



DISCIPLINARY BOARD REPORTER

REPORT OF CASES

Decided by the
Disciplinary Board
of the
Oregon State Bar

GEORGE A. RIEMER
Editor

DONNA J. HATFIELD
Assistant Editor

Volume 2

January 1, 1988 to December 31, 1988



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PREFACE

This Reporter contains final decisions of the Oregon State Bar Disciplinary Board. The Disciplinary Board Reporter should be cited, for example, as **2 DB Rptr 1 (1988)**.

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. 183-4 of the 1989 Membership Directory, and ORS 9.536.

It should be noted that the decisions printed herein have been placed 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, 1989 are also available from Donna Hatfield at the Oregon State Bar upon request. Please also note that the statutes, disciplinary rules and rules of procedure cited in the opinions were those in existence at the time the opinions were issued. The statutes and rules may have since been changed or renumbered. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

Questions concerning this reporter or the bar's disciplinary process in general may be directed to the undersigned. We hope this publication, including as it does the current bar Rules of Procedure, Code of Professional Responsibility, and Code of Judicial Conduct, proves helpful to those interested in or affected by the bar's disciplinary procedures.

George A. Riemer
General Counsel
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IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:

Complaint as to the Conduct of
John R. Perkins,
Accused.

Case No. 86-100

Bar Counsel: Stephen P. Riedlinger, Esq.

Counsel for the Accused: John R. Perkins, Esq., pro se

Trial Panel: Douglas A. Shepard, Trial Panel Chairperson; James V. Hurley and Carl Backstrom
(public member)

Disposition: Accused found not guilty of violation of DR 4-101(B)(1)(2)(3). Dismissal.

Effective Date of Opinion: January 22, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|-------------|
| In Re: |) | |
| |) | No. 86-100 |
| Complaint as to the Conduct of |) | |
| |) | TRIAL PANEL |
| JOHN R. PERKINS, |) | DECISION |
| |) | |
| Accused. |) | |

INTRODUCTION

This is a lawyer disciplinary proceeding instituted by the Oregon State Bar against John R. Perkins. The Bar charges the accused with violations of the following disciplinary rule:

- DR 4-101 Preservation of Confidences and Secrets of a Client.
- (B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:
 - (1) Reveal a confidence or secret of his client.
 - (2) Use a confidence or secret of his client to the disadvantage of the client.
 - (3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

PRELIMINARY MATTERS

At the commencement of the hearing, Perkins moved to dismiss the disciplinary proceeding because the Bar had not followed the mandatory procedures set out in BR 2.4(d)(1) and 2.4(e) [2.5(d)(1) and 2.5(e)], that the failure was jurisdictional and that the trial panel therefore could not proceed. Accused attached a supporting legal memorandum to the Motion. The Panel reserved ruling on the matter, took it under consideration and now makes its ruling. The thrust of the accused's motion was that the trial panel did not have jurisdiction to hear the matter because no LPRC report was ever filed with General Counsel. Attached to the motion were copies of two letters from M.D. Van Valkenburgh, an attorney who also testified at the hearing. He was chairman of the LPRC that was assigned the matter. Both his attached letters and his testimony revealed that because of "entanglements" the LPRC declined to proceed with the case, that no report was filed and the file and the only tape of one factual hearing was mailed back to General Counsel under date of October 17, 1986 with the recommendation that another committee be appointed to investigate Perkins. Curiously, Bar Counsel in response, then introduced Exhibit OSB-A which purported to be an unsigned LPRC report from committee member Ronald M. Sommers which bore the date of October 22, 1986. The accused first learned of Exhibit OSB-A at the hearing. The Panel, although troubled by what appears

to be a failure to follow the prescribed rules and the possible reliance by General Counsel upon what may be an unauthorized report, nevertheless, can find no basis for finding that the apparent procedural irregularity is jurisdictional and denies Perkin's Motion to dismiss.

GENERAL FINDINGS OF FACT

The Trial panel makes the following findings of fact:

1. Complainant, Carol Beggs Miller became a client of Perkins in January 1983. Perkins represented her on various matters until October 27, 1983 when he terminated all further representation of her.
2. In or about July 1983, Perkins undertook to represent complainant, who then went by the name Carol Beggs, in a case arising out of a Wasco County criminal charge against her of Custodial Interference in the First Degree. Prior to final disposition, another attorney took over the case and Perkins resigned.
3. Another case he took for her during this period was a dispute she was having with neighbor Ron Scott over the exchange of a hot tub and a travel trailer. Complainant Carol Beggs Miller and Scott's relationship was acrimonious, a fact known by Perkins and they had little that was good to say about one another. By the time a settlement had been reached, complainant had replaced Perkins with another attorney.
4. In December 1983, complainant married and her name became Carol Miller, by which name she was thereafter known.
5. Sometime prior to November 1985, complainant became owner and operator of a day care center known as "Miller Care Center for Children".
6. In November 1985, Perkins undertook to represent one Tamara Keys in a child custody dispute with Keys' ex-husband Mike Brown. Keys and Brown were the parents of two small children. Brown had legal custody of one child and physical custody of both and was leaving them daily at Miller's Care Center for Children. Mike Brown had served custody modification papers on Keys who as a result, sought the assistance of Perkins.
7. Keys told Perkins that she wanted her children out of the Miller day care center because she liked the hospital care center where the children previously had been and she did not want to change to the Miller child care center. At the time she consulted with Perkins, she had no knowledge of the Miller day care center that was critical except for one time when the center was unable to locate one of her children for a period of about one hour.
8. In the presence of Keys, Perkins made a phone call and then advised Keys that the Carol Miller who owned the day care center had been a former client of Perkins and that he could

understand why Keys wanted the children out. He told her that Miller had a criminal record and recommended that Keys go to the courthouse and find out more about the matter. Keys' purpose in investigating the Miller day care center was to attempt to find out unfavorable information which she could then relate to Mike Brown in order to persuade him to remove the children from the Miller Care Center.

9. Mike Brown removed the children from the day care center only because his attorney advised him that it would make it easier for him in his custody dispute with Tammy Keys, despite the fact that Brown was still of the opinion that Miller's was a good day care center.

10. Perkins also recommended that Keys call Ron Scott and that if Scott would talk to Keys, she might learn more about Carol Miller. Keys talked to Ron Scott who told her that at one time complainant had left her children with his family for two months instead of two weeks as she had promised and that she had attorneys all over and she did not pay her bills. While Scott could not recall talking to Keys, he testified he had discussed Carol Miller with 50 or 60 people.

11. Keys met with Perkins at a later date who advised her that a former client of his, Mischel Perales Lang, had also been a former employee of Miller's Care Center for Children and that she had been investigated for sexual abuse, which case was later dismissed.

CONCLUSIONS OF LAW

The three issues requiring resolution by the trial panel are whether the accused violated DR 4-101(B)(1)(2)(3) in:

- a. Revealing to client Tamara Keys information regarding the criminal record of his former client Carol Beggs Miller;
- b. In recommending to client Tamara Keys that she contact one Ron Scott for the purpose of learning adverse information about his former client Carol Beggs Miller, and
- c. Revealing to client Tamara Keys that his former client Carol Beggs Miller had at one time employed another of Perkin's former clients, one Mischel Perales Lang who had been investigated for sexual abuse and which case was later dismissed.

Both Carol Beggs Miller's conviction for the crime of custodial interference and the Mischel Perales Lang sex abuse case were matters of public record on file in the courthouse. The question becomes whether matters of public record can be subjects of confidences or secrets within the contemplation of DR 4-101[(A)]. The trial panel was unable to locate any Oregon case in point. One case cited by Perkins that dealt with the issue and a similar disciplinary rule was City of Wichita v. Chapman, 521 P2d 589 (1974), where an attorney had used an appraisal report obtained by him at a

time when he represented the City of Wichita in a later action against the City. In declaring that the accused's [sic] attorney had breached neither a confidence or a secret of his former client, the court held that the

". . . existence and contents (of the appraisal report) were made available to various agencies and to opposing counsel. Such public exposure of the information negates its 'secret' or 'confidential' character. . ."

"In order for communication from a client to his attorney to be confidential, and to impose upon the attorney the duty of not disclosing the same, it must be of a confidential character, and so regarded, at least by the client, at the time, and must relate to a matter which is in its nature private and properly the subject of confidential disclosure." (citing cases)

The trial panel is in accord with the reasoning of the Wichita case and holds that information given by Perkins to Tamara Keys regarding Carol Beggs Miller's criminal record and of her former employment of a former client who was the subject of a later dismissed sexual abuse charge, were neither confidences nor secrets as defined in DR 4-101(A).

The trial panel is further of the opinion that the Bar failed to prove by clear and convincing evidence that any statements or recommendations that the accused made to Tamara Keys that she contact Ron Scott to learn more about Carol Beggs Miller, breached either a confidence or secret.

The trial panel finds the accused John R. Perkins not guilty of all charges.

/s/ Douglas Shepard
Douglas Shepard
Trial Panel Chairman

/s/ James V. Hurley
James V. Hurley
Trial Panel Member

/s/ Carl Backstrom
Carl Backstrom
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-69 |
| |) | |
| Thomas C. Howes |) | |
| and Ronald L. Brown, |) | |
| |) | |
| Accused. |) | |
| _____ |) | |

Bar Counsel: Barry Mount, Esq.

Counsel for the Accused: Thomas C. Howes and Ronald L. Brown, pro se

Trial Panel: James V. Hurley, Trial Panel Chairperson; Wilford K. Carey and Carl Backstrom (public member)

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

Effective Date of Opinion: January 29, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|-----------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | No. 86-69 |
| |) | |
| Thomas C. Howes and |) | OPINION |
| |) | |
| Ronald L. Brown, |) | |
| |) | |
| Accused. |) | |

INTRODUCTION

This is a lawyer disciplinary proceeding instituted by the Oregon State Bar against Thomas C. Howes and Ronald L. Brown. The Bar charges the accused with violations of the following disciplinary rule:

DR 7-104(A)(1) of the Code of Professional Responsibility:

"(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation, or on directly related subjects, with a person he knows to be represented by a lawyer on that subject, or directly related subjects, unless he has the prior consent of the lawyer representing such other person or is authorized by law to do so."

PRELIMINARY MATTERS

1. When the Bar introduced into evidence the tapes and the transcript of the deposition of Kevin Alexander taken at the Oregon State Correctional Institution on November 30, 1987, the Defendants objected to the admission of the same. The Trial Panel reserved ruling on the admission of the tapes and the deposition. The Trial Panel now rules that the tapes and the deposition are admissible in accordance with Rule 804, ORS 40.465. Each of the Defendants were present at the deposition of Kevin Alexander and had full opportunity to cross exam Kevin Alexander.

2. At the conclusion of the Bar's evidence the Defendants moved for a directed verdict. The motion for a directed verdict was based on the fact that the Bar had the burden of proof based on clear and convincing evidence and had failed to meet that burden, and that notwithstanding the fact that the defense attorney had not been contacted the Defendants did not talk about any related matter

to the jail inmates. The motion for a directed verdict was overruled on the basis that there was sufficient evidence of a possible violation of DR 7-104(A)(1).

GENERAL FINDINGS OF FACT

The Trial Panel makes the following findings of fact:

1. On January 17, 1986, Defendant Howes directed the District Attorney's investigator Dale Trink to contact any jail inmates who may have had knowledge concerning statements made by one James Cray Young who was a jail inmate. Young's murder trial was scheduled to commence on January 19, 1986.
2. Dale Trink contacted four jail inmates on January 17, 1986. The four inmates were Norman Dennis Southwood, Kevin Todd Alexander, Michael Blaine Schneider and Phillip Rogers.
3. Southward, Alexander and Schneider were represented by Attorney William Kralovec. Rogers was represented by Attorney Terry Rahmsdorff. Neither Mr. Kralovec nor Mr. Rahmsdorff were advised in advance of Mr. Trink's contact.
4. Dale Trink concluded that two of the four jail inmates, namely Rogers and Schneider, had worthwhile information for the District Attorney's office. He so advised the District Attorney.
5. On Sunday, January 18, 1986 District Attorney Howes, Ronald L. Brown and Dale Trink interviewed the same four jail inmates. Neither Mr. Kralovec nor Mr. Rahmsdorff were advised in advance of the January 18th contact.
6. The four jail inmates were interviewed to cover the fact that only two of the four had anything useful for the District Attorney's office. The remaining two, namely Alexander and Southwood were interviewed as decoys or camouflage.
7. On Monday, January 19, 1986, Ronald L. Brown and Thomas C. Howes both advised Attorney Kralovec and Attorney Rahmsdorff that they had talked to Southwood, Alexander, Schneider and Rogers.
8. On January 19, 1986 Attorney Kralovec was advised by Brown and Howes that they wanted to meet with Kralovec for the purpose of determining if a deal would be made, and if so, what deal concerning Schneider.
9. On January 19, 1986 Attorney Rahmsdorff was advised by Howes that he would get together with Rahmsdorff and Rogers to see if they could strike a deal for Mr. Rogers.
10. At the time of the contacts, on January 17, and January 18, Defendant Alexander had approximately nine cases pending against him in Deschutes County and approximately twenty-one

additional charges pending in a total of five other counties. Schneider had two cases pending trial and one case pending charge.

11. None of the four inmates were called as witnesses in the James Cray Young murder trial.
12. Deals were made with the attorneys for Alexander, Schneider and Rogers. Southwood's desire to obtain a fixed maximum was not accepted by the Court.
13. The purpose of the Defendants' contact with the four jail inmates was to obtain information against James Cray Young, who was awaiting trial.
14. Notwithstanding evidence to the contrary from Kevin Alexander, the credible evidence presented at the hearing indicated that the jail inmates' attempt to bring up their cases in the conversations with Howes and Brown were not successful. No deal was discussed or made during those conversations.

CONCLUSIONS OF LAW

Formerly DR 7-104(A)(1) prohibited communication on the subject of the representation with a person represented by a lawyer, unless consent had been given. The new DR 7-104(A)(1) prohibits communication on the subject of the representation or on directly related subjects with a person represented by a lawyer, unless consent has been given.

Both the State Bar and the Defendants have cited In re Burrows, 291 Or 135, 629 P2d 820 (1981), as the only Oregon case in point.

In Burrows one Steven McAllister, who was in the Josephine County jail on a pending rape charge, requested police officers to arrange a meeting with Deputy District Attorney Hostetler. Although McAllister was represented by Attorney Hawkins, no one advised Hawkins of the scheduled meeting. The meeting was thereafter held in Hostetler's office. At the meeting Hostetler, the police, and McAllister were present. McAllister volunteered to do undercover drug investigations if he was released from jail pending his rape trial.

In Hostetler's presence, one of the police officers instructed McAllister not to advise Hawkins of the meeting, or the arrangement with the police. Hostetler did not override or object to the advice.

District Attorney Burrows met with the Circuit Judge on an ex parte basis, for the purpose of getting McAllister's bail reduced. The Judge reduced the bail, enabling McAllister to be released from jail pending his rape trial. He thereafter commenced his undercover work.

Although Burrows advised one of the police officers to advise Hawkins of McAllister's release from jail and agreement to work undercover, the officer failed to advise Hawkins.

Approximately two months elapsed before Hawkins learned the above facts.

The Court held that both Burrows and Hostetler violated DR 7-104(A)(1).

In the case under consideration, District Attorney Howes directed investigator Trink to determine if any jail inmates had any useful information relating to the assertion of self-defense by James Cray Young in his pending murder trial.

Trink interviewed four inmates on January 17, 1986. He had been instructed by Howes not to discuss the inmates['] cases and not make any deals. He found that two of the four inmates, Schneider and Rogers, had some useful information concerning the James Cray Young murder defense. The other two inmates, Alexander and Southwood, had no useful information.

On January 18, 1986, Howes, Trink and Brown, interviewed the same four inmates. Alexander and Southwood were interviewed only for the purpose of camouflage, or as decoys.

Schneider continually tried to discuss his case. He was advised not to discuss his case and that no deal would be made until his attorney was present.

On Monday, January 19, 1986, the murder trial of James Cray Young began. On the same day Attorney Kralovec and Attorney Rahmsdorff were advised of the inmate contacts.

Unlike Burrows the contacts with the inmates in the instant case contemplated contact with the inmates['] attorneys during the following week.

Also, unlike Burrows there was no deal made, such as agreeing to get bail reduced, or to act as undercover agent prior to contact with the inmates['] attorney. Nor was there an ex parte contact with the Circuit Court Judge.

Significantly in Burrows, counsel for McAllister, was not informed of the undercover arrangement until two months after the contact. In the instant case, counsel for the inmates were informed of the contact on the first regular business day after the January 17 and January 18 contacts.

When McAllister in the Burrows case, volunteered to act as undercover agent, the clear implication of his offer was to get out of jail pending trial and to receive favorable treatment in his pending rape trial. He did get bail reduction and got out of jail before trial. Later he also got favorable treatment on his pending charges. In a realistic way, the District Attorney contact related to the subject of representation.

In the case under consideration, Howes did not know which inmates were to be interviewed when he directed Trink to interview the inmates. He wanted information relevant to the James Cray Young trial. No deal was made with any inmate until their attorneys were present. Further the inmates were not permitted to discuss their cases until their attorneys were present.

As used in DR 7-104(A)(1) the terms "on the subject of the representation or on directly related subjects", appears to allow contact which relates indirectly to the representation or which does not relate at all to the representation.

If the intent of DR 7-104(A)(1) is to prohibit any contact with any inmate who may expect subsequent favorable treatment, even though the contact was made for an unrelated criminal case, then the Trial Board believes the rule should be amended to prohibit such contact. If the operative words provided: "on the subject of the representation or on matters which directly or indirectly relate to the representation", then any ambiguity would be removed. An alternative approach might be to prohibit contact which might be relevant to the representation. Either alternative would make it clear that any contact with a jail inmate would most likely be prohibited.

The Trial Panel finds that Thomas Howes was not guilty of violation of either count of violations of DR 7-104(A)(1).

The Trial Panel finds further that Ronald L. Brown did not violate DR 7-104(A)(1).

/s/ James V. Hurley
JAMES V. HURLEY,
Trial Panel Chairperson

/s/ Wilford K. Carey
WILFORD K. CAREY
Trial Panel Member

/s/ Carl Backstrom
CARL BACKSTROM
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-67 |
| |) | |
| James C. Farrell, |) | |
| |) | |
| Accused. |) | |
| |) | |

Bar Counsel: Laura A. Parrish, Esq.

Counsel for the Accused: James C. Farrell, Esq., pro se

Disciplinary Board: Jill E. Golden, Trial Panel Chairperson; Mark W. Perrin and N. Ray Hawk (Public Member)

Disposition: Accused found guilty of violation of DR 1-102(A)(3) and DR 7-102(A)(5); DR 7-102(A)(4); DR 5-101(A); not guilty of violation of DR 1-102(A)(3) in the second cause of action. Charge under DR 1-103(C) withdrawn. Thirty Day Suspension.

Effective Date of Opinion: February 15, 1988

IN THE SUPREME COURT OF THE STATE OF OREGON

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| In Re: |) | |
| |) | Case No. 86-67 |
| Complaint as to the Conduct |) | |
| |) | OPINION AND DISPOSITION |
| |) | |
| JAMES C. FARRELL, |) | |
| |) | |
| Accused. |) | |

A hearing was held before a Trial Panel of the Disciplinary Board pursuant to ORS 9.534 and Disciplinary [sic] Bar Rule 5 on November 11 and 24, 1987. The Trial Panel members were Mark W. Perrin, N. Ray Hawk and Jill E. Golden. The Oregon State Bar appeared by and through its attorney, Laura A. Parrish, and the Accused appeared in person, representing himself. Witnesses testified at the hearing, the Oregon State Bar's Exhibits 1 through 26, and the Accused's Exhibits 101 through 116 were received.

FINDINGS OF FACT

1. At all times relevant hereto the Accused, James C. Farrell, was an attorney at law, licensed to practice in the State of Oregon, having his office and principal place of business in Douglas County.
2. The Accused was retained to represent Geraldine Kookken in connection with a personal injury matter arising out of an automobile accident on May 24, 1981. The Accused also represented her husband, Rodney Kookken, in connection with a post decree child support matter. Finally, the Accused represented the Kookkens in connection with claims against Orchard Auto Parts and Sears. Such representation of the Kookkens covered the period of time from the summer of 1981 until late December, 1985.
3. The Accused filed Mrs. Kookken's personal injury complaint with the [Douglas County Circuit] Court in April 1983, but was unable to obtain service on the defendant before the statute of limitations ran on her claim.
4. The personal injury case was dismissed by the Douglas County Circuit Court on August 19, 1983. The Accused was aware of the dismissal and of an Order which was entered on September 21, 1983 allowing the defendant's costs to be charged to the Kookkens. The Accused did not notify his clients of the entry of this judgment against them. It has never been paid.

5. The Accused wrote a letter to his clients on September 12, 1983 advising that the personal injury case had been dismissed.

6. Whether the Kookens never received this letter, or received it and did not comprehend it, they did not understand that the personal injury case had actually been dismissed until December of 1985.

7. On December 6, 1984 at a child support hearing, Mr. Kooken testified that his wife's personal injury case was still pending, and that the prayer was for \$75,000. The Accused did nothing to correct this false evidence.

8. In its Memorandum Opinion of December 26, 1984 increasing Mr. Kooken's child support obligations, the Court made note of Mrs. Kooken's pending personal injury case. The Accused again took no steps to correct the Court's mistaken impression.

9. For over two years (late August 1983 - December 1985), the Accused failed and neglected to adequately communicate to the Kookens that the personal injury case had been dismissed. The Accused remained silent even in December 1984 when it was obvious from Rodney Kooken's testimony that the clients were still operating on the mistaken assumption that the case remained pending.

10. On and after August 19, 1983, the Kookens had a potential malpractice action against the Accused. Nonetheless, the Accused continued to represent them on other matters. The Accused did not advise the clients that such continued representation reasonably might be affected by his own financial, business and personal interests.

11. Between December 1984 and December 1985 (and in two particular meetings in August of 1985), the Accused discussed "settlement" with the Kookens. The Accused did not notify his clients that the statute of limitations was running on their potential claim against him, nor did he recommend that they see other counsel. The Kookens did not comprehend that they were discussing settlement of a malpractice action against the Accused, as opposed to settlement of Mrs. Kooken's personal injury litigation.

CONCLUSIONS

I

In the First Cause of Complaint, the Accused was charged with violating DR 1-102(A)(3) (conduct involving dishonesty, etc.) and DR 7-102(A)(5) (knowingly making a false statement of fact). Each of these violations are essentially based upon the same course of conduct by the Accused in

representing the Kookens and in knowingly misleading them by failing to correct their obviously mistaken understanding about the status of Mrs. Kookken's personal injury case.

It was apparent from the evidence that there were numerous opportunities for the Accused to have prevented this misunderstanding in the first instance, and to have halted it during the course of the next two years. The Accused did not forward copies of the Motion to Dismiss and related documents to the Kookens, nor did he provide them with a copy of the Order of Dismissal, the Cost Bill or the Order Allowing the Cost Bill. At no time did he even advise them that a judgment had been entered against Mrs. Kookken. Rather, on September 12, 1983, he wrote a terse letter to the Kookens (OSB's Exhibit 8) advising that the case had been dismissed because the defendant was not served within the statute of limitations. His letter went on to begin a pattern of miscommunication with the statement, "I am trying to straighten this problem out...."

The Accused continued to represent the Kookens for over two years thereafter, during which time he also discussed "settlement" of Mrs. Kookken's damages. At a meeting on December 17, 1983, the Accused discussed with the clients the fact that Mrs. Kookken continued to have headaches which she believed were related to the car accident. The Accused testified that she was planning on going to a pain center concerning this.

On August 3 and 13, 1985, the Accused again met with the Kookens to discuss "settlement." Mrs. Kookken was concerned on August 3, 1985 that medication she had taken following the automobile accident might have contributed to a birth defect of her infant son. The parties all testified that the Kookens were planning further tests to see if this were the case, and that "settlement" would be delayed until the test results were obtained. The Accused testified that he told his clients in August of 1985 that he would turn the claim in to the PLF. Mr. and Mrs. Kookken recalled a discussion about the "insurance company."

From the conduct of the Accused in continuing to meet with the Kookens, continuing efforts to assess Mrs. Kookken's injuries and damages arising from the accident, and discussions about an insurance company, it is easy to see how the clients could reasonably have been misled into thinking Mrs. Kookken's personal injury case remained pending. The Accused's letter of February 18, 1986 to the Oregon State Bar (OSB Exhibit 15) is most telling in this respect. In referring to the period of time after the personal injury case was dismissed, the Accused wrote:

"It is clear to me at this point, that Mr. and Mrs. Kookken may not have been totally aware of what occurred and that is probably due to my failure to effectively communicate the gravity of the situation.

There were occasions when Mr. and Mrs. Kooken's telephone calls went unanswered for several days, but I believe I was in constant contact with them and met with them on a somewhat regular basis.

On one occasion, I asked Mr. and Mrs. Kooken to come in so that I could explain what their rights were with respect to the professional liability fund, but very frankly that discussion was delayed, because Mr. and Mrs. Kooken expressed concern about a potential causal connection between injuries she had received in the accident and a birth defect that their child was born with. Mr. and Mrs. Kooken decided to wait until they had an opportunity to contact specialists at the Crippled Children's Hospital in Portland. Thereafter, they did indicate to me that there was no connection. At that point, at least, I should have clearly advised them of their claim against me and referred them to the professional liability fund. I did not."

If the Accused did not realize that the clients believed the personal injury case was still pending before December 1984, it should have been painfully obvious to him on the date of the child support hearing. Mr. Kooken and the Accused testified that on the morning of the hearing, the client asked what he should say if the personal injury case came up; the Accused advised him to testify to what actually happened. At hearing, when the question was in fact asked, Rodney Kooken testified (against his own interests in the case) that his wife's personal injury case remained pending for \$75,000. At no time that day or for over a year thereafter did the Accused say to the Kookens: "This is incorrect. The personal injury case was dismissed and has been over since August of 1983. All you have left is a potential case against me."

While the Panel does not find that the Accused overtly lied to the Kookens, we are convinced that he continuously allowed them to believe certain facts which he knew to be false. As the Supreme Court has stated, "...the ethical difference between active misrepresentation and failure to correct a false impression that one has given is of little importance." In re Fuller, 284 Or 273, 275 (1978). The Accused is found guilty of violating DR 1-102(A)(3) and DR 7-102(A)(5).

In addition to failing to correct the client's misunderstanding regarding the status of the personal injury case, the Accused knowingly allowed false evidence concerning the matter to be submitted to the Court. On December 6, 1984, when Rodney Kooken testified that the personal injury case was still pending, the Accused was obligated to correct this misstatement for the Court. This he did not do. Further, when the mistaken impression was repeated by the Court in its Memorandum Opinion of December 26, 1984, the Accused should have notified the Court and opposing counsel of this fact. Whether significant to the issues being litigated or not, the Accused should not have permitted this false impression to be submitted to and retained by the Court. The Accused is found guilty of violating DR 7-102(A)(4).

II

In the Second Cause of Complaint, the Accused was charged with violating DR 1-102(A)(3) (conduct involving dishonesty, etc.) and DR 1-103(C) (failure to respond truthfully in disciplinary investigation). At the hearing, the Oregon State Bar withdrew the latter charge. The former charge is based upon a contention that the letter of September 12, 1983 (OSB Exhibit 8), a copy of which was given to Bar representatives during the course of the LPRC investigation, was fictitious and false.

Much evidence was submitted at the hearing on the question of whether this letter was genuine or not, and whether the Accused actually did send it to the Kookens at the time. The burden of proof is on the Oregon State Bar to show by clear and convincing evidence all of the allegations of misconduct (BR 5.2). Upon review, the Panel feels that this burden was not met with respect to the genuineness of the letter.

The Accused testified that he recalled drafting the letter, and his time records are consistent with this. Sharon Kittson, his former secretary, testified that she specifically recalled the letter because it was the first time Mr. Farrell had missed the statute of limitations during the years she worked for him. She also testified that the Kookens had called in response to this letter, and that she had set up an appointment with Mr. Farrell to discuss it.

The Panel does not find that the failure of a copy of this letter to have been enclosed in the file provided to attorney Schiffman to be significant. At the hearing, the evidence revealed that there were other documents which were also not enclosed in the file provided to Mr. Schiffman. It was also not surprising from the disorganized and sloppy fashion in which the Accused maintained his records and files, that some letters and documents might be omitted. Finally, it is noteworthy that the Accused referred to this letter in his correspondence to the Oregon State Bar on February 18, 1986 (OSB Exhibit 15), some seven months before the LPRC meeting at Mr. Garrison's office.

On the other hand, the Kookens testified that they did not receive this letter, and their conduct in the months and years following would appear consistent with this testimony. The Panel feels it to be immaterial to this inquiry to determine whether or not the Kookens in fact received such letter. It is sufficient to determine that the Accused did in fact write it and cause it to be sent to his clients at the time, and that the letter is therefore not false and fictitious. The Accused is found not guilty of violating DR 1-102(A)(3) in this Cause.

III

In the Third Cause of Complaint, the Accused is charged with violating DR 5-101(A) (acceptance of employment when the lawyer's judgment may be affected by his own financial, business and personal interests, etc.).

There is no factual dispute with respect to this matter. After Geraldine Kooken's personal injury complaint was dismissed by the Court on August 19, 1983, and she thereupon possessed a potential cause of action against the Accused for malpractice, the Accused nonetheless continued his representation of the Kookens. The Accused testified that he did not recognize the conflict of interest in continuing to represent the Kookens until December 6, 1984, at the time of the hearing on Mr. Kooken's child support modification. Despite the fact that such conflict was then painfully clear to the Accused, he continued to represent the Kookens and to discuss settlement of Mrs. Kooken's personal injury damages throughout most of 1985. Further, the Accused did not recall ever advising the Kookens to obtain independent counsel or of the existence of his conflict of interest.

In his closing, the Accused acknowledged that after the personal injury case was dismissed, he should have withdrawn from all representation of the Kookens, and referred Mrs. Kooken to other counsel. The fact that the statute of limitations may have been running on Geraldine Kooken's potential cause of action against the Accused for malpractice during the time the Accused continued to meet with her about the value of her damages further suggests that his conduct may have injured his client. The Accused is found guilty of violating DR 5-101(A).

DISPOSITION

It is the decision of the Panel that the Accused be suspended from the practice of law for a period of thirty days. The Panel further recommends that the Accused attend any law office management and practice seminars as may be available in the near future.

