its allegation that the above acts constitute acts which adversely reflect on the accused's fitness to practice law, but does contend that the above acts are of such a nature that if the accused was applying for admission to the bar, his application should be denied.

CONCLUSIONS OF LAW

1. The accused's entry of a plea of nolo contendre to the charge of attempted possession of a controlled substance, to-wit: cocaine, does not, for the purposes of this proceeding, constitute a conviction of that charge. In re Corcoran, 215 Or 660, 337 P2d 307 (1959).

2. The crime of attempted possession of cocaine is not a crime involving moral turpitude, thus, in and of itself is not a basis for discipline by the Oregon State Bar. In re Chase, 299 Or 391, 702 P2d 1082 (1985); In re Drakulich, 299 Or 417, 702 P2d 1097 (1985).

3. The accused's acts of attempting to possess cocaine, destroy evidence and scuffling with a police officer were part of a single, isolated event and do not, in and of themselves, provide clear and convincing evidence creating substantial doubt about the accused's respect for the laws of the State of Oregon.

4. The bar has failed to prove by clear and convincing evidence that the acts of the accused complained of herein constitute acts or a course of conduct of such nature that if the accused was applying for admission to the bar that his application should be denied.

CONCLUSION

While the accused engaged in acts certainly unbecoming any citizen of this state, much less a lawyer, the acts complained of do not, under applicable disciplinary rules, warrant discipline by the Oregon State Bar. The trial panel recommends to the Supreme Court of the State of Oregon that the charges against the accused be dismissed.

/s/ Frank H. Lagesen
FRANK H. LAGESEN
TRIAL PANEL CHAIRPERSON

/s/ Ronald L. Gevurtz
RONALD L. GEVURTZ
TRIAL PANEL MEMBER

/s/ George M. Ray
GEORGE M. RAY
TRIAL PANEL MEMBER

SUBJECT INDEX -- LIST OF TOPICS

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