The Panel is mindful of Mr. Farrell's good previous record with the Bar, and appreciated his candor at the hearing. Nonetheless it is all too clear that he engaged in a pattern of deception with his clients in failing to clearly advise them of the true status of Mrs. Kooken's personal injury case, when it was obvious that the Kookens did not comprehend that the case had been dismissed. The Accused fostered their misunderstanding in continued discussions about the extent of Mrs. Kooken's injuries and the value of her damages. He should have made it clear to his clients in the late summer or fall of 1983 that the personal injury case was gone, and that they should contact another attorney regarding his own conduct in relation to the dismissal.

The Accused also acted improperly in allowing Mr. Kooken's inaccurate testimony to go uncorrected, and in continuing to represent the Kookens when his judgment was affected by his own financial, business and personal interests. He never gave the Kookens the full disclosure required of an attorney by DR 5-101(A) when he continued to discuss "settlement" with them.

While not guilty of having a bad heart, or intending any injury to the client, the Accused is indeed guilty of improper conduct, which should not go unpunished. In re Fuller, 284 Or 273 (1978); In re Morrow, 297 Or 808 (1984).

Dated this 2nd day of January, 1988.

/s/ Jill E. Golden
Jill E. Golden
Trial Panel Chair

/s/ N. Ray Hawk
N. Ray Hawk

/s/ Mark W. Perrin
Mark W. Perrin

IN THE SUPREME COURT
OF THE STATE OF OREGON

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| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-123 |
| |) | |
| Jon H. Paauwe, |) | |
| |) | |
| Accused. |) | |
| _____ | | |

Bar Counsel: Karen G. Mays, Esq.

Counsel for the Accused: Jon H. Paauwe, Esq., pro se

Trial Panel: E.R. Bashaw, Trial Panel Chairperson;, Lynne McNutt and Lee Wimberly (public member)

Disposition: Accused found guilty of violation of DR 1-102(A)(4) [fourth cause of action]; not guilty of DR 1-102(A)(3), DR 1-102(A)(4), [former DR 1-102(A)(6)] [third cause of action]; DR 5-101(A), DR 5-104(A), DR 5-105(A) & (B), and ORS 9.460(4). Public Reprimand.

Effective Date of Opinion: February 16, 1988

IN THE SUPREME COURT OF THE STATE OF OREGON

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| In Re: |) | |
| |) | Case No. 86-123 |
| Complaint as to the Conduct of |) | |
| |) | |
| Jon H. Paauwe, |) | FINDINGS, CONCLUSIONS, AND |
| |) | DECISION |
| Accused. |) | |

The above matter came on for hearing on October 26, 1987, in Medford, Oregon, before the undersigned, sitting as [a] disciplinary panel. The Oregon State Bar was represented by Karen G. Mays of Roseburg, and the Accused appear[ed] in person representing himself. Having considered the testimony and exhibits presented, the Panel makes the following findings of fact, conclusions of law, and decision:

FINDINGS OF FACT

1.

The Accused, a member of the Oregon Bar, was retained by Thomas Coleman to assist him and his wife in a personal bankruptcy in early 1983. Before commencing the bankruptcy, the Accused learned that the Colemans had two real estate contracts in which they were the contract vendors. The total balance due on the two contracts was \$35,000. However, the vendors' interest in the contracts were encumbered in the approximate amount of \$7,000 leaving a net total receivable of \$28,000. The Accused advised the Colemans to sell the contracts and invest the proceeds in a residence for which they could claim a homestead exemption. The Colemans made inquiry of the contract purchasers and learned that the purchasers were not interested in discounting the contracts, and advised the Accused that they could not sell the contracts. For various reasons, the Colemans were anxious to file for bankruptcy.

2.

The Accused filed a bankruptcy petition in the Colemans' behalf on March 7, 1983. The schedules in the bankruptcy disclosed that the Colemans had \$118,915.10 in debts, and the only nonexempt assets available for creditors consisted of the Colemans' vendors' interest in the two contracts above mentioned.

3.

Colemans agreed orally that Colemans would pay Accused \$900 for all services to be performed by him in the bankruptcy, and it was understood that Accused would make application to the Court for payment of bankrupts['] attorneys fees out of the estate assets as an expense of administration and, to the extent of such recovery, reimburse the Colemans for the amounts paid. Accused then believed that this was a proper and appropriate practice. Colemans paid Accused a total of \$760, of which \$360 was already paid by August 19, 1983, at which time Accused filed a petition for compensation with the Bankruptcy Court. Accused's petition to the Court sought \$900 and represented that Accused had not received any compensation from any other source. Accused admits that the allegation of nonpayment found in the petition was not true, but testified that his intent was to carry out his fee arrangement above described and that he was not aware of the inaccuracy in the petition when it was filed.

4.

The Court appointed a trustee to administer the above-mentioned assets of the bankruptcy estate and discharged the Colemans of all dischargeable pre-petition debts in January, 1984. Accused at that time believed he had no further duties to perform for Colemans and that they had no further interest in the bankrupt estate for him to protect, although from time to time he responded to various inquiries thereafter.

5.

On October 8, 1984, the trustee offered the two contracts for sale, circularizing a list of assets from various bankruptcies to 15 persons and organizations who, to trustee's knowledge, were interested in buying bankruptcy assets. Accused received a copy of the list. The list included the two contracts. The Accused, knowing that his parents might be able to make a favorable investment in the contracts, contacted them, and at their request submitted to the trustee a bid in their behalf. Neither the trustee nor the Accused notified the contract vendees that the contracts were for sale.

6.

Neither the Accused nor the trustee, who had served as bankruptcy trustee with an experience in excess of 12 years, believed that the Colemans had any remaining interest in the contracts which would conflict with the interest represented by Accused in submitting bids for his parents.

7.

Accused presented a bid in behalf of his parents, which resulted in an auction being conducted in which the other participant was a professional purchaser of such a paper. Accused's parents were

high bidders, paying about \$17,500 for the two contracts. The payments on the contracts were annual, and by reason of the various circumstances, \$17,500 was not an unreasonable amount. Trustee gave notice of intent to conclude the sales and such notice was received by the Colemans and by Accused.

8.

The bankruptcy is not yet completed. This is because of the time necessary to resolve issues raised by the Colemans as to their right to be reimbursed for taxes paid on estate assets and the priority wage claims asserted by their sons. However, those issues were settled and the trustee's present estimate is that the assets are sufficient to pay general creditors about 27 percent on their claims, after paying the nondischargeable amount of approximately \$1,600 due the Internal Revenue Services.

9.

The Bankruptcy Court denied the application for compensation submitted by the Accused, on the ground that Accused is entitled to attorneys fees only on a specific showing, based upon itemized time record, that his services benefited the bankruptcy estate and also on the ground that it "is not appropriate to take funds which otherwise would have gone to Mr. Coleman's pre-petition creditors to reimburse him for payments he chose to expend out of post-petition nonbankruptcy funds." Accused did not base his fee upon time spent, but upon a lump-sum contract, and was candid in responding to the Court's inquiries in regard to his fee arrangements. Accused has received a total of \$760 from all sources, of which \$60 was the filing fee.

10.

The contract vendees, having learned of the amount for which the vendors' interest in their contracts was discounted to Accused's parents, asserted that the failure to make the contacts available to them for discount had the appearance of a serious conflict of interest on the part of Accused.

CONCLUSIONS

First Cause of Complaint

1. The First Cause of Complaint is based upon DR 5-101(A) and DR 5-105(A) and (B), which read as follows:

DR 5-101(A):

"Except with the consent of lawyer's client after full disclosure, a lawyer will not accept employment if the exercise of the lawyer's professional judgment on behalf of the lawyer's client will be, or reasonable may be, affected by lawyer's own financial...or personal interests. Full disclosure shall include the recommendation that [the] client seek independent legal advice concerning continued representation by the lawyer."

DR 5-105(A):

"A lawyer shall decline [proffered] employment if the exercise of [the] lawyer's independent professional judgment on behalf of a client will be, or is likely to be, adversely affected by the acceptance of the [proffered] employment...."

DR 5-105(B)

"A lawyer shall not continue employment if the exercise of [the] lawyer's independent professional judgment on behalf of a client will be, or is likely to be, adversely affected by the lawyer's representations of another client...."

2. Accused represented his parents in bidding competitively for contracts receivable which had formerly belonged to his clients, the Colemans, but which had been assigned to the trustee in bankruptcy. The duty of the trustee in bankruptcy was to sell the contracts and apply the proceeds to the cost of administration and to the payment of the Colemans' pre-petition debts. The Colemans' interest in the amount for which the contract sold existed only if the proceeds of sale might exceed the amount of the Colemans' pre-petition debts so that the Colemans could receive the excess; or, if the proceeds from the sale were so small that they could not fully pay nondischargeable pre-petition debts, requiring the Colemans to pay the difference. In fact, neither was the case, and by reason of the amounts and nature of the debts compared to available assets disclosed in the bankruptcy schedules, the likelihood of such an interest was not shown by clear and convincing evidence.

3. There was no clear and convincing evidence that Accused's professional judgment in behalf of his client in respect of the client['s] limited interest in the assets involved as either affected or reasonably likely to be affected.

Second Cause of Complaint

1. The Second Cause of Complaint is based upon the same disciplinary rules as the First Cause of Complaint with the addition of DR 5-104(A), which says:

"A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, unless the client has consented after full disclosure...."

2. With regard to DR 5-101(A), the Panel finds that the Accused's submission of a bid in behalf of his parents constituted a "personal interest" on the part of the Accused by reason of the parental relationship. However, for the reasons set forth in Paragraphs 2 and 3 on the First Cause of Complaint, the Panel is unable to find that there was a reasonable likelihood that his professional judgment in behalf of the interests of his clients, the Colemans, was likely to be affected.

3. In submitting a bid to the trustee in bankruptcy, and engaging in an auction for the purchase of assets offered by the trustee, the Panel finds that the Accused was not entering into a business transaction with his clients, the Colemans.

Third Cause of Complaint

1. The Third Cause of Complaint is based upon DR 1-102(A)(4), which says:

"It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

and former DR 1-102(A)(6) which says that a lawyer:

"...Shall not engage in any conduct which adversely reflects on his fitness to practice law."

The Bar contends that the Accused violated the foregoing by reason of conduct which violated 18 USC §154, which says:

"Whoever, being a...officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a case under Title XI...shall be fined..."

The Bar points out that In Re Exennium, Inc., [23 BR 782 (1982), rev'd, 715 F.2d 1401 (9th Cir 1983)] a decision found in BAPCC-81-1296-HVG holds that an attorney for the bankrupt violates this [statute] when he purchases for his own account assets of the estate even though the estate is being handled by a trustee and his client has no apparent interest. This decision was subsequently reversed by the Court of Appeals (9th Circuit) on the ground of procedural lack of authority, and no other decisions are recorded on the issue.

2. Neither the trustee, a person of twelve years experience in that capacity, nor the Accused, was aware that the statute would be applicable in a situation such as this. The statute appears intended to apply where the attorney is buying for his own account, whether he does so directly or indirectly, but in the present case the Accused was not buying for his own account but as agent for his father and mother. The Panel does not find that the purchase was knowing or that the Accused was buying indirectly for his own account.

3. Because of the foregoing, the Bar has not presented clear and convincing evidence that the conduct reflects adversely on the Accused's fitness to practice law or is prejudicial to the administration of justice.

Fourth Cause of Complaint

1. The Fourth Cause of Complaint is based upon DR 1-102(A)(3) which says:

"It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

DR 1-102(A)(4) which says

"It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

former DR 1-102(A)(6) which makes it unprofessional to:

"...engage in any conduct which adversely reflects on the (lawyer's) fitness to practice law."

and ORS 9.460(4) which says:

"An attorney shall employ for the purpose of maintaining [the] causes confided to [the attorney] such means only as are consistent with truth[,] and never seek to mislead the court by any artifice or false statement of law or fact."

2. In representing to the Court that he had not received any money applicable to apply on his fees, the Accused submitted an application which contained a false statement, for the purpose of seeking approval from the Court for the payment of fees. The Panel finds that the Accused did not seek to mislead the Court, but the application, although inadvertently, fell short of telling the Court all of the circumstances which should have been brought to the Court's attention in respect of the application. DR 1-102(A)(3) necessarily implies an intent to deceive, and the Panel is unable to find that the Accused had such an intent. The Panel is unable to find that the conduct reaches the point that it adversely reflects upon the Accused's fitness to practice law. However, total and complete accuracy, truth, and candor is expected of attorneys in making formal representations to the court. An inadvertent failure to advise the court of a material factor in an application for fees under the circumstances cannot be tolerated under a rule which requires that an attorney not engage in conduct prejudicial to the administration of justice. Courts, in order to function, must be able to rely upon an attorney[']s making a correct representation and, in material matters, upon the attorney's exercising reasonable care to avoid a material inaccuracy. Representations to a court concerning matters which on their face are within the attorney's own knowledge have a special status, and any rule other than a strict one in this regard is prejudicial to the administration of justice.

DECISION

With reference to the First, Second, and Third Causes for Complaint, Accused did not violate the rules cited thereunder. With regard to the Fourth Cause of Complaint, accused violated DR 1-102(A)(4) of the Code of Professional Responsibility, but did not violate DR 1-102(A)(3), [former DR 1-102(A)(6)], or ORS 9.460(4).

SANCTION

The Panel finds that the Accused's violations caused no loss to any interest he was required to protect, were committed without any intent to deceive, evade, or cause harm, and were based upon inadvertence and carelessness. Nevertheless, the need to draw a line for future guidance in bankruptcy matters makes it necessary to impose a public reprimand.

Dated this 28th day of December, 1987.

/s/ E. R. Bashaw

E. R. Bashaw

/s/ Lee Wimberly

Lee Wimberly

/s/ Lynne McNutt

Lynne W. McNutt

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 87-33 |
| |) | |
| Theresa L. Wright, |) | |
| |) | |
| Accused. |) | |
| _____ | | |

Bar Counsel: Marilyn A. Curry, Esq.

Counsel for the Accused: Alan R. Beck, Esq.

Disciplinary Board: Paul J. Kelly, Jr., Trial Panel Chairperson; John P. Kneeland, Esq. and Joyce Tsongas (Public Member).

Disposition: Accused guilty of violation of DR 6-101(B) [former DR 6-101(A)(3)]; not guilty of violation of DR 1-102(A)(3) [former DR 1-102(A)(4)] and DR 1-103(C). Public Reprimand.

Effective Date of Opinion: 3/1/88

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|-------------|
| In Re: |) | |
| |) | No. 86-33 |
| Complaint as to the Conduct of |) | |
| |) | TRIAL PANEL |
| Theresa L. Wright, |) | DECISION |
| |) | |
| Accused. |) | |
| _____ |) | |

This matter came before a Trial Panel of the State Disciplinary Board consisting of the undersigned members on January 6, 1988 for hearing upon the Formal Complaint of the Oregon State Bar (hereinafter "Bar") charging Theresa L. Wright (hereinafter the "Accused") with three violations of the Code of Professional Responsibility, all of which stem from the Accused's representation of one client. The Bar appeared through Marilyn A. Curry, its attorney, and the Accused appeared in person and through Alan R. Beck, her attorney. The parties stipulated on the record that the hearing could be held at the offices of the Bar in Clackamas County, Oregon and the Accused waived any objection to the venue of the hearing. Following opening statements by counsel, the Bar presented its case through witnesses and exhibits and rested and the Accused testified and presented witnesses in her own behalf and rested her case. Following closing arguments by counsel, the Trial Panel took the matter under advisement.

The Trial Panel does hereby adopt 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 mentioned herein 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 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. At all times relevant to the consideration of this complaint, the Accused had her office and place of business in the County of Multnomah, State of Oregon.
3. On or about April 2, 1986, the Accused undertook to represent Maurice C. Wallner in a collection matter against Helen Hecker. At the time Mr. Wallner retained the Accused, the Accused was employed by Hyatt Legal Services in Portland, Oregon, (hereinafter "Hyatt").

4. Mr. Wallner paid \$150 to Hyatt Legal Services for the Accused to write two letters to Ms. Hecker in order to attempt to collect a debt in the amount of \$1,053 for typesetting services which Mr. Wallner had performed for Ms. Hecker. The letters were written and sent on April 21, 1986 and May 8, 1986, respectively. After these letters failed to result in successful collection of the bill from Ms. Hecker, Mr. Wallner paid an additional \$350 to Hyatt for the Accused to pursue further legal action against Ms. Hecker. On or about May 29, 1986, the Accused agreed to perform these services for Mr. Wallner.

5. As part of the further legal services she agreed to perform for Mr. Wallner, the Accused undertook to initiate a lawsuit against Ms. Hecker in Multnomah County District Court.

6. Early in the course of her representation of Mr. Wallner, the Accused knew that personal service of Summons and Complaint upon Ms. Hecker would be difficult because she only had a post office box address for Ms. Hecker. The Accused, therefore, knew that service by mail or other form of substitute service would be necessary.

7. During the course of the summer and fall of 1986, Mr. Wallner and the Accused had two or more telephone conversations about the status of his case, during which the Accused represented the following to Mr. Wallner:

- a. that a Complaint against Ms. Hecker had been filed in Multnomah County District Court;
- b. that it was necessary to obtain a court order for service of the Summons and Complaint upon Ms. Hecker by mail, and that such court order had been obtained;
- c. that, depending upon the response to the Summons and Complaint by Ms. Hecker, a judgment against her could be obtained either by default or after trial, and that efforts to collect on the judgment would follow.

8. The Accused prepared a Complaint against Ms. Hecker and instructed her staff to see that it was filed in Multnomah County District Court. However, no such Complaint was ever filed and Hyatt, for whom the Accused was then employed, never issued a check for filing fees or service fees.

9. The Accused dictated some form of motion and order for service of Summons and Complaint by mail. However, no such motion was ever filed by the Court and no order was ever issued.

10. No copies of a complaint, summons, or motion and order for service by mail were ever sent to Mr. Wallner by the Accused or by Hyatt.

11. At the time she made the representations to Mr. Wallner, as set forth in subparagraph 7a and b above, the Accused did not know whether those representations were true and made no effort to verify that the actions had been accomplished as she represented them.

12. The Accused frequently relied upon a member of her staff, Glen Hawkins, to file documents with the Court, send summons and complaint out for service, and to copy clients with pertinent file documents.

13. The Accused left her employment with Hyatt on or about October 17, 1986. By the time of her departure, the Accused had failed to determine that no complaint had ever been filed on Mr. Wallner's behalf or served against Ms. Hecker; had failed to review the status of Mr. Wallner's file; and, had failed to make arrangements to have another attorney with Hyatt assume responsibility for Mr. Wallner's file and the completion of his collection action against Ms. Hecker.

14. On or about October 25, 1986, Mr. Wallner contacted Hyatt to check on the status of his case and spoke with another attorney at Hyatt. Hyatt was unable to locate Mr. Wallner's case file although it found his Client Ledger Card. Mr. Wallner's case file has been lost since on or before October 25, 1986.

15. Prior to her departure from Hyatt, the Accused prepared a summary case report on her files, Ex. 104. Mr. Wallner's case was not referred to in that report.

16. On or about November 6, 1986, Hyatt issued a check to Mr. Wallner refunding all of the \$500 retainer previously paid.

17. Hyatt informed the Accused in early November, 1986 that it could not locate Mr. Wallner's case file and it asked the Accused to search for it at home, which she did without success.

18. Mr. Wallner filed a Complaint with the Bar on December 1, 1986 regarding the conduct of the Accused. The Bar notified the Accused of Mr. Wallner's Complaint on or about December 3, 1986. The Accused filed a written response with the Bar on or about December 20, 1986. (Ex. 103)

19. During the course of the investigation of the Complaint against the Accused by the Multnomah County Local Professional Responsibility Committee, the Accused told the Committee's representative that she knew Mr. Wallner's case file had not been located and that she had searched for it without success.

Based upon the foregoing Findings of Fact, the Trial Panel adopts the following

CONCLUSIONS OF LAW

20. By virtue of her conduct as described in Findings of Fact 7 through 15, the Accused neglected a legal matter entrusted to her by Mr. Wallner in violation of DR 6-101(B), [former DR 6-101(A)(3)], as charged by the Bar in its first cause of complaint.

21. The Accused's conduct did not violate DR 1-102(A)(3), [former DR 1-102(A)(4)], as charged by the Bar in its second cause of complaint and did not violate DR 1-103(C), as charged by the Bar in its third cause of complaint.

OPINION AND SANCTIONS

Although on or about May 29, 1986, the Accused agreed to file and prosecute a collection action for Mr. Wallner against Ms. Hecker for the debt the latter owed, and accepted a further retainer of \$350 from Mr. Wallner to render those services, no such lawsuit was ever initiated for Mr. Wallner by the Accused or Hyatt. The Bar charges, and the Accused admits, that during two or more telephone conversations with Mr. Wallner over the summer and fall of 1986, the Accused told Mr. Wallner that she had in fact prepared and filed a Complaint in Multnomah County District Court against Ms. Hecker, but was unable to obtain personal service of Summons and Complaint on her, and had submitted a motion and obtained an order for service on Ms. Hecker by mail. In fact, although the Accused may have prepared and directed the filing of the Complaint, and the motion and order, those documents were never filed with the Court. Although the Bar contends that the Accused affirmatively represented to Mr. Wallner that she had also obtained a judgment in his favor against Ms. Hecker, we conclude that the Bar has failed to prove that allegation by clear and convincing evidence.

Neither the Accused nor her subordinates performed the legal services for Mr. Wallner as she had contracted to do by agreeing to file and prosecute the lawsuit against Ms. Hecker. Since the Accused's representations to Mr. Wallner that she had in fact filed the lawsuit and had obtained an order for service upon Ms. Hecker by mail were not true, the Accused obviously took no steps, despite inquiries by Mr. Wallner, to determine whether these tasks had been accomplished and whether her staff had followed her instructions. She obviously did not review the case file after drafting the complaint, motion and order, and directing that they be filed. Finally, she left her employment with Hyatt without verifying the status of Mr. Wallner's case, which would have revealed to her that neither had been accomplished, and she failed to transfer responsibility for completing Mr. Wallner's case to another Hyatt attorney. This conduct amounts to neglect of a legal matter entrusted to the Accused.

In her Hearing Memorandum submitted to the Trial Panel, the Accused contends that her conduct does not violate DR 6-101(B) because it is an isolated instance of ordinary negligence, citing

In re Robert Neil Gygi, 273 Or 443, 541 P2d 1392 (1975). We do not find that argument persuasive under the facts as we have found them. On the contrary, we find the Oregon Supreme Court decisions in the cases of In re Collier, 295 Or 320, 667 P2d 481 (1983) and In re Hereford, 295 Or 604, 668 P2d 1217 (1983) to be more factually analogous to this case and dispositive of this issue.

In Gygi, *supra*, 273 Or at 450-51, the Court concluded that the accused's negligence in preparing an annual report for a corporate client was an isolated act of ordinary negligence which was not alone sufficient to warrant disciplinary action. However, the Court's decisions in both Collier and Hereford distinguished Gygi and held that the conduct of each of the accuseds amounted to a course of negligent conduct in violation of former DR 6-101(A)(3), the predecessor to current DR 6-101(B). In re Collier, *supra*, 295 Or at 328-329 and In re Hereford, *supra*, 295 Or at 610. Although the Accused's neglect involved only one client and case, it involved a course of neglect over several months which might have gone undiscovered and unremedied indefinitely in light of the loss of Mr. Wallner's file but for Mr. Wallner's own inquiry to Hyatt about the status of his case in late October, 1986. Had she exercised the proper standard of care, she would have readily determined that the lawsuit had not yet been filed or served and could easily and quickly have remedied that failure for Mr. Wallner's benefit.

Regarding the Bar's second cause of complaint, we do not find by clear and convincing evidence that the Accused knew that the representations she made to Mr. Wallner about filing the lawsuit and obtaining an order for service on the defendant by mail were untrue, and we do not find that she knowingly and intentionally misstated the facts, for the purpose of misleading Mr. Wallner or otherwise. Rather, part of her course of negligent conduct was her apparent failure to check with her staff or review Mr. Wallner's file to determine whether her instructions for the filing and service of the complaint had been carried out before making those representations to Mr. Wallner. The Accused is, therefore, not guilty of the second cause of complaint.

Finally, regarding the third cause of complaint, we find that not only did the Accused not intentionally fail to disclose to the Bar or the Local Professional Responsibility Committee that neither she nor Hyatt could locate Mr. Wallner's case file after searching for it unsuccessfully, but we find in fact that she did tell the Local Professional Responsibility Committee representative that information. Furthermore, the Bar's charge that the Accused's statement in her December 20, 1986 letter to the Bar, Ex. 103, that she was "not aware of anything that happened on Mr. Wallner's case after October 17" amounted to a deliberate concealment of her knowledge of the loss of Mr. Wallner's file, is too tenuous to support a charge of unethical conduct. The Accused adequately explained that this statement in her

December 20, 1986 letter meant that she was unaware of any developments on his collection action against Ms. Hecker. That was in fact true. The Accused is not guilty of the third cause of complaint.

We conclude that the Accused should be publicly reprimanded for her neglect of Mr. Wallner's collection matter. We believe this is consistent with the case law on sanctions in similar cases, especially in light of the facts that no evidence of any prior disciplinary problems has been offered against the Accused, that Hyatt refunded all of Mr. Wallner's retainer fee, and that no apparent irreparable harm has been done to the viability of Mr. Wallner's collection action against Ms. Hecker. We have also considered the favorable testimony presented regarding the Accused's professional and personal character.

Dated this 2nd day of February, 1988.

/s/ Paul J. Kelly, Jr.
Paul J. Kelly, Jr.
Chairperson

/s/ John P. Kneeland
John P. Kneeland
Panel Member

/s/ Joyce Tsongas
Joyce Tsongas
Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|-------------------------------|
| In Re: |) | |
| |) | Case No. 87-16 |
| Complaint as to the Conduct of |) | |
| |) | |
| WILLIAM H. HOWELL, |) | FINDINGS OF FACT, CONCLUSIONS |
| |) | OF LAW AND ORDER |
| Accused. |) | |
| |) | |

This matter came before a Trial Panel of the Oregon State Bar Disciplinary Board for Hearing on March 15, 1988, in the Hood River County Courthouse, Hood River, Oregon.

The Oregon State Bar was represented by James Habberstad. The accused represented himself. Seven Exhibits were marked for the Bar and received into evidence. Three Exhibits were marked for the Accused and received into evidence.

After considering the Pleadings filed by the Parties, including the Accused's Request For Admissions and the Bar Response, and the testimony and Exhibits presented at the Hearing, the Trail Panel makes the following Findings of Facts, Conclusions of Law and Order:

FINDINGS OF FACT:

The Accused William H. [H]owell, was admitted to practice law in the State of Oregon in 1982. After admission to the State Bar the Accused was suspended from practicing law for failure to pay his 1984 annual membership fees to the Oregon State Bar (Bar). Said suspension was effective on July 17, 1984. On about July 31, 1984, the Accused submitted a "Statement in Support of BR 8.3 Reinstatement." Said statement is a form provided by the Bar. On the line of said form marked "That my business address is", the Accused wrote:

"E. Wa-Na-Pa
P.O. Box 514
Cascade Locks, OR 97014"

The Accused was reinstated as an active member of the Bar by action of the Acting Executive Director of the Bar on August 1, 1984.

The Bar alleged the accused was suspended again on April 16, 1985, for failing to pay his 1985 Professional Liability Fund assessment.

The Bar alleged that the Accused was suspended again on July 16, 1985, for failing to pay his 1985 membership dues and the Client Security Fund assessment. There was no allegation or proof that

the Accused was reinstated after the April 16, 1985 alleged suspension. In fact the Bar Staff was not aware that the accused had not paid the PLF assessment until October 15, 1986.

The Bar, in its Response to Request for Admissions, stated that it mailed Notice of the Accused's delinquency for not paying Bar dues on May 16, 1985 to the Accused at 1331 Country Club Road, Hood River, Oregon 97031. The Bar admitted that it did not send a notice of delinquency for non payment of the 1985 PLF assessment, but alleged that the PLF sent Notice to 1331 County Club Road, Hood River, Oregon 97031. The Bar offered no proof that it mailed any Notices and it did not offer any proof that 1331 Country Club Road, Hood River, Oregon 97031, was the last known address for the Accused.

During his opening [argument] the Accused stated that the Country Club Road address was a prior address and was replaced by the address shown on his 1984 Reinstatement application.

The Accused denied receiving any Notice of Default in 1985 from either the PLF or the Bar. The Accused testified that he was first told by the Bar that he was suspended when he called the Bar office on October 10, 1986.

In September, 1986, Randy Posvar contacted the Accused and asked the Accused to represent him in a criminal matter in Union County, Oregon. An Affidavit signed by Mr. Posvar and submitted by the Accused, Exhibit H-3, states in part:

"3. In September, 1986, I asked Mr. Howell to represent me on felony charges pending against me in La Grande, Union County. Mr. Howell told me that his license was not active and he gave me the names, addresses and phone numbers of two attorneys to contact. He told me that he could represent me only if his license was activated.

4. I sent Mr. Howell \$970 to enable him to activate his license. This was to be credited against a retainer fee of \$3,000 for representing me on the criminal charges once his license was activated (sic). Mr. Howell told me that if for any reason he could not represent me he would pay back the money I sent.

5. I have been paid \$600 by Mr. Howell and will be paid the balance as he is able."

In order to expedite his reinstatement to active membership in the Bar, the Accused drove to the Bar office in Portland, Oregon on October 10, 1986. The Accused told the Bar Staff that he wanted to be reinstated as an active member of the Bar. The Bar Staff provided the Accused with an application for reinstatement of membership, gave him instruction as to how to fill it out and accepted his application and the necessary fees. He was also told that his application for reinstatement would

be considered by the Board of Bar Governors on October 23 or 24, 1986. Action by the Board of Governors was necessary because the Accused had been suspended for more than six months.

On October 14, 1986, the Bar Staff discovered that the amount of fees they had collected from the Accused was \$30.00 short. In addition on October 15, 1986, the Bar Staff discovered that the Accused had allegedly also been suspended for failure to pay the PLF assessment.

The Accused subsequently submitted two additional applications for reinstatement and an Affidavit for waiver of the 1985 PLF assessment. As a result of the Bar's errors consideration of Accused's application for reinstatement by the BOG was delayed to December, 1986.

In the meantime, the Accused appeared as Counsel for Randy Posvar in Union County District Court on October 20, 1986. At the time of said appearance, Judge Eric Valentine told the Accused that he was not listed in the Bar Membership roster and asked the Accused whether or-not it was proper for him to represent Mr. Posvar.

Judge Valentine's recollection of the Accused's response to said inquiry is vague. The Accused testified that he told the Court that his membership was inactive, that he had filed an application for reinstatement and that the Board of Governors was going to consider the application on October 23 or 24, 1986. The Accused states that Judge Valentine told him that he could proceed to represent Mr. Posvar and so he did.

After making the initial appearance on October 20, 1986 it was established that the Bar's Records showed the Accused was not an Active member of the Bar. The Accused withdrew from further representation of Mr. Posvar and has repaid \$600 to Mr. Posvar.

The BOG took action to reinstate the Accused as an Active member of the Bar in December, 1986 and the Accused is currently practicing law.

At all times material hereto the Accused has suffered from the diseases of alcoholism and chemical dependency. The Accused testified that he has been free from all alcohol and drugs since June, 1986[.]

The Accused is an active member of Alcoholics Anonymous and also participates in a support system sponsored by the Professional Liability Fund. [Don] Muccigrosso, an attorney and counselor for the PLF, testified that the Accused's actions during the period of time relevant to this matter are typical of the "mental gyrations" caused by alcoholism.

CONCLUSION

The Trial Panel finds that as a Matter of Law the Accused was not suspended from the Practice of law in the State of Oregon.

ORS 9.200 provides in part:

"(1) Any member (of the Oregon State Bar) in default in payment of membership fees ... or any member in default in payment of assessed contributions to a professional liability fund ..., shall, after 60 days written notice of the delinquency, be suspended from membership in the Bar. The Notice of delinquency shall be sent by the executive director, by registered or certified mail, to the member in default at the last-known post-office address of the member. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member. ..."

ORS 9.005 contains the following definitions:

- (1) "Attorney" and "member" mean a member of the bar.
- (2) ... "bar" means the Oregon State Bar ...
- (3) "Board" ... means the board of governors of the bar.
- (4) "Executive director" means the chief administrative employe of the bar, appointed by the board. ..."

The Oregon State Bar Rules of Procedure existing in 1984 provided:

"Rule 1.12. [Current BR 1.11] Address and Telephone Number Designation.

(a) All attorneys must designate, on a form approved by the Oregon State Bar, a current address and telephone number,

(b) It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her business address and telephone number, A new designation shall not become effective until actually received by the Oregon State Bar."

"Rule 5.2. Burden of Proof. The Bar shall have the burden of establishing misconduct by clear and convincing evidence."

In his answer the Accused, as his second and third Affirmative Defenses, alleged that the Bar failed to provide due process of law by failing to advise him of his "suspensions" from the practice of law or to provide him a hearing. The Accused alleged that said lack of Due Process estops the Bar from claiming that he was suspended and taints the process so that the Bar is prevented from taking any action against him. The Accused withdrew said Defenses at the hearing. However, in his General Answer and First Affirmative Defense and at the Hearing the Accused denied that he received notice of delinquency or notice of suspension from the Bar until he called the Bar office on October 10, 198[6].

The Bar bears the burden of proving the allegations of its Complaint by clear and convincing evidence.

The evidence establishes that as of January 1, 1985, when the 1985 PLF assessment and February 1, 1985 when the Bar dues were due, the last address supplied by the Accused to the Bar

on a Bar form was the address shown on the 1984 Reinstatement application: P.O. Box 514, Cascade Locks, Oregon.

The Bar presented no evidence that it mailed any notice to the Accused for nonpayment of dues or PLF assessments. From the Bar's response to Request for Admissions we deduce that the Executive Director never mailed notice of default for nonpayment of the PLF assessment to the Accused. The Executive Director did not mail notice of Default for nonpayment of 1985 Bar dues to the Accused's last known address.

Suspension from Bar membership for failure to pay Bar dues or PLF assessments occurs by operation of law 60 days after notice of delinquency is mailed by the Executive Director to the member at his last known address. As the Executive Director did not comply with the Notice requirement of ORS 9.200[1], the Accused was not suspended from membership in the Oregon State Bar after his reinstatement in 1984.

A. First Cause of Complaint

In its first cause of Complaint the Bar alleges:

1. That the Accused practiced law in violation of the regulations of the profession in the State of Oregon by appearing before Judge Valentine on October 20, 1986 when the Bar alleges the Accused was suspended from the practice of Law; and
2. That the Accused told Judge Valentine that he was eligible to represent Mr. Posvar when he kn[e]w that he wasn't eligible to practice law and thus engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and that he sought to mislead the Court by false statements.

The Bar alleges that the Accused violated DR 1-102(A)(3), 3-101(B) and 7-102(A)(5) and ORS 9.460(4).

ORS 9.160 provides:

"... no person shall practice law or represent [himself] as qualified to practice law unless [he] is an active member of the Oregon State Bar."

ORS 9.180 provides that all persons admitted to practice law in this State are active members of the Bar, unless by request or application of law or rule they are enrolled as inactive members.

In this case when the Accused appeared before Judge Valentine on October 20, 1986, the Bar thought the Accused was suspended and the Accused thought his membership was inactive. Both were wrong.

The Accused had not been lawfully suspended and he had not complied with the procedure for voluntarily placing his Bar membership on inactive status. Therefore, he did not practice law in violation of the regulations of the profession and did not violate DR 3-101(B).

Notwithstanding the Bar's failure to give the Accused Notice of his Suspension in the manner provided by ORS 9.200[1] and BR 1.8 (as then in effect) the Accused thought that he was not an "Active" member of the Bar and could not practice law in the State of Oregon.

Accused's Exhibit A-3, the Affidavit of Randy Posvar, and Accused's own testimony establish that the Accused thought that his Bar Membership was inactive and that he couldn't practice law until he was reinstated as an active member of the Bar.

The Accused made every effort to comply with the requirements of the Bar for reinstatement, including going personally to the Bar office, paying all fees requested by the Bar and the PLF and filing three separate applications for reinstatement during a three week period. He knew that the Board of Governors was not going to act on his reinstatement application until October 24, 1986, four days after his appearance before Judge Valentine.

The Accused testified repeatedly that he did not tell Judge Valentine that he was eligible to practice law. The Accused testified that he described his situation to Judge Valentine in detail, including that the Board of Governors was going to consider his reinstatement application on October 24, 1986.

The Accused's testimony was not contradicted by Judge Valentine's testimony. Judge Valentine testified that he does not recall the Accused telling him that he was "authorized" to practice, rather Judge Valentine may have presumed that the Accused could practice because the Accused was representing a client before him.

DR 7-102(A)(5) prohibits a lawyer from "knowingly" making a false statement of law or fact. DR 1-102(A)(3) defines Misconduct as engaging in illegal conduct involving moral turpitude. ORS 9.460(4) requires that a lawyer not mislead a Court by an artifice or false statement of law or fact.

At the time of the alleged misconduct, the Accused had been clean of drugs and alcohol for less than a year. At the time of the hearing, the physical damage caused by the Accused's dependency diseases was obvious. Mr. Muccigrosso testified that it takes at least a year for the human brain to recover from the effects of alcoholism and that during that period alcoholics will go through "mental gyrations."

There is no evidence that the Accused knowingly made any misstatement of law or fact to Judge Valentine. Nor is there any evidence that the Accused intended to trick or mislead Judge

Valentine. The Accused recognizes and admits that he should not have appeared in Judge Valentine's Court. However, he did not have the wrongful intent which is an element of the other violations of disciplinary rules and statutes charged in the First Cause of Complaint.

B. Second Cause of Complaint

In the Second Cause of Complaint the Bar charges that the Accused failed to respond fully and truthfully to inquiries from the Bar's General Counsel and that he made false statements to the General Counsel's office.

The Bar alleges that the Accused's said conduct violates DR 1-102(A)(3) and 1-103(C) of the Code. DR 1-102(A)(3) defines misconduct as engaging in illegal conduct involving moral turpitude. DR 1-103(C) requires that a lawyer who is subject to [a] disciplinary investigation respond fully and truthfully to inquiries from the Bar's General Counsel.

At all times material hereto the Accused has stated that he thought his membership was "Inactive." In fact, he was an "Active" member of the Oregon State Bar when he appeared before Judge Valentine on October 20, 1986.

The alleged false statements by the Accused to the General Counsel are in the Accused's letter to the Bar dated November 24, 1986, Exhibit B-6. In that letter the Accused stated that on October 20, 1986 he thought he was an "inactive" member of the Bar but that he did not know he was "suspended" from practice.

The Bar, in its Response to Request For Admissions, effectively admits that it did not give the Accused Notice of his Suspension from the [practice of] law as required by statute and Bar Rule of Procedure 1.8. However, the Bar points to the Accused's October 10, 1986 Application for Reinstatement to "active" membership, Exhibit B-1, as proof that the Accused knew he was suspended from practicing law.

On Exhibit B-1 the Accused "X[d]" the box which states that he was "suspended" for failing to pay membership dues and PLF assessments. He also X'd "Yes" to a question which asks if he has been "suspended" for more than six months.

The Accused testified that when he was in the Bar office on October 10, 1986 he told the Staff member who was assisting him, that he was "inactive", not "suspended." The Bar Staff member told him that if he wanted to get reinstated he had to "X" the box indicating that he was "suspended," so he did so.

The Accused testified that he believed that there was a difference between "inactive" status resulting from nonpayment of dues and "suspension" which results from dis[c]iplinary proceedings.

Mr. Muccigrosso characterized said reasoning as "mental gyrations" commonly caused by drug and alcohol abuse.

The Accused responded promptly and fully to the inquiry from the General Counsel. The Bar did not give the Accused notice of his suspension in the manner required by its own rules. There is no clear and convincing evidence that the Accused's response was untruthful. As a matter of law, the Accused was not "suspended" because the Bar did not give the written notice required by ORS 9.200 in the manner provided in BR 1.8.

The Bar failed to prove the allegations of the Second Cause of Action by clear and convincing evidence.

C. Third Cause of Complaint

In the third Cause of Complaint the Bar alleges that the \$900 (actually \$970) payment made by Mr. Posvar to the Accused in early October, 1986 was a loan. The Bar alleges that the Accused violated DR 5-104(A) because the Accused did not advise Mr. Posvar to seek independent legal advise [sic] before making said loan to the Accused.

The Accused testified that the Payment [sic] from Mr. Posvar to him was a retainer to be applied against a \$3,000 fee that Mr. Posvar had agreed to pay him for representing him in the Union County Criminal proceedings. The Accused's testimony is supported by Mr. Posvar's Affidavit.

There is no evidence which contradicts the Accused's testimony concerning said payment.

The Bar has failed to prove the allegations of the Third Cause of Complaint by Clear and Convincing evidence.

ORDER

The Accused is not guilty of any of the violations of Disciplinary Rules or ORS 9.460(4) as alleged in the Complaint. The Bar's Complaint is dismissed.

POSTSCRIPT

The Trial Panel does not want to leave the impression that the Accused's Conduct in October 1986, was without error. It wasn't. Both Accused and the Bar demonstrated poor judgment in this case.

The Accused testified that after he withdrew from representing Mr. Posvar, Mr. Posvar had inadequate funds to retain an attorney and was eventually represented in the Union County proceedings by the Public Defender. We assume that Mr. Posvar received competent representation, however, the Accused's conduct may have contributed to Mr. Posvar's inability to retain counsel of his choice.

At the time he appeared before Judge Valentine the Accused thought his Bar Membership status was "inactive." ORS 9.160 prohibits anyone who is not an "active" member of the Bar from representing a litigant. Attorneys are charged with knowing the law. The Accused knew or reasonably should have known that if the facts were as he understood them to be, he should not have agreed to represent Mr. Posvar and he should not have appeared before Judge Valentine on October 20, 1986. But for procedural errors by the Bar, the Accused would be facing suspension from the practice of law.

We are equally concerned about the Bar's actions in this case. The Bar failed to give notice of default for nonpayment of the Bar dues and PLF assessment in the manner required by law. When the Accused attempted to apply for reinstatement, the Bar records were such that the Bar did not know that he had not paid the 1985 PLF assessment and they were not able to tell him the correct amount of fees he must pay to reinstate his membership. The result was that the Accused ended up preparing and filing three separate reinstatement applications during a three week period and consideration of his reinstatement application by the Board of Governors was delayed two months. To error is human; the Bar Staff was polite and cooperative; the Accused was persistent.

Our concern with the Bar's conduct arises from its actions after Mr. Howell filed his Answer and his Request for Admissions. The Accused's said pleadings clearly demonstrated to the Bar that the Bar had not followed the statutory procedure for suspending an attorney for nonpayment and that he was, therefore, not suspended.

Rather than acknowledging its errors, and either amending or withdrawing its Complaint, the Bar proceeded to Hearing.

At Hearing the Bar argued that Mr. Howell had not completed a Bar change of Address form and therefore the address shown on his 1984 reinstatement application [was] not his last known address.

The Supreme Court has the statutory authority to promulgate rules for the operation of the Bar. Rules are necessary for the efficient management of any organization. Attorneys have a duty to comply with the Bar Rules. The Bar has a duty to apply those rules in a reasonable manner.

Mr. Howell provided the Bar with his current address on a Bar form which requested that information. Both ORS 9.200[1] and BR 1.8 require that Bar Notices be mailed to the last known address of the member. The Bar did not do that and it compounded its mistake by refusing to acknowledge its mistake, putting the Accused, the Bar and the Disciplinary Panel to great expense, loss of time and unnecessary frustration.

Had the Bar acknowledged its errors it could have amended the Complaint to allege violations of other Disciplinary Rules such as 1-102(A)(5) and (6) [current DR 1-102(A)(4)]. The Accused's actions described above were wrong, and the Accused freely admits he was wrong. The Accused violated Disciplinary Rules, however, he did not violate the rules alleged in the Complaint. If we had the ability to do so, we would invoke discipline, including suspension and probation. However, we are limited to only considering the matters alleged in the Pleadings.

Dated this 9th day of May, 1988.

/s/ William M. Ganong
William M. Ganong, OSB #78213

/s/ Joseph T. McNaught
Joseph T. McNaught, OSB #78302

/s/ Emery J. Skinner
Emery J. Skinner

OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-94 |
| |) | |
| Kent Anderson, |) | |
| |) | |
| Accused. |) | |
| _____) | | |

Bar Counsel: James W. Korth, Esq.

Counsel for the Accused: Lyle C. Velure, Esq.

Disciplinary Board: Chris L. Mullmann, State Chairperson; and K. Patrick Neill, Region 2 Chairperson

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

Effective Date of Opinion: August 2, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------------------|
| In Re: |) | |
| |) | Case No. 86-94 |
| Complaint as to the Conduct of |) | |
| |) | OPINION REGARDING |
| Kent Anderson, |) | STIPULATION FOR DISCIPLINE |
| |) | AND ORDER |
| Accused. |) | |

A stipulation for discipline has been presented to the Regional Chairperson and the State Chairperson of the Disciplinary Board for review pursuant to Bar Rule 3.6(e). The stipulation is intended by the Accused and the Bar to resolve the matters set out in a previously filed complaint by the Bar against the Accused.

The stipulation recites that during the pendency of the proceedings, the Bar and the Accused voluntarily agreed to resolution of the proceedings and this stipulation is a product of those negotiations.

The material allegations of the stipulation indicate the Accused, at all material[s] times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since September 18, 1978, he has been a member of the Oregon State Bar with his principal place of business in Lane County, Oregon.

From a review of the stipulation it appears that the Accused admits that on or about June 17, 1982, Mr. and Mrs. Gau consulted with him regarding a pending California matter and the possibility of an appeal from an adverse ruling before the California court. The clients deposited funds with the Accused to pay for the days' [sic] consultation, as well as for long distance toll charges and other costs incurred by the Accused on their behalf, in an effort to obtain new California counsel for advice regarding an appeal of the impending California judgment, and a possibility of a malpractice action against their prior formal counsel. Referral to California counsel was arranged.

Subsequently, on or about July 2, 1982, the Accused undertook to represent Mr. and Mrs. Gau and had an initial intake conference for the purpose of commencing the dissolution of their marriage. On or about July 22, 1982, Mrs. Gau signed an affidavit prepared for her by the Accused in which she requested that the 90 day waiting period and [sic] the dissolution be waived so that she could return to her family in England. A petition, an amended petition, Mr. Gau's waiver of appearance and consent to the default, and Mrs. Gau's affidavit in support of the decree were filed by the Accused in

Lane County Circuit Court, Case No. 15-87-06331, on or about July 29, 1982. The dissolution decree was signed July 30, 1982.

During the summer of 1982, the Accused represented Mr. and Mrs. Gau in securing the services of California counsel and in advising them of their rights as a judgment debtor and judgment debtor spouse, respectively, while he was simultaneously representing Mrs. Gau against Mr. Gau in a dissolution of marriage proceeding. At the time the Accused accepted and continued the multiple representation of the Gaus and of Mrs. Gau against Mr. Gau, the Accused failed to seek or obtain the consent of Mrs. Gau and Mr. Gau to his representation and did not fully disclose to them the possible effect of such representation on the exercise of his independent professional judgment on behalf of each of them. It was not obvious the Accused could adequately represent the interest of each client, regardless of whether he obtained consent and provided full disclosure to each client.

Based upon these facts, the Accused has stipulated that a violation of DR 5-105(A) and DR 5-105(B) of the Code of Professional Responsibility resulted from this conduct.

Pursuant to the stipulation the Accused has agreed to a public reprimand for having violated the Ethical Rules above specified. From the stipulation it appears that the Accused has no prior record of reprimand, suspensions or disbarment.

The Regional Chairperson and the State Chairperson on behalf of the Disciplinary Board approved the stipulation and the sanction.

IT IS HEREBY ORDERED:

1. The Accused will receive a public reprimand for violation of D.R. 5-105(A) and D.R. 5-105(B) of the Code of Professional Responsibility.

DATED this 2nd day of August, 1988

/s/ Chris Mullmann
Chris L. Mullmann
State Chairperson

/s/ K. Patrick Neill
K. Patrick Neill
Region 2 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|-----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-94 |
| |) | |
| Kent Anderson, |) | STIPULATION FOR |
| |) | DISCIPLINE |
| Accused. |) | |
| |) | |

Comes now Kent Anderson, attorney at law, and stipulates to the following matters pursuant to [the] Rule [of Procedure] 3.6(c).

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, Kent Anderson, was admitted by the Oregon Supreme Court to practice law in Oregon on September 18, 1978, 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.

3.

The State Professional Responsibility Board of the Oregon State Bar, at a meeting on June 27, 1987, approved for filing against the Accused a formal complaint alleging violations of the Code of Professional Responsibility. During the pendency of proceedings so commenced, the Bar and the Accused agreed to resolution of said proceedings. This stipulation is the product of those negotiations.

4.

Rudolph Gau, a building contractor, built a house for Reverend and Mrs. James R. Bishop in Southern California. When the Bishops withheld payment from Mr. Gau over a dispute, Mr. Gau filed suit to foreclose a construction lien against the property concerned. The Bishops counter-claimed against Mr. Gau alleging deceit and builder malpractice, among other claims. The court found in favor

of the Bishops after trial in May of 1982, and final judgment in the amount of \$48,621.45 was entered against Mr. Gau on July 23, 1982.

5.

On or about June 17, 1982, Mr. and Mrs. Gau consulted with the Accused regarding the pending California matter and the possibility of an appeal from the adverse ruling before the California court. The Gaus deposited funds with the Accused to pay for that day's consultation as well as for long distance toll charges and other costs to be incurred by the Accused on their behalf in the Accused's efforts to obtain new California counsel for advice regarding appeal of the impending California judgment and the possibility of a malpractice action against their prior California counsel arising out of the lien foreclosure case. A referral to California counsel was arranged.

6.

On or about July 2, 1982, the Accused undertook to represent Mrs. Gau against Mr. Gau at an initial intake conference for the purpose of commencing the dissolution of the Gaus' marriage. On or about July 22, 1982, Mrs. Gau signed an affidavit prepared for her by the Accused in which she requested that the 90 day waiting period in the dissolution be waived so that she could return to her family in England. A petition, an amended petition, Mr. Gau's waiver of appearance and consent to default and Mrs. Gau's affidavit in support of a decree were filed by the Accused in Lane County Circuit Case No. 15-87-06331 on or about July 29, 1982. The dissolution decree was signed on July 30, 1982.

7.

During the summer of 1982, the Accused represented Mr. and Mrs. Gau in securing the services of California counsel for a possible appeal and attorney malpractice claim, and in advising them as to their rights as a judgment debtor and judgment debtor's spouse respectively, while he was simultaneously representing Mrs. Gau against Mr. Gau in a dissolution of marriage proceeding. At the time the Accused accepted and continued the multiple representation of Mr. and Mrs. Gau, and of Mrs. Gau against Mr. Gau, the Accused failed to seek or obtain the consent of Mr. Gau and Mrs. Gau to his representation and did not fully disclose to them the possible effect of such representation on the exercise of his independent professional judgment on behalf of each of them. It was not obvious the Accused could adequately represent the interests of each client regardless of whether or not he obtained consent and provided full disclosure to each client.

8.

The Accused admits the above facts are true.

9.

The Accused stipulates that a violation of DR 5-105(A) and DR 5-105(B) of the Code of Professional Responsibility resulted from said conduct.

10.

The Accused agrees to a public reprimand for having violated the ethical rules specified herein.

11.

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

12.

All proceedings relating to this matter other than the stipulation set forth herein are withdrawn by the Bar.

13.

WHEREAS Disciplinary Counsel of the Oregon State Bar submits 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 July, 1988.

/s/ Kent Anderson
Kent Anderson

I, Kent Anderson, 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 this stipulation are true and correct as I verily believe.

/s/ Kent Anderson
Kent Anderson

Subscribed and sworn before me this 12th day of July, 1988.

/s/ Katherine M. Baser
Notary Public for Oregon
My commission expires: 12/20/90

Reviewed by Disciplinary Counsel on the 15th day of July, 1988 and approved by the State Professional Responsibility Board for submission to the Disciplinary Board on the 13th day of July, 1988.

/s/ Susan D. Isaacs
Susan D. Isaacs
Disciplinary Counsel
Oregon State Bar

IN THE SUPREME COURT
OF THE STATE OF OREGON

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|--------------------------------|---|------------------|
| In Re: |) | |
| |) | Case No. 86-94 |
| Complaint as to the Conduct of |) | |
| |) | FIRST AMENDED |
| Kent Anderson, |) | FORMAL COMPLAINT |
| |) | |
| Accused. |) | [Exhibit 1] |

For its FIRST CAUSE OF COMPLAINT against the Accused, 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, Kent Anderson, is, and 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.

3.

Randolph Gau, a builder, built a house for Reverend and Mrs. James R. Bishop in southern California. When the Bishops refused to pay Mr. Gau all sums he claimed were owed to him due to their dissatisfaction with Mr. Gau's construction of their home, Mr. Gau filed suit against them. The Bishops counter-claimed with allegations of deceit and builder's malpractice, among other claims. After the May 1982 trial, judgment was entered on July 9, 1982 on behalf of the Bishops against Mr. Gau in the amount of \$48,621.45. Final judgment was entered on July 23, 1982.

4.

On or about June 17, 1982, Randolph Gau and his wife, Wendy Gau, consulted with the Accused regarding their rights as a judgment debtor and judgment debtor's spouse, respectively, and regarding their desire to protect their family assets from the Bishops' judgment. The Gaus deposited funds with the Accused to pay for that day's consultation as well as for long distance telephone call charges and other costs to be incurred by the Accused on their behalf in the Accused's efforts to obtain new California counsel for advice regarding their appeal rights on the California judgment and the

possibility of a malpractice action against their previous California counsel arising out of that lawsuit and judgment. A referral to California counsel was arranged.

5.

On or about July 2, 1982, the Accused undertook to represent Mrs. Gau against Mr. Gau at an initial intake conference for the purpose of commencing the dissolution of the Gaus' marriage. On or about July 22, 1982, Mrs. Gau signed an affidavit prepared for her by the Accused in which she requested that the 90 day waiting period in the dissolution be waived so that she could return to her family in England. The Accused opened a dissolution file in Mrs. Gau's name on or about July 23, 1982. A petition, an amended petition, Mr. Gau's waiver of appearance and consent to default and Mrs. Gau's affidavit were filed by the Accused in Lane County Circuit Case No. 15-87-06331 on or about July 29, 1982. The dissolution decree, which awarded substantially all of the assets of the marriage to Mrs. Gau and did not provide for child support for Mrs. Gau until January 15, 1983, was signed on July 30, 1982.

6.

Mrs. Gau did not return to England after entry of the decree of dissolution or thereafter. The Accused knew that the Gaus continued to reside in the same residence during the summer of 1982.

7.

In or about August 1982, the Accused had a client conference with Mr. Gau regarding the California judgment. Also, in or about August 1982, the Accused opened a client file and ledger for Bratwurst Kitchen, Inc., a business the Accused incorporated on or about September 24, 1982 with Mrs. Gau as owner and Mr. Gau as a corporate officer.

8.

In or about the summer and fall of 1982, the Accused represented Mr. and Mrs. Gau in securing the services of California counsel for a possible appeal and attorney malpractice claim, in advising them as to their rights as a judgment debtor and judgement debtor's spouse respectively, and in incorporating their business, Bratwurst Kitchen, Inc., while he was simultaneously representing Mrs. Gau against Mr. Gau in a dissolution of marriage proceeding. At the time the Accused accepted and continued the multiple representation of Mr. and Mrs. Gau, and of Mrs. Gau against Mr. Gau, the Accused failed to seek or obtain the consent of Mr. Gau and Mrs. Gau to his representation and did not fully disclose to them the possible effect of such representation on the exercise of his independent professional judgment on behalf of each of them. It was not obvious the Accused could adequately

represent the interests of each client regardless of whether or not he obtained consent and provided full disclosure to each client.

9.

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

1. Former and current DR 5-105(A) of the Code of Professional Responsibility; and
2. Former and current 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:

10.

Incorporates by reference as fully set forth herein, paragraphs 1 through 7 of its First Cause of Complaint.

11.

In or about April 1984 the Bishops filed suit against Mr. Gau in Lane County Circuit Court Case No. 16-84-02890 alleging that Mrs. Gau had participated in a fraudulent property transfer in her dissolution from Mr. Gau described above in paragraph 5. On or about February 14, 1986, an order was entered against Mr. Gau and in favor of the Bishops finding fraudulent transfer of assets by the Gaus in their dissolution.

12.

The dissolution petition involving the transfer of property between Mr. and Mrs. Gau was filed and made for the purpose and with the intent to hinder, delay or defraud the Bishops in collection of their lawful claim for payment of their judgment against Mr. Gau.

13.

By assisting Mr. and Mrs. Gau in taking action to avoid the lawful debt owed to the Bishops through a fraudulent conveyance of property to Mrs. Gau in the dissolution proceeding, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and engaged in wilful deceit or misconduct in the legal profession.

14.

When the Accused assisted Mr. and Mrs. Gau in taking action to avoid the lawful debt owed to the Bishops through fraudulent conveyance of property to Mrs. Gau in the dissolution proceeding, the Accused knew the conduct of his clients was illegal or fraudulent, knew that the Gaus' dissolution action which he had maintained was not legal or just, and knew that he was employing means inconsistent with truth.

15.

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

1. Former DR 1-102(A)(4) and current DR 1-102(A)(3) of the Code of Professional Responsibility;
2. Former and current DR 7-102(A)(7) of the Code of Professional Responsibility;
3. ORS 9.460(3);
4. ORS 9.460(4); and
5. 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 7th day of April, 1988.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
Executive Director

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
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| IN RE: |) | |
| |) | No. 87-8 |
| Complaint as to the Conduct of |) | |
| |) | FINDINGS OF FACT, CONCLUSIONS |
| BRUCE E. HUFFMAN, |) | OF LAW AND ORDER |
| |) | |
| Accused. |) | |
| |) | |

This matter came before a Trial Panel of the Oregon State Bar Disciplinary Board for hearing on June 6, 1988, in the Klamath County Courthouse Annex in Klamath Falls, Oregon.

The Oregon State Bar was represented by Timothy J. Helfrich. The Accused represented himself. Ten Exhibits were marked and received into evidence.

After considering the pleadings, the testimony and exhibits presented at the hearing, the Trial Panel makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

The Trial Panel makes the following findings of fact:

1. The Accused, Bruce Huffman filed suit to foreclose a real estate contract for the sale of a tavern on behalf of his client Betty Kanna. Defendant Clyde Long was represented by the complainant, Sam McKeen. A third party, a couple named Grey were represented by William Sisemore.
2. During the pendency of the lawsuit, Clyde Long made his monthly \$502 contract payments to McKeen instead of Kanna. McKeen then paid the money into Circuit Court. When the case was concluded, the sum of \$8,000 in contract payments had accumulated in court.
3. The trial judge, Donald Piper, rendered a memorandum opinion on March 24, 1986 in which he found for defendants.
4. McKeen drafted a proposed decree and mailed copies to the accused and Sisemore with a cover letter dated April 3, 1986 indicating that he had submitted the order to Judge Piper for his approval and signature. The proposed order provided that all monies paid into court be paid over to Betty Kanna, that the contract and the escrow be re-established and that defendants as prevailing parties have judgment for costs and attorney fees. McKeen attempted to locate Piper to sign the decree on April 3, but was unsuccessful since Piper had left on vacation.

5. McKeen was also leaving on vacation the following morning, April 4. He was desirous of having his attorney fees, estimated by him to be \$1,800-2,000, paid from the \$8,000 in Circuit Court and in pursuit of that objective, retained attorney Steve Couch to protect his attorney fees while he was away on vacation. Meanwhile, Betty Kanna was insistent in having the funds released to her as soon as possible as she was in dire financial straits. She had long depended on the tavern contract monthly payments to meet a U.S. Bank obligation in which she was by this time four or five months delinquent because the money was being paid into court. In addition, she had contracted cancer, her medical bills were mounting and she had spent eighteen days in a psychiatric hospital to deal with her depression. Because of his client's mental, emotional and financial state, Accused had consulted with McKeen in an effort to persuade him to waive his attorney fees. McKeen refused to do so.

6. On April 4, Accused met his client Kanna and together they proceeded to the courthouse to see if the decree had been signed. They could not locate the original and correctly assumed it had not been signed. Since Judge Piper was out of town Accused took his copy of the decree and asked Judge Beesley if he would sign it based on Judge Piper's memorandum opinion. Judge Beesley signed the decree but shortly thereafter, discovered that an affidavit of prejudice had been filed against him in the case and so rescinded it by noting such at the bottom of the decree. Accused then found visiting District Judge Coon in the courthouse and requested he sign the decree, advising him that Sisemore had no objection. Judge Coon signed the decree in the afternoon of April 4, 1986. Accused returned to his office.

7. Attorney Steve Couch upon learning that Judge Coon had signed the decree found him at the bus station and requested that he go to the accused's office to discuss the decree with accused. Couch preceded Coon to Accused's office and advised him that Judge Coon would be arriving. When Judge Coon arrived, however, accused had already left the office and gone to the title company with escrow papers seeking to re-establish the contract escrow which had been ordered by the decree. Attorney Couch found Accused at the title company, advised him that Judge Coon had come to Accused's office to see him, and had rescinded the decree. A contested hearing was thereafter held on April 8, 1986 before Judge Piper to determine if McKeen's fees could be paid from the \$8,000 fund held in court. Judge Piper held they could not. On April 9th Judge Piper signed the decree and this time it was not rescinded.

8. The Bar presented evidence by McKeen's testimony that McKeen drafted the proposed decree and then searched in vain for Judge Piper to have it signed. While embarked on this endeavor

he encountered Steve Couch in the courthouse hallway who at McKeen's request, reviewed the decree and advised him that it was probably not broad enough to protect the payment of accused's fees from the \$8,000 fund. This advice prompted in McKeen a change of heart. He no longer wanted the decree signed in its present form and so on several occasions he informed accused by telephone prior to his leaving on vacation that he himself objected to the form of the decree, that he wanted his attorney fees estimated to be \$1,800-2,000 paid from the \$8,000, that accused clearly understood his objections to the decree but accused presented it anyway to two judges for signature without advising them of McKeen's objections to the form of decree.

9. Complainant's wife, Marylou McKeen, testified that she worked for her husband as an office secretary during the time in question and recalled McKeen placing a call to the Accused from McKeen's office on the morning of April 3rd and telling him that the decree was wrong and that he was going to talk to Judge Piper so he wouldn't sign it. She further testified that on the late afternoon or evening of April 3rd, Accused called McKeen at his home (McKeen's phone setup switched office calls to his home after hours) and McKeen advised the Accused that Steve Couch was representing him. Both phone calls were remarkable for the screaming in which both lawyers engaged. Two letters addressed to the accused dated April 2nd and 4th were received in evidence, (Exhibit 6) it being stipulated that they were both received by the Accused on April 4th from Steve Couch. Both letters objected to the form of the decree because of its failure to protect McKeen's fees.

10. Accused in his defense testified that he had three phone calls with McKeen on April 1st, 2nd and 3rd about various aspects of the case, not the least of which was his request that McKeen waive his attorney fees. He testified that McKeen never mentioned that he objected to the form of his own decree, that he never knew when he presented the decree to Judge Beesley and then to Judge Coon for signature, of McKeen's objection to the form of the decree. He maintained that he had no knowledge of the objection until he returned to the office from the title company late on April 4, 1986 after the decree had been signed, to discover the two letters from Couch on his desk which had been hand delivered. He pointed out that similar letters had been delivered to the courthouse and time stamped at 2:59 p.m. April 4, 1986 and offered that as some evidence that the letters were delivered to his office late in the day. He claimed that he had no reason to suspect that McKeen objected to the form of the decree since he had prepared it himself. He further testified that Sisemore had expressly approved the form of the decree, that the reason for his apparent urgency in obtaining a Judge's signature on the decree was motivated solely by his client's financial, physical and emotional state and her consequent concerns about receiving the money as soon as possible. He read into the

record his timer upon which he recorded his daily activity and to which the Bar stipulate that the entries were correct and the only entries regarding the case on the dates mentioned. They showed phone calls respecting the case on April 1, 2, 3 and 8. None of the notations mentioned McKeen's objection to the form of the decree. The accused further testified that at no time did Steve Couch relate to him that McKeen objected to the form of the decree but only that Couch was somehow representing McKeen respecting the protection of his attorney fees.

11. Steve Couch died shortly thereafter and was therefore unavailable as a witness.

12. The following appeared from McKeen's testimony: McKeen did not know when the decree got to the courthouse. He did not talk to the accused about his attorney fees prior to preparing the decree. He had two to four discussions with the accused regarding taking his attorney fees from the \$8,000 over a couple of days. He did not know when the calls took place. On April 3rd he first talked to Steve Couch in the courthouse hallway and retained him.

McKeen's affidavit, Exhibit 9, claims Accused called him at home two days prior to leaving on vacation. During the trial hearing he recanted his affidavit and testified that the phone call at home was instead the night before he left on vacation. On one occas[s]ion he testified that he talked with the Accused by phone a minimum of two and a maximum of three times, but shortly afterward, he testified again it was two to four calls.

CONCLUSIONS OF LAW

The Accused was charged with violations of the following:

- a. DR 1-102
 - (A) It is professional misconduct for a lawyer to:
 - (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- b. DR 7-102
 - (A) In the lawyer's representation of a client, a lawyer shall not:
 - (5) Knowingly make a false statement of law or fact, and
- c. DR 7-110
 - (B) "In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending."

Guilt requires proof by clear and convincing evidence, B.R. 5.2. The central issue was whether the accused was aware of McKeen's objection to the form of the decree at the time the accused presented the order for signature to Judges Beesley and Coon and knowingly suppressed that information from the judges, thereby misleading them.

The decision in this case must rest on the credibility of the witnesses. If McKeen and his wife are to be believed, then the Accused is guilty. If Accused is to be believed, then he is not. For that reason, a brief resume of the opposing positions has been set forth in the Findings of Fact.

The testimony of the Bar's central witness, Sam McKeen, was in several respects confusing, uncertain and contradictory. Judge Coon, who might have shed light on his encounter with Accused, did not appear as a witness. On the other hand, the Accused's agitated phone calls to McKeen and his unusual scramble to get the decree signed were activities not altogether consistent with an innocent frame of mind. Ultimately, the Trial Panel is left with measuring the bar's case against the standard of proof of guilt by clear and convincing evidence. Based on that standard, the Trial Panel is unanimous in its' opinion that the Bar has failed to carry its burden.

ORDER

The Accused, Bruce E. Huffman is not guilty of any of the violations alleged in the complaint. The Bar's complaint is dismissed.

/s/ Douglas A. Shepard

Douglas A. Shepard
Trial Panel Chairman

/s/ Ronald Schenck

Ronald Schenck
Trial Panel Member

/s/ Emery Skinner

Emery Skinner
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-39 |
| |) | |
| Garry P. McMurry, |) | |
| |) | |
| Accused. |) | |
| _____ |) | |

Bar Counsel: Dean M. Quick, Esq. and Lynn E. Ashcroft, Esq.

Counsel for the Accused: Carl R. Neil, Esq.

Trial Panel: John P. Kneeland, Trial Panel Chairperson; Larry Voth and Irwin J. Caplan (public member)

Disposition: Accused found guilty of violation of DR 5-105(A), DR 6-101(A) [former DR 6-101(A)(1) and (2); not guilty of other charges. Public reprimand.

Effective Date of Opinion: August 11, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|--------------------|
| In Re: |) | |
| |) | Case No. 86-39 |
| Complaint as to the Conduct of |) | |
| |) | |
| GARRY P. McMURRY, |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS AND |
| |) | RECOMMENDATIONS OF |
| Accused. |) | TRIAL BOARD |
| |) | |

The above matter came on regularly for a trial at 10:00 a.m. on May 18, 1988, in the City of Portland, County of Multnomah, State of Oregon, before John P. Kneeland, Chairperson, Larry Voth and Irwin J. Caplan, the duly appointed and constituted Trial Board of the Oregon State Bar. The trial lasted until May 26, 1988.

The Accused appeared in person and by Carl R. Neil, his attorney. The Oregon State Bar appeared by and through its counsel, Dean M. Quick and Lynn E. Ashcroft. Terri J. Mundt was duly sworn as reporter, and thereupon proceeded to and did take down, report and reduce into writing all of the testimony and proceedings in this matter. Witnesses were duly sworn, did testify, and exhibits introduced. The Trial Board kept a complete record of all proceedings in this matter, including the evidence and exhibits offered and received. The Trial Board transmits herewith its written memorandum opinion, and its findings of fact, conclusions and recommendations and the complete record of all proceedings before it in this matter.

I FINDINGS OF FACT:

1. GENERAL:

1.1 This matter arose out of the Accused's representation of two clients in what the Accused then thought was a bona fide business deal in which his clients were to receive a commission in return for putting up a letter of credit in connection with an international oil transaction. It appears from the evidence that what in fact was going on was an elaborate fraud. It is unclear from the evidence who were all of the conspirators in the fraud, but it is clear that the victims were the Accused's client, Fred Devine Diving & Salvage, Inc., (FDD&S) and the Accused.

1.2 On November 21, 1983, the Accused was contacted by telephone by R.S. Michel (Michel) to obtain the Accused's assistance in obtaining a letter of credit to guarantee the seller's performance in an oil transaction in which one of Michel's companies was serving as broker. The Accused was in Hawaii at the time on business. The Accused took some brief notes of his conversation with Michel

and advised Michel that they would meet the following week when the Accused returned to Portland. The Accused had previously represented Michel in connection with litigation and other legal matters arising out of the sale of United Medical Laboratories, which Michel had owned; the Accused had also represented Michel in other matters covering a span of several years.

1.3 Earlier, in 1983, Michel had approached the Accused about obtaining a letter of credit for an oil transaction in which the Accused's law firm would be providing the letter of credit. Papers were drawn up by the Accused (or by a member of the Accused's law firm under his direction) setting forth the proposed terms of the contract between Michel and the Accused's firm, but the deal was never made. The Accused then referred Michel to Dillingham, another client of the Accused, who he thought might be interested in acting as the surety. The Accused later learned through R.D. Turner (Turner), an employee of Michel, that Dillingham did serve as surety. That transaction reportedly involved oil from South America.

1.4 On November 28, 1983, the Accused met with Michel and Turner and obtained more information concerning the proposed transaction. What Michel and Turner basically wanted from the Accused was a client willing and able to put up an irrevocable letter of credit of \$500,000 to back the seller's performance in a very complex international oil transaction involving the purchase of huge amounts of Saudi Arabian oil. Michel was to be a broker in the transaction; and in return for finding the party to put up the \$500,000 letter of credit, Michel was to receive fifteen cents per barrel commission. Michel proposed that Michel would retain seven cents per barrel of the commission and the party actually providing the letter of credit would receive the other eight cents. Michel proposed that the Accused was to receive two cents per barrel from each party's side of the deal (for a total of four cents per barrel) for doing all of the legal work to set up the letter of credit and administer the contract (with respect to the interests of Michel and the party providing the letter of credit) and collect and divide the fifteen cents per barrel commission amongst all of the parties entitled to a share.

1.5 On November 28th, and continuing on November 29th, the Accused continued to obtain information concerning the structure of the transaction. The basic transaction was to be as follows:

1.5.1 Superport Oil Corp. ("Superport") had a contract (Exhibit 5018a) with Petroex Trading Ltd. ("Petroex") under which Superport was to sell Petroex 500,000 barrels of oil a day for 25 days per month at \$27.40 per barrel; the contract was for a minimum period of three months with renewal provisions which could extend the contract for up to three years.

1.5.2 Superport was to obtain the oil pursuant to a contract with the Petroleum Ministry of Saudi Arabia ("Petromin"). (The Accused asked for a copy of the contract between Superport and Petromin but was told that [it] was not customary for the contents of the contract to

be disclosed to third parties for fear that others would somehow take advantage of the information.)

1.5.3 Superport was to provide a bond to Petroex in the sum of \$500,000, in the form of an irrevocable letter of credit, from a "world-class bank" to cover Petroex's costs, including the cost of Petroex's letter of credit for the purchase price of the oil, in the event Superport did not perform as agreed. (The Accused was told that it was customary for the letter of credit to be put up by an independent third party.) The letter of credit was to be callable by Petroex upon its unilateral assertion that Superport had breached the contract.

1.5.4 After Superport's \$500,000 letter of credit was in place, Petroex was to issue its letter of credit for \$54,800,000 to Superport to cover the first delivery of 2,000,000 barrels. Once Petroex's letter of credit was obtained, Superport was to assign the letter to Petromin; Superport had three days from the date of issue of Petroex's letter in which to obtain the delivery information (referred to in the testimony as the "lift and stem numbers") from Petromin as to where and when the oil would be delivered.

1.5.5 When Petromin issued the lift and stem numbers it would also issue a letter of credit to Superport for approximately two percent of the price of the oil (\$1,080,000) which in turn would be assigned to the party who had provided the \$500,000 letter of credit for Superport. This process would be repeated every four days as the oil was delivered. There was only to be a three day "window of risk" in which the letter of credit for \$500,000 was vulnerable before it would in theory be covered by the bond from Petromin; but this three-day risk period would apply to each time a sale of an additional 2,000,000 barrels was due. Superport was to have obtained the letter of credit for \$500,000 by December 1, 1983.

1.6 After the Accused believed he understood the transaction, the Accused approached his law partners and then two other clients about putting up the \$500,000 letter of credit for Superport, but all declined interest. The Accused then approached FDD&S, who the Accused also represented, to see if it was interested in providing the letter of credit. The Accused knew that FDD&S had the available cash because it had recently received payment of a multi-million dollar salvage award.

1.7 At that time, the board of directors of FDD&S was composed of the daughters of the founder: Dixie Stambaugh, Bonnie Pfannensteil, and Betty Riley (hereinafter collectively referred to as the "Devine Sisters"). They and Captain Reino Mattila were the shareholders of FDD&S. Late on the afternoon of November 29, 1983, the Accused discussed the proposed transaction with Mrs. Stambaugh; she asked the Accused to explain the transaction to John Grossness, a CPA working as a part-time employee and comptroller of FDD&S. Thereafter, during the evening of November 29th and the morning of November 30, 1983, the Accused had telephone conversations with John Grossness,

each of the Devine Sisters, and Donald Pfannensteil (Bonnie Pfannensteil's husband), in which the Accused explained, or attempted to explain, the details of the transaction. (What was allegedly said or not said during those telephone conversations is the bases of many of the Bar's complaints against the Accused.) The Accused was first told that FDD&S would not provide the letter of credit because Mrs. Stambaugh was opposed; early the next morning he was informed that FDD&S would put up the letter of credit.

1.8 Two meetings were held on November 30, 1983, at which the Accused explained the transaction in greater detail and the decision was made to proceed. (As with the telephone conversations the night before, what was allegedly said or not said at those meetings is a large portion of the Bar's case against the Accused.) In the afternoon of November 30, 1983, FDD&S pledged a certificate of deposit to the U.S. National Bank which in turn issued the letter of credit in conformance with the contract between Superport and Petroex.

1.9 Shortly after the letter of credit was issued, a dispute arose between Petroex and Superport, with Superport claiming the Petroex's letter of credit for \$54,800,000 was not in conformance with the contract, and Petroex claiming that Superport had failed to provide shipping information as required. Shortly before Christmas, 1983, Petroex claimed default on the \$500,000 letter of credit, and the U.S. National Bank paid on the letter of credit as demanded.

1.10 The Accused, at the time the letter of credit was called, thought that Petroex had acted in bad faith and that the letter had been called wrongfully. The Accused sought and got the permission of FDD&S to pursue arbitration to recover the funds. In connection with the Accused's efforts to commence arbitration, the Accused sought an alliance with Superport, whom the Accused at that time believed was not in breach of the contract.

2. FIRST CAUSE OF COMPLAINT: The First Cause claims a conflict of interest in the Accused's representation of FDD&S and R.S. Michel's companies, Marine Trading Company and/or Marine Recovery Company. With respect to the First Cause, the Trial Panel makes the following findings:

2.1 The Accused had previous attorney-client relationships with R.S. Michel as well as the companies he controlled. The Accused had also previously represented FDD&S and two of the Devine Sisters. The Accused did undertake to represent both FDD&S and Marine Trading Company and/or Marine Recovery Company.

2.2 The letter of December 5, 1983, giving consent to the dual representation was signed by Bonnie Pfannensteil and Dixie Stambaugh on December 5, 1983, which was after the letter of credit was issued. The letter was never signed by Betty Riley and R.S. Michel. R.D. Turner signed an

altered version of the document on behalf of Marine Recovery Company in May, 1984. However, R.S. Michel was the owner of and in actual control of both Marine Trading Company and Marine Recovery Company and had verbally consented to the dual representation from the beginning. FDD&S had also verbally agreed that the Accused could represent both sides before the letter of credit was issued.

2.3 While the Accused did obtain consent from both sides prior to entering into the transaction, the consent, with respect to FDD&S, was not given with full appreciation of the consequences of the Accused's dual representation, especially with respect to issues dealing with the formation of the contract as between FDD&S and Michel. Also, it was not obvious that the Accused could adequately represent both sides.

2.3.1 The Devine Sisters, except in matters dealing with the marine salvage business, were not sophisticated and knowledgeable business persons. They were heavily dependent upon the Accused for advice and counsel, which the Accused well knew or should have known, including any questions as to whether dual representation was appropriate. The evidence is clear that none of the principals of FDD&S completely understood the proposed transaction and in particular the risks inherent in it. This transaction was brought to FDD&S by the Accused by reason of the request of Michel that the Accused contact some of his other clients to find someone interested in putting up the letter of credit.

2.3.2 R.S. Michel was a very experienced business man who had (or at that time appeared to have) prior experience dealing in international oil transactions. Michel and/or his associate, R.S. Turner, appeared to have detailed knowledge concerning the merits of the transaction between Superport and Petroex as well as the possible risks.

2.3.3 While FDD&S and Michel had a unity of interest in seeing the contract performed once the letter of credit was provided, FDD&S and Michel had rather obvious conflicting interests in questions dealing with the formation of their venture, and in particular whether Michel should share in the risk of loss. Questions of a similar nature had been raised when Michel had proposed an earlier transaction in which the Accused's firm was to be involved (see Exhibit 4011). While there is no evidence as to whether Michel would have agreed to share the risk with FDD&S, or indemnify FDD&S, or make any other concessions, it is clear that such issues were never raised. The Accused's dual representation of both parties placed the Accused in no position to raise such issues.

3. **SECOND CAUSE OF COMPLAINT:** The Second Cause claims the Accused entered into a business transaction with his clients without adequate disclosures or consent. With respect to the Second Cause, the Trial Panel makes the following findings:

3.1 At all times, the Accused believed himself to be rendering legal services and held himself out to have an attorney-client relationship with FDD&S and Michel.

3.2 All of the principals of FDD&S who testified believed the Accused was serving as an attorney for the parties in the transaction.

3.3 The Accused did not go into business, or attempt to go into business, with any of the participants in the contemplated transaction.

4. **THIRD CAUSE OF COMPLAINT:** The Third Cause of Complaint, which is stated in the alternative to the Second Cause, claims the Accused contracted for a clearly excessive fee. With respect to the Third Cause, the Trial Panel makes the following findings:

4.1 The Accused's fee, in theory, if the oil contract ran for the full three years and for the maximum number of days per month was to be \$500,000 per month, and \$18,000,000 for the entire three-year span of the contract. The Accused, Michel, and the principals of FDD&S were aware of the magnitude of the potential fee.

4.2 None of the Accused's clients objected to the fee at the time the transaction was being formed.

4.3 The Accused and his clients contemplated that the scope of the Accused's duties, if the transaction had progressed as planned, would be substantial and continuing, to include the monitoring of the transactions on behalf of the Accused's clients, the collection and division of their respective portions of the commission, as well as work dealing with the tax and other legal aspects of dealing with the money after it was received.

4.4 On examining the factors to be considered in finding whether a fee is reasonable, the Trial Panel finds as follows:

4.4.1 The time and labor required to perform the legal services contemplated by the parties would have been very substantial, and would have gone far beyond the original setting up of the letter of credit from FDD&S. In particular, there was a commitment to time, basically open-ended, to make sure that every aspect of Superport's performance as to each shipment (approximately every four days) was being performed so as to prevent the calling of the FDD&S letter of credit. As subsequent events amply demonstrated, the Accused was taking on a very heavy responsibility, and that would have been true even if all of the parties to the contract had performed as the Accused then thought they would.

4.4.2 As to the fees customarily charged for such work, no evidence was presented.

4.4.3 As to the amount involved and the results obtained, if the Accused had been entitled to a fee of \$18,000,000 it would only be by reason of his clients having received, in the aggregate,

\$49,500,000, net of his fee, which would not have been possible but for the Accused putting the two clients together and making the deal happen.

4.4.4. The time limitations involved in putting the transaction together in the first place, as well as the continuous monitoring that was going to be required, would have entitled the Accused to a substantial fee if the deal had gone as planned.

4.4.5 The Accused had a long-term professional relationship with Michel. The Accused's professional relationship with FDD&S was of fairly short duration, but the scope of the relationship went beyond the mere providing of legal services and into the realm of being a close confidant and advisor to at least two of the Devine Sisters on many aspects of the administration of FDD&S. It was the Accused who basically counseled FDD&S to do the deal; if that had turned out to be good advice, the Accused would have been entitled to be compensated handsomely.

4.4.6 While the Accused had no experience in international oil transactions, the Accused's overall experience, reputation and ability was such that he would have been entitled to a substantial fee. (The Trial Panel notes that the Accused's reputation and ability was such that, when the deal went sour, the Accused and his error were given considerable media attention.)

4.4.7 The fee was definitely contingent; the Accused in fact never received any payment nor claimed any right to payment.

5. FOURTH CAUSE OF COMPLAINT: The Fourth Cause alleges that the Accused undertook to represent both Superport and FDD&S in pursuing arbitration under the contract between Petroex and Superport without the consent of FDD&S. With respect to the Fourth Cause, the Trial Panel makes the following findings:

5.1 The Accused did undertake to represent both Superport and FDD&S, but only for the limited purpose of trying to get arbitration proceedings underway quickly.

5.2 At the time the Accused took such action he reasonably believed he had the consent of FDD&S by reason of the meeting of January 20, 1984, in which he was instructed to do whatever was necessary to get FDD&S's money back.

5.3 The Accused reasonably believed that Petroex had breached the contract and that FDD&S's interest was best served by joining with Superport to prove that breach.

5.4 The Accused was going to be a key witness in any litigation between Superport and Petroex, so he knew he had to withdraw as counsel for both FDD&S and Superport as soon as he arranged for counsel in California to represent FDD&S and Superport.

6. FIFTH CAUSE OF COMPLAINT: The Fifth Cause of Complaint alleges that the Accused improperly entered into a business transaction with Michel, or his corporate nominee, in connection

with the cost of an additional bond by Superport. With respect to the Fifth Cause, the Trial Panel makes the following findings:

6.1 The letter of credit for \$54,800,000 that was to be issued from Petroex to Superport to cover the purchase price of the oil was non-transferable. Superport insisted that the letter had to be assignable in order to assign it to Petromin. There was an additional cost to make the letter of credit assignable which Superport was unwilling to pay.

6.2 Michel and the Accused agreed to absorb the additional cost out of their respective shares of the fees each was to receive. Other than this accommodation, there was no change to the agreements or the relationships that then existed as between Michel, the Accused and FDD&S.

6.3 The Accused did not enter into business with Michel or one of Michel's corporations; this was an agreement between attorney and client to adjust a fee to assist the client in consummating the deal.

7. SIXTH CAUSE OF COMPLAINT: The Sixth Cause alleges the Accused undertook to represent a client in a matter which the Accused was incompetent to handle; the second part of the same Cause alleges that the Accused undertook to handle the matter without adequate preparation. The Accused admits handling the matter without adequate preparation, but denies the incompetency charge. With respect to the portion of the Sixth Cause dealing with the incompetency charge, the Trial Panel makes the following findings:

7.1 The Accused had no prior experience in dealing with international oil transactions.

7.2 The Accused neither associated [with] experienced counsel or sought to consult with a lawyer experienced in the field.

7.3 The Accused relied on persons who had a financial interest in the deal to give him a basic understanding of how these kinds of deals typically worked. There were basic parts of the transaction that an attorney competent and experienced in the field would have quickly spotted as very unusual and suspect (for example, the quantities of oil, the fact that Superport refused to divulge its contract with Petromin, the fact that Superport was reselling the oil to Petroex) (see deposition of Wilfred Tapper, Exhibit 4033).

7.4 While the Accused is a very experienced and able practitioner in the areas of law in which he frequently practices, the Accused was not competent to handle this transaction.

8. SEVENTH CAUSE OF COMPLAINT: The Seventh Cause alleges the Accused counseled the Devine Sisters to divert the anticipated profits of the oil transaction away from FDD&S in detriment to the fourth shareholder and in evasion of income tax laws. With respect to the Seventh Cause, the Trial Panel makes the following findings of fact:

8.1 The Accused suggested to one or more of the Devine Sisters that they may want to consider making a distribution of the contract out of FDD&S, for the benefit of all of the shareholders, and form an "offshore corporation" for the purpose of avoiding U.S. income taxes. The Accused's suggestions were totally misunderstood by the Devine Sisters.

8.2 The Accused had two members of his firm do preliminary research on lawful means of tax avoidance through the use of an "offshore corporation" in which to channel the profits.

8.3 The Accused discussed the proposal with John Grossness, FDD&S's CPA; Grossness understood the Accused only to be suggesting a lawful device for tax avoidance for all of the shareholders.

8.4 The Accused counseled no illegal or fraudulent acts.

9. EIGHTH CAUSE OF COMPLAINT: The Eighth Cause of Complaint alleges the Accused knowingly misrepresented the risk of the transaction to FDD&S at the time the deal was made and then lied in his deposition and to the Bar investigators as to what the Accused had originally told his clients. With respect to the Eighth Cause, the Trial Panel makes the following findings:

9.1 While the Accused did not understand the true risks of the transaction at the time, the Accused did attempt to explain the risks accurately as he then saw them.

9.2 The Accused made no knowing misstatements in either his deposition or during the Bar's investigation.

9.3 The persons to whom the misrepresentations were allegedly originally made, Bonnie Pfannensteil, Donald Pfannensteil, Dixie Stambaugh, Betty Riley, and John Grossness evidenced in their testimony that none had a thorough understanding of the transaction (as the Accused then understood it) at the time the deal was made. John Grossness, on whom the Devine Sisters were relying heavily to counsel them on the transaction (in addition to the Accused), admitted that he "tuned out" the Accused's explanations of the deal because he (Grossness) was opposed to the transaction. None of the Bar's witnesses who were apparently present for the Accused's most comprehensive explanation on the morning of November 30th attended the entire meeting. All of the Bar's witnesses showed material gaps in their recollection on what was said and not said during the telephone conversations on the evening of November 29th, or in the meetings of November 30th. (This finding applies to all of the Bar's Causes of Complaint in which the Bar claims the Accused made various misrepresentations.)

10. NINTH CAUSE OF COMPLAINT: The Ninth Cause of Complaint alleges that the Accused engaged in deceit by altering a document and then allegedly attempting to conceal the fact that it had been altered. With respect to the Ninth Cause, the Trial Panel makes the following findings:

10.1 The document in question, a letter of December 5, 1983, was prepared by the Accused, shortly after the letter of credit was issued by FDD&S, to document that he had the consent of both FDD&S and Michel to represent both.

10.2 The version signed by Bonnie Pfannensteil and Dixie Stambaugh had a signature block to be signed by R.S. Michel "President and Individually" for Marine Trading Company (Exhibit 4010). The Accused then believed, in error, that Marine Trading Company was the corporation through which Michel intended to deal. The Accused sent a copy to Michel for his signature at the time the letter was signed by Pfannensteil and Stambaugh, but Michel failed to sign it.

10.3 The Accused did not discover that Michel had failed to sign and return a copy until a meeting in May, 1984, with Michel, R.D. Turner, and James McCaffrey, who then represented Michel in the litigation then pending. The Accused was informed at the meeting that the corporation (which Michel also owned and controlled) through which he had intended to deal in the oil transaction was Marine Recovery Company, of which R.D. Turner, Michel's associate, was president. The Accused, at that meeting, then had his secretary white out the name of Marine Trading Company and R.S. Michel's name and insert the name of Marine Recovery Company with R.D. Turner's name under the signature line. The words "President and Individually" were not changed or was the body of the letter which still referred to Marine Trading Company (Exhibit 4090). R.D. Turner signed the second version.

10.4 The Accused supplied both versions of the document in response to discovery requests during the malpractice litigation, and freely and accurately testified as to the circumstances of its alteration during his deposition.

10.5 The Accused's purpose in altering the document was to confirm the undisputed fact that he had represented both FDD&S and Michel's corporation with their consent. The Accused engaged in no act of fraud, dishonesty or deceit.

11. TENTH CAUSE OF COMPLAINT: The Tenth Cause of Complaint alleges the Accused misrepresented his experience in oil transactions to his clients. With respect to the Tenth Cause, the Trial Panel makes the following findings:

11.1 While the Accused did mention that he had put R.D. Turner, on behalf of Michel, in contact with a subsidiary of Dillingham on a prior oil deal, the Accused did not claim that he had represented Dillingham in the prior transaction.

11.2 The Accused did not represent to his clients that he had prior experience in transactions similar to the one involving FDD&S, Petroex and Superport.

11.3 The Accused did not knowingly misrepresent his experience to his clients, nor did the Accused knowingly make any false statements in his subsequent deposition or in the Bar's investigation concerning this issue.

12. **ELEVENTH CAUSE OF COMPLAINT:** The Eleventh Cause of Complaint alleges the Accused knowingly misrepresented that his fee in the matter was the customary fee when the Accused did not know what a customary fee would be. With respect to the Eleventh Cause, the Trial Panel makes the following findings:

12.1 There appears to be no credible testimony as to whether there was any discussion before the letter of credit was issued by FDD&S concerning the reasonableness of the Accused's proposed fee. There is no evidence that the Accused made any representation before the letter of credit was issued that his fee was usual or customary.

12.2 The only evidence that the Accused ever made such a statement is the testimony of Freddyryck Barfuet concerning the events of a meeting of January 20, 1984, which is after the letter of credit was issued. It is unclear from Mr. Barfuet's testimony whether the Accused's statement referred to the entire [\$.15/barrel brokerage fee, or the Accused's legal fee.

13. **TWELFTH CAUSE OF COMPLAINT:** The Twelfth Cause of Complaint alleges the Accused agreed to accept a legal fee from R.D. Turner in connection with this matter when the Accused had no attorney-client relationship with Turner. This Cause is in the alternative to the Ninth Cause of Complaint. With respect to the Twelfth Cause, the Trial Panel makes the following findings:

13.1 The findings of the Ninth Cause are incorporated here.

13.2 There is no evidence that Turner, personally, agreed to pay the Accused any fee for services in this matter or that the Accused agreed to accept a fee from Turner.

14. **THIRTEENTH CAUSE OF COMPLAINT:** The Thirteenth Cause of Complaint alleges that the Accused lied in his deposition and in response to inquiries from the Bar concerning the length of time FDD&S had to consider going into the transaction before the letter of credit was issued. With respect to the Thirteenth Cause, the Trial Panel makes the following findings:

14.1 The Accused did originally misrepresent in his deposition and to the Bar that the principals of FDD&S had more than one day to consider the transaction. The misrepresentation was innocent.

14.2 The mistake arose from the memorandum of facts (Exhibit 4016) the Accused prepared in 1984 in anticipation of California counsel representing FDD&S in the arbitration. By the time the Accused prepared the memorandum, the Accused had forgotten that he had been in Hawaii when he was first contacted by Michel about the deal and made the notes dated November 21, 1983. The

Accused made frequent trips to Hawaii in connection with his Maritime practice, so the fact that he had been in Hawaii was not memorable to him.

14.3 The error was discovered by the Accused by having his staff research his travel vouchers. The Accused promptly and voluntarily brought the error to the attention of the Bar and counsel for the malpractice insurers.

II CONCLUSIONS: The Trial Panel reaches the following Conclusions:

15. With respect to the First Cause of Complaint, the conduct of the Accused in representing both FDD&S and Michel (to include his corporations), was unethical and in violation of DR 5-105(A), and the Trial Panel finds the Accused guilty.

16. With respect to the Sixth Cause of Complaint, the Accused has admitted the portion of the charge relating to his lack of adequate preparation [DR 6-101(A)(2)]. The Trial Panel also concludes the Accused is guilty of a violation of DR 6-101(A)(1).

17. With respect to all of the other Causes of Complaint, the Trial Panel finds the Accused not guilty.¹

[Footnote: ⁽¹⁾ In determining the guilt or innocence of the Accused, the Trial Panel has kept in mind that the Accused is entitled to a presumption of innocence and that the Bar must prove its charges by clear and convincing evidence. The Trial Panel is also mindful that some of the charges of which the Accused is acquitted involve serious charges of moral turpitude, and that the Accused, by reason of his prominence in the community and the seriousness of the accusations, received substantial unfavorable publicity when the charges were brought. In fairness to the Accused, the Trial Panel believes the record should show that the basis for the Trial Panel's acquittal on the charges involving moral turpitude is not merely a failure of proof by the Bar, rather, the Trial Panel finds that, by at least a preponderance of the evidence (and as to some charges, beyond any reasonable doubt), the Accused is innocent. (Nothing in these remarks should infer a lesser finding with respect to those charges of which the Accused is acquitted not involving moral turpitude.)]

III RECOMMENDATIONS:

18. In making its recommendations as to sanctions, the Trial Panel finds no factors in aggravation and the following in mitigation:

18.1 The Accused has no prior disciplinary record.

18.2 The Accused had no dishonest motive.

18.3 The Accused acknowledged his error and urged settlement of FDD&S' malpractice claim.

18.4 The Accused made full and free disclosure to the Bar's investigation and took a cooperative attitude toward the proceedings.

18.5 The Accused has the highest character and reputation.

18.6 The Accused has suffered de facto imposition of other penalties and sanctions through his financial loss and negative media coverage.

18.7 The Accused is sincerely remorseful as to the loss and inconvenience he caused his clients.

19. As to the two Causes of Complaint of which the Trial Panel finds the Accused guilty, the Trial Panel recommends that the Accused should receive a public reprimand.

DATED this 19th day of July, 1988.

/s/ John P. Kneeland, Chairperson
John P. Kneeland, Chairperson

/s/ Larry Voth
Larry Voth

/s/ Irwin J. Caplan
Irwin J. Caplan

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|-----------------------------|---|-------------------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct |) | Case Nos. 86-115, 87-76 |
| |) | |
| William Benjamin, |) | |
| |) | |
| Accused. |) | |
| _____ | | |

Bar Counsel: John E. Uffelman, Esq.

Counsel for the Accused: Bradley Littfield, Esq.

Disciplinary Board: Chris L. Mullman, State Chairperson; Jerry K. McCallister, Region 4 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of former DR 1-102(A)(5) [current DR 1-102(A)(4)]; DR 1-103(C); former DR 6-101(A)(1) [current DR 6-101(A)]; former DR 6-101(A)(3) [current DR 6-101(B)]; DR 7-101(A)(2). Sixty day suspension.

Effective Date of Opinion: October 1, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

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|--------------------------------|---|----------------------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Cases No. 86-115, 87-76 |
| |) | |
| William Benjamin |) | OPINION REGARDING |
| |) | STIPULATION FOR DISCIPLINE |
| Accused. |) | AND ORDER |
| |) | |

A stipulation for discipline has been presented to the Regional Chairperson and the State Chairperson of the Disciplinary Board for review pursuant to Bar Rule 3.6(E). The stipulation is intended by the Accused and the Bar to resolve the matter set out in a previously filed complaint by the Bar against the Accused.

The stipulation recites that during the pendency of the proceedings, the Bar and the Accused voluntarily agree to resolution of the proceedings and this stipulation is a product of those negotiations.

The material allegations of the stipulation indicate that the Accused, at all material times, was admitted to the Oregon Supreme Court to practice law in the State of Oregon.

From a review of the stipulation, it appears that the Accused admits the material allegations of the Amended Complaint, a copy of which is attached hereto and incorporated herein as if fully set forth. The Accused has stipulated that his conduct resulted in violations of the following provisions of the Code of Professional Responsibility:

1. Former DR 1-102(A)(5) [current DR 1-102(A)(4)];
2. Former and current DR 1-103(C);
3. Former DR 6-101(A)(1) [current DR 6-101(A)];
4. Former DR 6-101(A)(3) [current DR 6-101(B)];
5. Former and current DR 7-101(A)(2).

Pursuant to the stipulation, the Accused has agreed to a sixty (60) day suspension from the practice of law for having violated the ethical rules specified above.

From the stipulation, it appears that the Accused has no prior record of reprimand, suspension or disbarment, and that the violations occurred during the Accused's first three years of practice. The Accused has voluntarily sought and undergone rehabilitation in order to improve his ability to practice law, including treatment by an industrial psychologist and an advisor employed by the Oregon State

Bar Professional Liability Fund in order to develop more effective office procedures and client case tracking. The Accused has implemented new office practice management and fully expects to abide by the Code of Professional Responsibility to avoid violations in the future.

Pursuant to BR 3.6(e)], the Regional Chairperson and the State Chairperson on behalf of the Disciplinary Board approve the stipulation and the sanction.

NOW, THEREFORE, IT IS ORDERED:

1. The Accused is suspended from the practice of law for a period of sixty (60) days for his violation of the following provisions of the Code of Professional Responsibility:

- A. Former DR 1-102(A)(5) [current DR 1-102(A)(4)];
- B. Former and current DR 1-103(C);
- C. Former DR 6-101(A)(1) [current DR 6-101(A)];
- D. Former DR 6-101(A)(3) [current DR 6-101(B)];
- E. Former and current DR 7-101(A)(2).

2. The Accused is suspended and the suspension shall become effective October 1, 1988. Effectively submitted this 16th day of September, 1988.

/s/ Chris Mullmann

Chris L. Mullmann
State Chairperson

/s/ Jerry K. McCallister

Jerry K. McCallister
Region 4 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

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|--------------------------------|---|------------------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-115; 87-76 |
| |) | |
| William G. Benjamin, |) | STIPULATION FOR |
| |) | DISCIPLINE. |
| Accused |) | |
| |) | |

Comes now William G. Benjamin, attorney at law, and stipulates to the following matters pursuant to Rule of Procedure 3.6(c).

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, William G. Benjamin, 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 Washington, State of Oregon.

3.

At meetings held on March 18, 1987 and October 31, 1987, the State Professional Responsibility Board (SPRB) of the Oregon State Bar authorized formal proceedings to be instituted against the Accused, and directed that a formal complaint alleging a number of violations of the Code of Professional Responsibility be filed against him. A copy of the Bar's Amended Formal Complaint is attached hereto and incorporated by reference herein as Exhibit 1.

4.

The Accused admits his violation of the following standards of professional conduct established by law and by the Oregon State Bar as alleged in the Bar's First Cause of Complaint:

1. Former DR 1-102(A)(5) [current DR 1-102(A)(4)] of the Code of Professional Responsibility;
2. Former DR 6-101(A)(1) [current DR 6-101(A)] of the Code of Professional Responsibility; and

3. Former DR 6-101(A)(3) [current DR 6-101(B)] of the Code of Professional Responsibility.

The Accused admits each of the predicate facts alleged in the Bar's First Cause of Complaint to establish his violation of these standards of professional conduct.

5.

The Accused admits his violations of the following standard of professional responsibility as established by law and by the Oregon State Bar as alleged in the Bar's Second Cause of Complaint:

1. DR 1-103(C) of the Code of Professional Responsibility.

The Accused admits each of the predicate facts alleged in the Bar's Second Cause of Complaint to establish his violation of this standard of professional responsibility.

6.

The Bar's Third Cause of Complaint contains allegations that the Accused engaged in professional misconduct in his handling of two separate matters: the Coulter matter and the Farrar matter. The Accused admits his violation of the following standards of professional responsibility as established by law and by the Oregon State Bar as alleged in the Bar's Third Cause of Complaint arising only from his handling of the Coulter matter:

1. Former DR 6-101(A)(3) [current DR 6-101(B)] of the Code of Professional Responsibility; and
2. DR 7-101(A)(2) of the Code of Professional Responsibility.

The Accused admits each of the predicate facts alleged in the Bar's Third Cause of Complaint to establish his violation of these standards of professional responsibility arising only from his handling of the Coulter matter.

7.

The Bar withdraws its charges against the Accused arising from the Accused's handling of the Farrar matter as alleged in its Third Cause of Complaint.

8.

The Accused admits his violation of the following standard of professional responsibility as established by law and by the Oregon State Bar as alleged in the Bar's Fourth Cause of Complaint:

1. DR 1-103(C) of the Code of Professional Responsibility.

The Accused admits each of the predicate facts alleged in the Bar's Fourth Cause of Complaint to establish his violation of this standard.

9.

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

10.

The violations occurred during the Accused's first three years of practice. The Bar acknowledges that the Accused has voluntarily sought and undergone rehabilitation in order to improve his ability to practice law. He has undergone treatment by an industrial psychologist and has consulted an advisor employed by the Oregon State Bar Professional Liability Fund in order to develop more effective office procedures and client case tracking and otherwise improve his performance of the day-to-day tasks associated with a legal practice. As a result of such counseling, the Accused has implemented new office practice management. The Accused fully expects to abide by the Code of Professional Responsibility and avoid violations in the future.

11.

The Accused agrees to a 60 day suspension from the practice of law for having violated the ethical rules specified herein.

12.

Disciplinary Counsel of the Oregon State Bar and the Accused agree to request that the Oregon State Bar Disciplinary Board order that the Accused's 60 day suspension from the practice of law commence October 1, 1988.

13.

WHEREAS Disciplinary Counsel of the Oregon State Bar submits 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 25th day of August, 1988.

/s/ William G. Benjamin
William G. Benjamin

I, William G. Benjamin, 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 this stipulation are true and correct as I verily believe.

/s/ William G. Benjamin
William G. Benjamin

Subscribed and sworn before me this 25th day of August, 1988.

/s/ J. Bradley
Notary Public for Oregon
My commission expires: 6-12-90

Reviewed by Disciplinary Counsel on the 1st day of September, 1988 and approved by the State Professional Responsibility Board for submission to the Disciplinary Board on the 27th day of August, 1988.

/s/ George A. Riemer
George A. Riemer
Acting Disciplinary Counsel
Oregon State Bar

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|--------------------------|
| In Re: |) | |
| |) | Case No. 86-115; 87-76 |
| Complaint as to the Conduct of |) | |
| |) | AMENDED FORMAL COMPLAINT |
| William G. Benjamin, |) | |
| |) | [Exhibit 1] |
| 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, William G. Benjamin, 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 Washington, State of Oregon.

3.

On or about April 25, 1983, the Accused undertook to represent Viva B. Evans, regarding the probate of her son's estate. A petition for the administration of the estate of Robert Orbison Harms was thereafter filed in May of 1983 by the Accused in Washington County Circuit Court, File No. PE83-0192, naming Viva B. Evans as personal representative. The Accused's responsibility for probating the Harms estate extended for April 25, 1983 through no earlier than December 15, 1986.

4.

Prior to November 28, 1986, the Accused failed to: (1) file a bond with the clerk of the court pursuant to order of the court admitting the case to probate, as required by ORS 113.105; (2) file an inventory of estate property within the mandated time, as required by ORS 113.165; (3) publish on behalf of the personal representative a notice to interested persons, as required by ORS 113.155; (4) publish on behalf of the personal representative a notice to heirs and devisees, as required by ORS 113.145; (5) file on behalf of the personal representative annual accountings of the personal representative's administration of the estate, as required by ORS 116.083; (6) respond to or pay claims

against the estate, as required by ORS 115.135; (7) maintain adequate contact with the personal representative; (8) obtain tax releases from the Oregon Department of Revenue; and (9) distribute the assets and close the estate in a timely manner.

5.

Prior to May 1, 1984, the Accused took from estate funds attorneys fees of \$1,5000 without filing an affidavit, without obtaining the prior approval of the court, and without notice or approval of the personal representative, as required by ORS 116.183.

6.

The Accused opened a bank account entitled "William G. Benjamin, Estate of Robert O. Harms" with the Benjamin Franklin Savings and Loan Association on or about May 11, 1983. The Accused represented himself to employees of the Benjamin Franklin Savings and Loan Association as the personal representative of the estate, rather than as the attorney for the personal representative of the estate. The Accused thereafter failed to respond to the bank's request for copies of court documentation and permitted the account to be frozen by the bank.

7.

The Accused failed to respond in writing to letters from the probate commission dated November 29, 1984, January 4, 1985, and June 18, 1986, requesting status reports on the probate of the Harms estate. A hearing was held on November 28, 1986 to show cause why the personal representative should not be removed for failing to respond to the court's inquiries and failing to administer the estate in a timely manner. Thereafter, the Accused failed to comply with the directions of the court in that he did not by December 15, 1986, the time limit set by the court, file a bond, file an inventory, or file an accounting in the proper form signed by the personal representative. Instead, the Accused filed copies rather than originals, failed to attach vouchers, and failed to show the source of receipts and disbursements, as required by ORS 116.083.

8.

The Accused undertook to act as the attorney for the personal representative in the probate of the Harms estate, the first estate he had ever handled, without adequate knowledge regarding how to handle the probate, without making an attempt to educate himself to obtain the legal knowledge necessary to properly handle the probate, and without preparation reasonably necessary for the representation. The Accused failed to follow the statutory steps required in the probate of the estate and failed to file annual accountings despite requests by the court that he do so. Even after being cited to appear to show cause why the personal representative should not be remove for failure to

timely close the estate and for failure to respond to requests of the court regarding the status of the estate, the Accused continued to fail to take the necessary steps and the steps directed by the court, to complete the manner.

9.

The Accused's neglect and inaction during various stages of the probate of the Harms estate were prejudicial to the administration of justice in that court action beyond that which should have been reasonably required to complete the probate was necessitated by the Accused's conduct.

10.

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

- (1) Former DR 1-102(A)(5) and current DR 1-102(A)(4) of the Code of Professional Responsibility;
- (2) Former DR 6-101(A)(1) and current DR 6-101(A) of the Code of Professional Responsibility;
- (3) Former DR 6-101(A)(3) and current DR 6-101(B) of the Code of Professional Responsibility.

AND, for its SECOND CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

11.

Incorporates by reference as fully set forth herein Paragraphs 1 through 9 of its First Cause of Complaint.

12.

By a letter dated August 29, 1986, General Counsel of the Oregon State Bar notified the Accused that a letter of complaint by Naomi Ringer concerning his conduct as described in the First Cause of Complaint herein had been received. A response from the Accused by September 22, 1986 was requested. When the Accused failed to respond to Ringer's complaint, the matter was referred directly by the Bar to the Washington/Yamhill County Local Professional Responsibility Committee for investigation on October 24, 1986.

13.

On or about November 20, 1986, the Accused failed to bring his file concerning the Harms estate to a meeting with two members of the LPRC as requested. On or about December 16, 1986,

an LPRC investigator contacted the Accused by telephone and requested an opportunity to review the Accused's file and the bank records concerning the Harms estate. The Accused delivered his file to the LPRC shortly thereafter but failed to deliver the bank records as requested.

14.

At the meeting between the Accused and the LPRC held on or about November 20, 1986, the Accused told the LPRC members that he had not taken any attorneys fees from the estate. Thereafter, on November 28, 1986, the Accused told the probate court that he had taken \$1,500 in attorneys fees from the estate without court approval. During a telephone conversation on or about December 16, 1986, the Accused admitted to LPRC investigator Allen Reel that he had taken \$1,500 in attorneys fees from the estate.

15.

While the subject of a disciplinary investigation, the Accused failed to respond fully and truthfully to inquiries from or comply with reasonable requests of the General Counsel's office and the Bar's Local Professional Responsibility Committee, authorities empowered to investigate or act upon the conduct of lawyers. The Accused did not have and did not exercise any applicable right or privilege to justify his failure to fully and truthfully respond to, or cooperate with, the General Counsel's office or the Local Professional Responsibility Committee.

16.

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

- (1) Former and current DR 1-103(C) of the Code of Professional Responsibility

AND, for its THIRD CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

17.

Incorporates by reference as fully set forth herein Paragraphs 1 and 2 of its First Cause of Complaint.

18.

On or about June 28, 1985, the Accused was engaged by Medical Personnel Pool, Inc. ("MPP"), a wholly-owned subsidiary of Personnel Pool of America ("PPA"), to collect a debt of \$1120 owed to MPP by Clark and Marvis Coulter. By a letter dated June 28, 1985 to MPP Administrator Judy Brady, the Accused confirmed his telephone conversation of that date with Brady, set forth his

contingency fee arrangement, and outlined his assessment of the case. By a letter dated July 18, 1985, Assistant Counsel Paige S. Kayfus agreed to the Accused's contingency fee schedule on behalf of PPA and MPP.

19.

In or about November 1985, the Accused was again retained by MPP to collect a debt of \$17,799.62 owed to MPP by Ronald B. Farrar.

20.

By a letter dated November 14, 1985, PPA Legal Assistant Cathynn Calabrese requested a status report from the Accused concerning the Coulter collection account. The Accused failed to respond to Calabrese's request for information. Calabrese again requested a status report from the Accused concerning the Coulter collection account by her letter dated January 28, 1986. The Accused again failed to respond to Calabrese's request for information.

21.

By a note dated February 5, 1986, Brady reported to Calabrese that she had left telephone messages six times for the Accused and visited his office twice at which time she insisted that the Accused meet his commitment to respond to PPA's and MPP's inquiries. The Accused still failed to respond to the requests for information made by his client. By a note dated May 21, 1986, Brady again reported to Calabrese that she had recently contacted the Accused twice but had again failed to receive any response from the Accused.

22.

Calabrese then wrote to the accused on May 28, 1986 requesting a status report concerning both the Coulter and the Farrar collection account cases, but the Accused continued to fail to respond to his client's inquiries.

23.

PPA Law Department Legal Assistant Nancy Bentz noted on her telephone contact report that the Accused was to call back at 1:00 p.m. on June 27, 1986. No notation of a return call was made. The next two notations, dated July 30, 1986 and August 12, 1986, indicate the need to send a letter to the Accused questioning why he had failed to respond to inquiries in both the Coulter and Farrar collection account cases. Bentz next noted on August 19, 1986 that she had sent a second request for a status report on both the Coulter and Farrar collection account cases to the Accused. Bentz' second request was a copy of Calabrese's May 28, 1986 letter to the Accused stamped "Second Request" and dated August 19, 1986. The Accused again did not respond to his client's request for information.

24.

After undertaking to represent MPP in collection of the Coulter account in or about June or July 1985, the Accused determined that he was unable to locate the debtor despite the fact that his client had provided him with addresses for the debtor. Thereafter, the Accused failed to work further on the Coulter collection account case or to take any steps to collect the debt on behalf of his client. The Accused failed to notify his client that he had ceased work on the Coulter collection account case.

25.

After undertaking to represent MPP in collection of the Farrar account in or about November 1985, the Accused filed an appearance in the estate proceeding of the debtor. In or about June 1986, Mike Sandoval, the attorney for the Farrar estate, reported to the Accused the contents of a telephone call he had had with Brady in which Brady advised that the Accused had been discharged from employment in the Farrar account. Brady does not recall the telephone conversation with Sandoval.

26.

During a telephone conversation with Bentz on or about October 2, 1986, the Accused indicated that he did not recall the Coulter collection account case, but insisted that he continue his representation of MPP in the Farrar collection account case. The Accused indicated to Bentz that he would call her on Monday, October 6, 1986 with details regarding the status of the Farrar collection account case. The Accused failed to follow through with a return call to Bentz as promised. Due to the Accused's failure to call her as promised, Bentz left telephone messages on or about October 10, 1986 and November 7, 1986 requesting that the Accused call her when the Accused failed to respond. MPP Associate Counsel Raphael D. Umansky sent the Accused a certified letter dated November 25, 1986 describing the Accused's failure to communicate despite repeated requests that he do so and demanding immediate action by the Accused on both collection accounts or a written explanation of his refusal to do so within 10 business days of receipt of the letter. On or about December 12, 1986, the Accused telephoned Bentz in response to Umansky's November 25, 1986 letter and advised that he was talking with the representative of the Farrar estate.

27.

By a letter dated March 9, 1987, Bentz requested a status report from the Accused concerning both collection account cases. The Accused failed to respond to Bentz' request for information. Bentz left telephone messages for the Accused on or about March 30, 1987 and April 20, 1987, but the Accused failed to return her calls. On or about May 5, 1987, Bentz told the Accused's secretary that if the Accused had referred the cases to another attorney, the Accused should call Bentz to inform

her that he had done so if the Accused had not referred the cases to another attorney, Bentz would be doing so and that the Accused should do nothing. When the Accused failed to respond, Bentz left another message for him to do so on or about May 19, 1987. When the Accused again failed to respond to his client's request for information, Umansky filed a complaint about the Accused with the Oregon State Bar on July 6, 1987.

28.

By failing to take steps necessary to collect on both the Coulter and Farrar collection accounts from June or July 1985 and November 1985, respectively, when he was retained by MPP to do so, until May 1987, when he was told to do nothing by his client, the Accused neglected legal matters entrusted to him.

29.

By determining to take no further action on the Coulter collection account due to his perceived inability to locate the debtor or a representative of the debtor and by failing to notify his client of his decision despite repeated requests for status reports from his client, the Accused intentionally failed to carry out a contract of employment entered into with MPP for professional services.

30.

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

1. Former DR 6-101(A)(3) and current DR 6-101(B) of the Code of Professional Responsibility; and
2. Former and current DR 7-101(A)(2) of the Code of Professional Responsibility.

AND, for its FOURTH AND FINAL CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

31.

Incorporates by reference as fully set forth herein Paragraphs 1 and 2 of its First Cause of Complaint and Paragraphs 18 through 27 of its Third Cause of Complaint.

32.

On July 6, 1987, a complaint concerning the Accused as described in the Third Cause of Complaint herein was filed with the General Counsel's office of the Oregon State Bar by Raphael D. Umansky, Associate Counsel for PPA. On July 8, 1987, a letter was sent to the Accused from the General Counsel's office enclosing a copy of Umansky's letter of complaint and requesting a response

from the Accused by July 29, 1987. After receiving no response from the Accused, the General Counsel's office referred the matter to the Washington/Yamhill County Local Professional Responsibility Committee on August 10, 1987 for investigation.

33.

On or about August 26, 1987, LPRC investigator J. Davis Walker addressed certain interrogatories to the Accused and requested file documents from the Accused within ten days. The Accused failed to provide a written response to Davis' request for information.

34.

The Accused admitted to LPRC investigator Walker that he had not responded to the July 8, 1987 letter by the General Counsel's office of the Oregon State Bar and gave as his reasons for failing to do so that his printing machine had broken down, his secretary had left, and he had moved his office to another room.

35.

While the subject of a disciplinary investigation, the Accused failed to respond fully and truthfully to inquiries from or comply with reasonable requests of the General Counsel's office and the Bar's Local Professional Responsibility Committee, authorities empowered to investigate or act upon the conduct of lawyers. The Accused did not have and did not exercise any applicable right or privilege to justify his failure to fully and truthfully respond to, or cooperate with, the General Counsel's office or the Local Professional Responsibility Committee.

36.

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

1. Former and current DR 1-103(C) 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 16th day of December, 1987.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
Executive Director

IN THE SUPREME COURT
OF THE STATE OF OREGON

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| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 86-109 |
| |) | |
| Daniel W. Goff and |) | |
| Robert W. Smith, |) | |
| |) | |
| Accused. |) | |
| |) | |

Bar Counsel: James H. Anderson, Esq.

Counsel for the Accused: David L. Jensen, Esq. and Larry O. Gildea, Esq.

Trial Panel: K. Patrick Neill, Trial Panel Chairperson; James W. Spickerman; and Janet B. Amundson (public member)

Disposition: Accused found not guilty of violation of DR 1-103(C). Dismissal.

Effective Date of Opinion: October 28, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--|---|-----------------|
| In Re: |) | |
| |) | Case No. 86-109 |
| Complaint as to the Conduct of |) | |
| |) | |
| Daniel W. Goff and |) | <u>OPINION</u> |
| Robert J. Smith, |) | |
| |) | |
| Accused. |) | |
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This matter came before the Trial Panel of the Disciplinary Board for trial on September 13, 1988. The Oregon State Bar appeared through its counsel, James Anderson. The accused appeared in person and through their attorney, David Jensen. Also in attendance was Larry Gildea, attorney for the accused and a witness in the proceeding. The Bar alleges that the accused violated DR 1-103(C), which provides as follows:

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, 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.

The accused deny that they violated DR 1-103(C).

The parties presented evidence and argument. The Panel has considered all the evidence and arguments and, based thereon, renders this OPINION.

FACTS

The Bar notified the accused by its letter of June 2, 1986 of the underlying complaint of Randy Albert McCain. That letter enclosed the four page complaint of Mr. McCain and requested cooperation from the accused as follows: "This office would appreciate your cooperating by responding to this complaint by June 23, 1986."

Prior to and at the time of the Bar's letter regarding the complaint of Mr. McCain, Mr. Smith represented Robin McCain, wife of Randy Albert McCain, in a dissolution proceeding. Among the issues in that dissolution was custody of minor children. Mr. Goff never represented either Mr. or Mrs. McCain.

Upon receipt of the letter from the Bar, both accused were concerned about potential conflicts of interest and related duties respecting the attorney-client privilege and their affect on their ability to

respond fully to the inquiry from the Bar. Mr. Smith and Mr. Goff immediately sought the counsel of Mr. Gildea in that regard, both in connection with their ethical duties and in connection with potential exposure to claims against them by Mrs. McCain should they make disclosures that could affect Mrs. McCain in her dissolution action. Mr. Gildea is experienced in such matters.

Contemporaneous with these events, an issue had arisen between the accused and the Bar regarding their status as a partnership. The Bar had questioned the propriety of the letterhead that they used in connection with their practice. The accused and Mr. Gildea concluded that Mr. Goff and Mr. Smith were or could be deemed to be a defacto partnership.

As a result, Mr. Gildea concluded that Mr. Goff as well as Mr. Smith had potential exposure for disclosing information regarding Mrs. McCain. He advised both accused not to disclose information regarding Mr. Goff's relationship with Mrs. McCain without a formal determination that would protect them from later complaint from any source regarding such disclosure, unless Mrs. McCain consented to such disclosure with advice of independent counsel. Mrs. McCain refused to give such consent.

Based upon this advice, Mr. Goff responded to the Bar's inquiry letter by his letter of June 17, 1986. Mr. Smith responded to that letter by his letter of June 18, 1986. Their responses were reviewed and approved by Mr. Gildea. Both responses were given within the time requested by the Bar.

Subsequent to the initial responses of the accused, further communication with the Bar on this matter was through Mr. Gildea as attorney for both. There were numerous letters between the Bar and Mr. Gildea in connection with the position taken by Mr. Gildea and the accused that attorney-client privilege issues were raised by the requests relating to Mr. Goff's relationship with Mrs. McCain, and that therefore they would refuse to make such disclosures until the privilege issues were resolved. There was never any attempt to conceal the position being taken by the accused. In fact, there are lengthy letters from Mr. Gildea attempting to make his position on that question clear.

During the Bar's ensuing investigation of the underlying complaint, communications occurred between Mr. Gildea on behalf of the accused and representatives of the Bar as to procedures available to obtain a determination on the privilege issue. Among the alternatives discussed was subpoenaing the accused to give sworn statements, the accused would refuse to answer questions in dispute based upon advice of counsel, and the Bar would then take the matter to an appropriate judge for a determination. Mr. Gildea and the accused were agreeable to such an approach. Subsequently a mutually agreeable time was set for taking sworn statements from the accused. A transcript of those

statements is in evidence. The only question that was not answered by either accused was the following question put to Mr. Goff:

Q. Did you have an intimate or sexual relationship with her during this period of time?

Mr. Gildea: I'll direct the witness not to answer that question.

Mr. Smith did not refuse to answer any questions put to him.

Consistent with the communications that had occurred up to that time, the accused reasonably expected that if the Bar still intended to pursue with the accused the question of Mr. Goff's relationship with Mrs. McCain, it would take the steps necessary to bring the issue before a judge. Instead, the accused were notified that the Bar was commencing disciplinary proceedings not based upon the underlying claims of Mr. McCain but based upon the contention that the Accused failed to cooperate with the Bar.

In the meantime, the Bar apparently obtained the information they needed to make a determination on the underlying complaint of Mr. McCain from a sworn statement obtained from Mrs. McCain.

The Bar contends that the accused failed to cooperate in the investigation by not providing more complete information than was contained in their initial letters responding to the Bar's June 2, 1986 inquiry, and by thereafter refusing to provide additional information upon further inquiry from Bar representatives. The accused contend that they did cooperate with the Bar by promptly responding to the Bar's initial inquiry and by thereafter communicating openly and candidly regarding their dilemma arising from the attorney-client privilege issue that they and their counsel perceived to exist. They also contend that throughout this proceeding they acted in good faith based upon advice of counsel.

FINDINGS

The Panel finds that the accused did not violate DR 1-103(C) in that they did not fail to cooperate with the Bar. What constitutes failure to cooperate is not defined with specificity. The Panel is of the opinion that failure to cooperate requires far more than has been shown in this case. The reported cases all appear to involve some degree of gross neglect in responding to inquiries. There is no hint of that in this case. The Bar concedes that there is not indication that anything occurred in this case other than a good faith, bonafide dispute regarding the affect of the attorney-client privilege and that the accused were acting on the advice of counsel. The Panel is of the opinion that some degree of scienter is required to establish the violation charged. None was established here and in fact the Bar concedes that none existed.

The Bar also contends that the privilege does not apply as a result of the affect of DR 4-101(C)(4), which allows an attorney to reveal confidences or secrets necessary to defend himself. The Bar contends that that provision applies in this case in that the accused were entitled to reveal any confidences in order to defend themselves from the claim of noncooperation. We do not need to reach this issue as a result of what is discussed above. We are convinced that this issue is at least sufficiently unclear to support a good faith, bonafide belief that a privilege issue remains. Furthermore, the Panel is of the opinion that the Bar is wrong in its application of DR 4-101(C)(4). If it applied as the Bar suggests, the privilege would never protect confidences in a disciplinary proceeding since reliance on it could always be used to support a claim of noncooperation, thereby creating the need to disclose such confidences in defense of that claim. We do not believe that is the intended result of DR 4-101(C)(4).

CONCLUSION

1. The accused reasonably responded to the initial inquiry from the Bar within the time period requested, and thereafter communicated in good faith.
2. Any failure of the accused to disclose requested information was based upon a bonafide, good faith perception of a conflict with the attorney-client privilege, and upon advice of counsel.

The Panel is of the opinion that the Bar has not established the violations alleged and that the Complaint against the accused should be dismissed.

Dated this 29th day of September, 1988.

/s/ James W. Spickerman

James W. Spickerman

/s/ Janet B. Amundson

Janet B. Amundson

/s/ K. Patrick Neill

K. Patrick Neill, Chair

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 87-88 |
| P. Herbert Schmidt, |) | |
| |) | |
| Accused. |) | |
| _____ |) | |

Bar Counsel: Stephen P. Rickles, Esq.

Counsel for the Accused: Frank H. Hilton, Esq.

Disciplinary Board: Chris L. Mullman, State Chairperson; and Nancy Tauman, Region 6 Chairperson

Disposition: Stipulation for discipline. Violation of DR 3-101(B). Public Reprimand.

Effective Date of Opinion: December 7, 1988

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|----------------------------|
| In Re: |) | |
| |) | Case No. 87-88 |
| Complaint as to the Conduct of |) | |
| |) | OPINION REGARDING |
| P. Herbert Schmidt, |) | STIPULATION FOR DISCIPLINE |
| |) | AND ORDER |
| Accused. |) | |
| _____ |) | |

A stipulation for discipline has been presented to the Regional Chairperson and the State Chairperson of the Disciplinary Board for review pursuant to Bar Rule 3.6(e). The stipulation is intended by the Accused and the Bar to resolve the matters set out in a previously filed complaint by the Bar against the Accused.

The stipulation recites that during the pendency of the proceedings, the Bar and the Accused voluntarily agreed to resolution of the proceedings and this stipulation is a product of those negotiations.

The material allegations of the stipulation indicate the Accused, at all materials times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since September, 1978, the Accused has been a member of the Oregon State Bar with his principal place of business in Clackamas County, Oregon.

From a review of the stipulation it appears that the Accused admits that on April 23, 1987, at approximately 10:00 a.m., he appeared with his client, Dale Miller, in the offices of attorney Averill Bolton to conduct negotiations on a case involving the Accused's client and Mr. Bolton's client. At no time during the negotiations did the Accused make a disclaimer that he had been suspended for failure to pay a PLF assessment to either his client or Mr. Bolton.

NOW THEREFORE, IT IS ORDERED:

- 1. The Accused is publicly reprimanded for having violated the following provision of the Code of Professional Responsibility:
 - A. DR 3-101(B)

Submitted this 7th day of December, 1988.

/s/ Chris L. Mullman
Chris L. Mullmann
State Chairperson

/s/ Nancy Tauman
Nancy Tauman
Region 6 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|-----------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | Case No. 87-88 |
| |) | |
| P. Herbert Schmidt, |) | STIPULATION FOR |
| |) | DISCIPLINE |
| Accused. |) | |
| |) | |

P. Herbert Schmidt, attorney at law, (hereinafter, the Accused) and the Oregon State Bar (hereinafter, the Bar), hereby stipulate to the following matters pursuant to Rule of Procedure 3.6(c).

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, P. Herbert Schmidt, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, 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.

3.

The State Professional Responsibility Board (SPRB) of the Oregon State Bar, at a meeting on October 31, 1987, approved for filing against the Accused a formal complaint alleging a number of violations of the Code of Professional Responsibility. A copy of the Bar's Formal Complaint is attached hereto and incorporated by reference herein as Exhibit 1.

4.

The Accused enters into this Stipulation freely and voluntarily.

5.

The Accused admits his violation of DR 3-101(B) of the Code of Professional Responsibility, the Bar's First Cause of Complaint.

6.

The Accused admits that on April 23, 1987, at approximately 10:00 A.M. he appeared with his client, Dale Miller, in the offices of attorney Averill Bolton to conduct negotiations on a case involving the Accused's client, Dale Miller, and Mr. Bolton's client. At no time during the negotiations

did the Accused make a disclaimer about his suspended status to either Mr. Bolton or his own client, Mr. Miller. At the time of such meeting, the Accused had been suspended from the practice of law in Oregon pursuant to ORS 9.200 because of his failure to pay his PLF assessment.

7.

The Accused further admits that he was uncertain of the effective date of his suspension, that he should have ascertained his status before acting on behalf of a client, and that he failed to do so, which resulted in the Accused's violation of DR 3-101(B).

8.

The Accused agrees to a public reprimand for having violated the ethical rule specified herein.

9.

The Bar agrees that, for the purposes of this Stipulation, it will withdraw the Second Cause of Complaint.

10.

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

11.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED by the Accused this 15th day of November, 1988, and by Assistant Disciplinary Counsel on 18th day of November, 1988.

/s/ P. Herbert Schmidt
P. Herbert Schmidt

/s/ Teresa J. Schmid
Teresa J. Schmid
Assistant Disciplinary Counsel
Oregon State Bar

I, P. Herbert Schmidt, 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/ P. Herbert Schmidt
P. Herbert Schmidt

Subscribed and sworn to before me this 15th day of November, 1988.

/s/ James R. Scheldon
Notary Public for Oregon
My commission expires: 6/9/90

I, Teresa J. Schmid, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for Discipline and that it was approved by the SPRB for submission to the Disciplinary Board on the 5th day of November, 1988.

/s/ Teresa J. Schmid
Teresa J. Schmid
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 18th day of November, 1988.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3/9/92

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|------------------|
| In Re: |) | |
| |) | |
| Complaint as to the Conduct of |) | No. 87-88 |
| P. Herbert Schmidt, |) | FORMAL COMPLAINT |
| Accused. |) | [Exhibit 1] |
| |) | |

For its FIRST CAUSE OF COMPLAINT against the Accused, 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, P. Herbert Schmidt, 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.

3.

On February 17, 1987, the Professional Liability Fund (PLF), the professional liability insurance carrier for Oregon attorneys in private practice, and the Bar sent a notice to the Accused by certified mail advising him that unless his PLF assessment was paid and received in the PLF office by April 20, 1987 at 5:00 p.m., he would be automatically suspended from the practice of law in Oregon pursuant to ORS 9.200. The note stated in part that "suspension is automatic" (emphasis in original). The Accused actually received such notice prior to April 20, 1987.

4.

On April 20, 1987 the Accused spoke with Susan D. Isaacs, Disciplinary Counsel, regarding his impending suspension. In response to the Accused's statement that he anticipated receiving funds the next day to pay his PLF assessment, Ms. Isaacs told the Accused that even if he paid one day after the April 20, 1987 payment deadline, he would still have to apply for reinstatement. The Accused did not pay the PLF assessment before 5:00 p.m. on April 20, 1987, and was thereby automatically suspended.

5.

On April 23, 1987, at approximately 10:00 A.M. the Accused appeared with his client, Dale Miller, in the offices of attorney Averill Bolton to conduct negotiations on a case involving the Accused's client, Dale Miller, and Mr. Bolton's client. At no time during the negotiations on April 23, 1987, nor prior to the negotiations, did the Accused make a disclaimer about his suspended status to either Mr. Bolton or his own client, Mr. Miller. At the time of such meeting, the Accused knew he was suspended from the practice of law in Oregon.

6.

By reason of his attending negotiating sessions with a client and opposing counsel when the Accused knew he was suspended from the practice of law in Oregon, the Accused practiced law in a jurisdiction in violation of regulations of the profession of that jurisdiction.

7.

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

1. DR 3-101(B) of the Code of Professional Responsibility.

AND, for its SECOND CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

8.

Incorporates by reference as fully set forth herein, paragraphs 1 through 5 of its First Cause of Complaint.

9.

On May 14, 1987, attorney Averill Bolton submitted a complaint to the Bar concerning the Accused's appearance with the Accused's client at a negotiating session with Bolton on April 23, 1987, at a time when the Accused was suspended from the practice of law in Oregon.

10.

On May 22, 1987, Disciplinary Counsel's office requested the Accused to respond to Bolton's complaint. In his response, the Accused stated he was not aware of his suspended status at the time of his meeting with Bolton on April 23, 1987, since he did not review his mail, which included the notice of suspension.

11.

On August 26, 1987, the complaint was referred to the Clackamas/Linn/Marion County Local Professional Responsibility Committee for investigation. In the course of the investigation, the Accused

again represented to the LPRC investigator that the Accused was not aware of his suspended status on April 23, 1987.

12.

The Accused had actual knowledge of his suspended status, effective at 5:00 P.M. on April 20, 1987, in that he had actually received notice prior to such date that he would be automatically suspended, and in that he had discussed such suspension on April 20, 1987, with Disciplinary Counsel Susan D. Isaacs. The Accused's representations to Disciplinary Counsel and the LPRC were therefore false and known by the Accused to be false when made.

13.

By reason of the Accused representing to the Bar that he did not know until late on April 23, 1987 that he had been suspended for non-payment of his PLF assessment on April 20, 1987, when he had actual notice of such suspension, he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

14.

By his statement to the Bar that he did not know he had been suspended on April 20, 1987 when he knew or should have known he had been suspended on April 20, 1987, the Accused failed to respond fully and truthfully to inquiries from Disciplinary Counsel and the LPRC, authorities empowered to investigate or act upon the conduct of lawyers. The Accused did not have or exercise an applicable right or privilege to justify his failure to respond fully and truthfully.

15.

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) (3) of the Code of Professional Responsibility; and
2. DR 1-103(C) 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 1st day of June, 1988.

OREGON STATE BAR

By: /s/ Celene Greene
CELENE GREENE
Executive Director

**OREGON STATE BAR
RULES OF PROCEDURE**

(As Amended to June 1, 1989)

TITLE 1 -- GENERAL PROVISIONS

| | |
|------------------|---|
| Rule 1.1 | Definitions |
| Rule 1.2 | Authority |
| Rule 1.3 | Nature of Proceedings |
| Rule 1.4 | Jurisdiction |
| Rule 1.5 | Effective Date |
| Rule 1.6 | Citation of Rules |
| Rule 1.7 | Bar Records |
| Rule 1.8 | Service by Mail |
| Rule 1.9 | Time |
| Rule 1.10 | Filing |
| Rule 1.11 | Address and Telephone Number Designation |
| Rule 1.12 | Resident Agent for Service |

RULE 1.1. DEFINITIONS. In these rules, unless the context or subject matter requires otherwise:

- (a) "Accused" means an attorney charged with misconduct by the Bar in a formal complaint.
- (b) "Applicant" means an applicant for admission to practice law in Oregon or an applicant for reinstatement to the practice of law, as the case may be.
- (c) "Attorney" means a person who has been admitted to the practice of law in Oregon.
- (d) "Bar" means Oregon State Bar created by the Bar Act.
- (e) "Bar Act" means ORS Chapter 9.
- (f) "Bar Counsel" means counsel appointed by the SPRB or the Board to represent the Bar.
- (g) "BBX" means Board of Bar Examiners appointed by the Supreme Court.
- (h) "Board" means Board of Governors of the Bar.
- (i) "Contested Admission" means a proceeding in which the Bar is objecting to the admission of an applicant to the practice of law.
- (j) "Contested Reinstatement" means a proceeding in which the Bar is objecting to the reinstatement of an attorney or a former attorney to the practice of law.
- (k) "Disciplinary Board" means the board appointed by the Supreme Court to hear and decide contested admission, disciplinary and reinstatement proceedings pursuant to these rules.
- (l) "Disciplinary Counsel" means disciplinary counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist disciplinary counsel.
- (m) "Disciplinary Proceeding" means a proceeding in which the Bar is charging an attorney with misconduct in a formal complaint.
- (n) "Examiner" means a member of the BBX.
- (o) "Executive Director" means the chief administrative employee of the Bar.
- (p) "Formal Complaint" means the instrument used to charge an attorney with misconduct.
- (q) "LPRC" means a local professional responsibility committee appointed by the Board.
- (r) "Misconduct" means any conduct which may or does subject an attorney to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court.
- (s) "State Court Administrator" means the person who holds the office created pursuant to ORS 8.110.
- (t) "Supreme Court" and "court" mean Supreme Court of Oregon.

- (u) "SPRB" means State Professional Responsibility Board created by the Board.
- (v) "Trial Panel" means a three-member panel of the Disciplinary Board.

(Rule 1.1 amended by Order dated November 10, 1987.)
(Rule 1.1(c) amended by Order dated February 23, 1988.)

RULE 1.2. AUTHORITY. These "Rules of Procedure" are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(6) and ORS 9.542. These rules may be amended or repealed and new rules may be adopted by the Board at any regular meeting or at any special meeting called for that purpose. No amendment, repeal or new rule shall become effective until approved by the Supreme Court.

RULE 1.3. NATURE OF PROCEEDINGS. Contested admission, disciplinary, and reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant's conduct should preclude the applicant from being admitted to the Bar, or from being reinstated to membership in the Bar.

RULE 1.4. JURISDICTION. An attorney admitted to the practice of law in Oregon, and any attorney specially admitted by a court or agency in Oregon for a particular case, is subject to the Bar Act and these rules. The Supreme Court's jurisdiction over matters involving the practice of law by an attorney in Oregon shall continue whether or not the attorney retains the authority to practice law in Oregon, and regardless of the residence of the attorney.

RULE 1.5. EFFECTIVE DATE.

(a) These rules shall apply to all contested admission, disciplinary and reinstatement proceedings initiated by the service of a formal complaint or statement of objections on an accused or applicant on or after January 1, 1984. Contested admission, disciplinary and reinstatement proceedings initiated by the service of a formal complaint or statement of objections on an accused or applicant prior to January 1, 1984 shall be completed under the rules in effect prior to that date. For all other purposes, these rules shall become effective January 1, 1984.

(b) The provisions of BR 1.5(a) shall apply except to the extent that in the opinion of the court their application in a particular matter or proceeding would not be feasible or would work an injustice in which event the former or current rule most consistent with the fair and expeditious resolution of the matter or proceeding under consideration shall be applied.

RULE 1.6. CITATION OF RULES. These Rules of Procedure may be referred to as Bar Rules and cited, for example, as BR 1.1(a).

RULE 1.7. BAR RECORDS.

(a) Property of Bar. The records of the Bar and of its officers, governors, employees and committees, in contested admission, disciplinary and reinstatement proceedings are the property of the Bar.

(b) Public Records Status. Except as exempt or protected by law from disclosure, the records of the Bar relating to contested admission, disciplinary, and reinstatement proceedings are available for public inspection.

RULE 1.8. SERVICE BY MAIL.

- (a) Any pleading or document transmitted by mail to an accused or applicant shall be sent to the accused or applicant, or his or her attorney if the accused or applicant is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar.
- (b) Any pleading or document transmitted by mail to the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address.
- (c) Any pleading or document transmitted by mail to Bar Counsel shall be sent by first class mail addressed to his or her last designated business address on file with the Bar.
- (d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12(c).

(Rule 1.8 amended by Order dated June 30, 1987.)

(Rule 1.8(a) amended by Order dated February 23, 1988.)

RULE 1.9. TIME. In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday or legal holiday. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

RULE 1.10. FILING.

- (a) Any pleading or document to be filed with the Bar shall be delivered to Disciplinary Counsel, Oregon State Bar, 5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Case Records Division, Supreme Court Building, Salem, Oregon 97310. Any pleading or document to be filed with the State Chair of the Disciplinary Board, a regional chair or a trial panel chair shall be delivered to the intended recipient at his or her last designated business or residence address on file with the Bar.
- (b) Filing may be accomplished by mail and shall be complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.
- (c) If filing is not done as provided in subsection (b) of this rule, the filing shall not be timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.
- (d) A copy of any pleading or document delivered for filing under these Rules must also be served by the party or attorney delivering it on other parties to the case. All service copies must include a certificate showing the date of delivery for filing. "Parties" for the purposes of this rule shall be the accused or applicant, or his or her attorney if the accused or applicant is represented, the Bar, and Bar Counsel.
- (e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledgement of service by the person served or be in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who has made service.

(Rule 1.10 amended by Order dated June 30, 1987.)

(Rule 1.10(d) amended by Order dated February 23, 1988.)

RULE 1.11. ADDRESS AND TELEPHONE NUMBER DESIGNATION.

(a) All attorneys must designate, on a form approved by the Oregon State Bar, a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address.

(b) It is the duty of all attorneys promptly to notify the Oregon State Bar in writing of any change in his or her business address and telephone number, or residence address and telephone number, as the case may be. A new designation shall not become effective until actually received by the Oregon State Bar.

(Rule 1.11 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)

RULE 1.12. RESIDENT AGENT FOR SERVICE OF BAR PLEADINGS OR DOCUMENTS; SERVICE OF BAR PLEADINGS OR DOCUMENTS IN ABSENCE OF RESIDENT AGENT.

(a) All attorneys who pursuant to BR 1.11 designate a business address or residence address which is not located within the State of Oregon must additionally designate, on a form approved by the Oregon State Bar, an in-state agent for service of Bar pleadings and documents who shall be a resident active member of the Oregon State Bar. The designation shall include a street address for the designated in-state agent.

(b) It is the duty of all attorneys who have designated an in-state agent for service to promptly notify the Oregon State Bar in writing of any change in the name or address of his or her in-state agent. A new designation shall not become effective until actually received by the Oregon State Bar.

(c) Service upon the in-state agent of any Bar pleading or document in compliance with these Rules shall be deemed the equivalent of personal service upon the attorney. If an attorney with a designated address which is not located within the State of Oregon has no in-state agent on file with the Bar, mailing any such pleading or document by first class mail to the attorney's last designated business or residence address on file with the Bar shall be deemed the equivalent of personal service upon the attorney. Service by mail to the attorney at his or her last designated address shall be complete seven days after such mailing. Proof of such service by mail shall be by certificate showing the date of deposit in the mail.

(Rule 1.12 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)

TITLE 2 -- STRUCTURE AND DUTIES

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|-----------------|---|
| Rule 2.1 | Qualifications of Counsel |
| Rule 2.2 | Investigators |
| Rule 2.3 | Local Professional Responsibility Committees and State Professional Responsibility Board |
| Rule 2.4 | Disciplinary Board |
| Rule 2.5 | Investigation of Complaints |
| Rule 2.6 | Investigations of Alleged Misconduct Other Than by Complaint |
| Rule 2.7 | Proceedings not to Stop on Compromise |
| Rule 2.8 | Requests for Information and Assistance |

RULE 2.1. QUALIFICATIONS OF COUNSEL.

(a) Bar Counsel. Any attorney admitted to practice at least three years in Oregon may serve as Bar Counsel except an attorney who is contemporaneously representing an accused or applicant in a contested admission, disciplinary or reinstatement proceeding or is a member of an accused's firm or if a firm member is contemporaneously serving on the Disciplinary Board.

(b) Counsel for Accused or Applicant. Any attorney may represent an accused or applicant except as follows: an attorney who served on the Board, SPRB, BBX or an LPRC when the charges pending against the accused or inquiry regarding the applicant were considered; an attorney serving as Bar Counsel or as a member of the Disciplinary Board; and an attorney who served as a member of the Disciplinary Board with respect to a complaint or statement of objections filed with the Disciplinary Board while the attorney was serving on the Disciplinary Board. In addition, an attorney shall not serve as counsel for an accused or applicant if a firm member is contemporaneously serving on the Disciplinary Board or served on the Disciplinary Board with respect to a complaint or statement of objections filed with the Disciplinary Board while the attorney was serving on the Disciplinary Board.

(c) Vicarious Disqualification. The disqualifications contained in BR 2.1(a) and (b) shall also apply to attorneys in Bar Counsel's firm and attorneys in the firm of counsel for an accused or applicant.

(Rule 2.1(b) amended by Order dated May 31, 1984, July 27, 1984, nun pro tunc May 31, 1984. Rule 2.1 amended by Order dated June 30, 1987.)

RULE 2.2. INVESTIGATORS. Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of admission and reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

RULE 2.3. LOCAL PROFESSIONAL RESPONSIBILITY COMMITTEES AND STATE PROFESSIONAL RESPONSIBILITY BOARD.

(a) LPRCs.

(1) Appointment. The Board shall create a local professional responsibility committee for each of the districts into which the counties of the state are grouped by the Board for convenient administrative purposes. The size of each LPRC shall be as the Board determines except each LPRC shall be composed of at least three resident attorneys and at least one member of the public

who is not an attorney. Chairpersons and members of LPRCs shall be appointed by the Board for one-year terms, and may be reappointed.

(2) Duties of LPRCs. It shall be the duty of each LPRC to investigate promptly all matters submitted to it by the SPRB or Disciplinary Counsel. Whether or not a majority of the membership of an LPRC are of the opinion that there is probable cause for a disciplinary proceeding by the Bar, a written report with the specific findings and recommendations of the LPRC shall be made promptly to the SPRB by the LPRC. Any member of an LPRC may conduct an investigation and submit a report on behalf of an LPRC to the SPRB, after first submitting such report to the chairperson of the LPRC of which he or she is a member. LPRCs shall perform such other duties on behalf of the Bar as may be referred to such LPRCs by the SPRB or Disciplinary Counsel.

(3) Authority.

(A) LPRCs shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(B) A witness in an investigation conducted by an LPRC who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. LPRCs may enforce any subpoena issued pursuant to BR 2.3(a)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(C) A member of an LPRC may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(a)(3)(A).

(b) SPRB.

(1) Appointment. The Board shall create for the state at large a state professional responsibility board and appoint its members. The SPRB shall be composed of seven resident attorneys and one member of the public who is not an attorney. Two attorney members shall be from Board Region 5 and one attorney member shall be from each of the remaining Board regions. The public member shall be an at-large appointee. Members of the SPRB shall be appointed for three-year terms and shall not be reappointed. Each year the Board shall appoint one member of the SPRB as chairperson. The chairperson shall be an attorney.

(2) Duties of SPRB. The SPRB shall supervise the investigation of complaints, allegations, or instances of alleged misconduct on the part of attorneys and act on such matters as it may deem appropriate. A complaint by a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or the institution of disciplinary proceedings against any attorney.

(3) Authority.

(A) The SPRB shall have the authority to dismiss complaints, allegations or instances of alleged misconduct against attorneys, refer matters to Disciplinary Counsel or LPRCs for investigation, issue admonitions for misconduct, refer matters to the State Lawyers Assistance Committee, or institute disciplinary proceedings against any attorney.

(B) The SPRB shall have the authority to adopt rules dealing with the handling of its affairs, subject to approval by the Board.

(C) The SPRB shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(D) A witness in an investigation conducted by the SPRB who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents

pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The SPRB may enforce any subpoena issued pursuant to BR 2.3(b)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(E) A member of the SPRB may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(b)(3)(C).

(c) Resignation and Replacement. The Board may remove, at its discretion, or accept the resignation of, any officer or member of the SPRB or an LPRC and appoint a successor who shall serve the unexpired term of the member who is replaced.

RULE 2.4. DISCIPLINARY BOARD.

(a) Composition. A disciplinary board shall be appointed by the Supreme Court. The Disciplinary Board shall consist of a state chairperson, 6 regional chairpersons, and 6 additional members for each Board region except for Region 5 which shall have 23 additional members. Each regional panel shall contain 2 members who are not attorneys, except for Region 5 which shall have appointed to it 8 members who are not attorneys. The remaining members of the Disciplinary Board shall be resident attorneys admitted to practice in Oregon at least 3 years. Except for the state chairperson who shall be an at-large appointee, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of 2 attorneys and 1 public member. The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.

(b) Term. The initial appointees to the Disciplinary Board shall serve terms of 1, 2 or 3 years as designated by the Supreme Court, and all members appointed thereafter shall serve terms of 3 years. Disciplinary Board members shall not serve more than 2 terms. State and regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the Supreme Court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor who shall serve the unexpired term of the member who is replaced.

(d) Disqualifications.

(1) The disqualifications contained in the Code of Judicial Conduct shall apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board, the SPRB, or an LPRC shall not serve on the Disciplinary Board during the member's term of office. This disqualification shall also preclude an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board, the SPRB or an LPRC.

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to subject matter considered by the Board, the SPRB or an LPRC while a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board, the SPRB or an LPRC.

(C) A member of the BBX shall not serve on the Disciplinary Board during the member's term of office. This disqualification shall also preclude an attorney from serving as the state chairperson of the Disciplinary Board while any member of his or her firm is serving on the BBX.

(D) No member of the Disciplinary Board shall sit on a trial panel with regard to subject matter considered by the BBX while a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the BBX.

(e) Duties of State Chairperson.

(1) The state chairperson shall coordinate and supervise the activities of the Disciplinary Board.

(2) The state chairperson shall not be required to, but may, serve on trial panels during his or her term of office.

(3) The state chairperson shall resolve all challenges to the qualifications of regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested admission and reinstatement proceedings.

(4) Upon receipt of written notice from Disciplinary Counsel of service of a statement of objections, the state chairperson shall appoint a trial panel and trial panel chairperson from an appropriate region. The state chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the applicant of such appointments.

(5) The state chairperson may appoint Disciplinary Board members from any region to serve on trial panels as may be necessary to resolve the matters submitted to the Disciplinary Board for consideration.

(6) In matters involving final decisions of the Disciplinary Board under BR 10.1, the state chairperson shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel of service of a formal complaint, the regional chairperson shall appoint a trial panel from the members of the regional panel and a chairperson thereof. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel and the accused of such appointments.

(2) Except as provided in BR 2.4(e)(3), the regional chairperson shall rule on all challenges to the qualifications of members of the trial panels in his or her region under BR 2.4(g).

(g) Challenges. The Bar and an accused or applicant shall be entitled to one peremptory challenge and an unlimited number of challenges for cause as may arise under the Code of Judicial Conduct or these rules. Any such challenges shall be filed in writing within seven days of written notice of an appointment of a trial panel with the regional chairperson for disciplinary proceedings and the state chairperson for contested admission and reinstatement proceedings or for cases involving challenges to a regional chairperson. The regional chairperson or the state chairperson, as the case may be, shall notify Disciplinary Counsel, Bar Counsel and the accused or applicant in writing of all rulings on challenges. These provisions shall apply to all substitute appointments, except that neither the Bar nor an accused or applicant shall have more than 1 peremptory challenge. The Bar and an accused or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

(h) Duties of Trial Panel Chairperson. Disciplinary Counsel shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Counsel, the trial panel chairperson shall promptly establish the date and place of hearing and notify in writing Disciplinary Counsel, Bar Counsel, and the accused or applicant of the date and place of hearing. The hearing date shall be not less than 42 days nor more than 91 days from the date the pleadings are received by the trial panel chairperson. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson shall convene the hearing, oversee the orderly conduct of the same, and timely file the written opinion of the trial panel.

(i) Duties of Trial Panel.

(1) Trial. It shall be the duty of a trial panel to which a contested admission, disciplinary, or reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.

(2) Briefs. Briefs, if any, shall be filed with the trial panel no later than 7 days prior to the hearing, provided that the trial panel chairperson may, in his or her discretion, where new or additional issues have arisen, grant 7 days additional time for the filing of briefs on those issues.

(3) Decision. The trial panel shall render, within 21 days of the conclusion of the hearing, or in the event additional briefs are permitted, within 21 days of the filing of such briefs, a written opinion signed by the concurring members of the trial panel, which shall include specific findings of fact, conclusions and a disposition, and shall file the original with Disciplinary Counsel and a copy with the State Court Administrator. A dissenting member shall note the dissent and may file a dissenting opinion with the trial panel chairperson in time for filing with the majority opinion of the trial panel. If additional time is required by the trial panel to render its opinion, it may file a request for an extension of time with the state chairperson prior to the expiration of the applicable 21 day period. Disciplinary Counsel, Bar Counsel, and the accused or applicant shall be given written notice of such request and shall be notified by the state chairperson in writing of the extension decision.

(4) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file such record with Disciplinary Counsel.

(5) Notice. Copies of the opinion of the trial panel shall be mailed promptly by Disciplinary Counsel to Bar Counsel and the accused or applicant.

(j) Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the Supreme Court. The reporter service shall be distributed to all state and county law libraries, bar counsel and members of the Disciplinary Board, LPRC and SPRB.

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court disciplinary decisions and summaries of all Disciplinary Board decisions not reviewed by the Supreme Court.

(Rule 2.4(a) amended by Order dated January 2, 1986, further amended by Order dated January 24, 1986 effective January 2, 1986, *nun pro tunc*.)

(Rule 2.4(d)(2) amended by Order dated September 10, 1986, effective September 10, 1986.)

(Rules 2.1, 2.6, 2.7 and 2.8 amended by Order dated June 30, 1987.)

(Rule 2.4(j) amended by Order dated October 1, 1987, effective October 1, 1987.)

(Rule 2.4(f)(1) amended by Order dated February 22, 1988.)

(Rule 2.4(d), (h) and (i) amended by Order dated February 23, 1988.)

(Rule 2.4(e) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

RULE 2.5. INVESTIGATION OF COMPLAINTS.

(a) Complaints To Be In Writing. All complaints made against an attorney shall be in writing and shall be referred to Disciplinary Counsel, who shall evaluate the information contained in the complaint. If the facts alleged do not raise an arguable complaint of misconduct, Disciplinary Counsel shall, within 14 days after receipt of the complaint, dismiss the complaint and notify the complainant and the attorney in writing of the dismissal. A complainant may request in writing that the action taken by Disciplinary Counsel in dismissing his or her complaint be reviewed

by the SPRB, in which case Disciplinary Counsel shall submit a report on the complaint to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate on such complaint.

(b) Review by Disciplinary Counsel.

(1) If the facts alleged raise an arguable complaint of misconduct, Disciplinary Counsel shall, within 14 days after receipt of the complaint, mail a copy of said complaint to the attorney and notify the attorney that he or she must respond to the complaint in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel mailed the complaint to the attorney. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney.

(2) If the attorney fails to respond within the time allowed, Disciplinary Counsel shall refer the complaint to the chairperson of an appropriate LPRC within 14 days of the time set for the response. The procedure set forth in BR 2.5(e) shall be followed. Disciplinary Counsel shall inform the complainant and the attorney in writing of this action.

(c) Dismissal by Disciplinary Counsel. If, after considering both the complaint and the response of the attorney, Disciplinary Counsel determines that the facts alleged do not raise an arguable complaint of misconduct, the complaint shall be dismissed within 14 days after receipt of the response. The complainant and the attorney shall be notified in writing by Disciplinary Counsel of the dismissal. A complainant may request in writing that the action taken by Disciplinary Counsel in dismissing his or her complaint be reviewed by the SPRB, in which case Disciplinary Counsel shall submit a report on the complaint to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate on such complaint.

(d) Review by SPRB.

(1) If the attorney furnishes a response from which Disciplinary Counsel determines that misconduct may be involved, the complaint shall be referred by Disciplinary Counsel to an appropriate LPRC for further investigation, or referred by Disciplinary Counsel to the SPRB at a scheduled meeting. If the complaint is referred to an LPRC by Disciplinary Counsel, the procedure specified in BR 2.5(e) shall be followed. Otherwise, the SPRB shall evaluate the complaint based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, refer it to an LPRC, admonish the attorney, or approve the filing of a formal complaint by the Bar against the attorney.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such procedure shall be initiated within 14 days of the SPRB's meeting. If an attorney refuses to accept the admonition, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(C) If the SPRB determines that the complaint should be investigated, Disciplinary Counsel shall submit the complaint to the appropriate LPRC within 14 days of the SPRB's meeting. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(e) LPRC Investigations and Reports.

(1) The chairperson of the LPRC shall cause an investigation of the complaint to be conducted and completed within 63 days of the chairperson's receipt of the referral from Disciplinary Counsel.

(2) The LPRC shall file a report with Disciplinary Counsel within 14 days after the investigation is completed. The report shall contain the specific findings and recommendations of the LPRC.

(f) Further Review by SPRB.

(1) Disciplinary Counsel shall submit the LPRC's report to the SPRB at a scheduled meeting. The SPRB shall evaluate the complaint based on the LPRC's report and the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, have it investigated further, admonish the attorney, or approve the filing of a formal complaint against the attorney.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such action shall be initiated within the time set forth in BR 2.5(d)(1)(B). If an attorney refuses to accept the admonition, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(C) If the SPRB determines that further investigation is needed, Disciplinary Counsel shall, within 14 days of the SPRB's meeting, refer the matter to the chairperson of the appropriate LPRC which shall conduct a further investigation in accordance with BR 2.5(e). The further investigation shall be completed within 28 days and a report shall be filed with Disciplinary Counsel within 7 days after the further investigation is completed. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action. The report of the further investigation shall be submitted to the SPRB at a scheduled meeting, at which the SPRB shall take action in accordance with BR 2.5(f)(1).

(2) The SPRB may grant to an LPRC additional time to investigate a complaint if a request for additional time with the reasons therefor is submitted by the chairperson of the LPRC to Disciplinary Counsel for presentation to the SPRB. Disciplinary Counsel shall notify the attorney and the complainant in writing of any such request and of the action taken by the SPRB on any such request.

(g) Requests for Reconsideration. A decision by the SPRB to file a formal complaint against an attorney for misconduct shall not be rescinded by the SPRB absent a written request for reconsideration filed by the attorney with the Bar within 21 days of the date Disciplinary Counsel mails the attorney notice of the SPRB's decision to file a formal complaint against the attorney, showing, to the satisfaction of a majority of the entire SPRB, that there exists:

(1) new evidence, neither in the accused's possession nor otherwise available at the time of the SPRB's last consideration of the matter, which would have clearly affected the SPRB's decision to file a formal complaint; or

(2) legal authority, not known to the SPRB at the time of its last consideration of the matter, which establishes that the SPRB's decision to file a formal complaint was incorrect.

(h) Approval of Charges. If the SPRB determines that a formal complaint should be filed against an attorney, the SPRB shall instruct Disciplinary Counsel to appoint Bar Counsel for that purpose. The attorney and the complainant shall be notified in writing by Disciplinary Counsel of such action. Bar Counsel shall also be appointed by Disciplinary Counsel for the purpose of filing a formal complaint against an attorney if the attorney rejects an admonition offered by the SPRB.

RULE 2.6. INVESTIGATIONS OF ALLEGED MISCONDUCT OTHER THAN BY COMPLAINT. Allegations or instances of alleged misconduct that are brought or come to the attention of the Bar other than through the receipt of a written complaint shall be evaluated using the procedure specified in BR 2.5 except as that rule may be inapplicable due to the lack of a written complaint or a complainant with which to communicate.

RULE 2.7. PROCEEDINGS NOT TO STOP ON COMPROMISE. Neither unwillingness nor neglect of the complainant to sign or to pursue a complaint, nor settlement, compromise or restitution of any civil claim, shall, in and of itself, justify any failure to undertake or complete the investigation or the formal resolution of a contested admission, disciplinary or reinstatement matter or proceeding.

RULE 2.8. REQUESTS FOR INFORMATION AND ASSISTANCE. The Bar may request a person complaining against an attorney or applicant to supply and disclose to the investigating authorities of the Bar all documentary and other evidence in his or her possession, and the names and addresses of witnesses relating to his or her complaint, and may otherwise request the complainant to assist such investigating authorities in obtaining evidence in support of the facts surrounding his or her complaint.

TITLE 3 -- SPECIAL PROCEEDINGS

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| Rule 3.1 | Temporary Suspension During Pendency of Disciplinary Proceedings |
| Rule 3.2 | Mental Incompetency or Addiction - Involuntary Transfer to Inactive Membership Status |
| Rule 3.3 | Criminal Proceedings Against Attorneys |
| Rule 3.4 | Conviction of Attorneys |
| Rule 3.5 | Reciprocal Discipline |
| Rule 3.6 | Discipline by Consent |

RULE 3.1. TEMPORARY SUSPENSION DURING PENDENCY OF DISCIPLINARY PROCEEDINGS.

(a) Petition for Temporary Suspension. If it appears to the SPRB, upon the affirmative vote of three-fourths of its membership, that the continuation of the practice of law by an attorney during the pendency of disciplinary proceedings will, or is likely to, result in substantial harm to any person or the public at large, Disciplinary Counsel shall directly, or through Bar Counsel, petition the Supreme Court on behalf of the Bar for an order suspending the attorney from practice until further order of the court. A petition under this rule may be filed by the Bar at any time after the SPRB has approved the filing of a formal complaint by the Bar against the attorney.

(b) Contents of Petition; Service; Answer by Attorney. A petition to the Supreme Court for the suspension of an attorney under this rule shall set forth the acts and violations of the rules of professional conduct or statutes submitted by the Bar as grounds for the attorney's suspension. The petition shall have attached as an exhibit a copy of the Bar's formal complaint against the attorney, if one has been filed by the Bar. The petition may be supported by documents or affidavits. A copy of the petition, along with a notice to answer, shall be served on the attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons. The attorney shall file an answer to the Bar's petition with the Supreme Court within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and Bar Counsel, if any, and file proof of mailing with the court.

(c) Hearing, answer filed. Upon the filing of the attorney's answer, the court shall hold a hearing on the Bar's petition. The hearing date shall be set by the court and notice thereof shall be mailed to Disciplinary Counsel, Bar Counsel and the attorney by the State Court Administrator.

(d) Hearing, default. The failure of the attorney to answer the Bar's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the

Bar's petition. The court shall then enter the order provided in BR 3.1(e) either upon the record before it, or at the discretion of the court, after a hearing ordered by the court.

(e) Order of Court. The court, after the hearing provided in BR 3.1(c) or upon the record or after the hearing provided in 3.1(d), shall enter an appropriate order. If the court grants the Bar's petition, an effective date for the attorney's suspension shall be stated therein. The suspension shall remain in effect until further order of the court.

(f) Duties upon Suspension. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(g) Other Orders. The court may enter such other orders as it deems appropriate to protect the interests of the suspended attorney, the suspended attorney's clients and the public.

(h) Accelerated Proceedings Following Temporary Suspension. When an attorney has been temporarily suspended by order of the court under BR 3.1(e), the complaint by the Bar shall thereafter proceed and be determined as an accelerated case, without unnecessary delay. Unless extended by stipulation of the Bar and the attorney, and approved by the court, the further order of the court contemplated by BR 3.1(e) shall be entered not later than 270 days following the entry of the order of temporary suspension, subject to continuance for an additional period not to exceed 90 days upon motion filed by the Bar, served upon the attorney, and granted by the Supreme Court.

(i) Termination of Temporary Suspension. In the event the further order of the court contemplated by BR 3.1(e) is not entered within the time provided by BR 3.1(h), the order of temporary suspension shall automatically terminate without prejudice to any pending or further disciplinary proceeding against the attorney.

(Rule 3.1(h) amended by letter dated December 10, 1987.)

(Rule 3.1 amended by Order dated February 23, 1988.)

(Rule 3.1(f) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

RULE 3.2. MENTAL INCOMPETENCY OR ADDICTION - INVOLUNTARY TRANSFER TO INACTIVE MEMBERSHIP STATUS.

(a) Summary Transfer to Inactive Status.

(1) The Supreme Court may summarily order, upon ex parte application by the Bar, that an attorney be placed on inactive membership status until reinstated by the court if the attorney has been adjudged by a court of competent jurisdiction to be mentally ill or incapacitated.

(2) A copy of the court's order shall be personally served on such attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons and mailed to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(b) Petition by Bar.

(1) The Bar may petition the court to determine whether an attorney is disabled from continuing to practice law due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) senility; or
- (iv) addiction to drugs, narcotics or intoxicants.

The Bar's petition shall be mailed to the attorney and to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(2) (A) On the filing of such a petition, the court may take or direct such action as it deems necessary or proper to determine whether such attorney is disabled. Such action may include, but is not limited to, examination of such attorney by such qualified experts as the court shall designate.

(B) A copy of an order requiring an attorney to appear, for examination or otherwise, shall be mailed by the State Court Administrator to the attorney and to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(C) In the event of a failure by the attorney to appear at the appointed time and place for examination, the court may place the attorney on inactive membership status until further order of the court.

(D) If, upon consideration of the reports of the designated experts or otherwise, the court finds that probable cause exists that the attorney is disabled under the criteria set forth in BR 3.2(b)(1) from continuing to practice law, the court may order the attorney to appear before the court or its designee to show cause why the attorney should not be placed by the court on inactive membership status until reinstated by the court. A copy of such show cause order shall be mailed by the State Court Administrator to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(E) After such show cause hearing as the court deems appropriate, if the court finds that such attorney is disabled from continuing to practice law, the court may order the attorney placed on inactive membership status. A copy of an order placing the attorney on inactive membership status shall be mailed by the State Court Administrator to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(3) Any disciplinary proceeding pending against an attorney placed by the court on inactive membership status under this rule shall thereupon be suspended and held in abeyance until further order of the court.

(c) Disability During Disciplinary Proceedings.

(1) The court may order that an attorney be placed on inactive membership status until reinstated by the court if, during the course of a disciplinary investigation or disciplinary proceeding, the accused files a petition with the court, with notice to Disciplinary Counsel and Bar Counsel, alleging that he or she is disabled from understanding the nature of the proceeding against the accused, assisting and cooperating with his or her attorney, or from participating in his or her defense due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) senility; or
- (iv) addiction to drugs, narcotics or intoxicants.

(2) The court shall take or direct such action as it deems necessary or proper as provided in BR 3.2(b) to determine if such attorney is disabled.

(3) A copy of the court's order in the matter shall be mailed by the State Court Administrator to Disciplinary Counsel, Bar Counsel, and the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and attorney of record in the Bar's disciplinary proceeding.

(4) If the court determines that the attorney is not disabled under the criteria set forth in BR 3.2(c)(1), it may take such action as it deems necessary or proper, including the issuance of an order that any disciplinary investigation or proceeding against the attorney which is pending or held in abeyance be continued or resumed.

(d) Appointment of Attorney. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to represent the attorney if he or she is without representation.

(e) Custodians. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to inventory the files of the attorney and to take such action as seems necessary to protect the interests of his or her clients. Any attorney so appointed

by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(f) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be paid by the attorney or his or her estate, including compensation fixed by the court to be paid to any attorney or medical expert appointed under this rule. The court may order such hearings as it deems necessary or proper to determine the costs and expenses to be paid under this rule.

(g) Waiver of Privilege.

(1) Under this rule, a claim of disability by an accused in a disciplinary investigation or disciplinary proceeding, or the filing of an application for reinstatement as an active member by an attorney placed on inactive membership status under this rule for disability, shall be deemed a waiver of any privilege existing between such accused or attorney and any doctor or hospital treating him or her during the period of the alleged disability.

(2) Such accused or attorney shall, in his or her claim of disability or in his or her application for reinstatement, disclose the name of every doctor or hospital by whom he or she has been treated during his or her disability or since his or her placement on inactive membership status and shall furnish written consent to divulge all such information and all such doctor and hospital records as may be requested by the Bar or the court.

(h) Application of Other Rules.

(1) The Rules of Procedure that apply to the resolution of a formal complaint or statement of objections do not apply to transfers from active to inactive membership status under BR 3.2. Nor does the placement of an attorney on inactive membership status under BR 3.2 preclude the Bar from filing a formal complaint against the attorney. An attorney placed on inactive membership status under BR 3.2 must comply with the applicable provisions of Title 8 of these rules to obtain reinstatement to active membership status.

(2) (i) An attorney transferred to inactive status under this rule shall not practice law after the effective date of the transfer. This rule shall not preclude such an attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(ii) It shall also be the duty of an attorney transferred to inactive status under this rule to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(iii) Disciplinary Counsel may petition the Supreme Court to hold an attorney transferred to inactive status under this rule in contempt for failing to comply with the provisions of BR 3.2(h)(2)(i) and (ii). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

(Rule 3.2(h) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

RULE 3.3. ALLEGATIONS OF CRIMINAL CONDUCT INVOLVING ATTORNEYS.

(a) In the event the SPRB causes disciplinary charges to be filed against an attorney which charges involve the possible commission of a crime, the SPRB shall direct Disciplinary Counsel to report the possible crime to the appropriate district attorney.

(b) On the filing of an accusatory instrument against an attorney for the commission of a misdemeanor which may involve moral turpitude or of a felony, the SPRB shall forthwith direct an investigation by Disciplinary Counsel or an LPRC to determine whether a disciplinary proceeding should be instituted against such attorney.

(Rule 3.3 amended by Order dated March 31, 1989.)

RULE 3.4. CONVICTION OF ATTORNEYS.

(a) Referral of Convictions to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been convicted in any jurisdiction of an offense that is a misdemeanor which may involve moral turpitude or is a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States. Disciplinary Counsel shall file a copy of the documents which show the conviction and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney. A "conviction" for the purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty.

(b) Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.

(c) Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.

(d) Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(e) Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board, with written notice to Disciplinary Counsel and the attorney, for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. Upon receipt of notice of a conviction matter to the Disciplinary Board, Disciplinary Counsel shall appoint Bar Counsel to file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.

(f) Independent Charges; Consolidated Proceedings. The SPRB may cause disciplinary charges to be filed against the attorney independent of the fact of the attorney's conviction. In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.

(g) Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).

(i) Relief From Suspension. If an attorney's conviction is reversed on appeal, and such reversal has become a final order not subject to further appeal or review, or the attorney has been granted a new trial which order has become final, a suspension or discipline previously ordered shall be vacated upon the court's receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal or the granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

(Rule 3.4(d) amended by Order dated March 13, 1989, effective April 1, 1989.)

RULE 3.5. RECIPROCAL DISCIPLINE.

(a) Notice to Court. Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after receiving notice that an attorney has been disciplined for

misconduct in another jurisdiction. Disciplinary Counsel shall file a copy of the judgment, order or determination of discipline with the court, with written notice to the attorney. A plea of no contest, a stipulation for discipline or a resignation while formal charges are pending shall be considered a judgment or order of discipline for the purposes of this rule. The judgment or order or determination of discipline shall be accompanied by a recommendation of the SPRB as to the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court, and such other information as the Bar deems appropriate to file with the court.

(b) Judgment Sufficient Evidence of Misconduct. A copy of the judgment, order or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct described therein.

(c) Answer of Attorney. The attorney shall have 21 days from the filing of the judgment, order, or determination of discipline with the court to file with the court an answer discussing the following issues:

(1) Was the procedure in the jurisdiction which disciplined the attorney lacking in notice or opportunity to be heard?

(2) Should the attorney be disciplined by the court?

The attorney shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the court.

(d) Reply of Bar. The Bar shall have 14 days from the expiration of the time specified in BR 3.5(c) in which to file a reply to the attorney's answer with the court. The Bar shall mail a copy to the attorney and file proof of mailing with the court.

(e) Review by Court; Referral for Hearing. Upon review of the judgment, order or determination of discipline and the response and answer filed by the attorney and the Bar, and after oral argument if ordered by the court, the court shall determine whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner. The court, in its discretion, may refer the matter to the Disciplinary Board, with written notice to Disciplinary Counsel and the attorney, for the purpose of taking testimony on the issues set forth in BR 3.5(c)(1) and (2). Upon receipt of a notice of referral to the Disciplinary Board, Disciplinary Counsel shall appoint Bar Counsel to file a formal complaint regarding the issues before the Disciplinary Board. The same rules as apply in a disciplinary proceeding shall apply in a reciprocal discipline proceeding.

(f) Burden of Proof. The attorney shall have the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction.

(g) Hearing; Review by Court. A trial panel appointed by the state chairperson shall make a decision concerning the issues submitted to it. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

(h) Suspension. The court may suspend an attorney from the practice of law in this state at the time it approves a referral of the matter to the Disciplinary Board for hearing. The suspension shall remain in effect until otherwise ordered by the court. An attorney suspended under this rule shall comply with the requirements of BR 6.3(a) and (b).

(i) Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.5(e), (f) and (g).

(j) Independent Charges. Nothing in this rule shall preclude the filing of disciplinary charges by the Bar against an attorney for misconduct in any jurisdiction.

(Rule 3.5 amended by Order dated July 16, 1984, effective August 1, 1984.)

(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)

RULE 3.6. DISCIPLINE BY CONSENT.

(a) Application. Any formal disciplinary complaint may be disposed of by a no contest plea, or by a stipulation for discipline, entered into at any time after service of the formal complaint upon the accused.

(b) No Contest Plea. A plea of no contest to all causes or any cause of a formal complaint shall be verified by the accused and shall include:

(i) A statement that the plea has been freely and voluntarily made by the accused;

(ii) A statement that the accused does not desire to defend against the formal complaint or any designated cause thereof;

(iii) A statement that the accused agrees to accept a designated form of discipline in exchange for the no contest plea;

(iv) A statement of the accused's prior record of reprimand, suspension or disbarment, or absence of such record.

(c) Stipulation for Discipline. A stipulation for discipline shall be verified by the accused and shall include:

(i) A statement that the stipulation has been freely and voluntarily made by the accused;

(ii) A statement that explains the particular facts and violations to which the Bar and the accused are stipulating;

(iii) A statement that the accused agrees to accept a designated form of discipline in exchange for the stipulation;

(iv) A statement of the accused's prior record of reprimand, suspension or disbarment, or absence of such record.

(d) Approval of SPRB. Pleas of no contest and stipulations shall be approved as to form by Disciplinary Counsel and approved in substance by the SPRB. The plea or stipulation, if acceptable to the SPRB and the accused, shall be filed by Disciplinary Counsel with the state chairperson of the Disciplinary Board if the discipline to be imposed does not exceed a 60-day suspension, otherwise it shall be filed with the State Court Administrator for review by the court.

(e) Review by Disciplinary Board or Court. The Disciplinary Board or the court, as the case may be, shall review the plea or stipulation. If the matter is submitted to the Disciplinary Board, it shall be reviewed by the state chairperson and the regional chairperson in the region the member maintains his or her principal place of business. The state chairperson and regional chairperson shall have the authority to act on the matter for the Disciplinary Board. If the Disciplinary Board or the court approves the plea or stipulation a decision shall be issued so stating. If the plea or stipulation is rejected by the Disciplinary Board or the court it may not be used as evidence of misconduct against the accused in the pending or in any subsequent disciplinary proceeding.

(f) Costs. The Bar may file a cost bill with the Disciplinary Board or the court, as the case may be, within 21 days of the filing of the decision of the Disciplinary Board or the court in matters submitted under this rule. The Accused, if he or she desires to contest the Bar's statement of costs, must file verified objections with proof of service on Disciplinary Counsel with the state chairperson of the Disciplinary Board or the court within 7 days from the date of filing of the Bar's cost bill. The state chairperson of the Disciplinary Board or the court, as the case may be, may fix the amount of the Bar's actual and necessary costs and disbursements incurred in the proceeding to be paid by the accused.

(g) Supplementing Record. If the Disciplinary Board or the court concludes that facts are not set forth in sufficient detail to enable it to form an opinion as to the propriety of the discipline agreed upon, the Disciplinary Board or court may request that additional stipulated facts be submitted or it may disapprove the plea or stipulation.

(h) Confidentiality. A plea or stipulation prepared for the Disciplinary Board or the court's consideration shall not be subject to public disclosure prior to Disciplinary Board or court approval of the plea or stipulation or if rejected by the Disciplinary Board or court.

(Rule 3.6(d) and (e) amended by Order dated February 23, 1988.)

TITLE 4 -- PREHEARING PROCEDURE

| | |
|-----------------|------------------------------------|
| Rule 4.1 | Formal Complaint |
| Rule 4.2 | Service of Formal Complaint |
| Rule 4.3 | Answer |
| Rule 4.4 | Pleadings and Amendments |
| Rule 4.5 | Discovery |

RULE 4.1. FORMAL COMPLAINT.

(a) Designation of Counsel and Region. If it shall appear to the SPRB that probable cause exists to believe an attorney has engaged in misconduct warranting public reprimand, suspension or disbarment, it shall refer the matter to Disciplinary Counsel with instructions to file specified charges against the attorney. Disciplinary Counsel, being so advised, shall appoint Bar Counsel and, upon the service of a formal complaint upon an accused, request that the Disciplinary Board appoint a trial panel in the appropriate region selected pursuant to BR 5.3(a).

(b) Filing. Disciplinary Counsel or Bar Counsel shall prepare and file a formal complaint against the attorney on behalf of the Bar. Proceedings thereon shall then be had as herein provided. The formal complaint shall be in substantially the form set forth in BR 12.1.

(c) Substance of Formal Complaint. A formal complaint shall be signed by the Executive Director, or his or her designee, and shall set forth succinctly the acts or omissions of the accused, including the specific statutes or disciplinary rules violated, so as to enable the accused to know the nature of the charge or charges against the accused. When more than one act or transaction is relied upon, the allegations shall be separately stated and numbered. The formal complaint need not be verified.

(d) Consolidation of Charges and Proceedings. The Bar, at the direction of the SPRB, may consolidate in a formal complaint two or more causes of complaint against the same attorney or attorneys, but shall file a separate formal complaint against each accused. The findings and conclusions thereon may be either joint or separate, as the trial panel, in its discretion, may determine. The Bar, at the discretion of the SPRB, may also consolidate formal complaints against two or more attorneys for hearing before one trial panel.

(Rule 4.1(a) amended by Order dated January 5, 1988.)

(Rule 4.1(b) amended by Order dated February 23, 1988.)

RULE 4.2. SERVICE OF FORMAL COMPLAINT.

(a) Manner of Service of Formal Complaint. A copy of the formal complaint, accompanied by a notice to answer it within 14 days, may be personally served on the accused, his or her in-state agent or as otherwise permitted by Bar Rule 1.12. The notice to answer shall be substantially the form set forth in BR 12.3.

(b) Alternative Service of Formal Complaint. The Bar may request the Supreme Court to authorize the service of a formal complaint and notice to answer on the Accused pursuant to ORCP 7.D(6).

(c) Proof of Service of Complaint. Proof of personal service shall be made in the same manner as in a case pending in a circuit court.

(d) Disregard of Error. Failure to comply with any provision of this rule or BR 1.12 shall not affect the validity of service if the Accused received actual notice of the substance and pendency of the disciplinary proceedings.

(Rule 4.2 amended by Order dated June 30, 1987.)

RULE 4.3. ANSWER.

(a) Time to Answer. The accused shall answer the formal complaint within 14 days of service of the formal complaint.

(b) Extensions. The accused may, in writing, request an extension of time to file his or her answer from Bar Counsel. The request for extension must be received by Bar Counsel within the time the accused is required to file an answer. Bar Counsel may allow one extension for not longer than 14 days.

(c) Trial Panel Authority. Upon application of either Bar Counsel or the accused, the trial panel chairperson to which the matter is assigned may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.

(d) Form of Answer. The accused's answer shall be responsive to the formal complaint filed. General denials shall not be allowed. The answer shall be substantially in the form set forth in BR 12.3 and shall be verified by the accused. The original shall be filed with Disciplinary Counsel and a copy mailed by the accused to Bar Counsel.

RULE 4.4. PLEADINGS AND AMENDMENTS.

(a) Pleadings. The only permissible pleadings shall be a formal complaint and an answer, and amendments thereto, except for a motion to require a formal complaint to comply with BR 4.1(c) and an answer to comply with BR 4.3(d).

(b) Amendments. (1) A formal complaint can be amended at any time after filing, in amplification of the original charges, to add new charges, or to withdraw charges. In case of amendment, however, the accused shall be given a reasonable time, set by the trial panel chairperson, to answer the amended formal complaint, to procure evidence and to prepare to meet the matters raised by the amended formal complaint.

(2) An answer can be amended at any time after filing. In the case of amendment, however, the Bar shall be given a reasonable time, set by the trial panel chairperson, to procure evidence and to prepare to meet the matters raised by the amended answer.

RULE 4.5. DISCOVERY.

(a) General. Discovery in disciplinary proceedings is intended to promote identification of issues and a prompt and fair hearing on the charges. Discovery shall be conducted expeditiously by Bar Counsel and the accused, and shall be completed within 14 days prior to the date of hearing unless extended for good cause by the trial panel chairperson.

(b) Permitted Discovery.

(1) Requests for admission, requests for production of documents, and depositions may be utilized in disciplinary proceedings.

(2) The manner of taking depositions shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Subpoenas may be issued when necessary by the trial panel chairperson, Bar Counsel, the accused or his or her attorney of record. Depositions may be taken any time after service of the formal complaint.

(3) Transcripts of depositions in disciplinary proceedings shall comply with the Rules of Appellate Procedure of the Supreme Court as to form. A person who is deposed may request at the time of deposition to examine the person's transcribed testimony. In such case, the procedure set forth in the Oregon Rules of Civil Procedure shall be followed as far as practicable.

(4) The manner of making requests for the production of documents shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for production may be served any time after service of the formal complaint with responses due within 21 days.

(5) The manner of making requests for admission shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for admission may be served any time after service of the formal complaint with responses due within 21 days.

(c) Discovery Procedure. All discovery questions shall be resolved by the trial panel chairperson on motion. Discovery motions, including motions for limitation of discovery, shall be in writing. All such motions shall be filed with the trial panel chairperson and a copy mailed to Bar Counsel or the accused, and Disciplinary Counsel. Bar Counsel or the accused shall have 7 days from filing of a motion with a trial panel chairperson in which to file a response, unless the time is shortened by the trial panel chairperson for good cause. Upon expiration of the time for response, the trial panel chairperson shall promptly rule on the motion, with or without argument at the discretion of the trial panel chairperson. Argument on any motion may be heard by conference telephone call. Rulings on discovery motions shall be in writing with copies mailed to Bar Counsel, the accused, and Disciplinary Counsel.

(d) Limitations on Discovery. In the exercise of his or her discretion, the trial panel chairperson shall impose such terms or limitations on the exercise of discovery as may appear necessary to prevent undue delay or expense in bringing the matter to hearing and to promote the interests of justice.

(e) Discovery Sanctions. For failure to provide discovery as required under BR 4.5, the trial panel chairperson may make such rulings as are just, including, but not limited to, the following:

(1) A ruling that the matters regarding which the ruling was made or any other designated fact shall be taken to be established for the purposes of the proceeding in accordance with the claim of the litigant obtaining the ruling; or

(2) A ruling refusing to allow the disobedient litigant to support or oppose designated claims or defenses, or prohibiting the disobedient litigant from introducing designated matters in evidence.

In addition, any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to BR 4.5 may be enforced by application of the Bar or accused to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(f) Rulings Interlocutory. Discovery rulings are interlocutory.

(Rule 4.5(c) amended by Order dated February 23, 1988.)

TITLE 5 -- DISCIPLINARY HEARING PROCEDURE

| | |
|-----------------|--|
| Rule 5.1 | Evidence and Procedure |
| Rule 5.2 | Burden of Proof |
| Rule 5.3 | Location of Hearing; Subpoenas, Testimony |
| Rule 5.4 | Hearing Date; Continuances |
| Rule 5.5 | Prior Record |
| Rule 5.6 | Evidence of Prior Acts of Misconduct |
| Rule 5.7 | Consideration of Sanctions |
| Rule 5.8 | Default |

RULE 5.1. EVIDENCE AND PROCEDURE.

(a) **Rules of Evidence.** Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) **Harmless Error.** No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the accused has occurred.

(Rule 5.1(a) amended by Order dated February 23, 1988.)

RULE 5.2. BURDEN OF PROOF. The Bar shall have the burden of establishing misconduct by clear and convincing evidence.

RULE 5.3. LOCATION OF HEARING; SUBPOENAS; TESTIMONY.

(a) **Location.** In the trial of any disciplinary proceeding, the hearing shall be held either in the county in which the person charged maintains his or her office for the practice of law or other business, in which he or she resides, or in which the offense is alleged to have been committed, in the discretion of the trial panel chairperson. With the consent of the accused, the hearing may be held elsewhere. In the trial of any contested admission or reinstatement matter, the hearing shall be held at a location designated by the state chairperson of the Disciplinary Board.

(b) **Subpoenas.** The Executive Director, the state chairperson or regional chairpersons of the Disciplinary Board, trial panel chairpersons, Bar Counsel and the attorney of record for the accused or the accused, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to BR 4.5 may be enforced by application of the Bar or an accused to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) **Testimony.** Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an oath.

(d) **Transcript of Proceedings; Correction of Errors; Settlement Order.** Every disciplinary hearing shall be transcribed. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the accused of the filing of the transcripts with the trial panel chairperson. Within 14 days after the transcript is filed, Bar Counsel or the accused may move the trial panel chairperson for an order to correct any errors

appearing in the transcript. A copy of such motion shall be mailed to Bar Counsel or the accused, as the case may be. Within 7 days Bar Counsel or the accused, as the case may be, may file a response to the motion with the trial panel chairperson. The trial panel chairperson shall thereafter direct the making of such corrections as may be appropriate. Upon the denial of a motion to correct the transcript or upon the making of such corrections as may be directed by the trial panel chairperson, an order settling the transcript shall be entered in the record by the trial panel chairperson with copies thereof mailed to Disciplinary Counsel, Bar Counsel and the accused.

RULE 5.4. HEARING DATE; CONTINUANCES. The hearing date shall be established by the trial panel chairperson as provided in BR 2.4(h). Continuances of the hearing date may be granted by the trial panel chairperson at any time prior to the hearing, or by the trial panel, at the time of the hearing, only upon a showing of good cause therefor; but in no event shall continuances granted the Bar or the accused exceed 56 days in the aggregate.

RULE 5.5. PRIOR RECORD.

(a) Defined. "Prior record" means any contested admission, disciplinary or reinstatement decision of the Disciplinary Board or the Supreme Court which has become final.

(b) Restrictions on Admissibility. At the fact finding hearing in a disciplinary proceeding, an accused's prior record or lack thereof shall not be admissible to prove the character of an accused or to impeach his or her credibility.

RULE 5.6. EVIDENCE OF PRIOR ACTS OF MISCONDUCT. Evidence of prior acts of misconduct on the part of an accused is admissible in a disciplinary proceeding for such purposes as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident.

RULE 5.7. CONSIDERATION OF SANCTIONS. Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the accused is in violation of a disciplinary rule or statute. Only when the trial panel chairperson considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred.

(Rule 5.7 amended by Order dated February 23, 1988.)

RULE 5.8. DEFAULT. If an accused fails to resign before his or her answer to a formal complaint is due or fails to answer a formal complaint within the time allowed by these rules, the trial panel shall enter an order in the record finding the accused in default under this rule. The trial panel shall thereafter proceed to a determination of the charge or charges filed against the accused based on the evidence presented by the Bar; and the accused shall not be entitled to further notice, except as may be required by these rules or by statute, in the disciplinary proceeding under consideration.

TITLE 6 -- SANCTIONS AND OTHER REMEDIES

| | |
|-----------------|---|
| Rule 6.1 | Sanctions |
| Rule 6.2 | Probation |
| Rule 6.3 | Duties Upon Suspension or Disbarment |

RULE 6.1. SANCTIONS.

(a) Disciplinary Proceedings. The dispositions or sanctions in disciplinary proceedings shall include

- (i) dismissal of any charge or all charges;
- (ii) public reprimand;
- (iii) suspension for periods from 30 days to three years;
- (iv) a suspension for any period designated in BR 6.1(a)(iii) which may be stayed in whole or in part on the condition that designated probationary terms are met; or
- (v) disbarment.

(b) Contested Admission Proceedings. In contested admission cases a determination shall be made whether the applicant shall be

- (i) denied admission;
- (ii) admitted conditionally, subject to probationary terms; or
- (iii) admitted unconditionally.

(c) Contested Reinstatement Proceedings. In contested reinstatement cases a determination shall be made whether the applicant shall be

- (i) denied reinstatement;
- (ii) reinstated conditionally, subject to probationary terms; or
- (iii) reinstated unconditionally.

(d) Time Period Before Application and Reapplication. A disbarred attorney may not apply for reinstatement until five years has elapsed from the effective date of his or her disbarment. The court may require an applicant whose admission or reinstatement has been denied to wait a period of time designated by the court before reapplying for admission or reinstatement.

(Rule 6.1(a) amended by Order dated May 31, 1984, effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985.)

RULE 6.2. PROBATION.

(a) Authority in Disciplinary Proceedings. Upon determining that an accused should be suspended, the trial panel may decide that the execution of the suspension shall be stayed, in whole or in part, and that the accused shall be placed on probation for a period no longer than three years. The imposition of a probationary term shall not affect the criteria established by statute and these rules for the review of decisions of trial panels by the Supreme Court. Probation, if ordered, may be under such conditions as the trial panel or the Supreme Court considers appropriate. Such conditions may include, but are not limited to, requiring alcohol or drug treatment; requiring medical care; requiring psychological or psychiatric care; requiring professional office practice or management counseling; and requiring periodic audits or reports. In any case where an attorney is placed on probation pursuant to this rule, the state chairperson of the Disciplinary Board or the Supreme Court may appoint a suitable person or persons to supervise the probation. Cooperation with a person or persons so appointed shall be a condition of the probation.

(b) Authority in Contested Admission and Reinstatement Proceedings. Upon determining that an applicant should be admitted or readmitted to membership in the Oregon State Bar, the trial panel may decide to place the applicant on probation for a period no longer than three years. The

probationary terms may include, but are not limited to, those provided in BR 6.2(a). The Supreme Court may adopt, in whole or in part, the decision of the trial panel regarding probation and enter an appropriate order upon a review of the proceeding. The court may appoint a suitable person or persons to supervise the probation. Cooperation with a person or persons so appointed shall be a condition of the probation. An attorney placed on probation pursuant to this rule may have his or her probation revoked for a violation of any probationary term by petition of Disciplinary Counsel in accordance with the procedures set forth in BR 6.2(d). An attorney whose probation is revoked shall be suspended from the practice of law until further order of the court.

(c) **Disciplinary Board.** In all cases where the trial panel determines that the accused should be suspended and the determination is not reviewed by the Supreme Court, thereby resulting in such determination becoming final, the decision that the accused be placed on probation under the conditions specified in the trial panel's opinion shall be deemed adopted and made a part of the determination.

(d) **Revocation.** Disciplinary Counsel may petition the trial panel before whom the matter was originally heard, if available, or before a panel convened for that purpose by the chairperson in the region in which the original proceeding was held, or the Supreme Court, as the case may be, to revoke the probation of any attorney for violation of any probationary term. The trial panel or court may order the attorney to appear and show cause, if he or she has any, why the attorney's probation should not be revoked and the original sanctions imposed. A petition for revocation of an attorney's probation shall not preclude the Bar from filing independent disciplinary charges based on the same conduct as alleged in the petition.

RULE 6.3. DUTIES UPON DISBARMENT OR SUSPENSION .

(a) **Attorney to Discontinue Practice.** A disbarred or suspended attorney shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) **Responsibilities.** It shall be the duty of a disbarred or suspended attorney to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) **Contempt.** Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

(Rule 6.3 amended by Order dated March 13, 1989, effective April 1, 1989.)

TITLE 7 -- CONTESTED ADMISSION

| | |
|-----------------|--|
| Rule 7.1 | Petition to Review Adverse Recommendation |
| Rule 7.2 | Procedure on Referral by Court |
| Rule 7.3 | Answer to Statement of Objections |
| Rule 7.4 | Hearing Procedure |
| Rule 7.5 | Burden of Proof |
| Rule 7.6 | Burden of Producing Evidence |

RULE 7.1. PETITION TO REVIEW ADVERSE RECOMMENDATION. An applicant who passed the Bar examination, but on other grounds was not recommended for admission, may file with the State Court Administrator and serve on the Executive Director of the Oregon State Bar a

petition stating in substance that the applicant desires to have his or her case reviewed by the court. The petition shall be filed no later than 28 days after the Supreme Court has mailed the applicant notice of the Board of Bar Examiners adverse recommendation. If the court considers it appropriate, it may refer the petition to the Disciplinary Board for a hearing to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to Disciplinary Counsel and the applicant of such referral.

(Rule 7.1 amended by Order dated November 1, 1984, effective December 1, 1984. Amended by Order dated September 24, 1987, effective October 1, 1987.)

RULE 7.2. PROCEDURE ON REFERRAL BY COURT. On receipt of notice of a referral to the Disciplinary Board under BR 7.1, Disciplinary Counsel shall appoint Bar Counsel to represent the Bar. Bar Counsel shall prepare and serve on the applicant a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.4.

RULE 7.3. ANSWER TO STATEMENT OF OBJECTIONS. The applicant shall answer the statement of objections within 14 days of the service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials shall not be allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with Disciplinary Counsel and a copy mailed to Bar Counsel. The matter shall proceed to hearing upon the filing of an answer or upon the expiration of the time to answer in the event the applicant fails to answer.

RULE 7.4. HEARING PROCEDURE. Titles 4, 5, and 10 shall apply as far as practicable to contested admission proceedings referred by the court to the Disciplinary Board for hearing.

RULE 7.5. BURDEN OF PROOF. An applicant for admission to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that he or she has the requisite good moral character and general fitness to practice law, and that his or her admission to the practice of law in this state will not be detrimental to the administration of justice or the public interest.

RULE 7.6. BURDEN OF PRODUCING EVIDENCE. While an applicant for admission has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be admitted to the practice of law.

TITLE 8 -- REINSTATEMENT

| | |
|------------------|--|
| Rule 8.1 | Reinstatement - Formal Application Required |
| Rule 8.2 | Reinstatement - Informal Application Required |
| Rule 8.3 | Reinstatement - Compliance Affidavit |
| Rule 8.4 | Reinstatement - Financial Matters |
| Rule 8.5 | Reinstatement - Noncompliance with MCLE |
| Rule 8.6 | Other Obligations Upon Application |
| Rule 8.7 | Board Investigation and Recommendation |
| Rule 8.8 | Petition to Review Adverse Recommendation |
| Rule 8.9 | Procedure on Referral by Court |
| Rule 8.10 | Answer to Statement of Objections |
| Rule 8.11 | Hearing Procedure |
| Rule 8.12 | Burden of Proof |
| Rule 8.13 | Burden of Producing Evidence |

RULE 8.1. REINSTATEMENT - FORMAL APPLICATION REQUIRED.

- (a) Applicants. Any person who has been a member of the Bar, but who has
- (i) resigned under Form A of these rules more than two years prior to the date of application for reinstatement and who has not been a member of the Bar during such period; or
 - (ii) resigned under Form B of these rules; or
 - (iii) been disbarred; or
 - (iv) been suspended for misconduct for a period of more than six months; or
 - (v) been suspended for misconduct for a period of six months or less but has remained in a suspended status for a period of more than six months prior to the date of application for reinstatement; or
 - (vi) been enrolled voluntarily as an inactive member for more than two years; or
 - (vii) been involuntarily enrolled as an inactive member; or
 - (viii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than two years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension, disbarment or resignation. A reinstatement to inactive status shall not be allowed under this rule. The application for reinstatement of a person who has been suspended for a period exceeding six months shall not be made earlier than three months before the earliest possible expiration of the period specified in the court's opinion or order of suspension.

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public

interest. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) **Fees.** In addition to the payments required in BR 8.6, an applicant under this rule shall pay the following at the time the application for reinstatement is filed:

(i) if the applicant has been enrolled, voluntarily or involuntarily, as an inactive member, or resigned under Form A, all fees, assessments and penalties due and delinquent at the time of enrollment as an inactive member or resignation under Form A, and, if the applicant has continued in

- (1) a voluntary inactive status for less than five years, an application fee of \$200; or
- (2) a voluntary inactive status for five years or more, an application fee of \$400; or
- (3) an involuntary inactive status for less than two years, an application fee of \$200; or
- (4) an involuntary inactive status for two years or more, an application fee of \$400; or
- (5) a Form A resignation status for less than five years, an application fee of \$200; or
- (6) a Form A resignation status for five years or more, an application fee of \$400.

(ii) if the applicant has been disbarred, or suspended by the court as a result of a disciplinary proceeding, or resigned under Form B of these rules and the resignation was accepted by the court, all fees, assessments and penalties due and delinquent at the time of the applicant's disbarment, suspension, or resignation, and an application fee of \$400.

(iii) if the applicant has been suspended for failure to pay any assessment, fee or penalty to the Bar, all fees, assessments and penalties due and delinquent at the time of suspension, and, if the applicant has continued in

- (1) a suspended status for less than five years, an application fee of \$200; or
- (2) a suspended status for five years or more, an application fee of \$400.

(Rule 8.1(c) and (f) amended by Order dated May 31, 1984, effective July 1, 1984.)

(Rule 8.1(c) amended by Order dated July 27, 1984 nun pro tunc May 31, 1984.)

(Rule 8.1 amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)

RULE 8.2. REINSTATEMENT - INFORMAL APPLICATION REQUIRED.

(a) **Applicants.** Any person who has been a member of the Bar, but who has

(i) resigned under Form A of these rules for two years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been suspended for misconduct for a period of 64 days to and including six months; or

(iii) been suspended for misconduct for a period of 63 days or less but did not file a Compliance Affidavit under BR 8.3 within 28 days after the period of suspension expired and has remained in a suspended status for a period not in excess of six months; or

(iv) been enrolled voluntarily as an inactive member for two years or less prior to the date of application for reinstatement; or

(v) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than six months but not in excess of two years prior to the date of application for reinstatement,

may be reinstated by the Board at its next regularly scheduled meeting following the filing of an informal application for reinstatement with the Bar, unless the court or Disciplinary Board, in any suspension order or decision, shall have directed otherwise. The informal application for reinstatement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive status, suspension or resignation. Reinstatements to inactive status shall not be allowed under this rule except for those applicants who were inactive and are seeking reinstatement to inactive status after a financial suspension. No applicant shall resume the practice of law in this state or active or inactive membership status unless all the requirements of this rule are met.

(b) Fees. In addition to the payments required in BR 8.6, an applicant under this rule shall pay the following at the time the application for reinstatement is filed:

(i) if the applicant has been enrolled voluntarily or involuntarily as an inactive member or resigned under Form A, all fees, assessments and penalties due and delinquent at the time of enrollment as an inactive member or resignation under Form A, and an application fee of \$100;

(ii) if the applicant was suspended for misconduct, all fees, assessments and penalties due and delinquent at the time of his or her suspension, and an application fee of \$200;

(iii) if the applicant was suspended for failure to pay any assessment, fee or penalty to the Bar, all fees, assessments and penalties due and delinquent at the time of suspension, and an application fee of \$100;

(c) Exceptions. Any applicant otherwise qualified to file for reinstatement under this rule but who

(i) during the period of the member's resignation, has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States; or

(ii) during the period of the member's suspension, resignation or inactive status, has been suspended for professional misconduct for more than six months or has been disbarred by any court other than the Supreme Court; or

(iii) has engaged in conduct which raises issues of possible violation of the Bar Act or Code of Professional Responsibility; shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of this rule shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's resignation, suspension or transfer to inactive status, and an application fee of \$400 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(d) Denial of Application. If the Board determines from its review of the informal application that the applicant for reinstatement has not shown that the applicant has good moral character and general fitness to practice law or that the applicant has failed to show that the resumption of the practice of law in this state would not be detrimental to the administration of justice or the public interest, the Board may deny the application for reinstatement. The Board shall file its adverse recommendation with the Supreme Court under BR 8.7.

(e) Suspension of Application. If the Board determines that additional information is required from an applicant regarding conduct during the period of suspension, resignation or inactive status, the Board may direct Disciplinary Counsel to secure additional information concerning the

applicant's conduct and the Board may defer consideration of the application for reinstatement to a subsequent meeting designated by the Board.

(Rule 8.2(b) amended by Order dated May 31, 1984, effective July 1, 1984.)

(Rule 8.2 amended by Order dated March 13, 1989, effective April 1, 1989.)

RULE 8.3 REINSTATEMENT - COMPLIANCE AFFIDAVIT.

(a) **Applicants.** Subject to the provisions of BR 8.2(a)(iii), any person who has been a member of the Bar but who has been suspended for misconduct for a period of 63 days or less shall be reinstated upon the filing of a Compliance Affidavit with Disciplinary Counsel as set forth in BR 12.9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

(b) **Fees.** In addition to the payments required in BR 8.6, an applicant under this rule shall pay an application fee of \$200.

(Rule 8.3 established by Order dated March 13, 1989, effective April 1, 1989.)

RULE 8.4. REINSTATEMENT - FINANCIAL MATTERS.

(a) **Applicants.** Any person who has been a member of the Bar but suspended solely for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment or annual membership fees or penalties may be reinstated by the Executive Director to the membership status from which the person was suspended within six months from the date of the applicant's suspension, upon payment of the following sums to the Bar:

- (i) all applicable assessments, fees and penalties owed by the member to the Bar, and
- (ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, a reinstatement fee of \$50; or
- (iii) in the case of a suspension for failure to pay the Professional Liability Fund assessment, a reinstatement fee of \$75; or
- (iv) in the case of suspensions for failure to pay both membership fees or penalties or the Client Security Fund assessment, and the Professional Liability Fund assessment, a reinstatement fee of \$100.

An applicant under this rule must, in conjunction with the payment of all required sums, submit a written statement to the Executive Director indicating compliance with this rule before reinstatement is authorized. The written statement shall be on a form prepared by the Bar for such purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(b) **Exceptions.** Any applicant otherwise qualified to file for reinstatement under this rule but who, during the period of the member's suspension, has been suspended for misconduct for more than six months or been disbarred by any court other than the Supreme Court, shall be required to seek reinstatement under BR 8.1. Any applicant required to apply for reinstatement under BR 8.1 because of BR 8.4(b) shall pay all fees, assessments and penalties due and delinquent at the time of the applicant's suspension and an application fee of \$400 to the Bar at the time the application for reinstatement is filed, together with any payments due under BR 8.6.

(Rule 8.4 (former BR 8.3) amended by Order dated March 13, 1989, effective April 1, 1989.)

RULE 8.5. REINSTATEMENT -- NONCOMPLIANCE WITH MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENT.

(a) Applicants. Any person who has been a member of the Bar but suspended solely for failure to comply with the requirements of the Minimum Continuing Legal Education Rules may seek reinstatement at any time subsequent to the date of the applicant's suspension by meeting the following conditions:

(i) Filing a written statement with the Executive Director, on a form prepared by the Bar for that purpose, which indicates compliance with this rule and MCLE Rule 8.2. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's suspension.

(ii) Submitting in conjunction with the required written statement, a reinstatement fee of \$100.

(b) Referral to Supreme Court. Upon compliance with the requirements of this rule, the Executive Director shall submit a recommendation to the Supreme Court with a copy to the applicant. No reinstatement is effective until approved by the Court.

(c) Exception. Reinstatement under this rule shall have no effect upon any member's status under any other proceeding under these Rules of Procedure.

(Rule 8.4 established by Order dated November 24, 1987, effective January 1, 1988.)

(Rule 8.5 (former BR 8.4) amended by Order dated March 13, 1989, effective April 1, 1989.)

RULE 8.6 OTHER OBLIGATIONS UPON APPLICATION.

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the same year. The applicant shall also pay, upon admission, any applicable assessment to the Professional Liability Fund.

(b) Judgment for Costs. In the event the applicant was disciplined by the court or the Disciplinary Board, the applicant shall also pay to the Bar, at the time of application, any unpaid judgment for costs and disbursements assessed by the court or the Disciplinary Board therein.

(c) Refunds. In the event an application for reinstatement is denied, the Bar shall refund to the applicant all membership fees and assessments paid at the time of application, less the membership fees and assessments that applied during any temporary reinstatement under BR 8.7.

(d) Adjustments. In the event an application for reinstatement is filed in one year and not acted upon until the following year, the applicant shall pay to the Bar, prior to reinstatement, any increase in membership fees or assessments since the date of application. If a decrease in membership fees and assessments has occurred, the Bar shall refund the decrease to the applicant.

RULE 8.7. BOARD INVESTIGATION AND RECOMMENDATION. On the filing of an application for reinstatement under BR 8.1 and BR 8.2, the Board shall make such investigation as it deems proper. The Board may temporarily reinstate an applicant pending receipt of all investigatory materials if a determination is made that the applicant is of good moral character and generally fit to practice law. A temporary reinstatement shall not exceed a period of four months unless authorized by the court. The Board shall recommend to the court that the application be granted, conditionally or unconditionally, or denied, and shall mail a copy of its recommendation to the applicant.

RULE 8.8. PETITION TO REVIEW ADVERSE RECOMMENDATION. Not later than 28 days after the Bar files an adverse recommendation regarding the applicant with the court, an

applicant who desires to contest the Board's recommendation shall file with Disciplinary Counsel and the State Court Administrator a petition stating in substance that the applicant desires to have the case reviewed by the court. If the court considers it appropriate, it may refer the petition to the Disciplinary Board to inquire into the applicant's moral character and general fitness to practice law. Written notice shall be given by the State Court Administrator to Disciplinary Counsel and the applicant of such referral. The applicant's resignation, disbarment, suspension or inactive membership status shall remain in effect until final disposition of the petition by the court.

RULE 8.9. PROCEDURE ON REFERRAL BY COURT. On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel shall appoint Bar Counsel to represent the Bar. Bar Counsel shall prepare and serve on the applicant a statement of objections. The statement of objections shall be substantially in the form set forth in BR 12.5.

RULE 8.10. ANSWER TO STATEMENT OF OBJECTIONS. The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 12.3. The original shall be filed with Disciplinary Counsel and a copy mailed to Bar Counsel. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

RULE 8.11. HEARING PROCEDURE. Titles 4, 5 and 10 shall apply as far as practicable to reinstatement proceedings referred by the court to the Disciplinary Board for hearing.

RULE 8.12. BURDEN OF PROOF. An applicant for reinstatement to the practice of law in Oregon shall have the burden of establishing by clear and convincing evidence that the applicant has the requisite good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state will not be detrimental to the administration of justice or the public interest.

RULE 8.13. BURDEN OF PRODUCING EVIDENCE. While an applicant for reinstatement has the ultimate burden of proof to establish good moral character and general fitness to practice law, the Bar shall initially have the burden of producing evidence in support of its position that the applicant should not be readmitted to the practice of law.

(Rules 8.5 - 8.11 amended by Order dated November 24, 1987, effective January 1, 1988.)
(Rules 8.6 - 8.13 amended by Order dated March 13, 1989, effective April 1, 1989.)

TITLE 9 -- RESIGNATION

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|-----------------|----------------------------------|
| Rule 9.1 | Resignation |
| Rule 9.2 | Acceptance of Resignation |
| Rule 9.3 | Duties upon Resignation |

RULE 9.1. RESIGNATION. An attorney may resign by filing with Disciplinary Counsel, in duplicate original, a resignation in writing which shall be effective only on acceptance by the court. If no charges, allegations or instances of alleged misconduct involving the attorney are under investigation by the Bar, and no disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.6. If charges, allegations or instances of alleged

misconduct involving the attorney are under investigation by the Bar, or if disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.7.

RULE 9.2. ACCEPTANCE OF RESIGNATION. Disciplinary Counsel shall promptly forward a duplicate original of the resignation to the State Court Administrator for submission to the court. Upon acceptance of the resignation by the court, the name of the resigning attorney shall be stricken from the roll of attorneys; and he or she shall no longer be entitled to the rights or privileges of an attorney, but shall remain subject to the jurisdiction of the court with respect to matters occurring while he or she was an attorney. Unless otherwise ordered by the court, any pending investigation of charges, allegations or instances of alleged misconduct by the resigning attorney shall, on the acceptance by the court of his or her resignation, be closed, as shall any pending disciplinary proceeding against the attorney.

RULE 9.3. DUTIES UPON RESIGNATION.

(a) **Attorney to Discontinue Practice.** An attorney who has resigned membership in the Oregon State Bar shall not practice law after the effective date of the resignation. This rule shall not preclude an attorney who has resigned from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) **Responsibilities.** It shall be the duty of an attorney who has resigned to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) **Contempt.** Disciplinary Counsel may petition the Supreme Court to hold an attorney who has resigned in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

(Rule 9.3 amended by Order dated March 13, 1989, effective April 1, 1989.)

TITLE 10 -- REVIEW BY SUPREME COURT

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|------------------|--|
| Rule 10.1 | Disciplinary Proceedings |
| Rule 10.2 | Contested Admission and Reinstatement Proceedings |
| Rule 10.3 | Request for Review |
| Rule 10.4 | Filing in Supreme Court |
| Rule 10.5 | Procedure in Supreme Court |
| Rule 10.6 | Nature of Review |
| Rule 10.7 | Costs and Disbursements |

RULE 10.1. DISCIPLINARY PROCEEDINGS. Upon the conclusion of a disciplinary hearing, the trial panel, pursuant to BR 1.8, shall file its written opinion with Disciplinary Counsel who shall mail a copy to Bar Counsel, the accused and the State Court Administrator. If the decision of the trial panel finds the accused not guilty of all alleged misconduct or determines that the accused shall be disciplined by reprimand or suspension from the practice of law not to exceed 60 days, the Bar or the accused may seek review of the matter by the Supreme Court; otherwise, the decision of the trial panel shall be final on the 15th day following the mailing of the trial panel opinion by Disciplinary Counsel. If the decision of the trial panel is to suspend the accused for a period longer than 60 days or to disbar the accused, the matter shall be reviewed by the Supreme Court.

(Rule 10.1 amended by Order dated July 8, 1988.)

RULE 10.2. CONTESTED ADMISSION AND REINSTATEMENT PROCEEDING.

Upon the conclusion of a contested admission or reinstatement hearing, the trial panel shall file its written opinion with Disciplinary Counsel and mail a copy to the State Court Administrator. Each such matter shall be reviewed by the Supreme Court.

RULE 10.3. REQUEST FOR REVIEW. Within 14 days after a trial panel opinion is mailed by Disciplinary Counsel finding the accused not guilty or imposing discipline by reprimand or suspension not to exceed 60 days, the Bar or the accused may file with Disciplinary Counsel and the State Court Administrator a request for review as set forth in BR 12.8.

(Rule 10.3 amended by Order dated July 8, 1988.)

RULE 10.4. FILING IN SUPREME COURT.

- (a) Upon the receipt of a trial panel opinion by Disciplinary Counsel in
- (i) any contested admission or reinstatement proceeding;
 - (ii) any disciplinary proceeding resulting in disbarment or suspension in excess of 60 days; or
- (b) upon timely filing with Disciplinary Counsel of a request for review Disciplinary Counsel shall file the record of the proceeding with the State Court Administrator. Upon receipt of the record, the matter shall be reviewed by the court as provided in BR 10.5.

RULE 10.5. PROCEDURE IN SUPREME COURT.

- (a) Petition. No later than 28 days after the court's written notice to Disciplinary Counsel, Bar Counsel and the accused or applicant of receipt of the record, a petition asking the court to adopt, modify or reject, in whole or in part, the decision of the trial panel shall be filed with the court.
- (b) Moving Party. The petition shall be filed by the accused or applicant if the trial panel made a finding of misconduct against the accused or recommended against the admission or reinstatement of the applicant; otherwise, the Bar shall file the petition.
- (c) Briefs. A petition filed under this rule shall be accompanied by a brief. The format of the opening brief and the timing and format of answering briefs and reply briefs shall be governed by the applicable Rules of Appellate Procedure of the Supreme Court. The failure of the Bar or an accused or applicant to file a petition or brief does not prevent the opposing litigant from filing a brief. Answering briefs are not limited to issues addressed in petitions or opening briefs, and may urge the adoption, modification or rejection in whole or in part of any decision of the trial panel.
- (d) Oral Argument. The Rules of Appellate Procedure of the Supreme Court relative to oral argument shall apply in contested admission, disciplinary and reinstatement proceedings. The moving party under BR 10.5(b) shall be considered the appellant.

RULE 10.6. NATURE OF REVIEW. The court shall consider each matter de novo upon the record and may adopt, modify or reject the decision of the trial panel in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel without opinion, the opinion of the trial panel shall stand as a statement of the decision of the court in the matter but not as the opinion of the court.

RULE 10.7. COSTS AND DISBURSEMENTS.

- (a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions; (3) expense of the hearing transcript; and (4) the expense

of preparation of an appellate brief in accordance with ORAP 11.05(1). Lawyer fees are not recoverable costs and disbursements either at the hearing or on appeal nor are prevailing party fees recoverable by any party.

(b) Allowance of Costs and Disbursements. In any contested admission, discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the court or Disciplinary Board. An accused or applicant prevails when the charges against the accused are dismissed in their entirety or the applicant is unconditionally admitted or reinstated to the practice of law in Oregon. The bar shall be considered to have prevailed in all other cases.

(c) Recovery After Offer of Settlement. An accused may, at any time up to 14 days prior to hearing, serve upon Bar Counsel and Disciplinary Counsel an offer by the accused to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the written offer by an accused to enter into a stipulation for discipline or no contest plea is rejected by the SPRB, and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or of the court imposing a sanction no greater than that to which the accused was willing to plea no contest or stipulate based on the charges the accused was willing to concede or admit, the Bar shall not recover and the accused shall recover actual and necessary costs and disbursements incurred after the date the accused's offer was rejected by the SPRB.

(d) Procedure for Recovery and Collection. The procedure set forth in the Rules of Appellate Procedure of the Supreme Court regarding the filing of cost bills and objections thereto shall be followed except that in matters involving final decisions of the Disciplinary Board cost bills shall be filed with the state chairperson of the Disciplinary Board and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. Objections to a cost bill in a matter involving a final Disciplinary Board decision shall also be filed with and resolved by the state chairperson of the Disciplinary Board. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536(5).

(Rule 10.7 amended by Order dated June 25, 1985, effective July 15, 1985; amended by further Orders dated July 8, 1985 and July 22, 1985; amended by Order dated March 13, 1989, effective April 1, 1989.)

TITLE 11 -- TIME REQUIREMENTS

Rule 11.1 Failure to Meet Time Requirements

RULE 11.1. FAILURE TO MEET TIME REQUIREMENTS. The failure of any person or body to meet any time limitation or requirement in these rules shall not be grounds for the dismissal of any charge or objection unless a showing is made that the delay substantially prejudiced the ability of the accused or applicant to receive a fair hearing.

Title 12 -- FORMS

| | |
|------------------|---|
| Rule 12.1 | Formal Complaint |
| Rule 12.2 | Notice to Answer |
| Rule 12.3 | Answer |
| Rule 12.4 | Statement of Objections to Admission |
| Rule 12.5 | Statement of Objections to Reinstatement |
| Rule 12.6 | Form A Resignation |
| Rule 12.7 | Form B Resignation |
| Rule 12.8 | Request for Review |
| Rule 12.9 | Compliance Affidavit |

RULE 12.1. FORMAL COMPLAINT. A formal complaint in a disciplinary proceeding shall be in substantially the following form:

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--------------------------------|---|------------------|
| In Re: |) | |
| |) | No. _____ |
| Complaint as to the conduct of |) | |
| |) | 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 discipline of attorneys.

2.

The Accused, _____, 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 [her] office and place of business in the County of _____, State of _____.

3. et seq.

(State with certainty and particularity the actions of the Accused alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

4. (or next number)

The aforesaid conduct of the Accused violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its second cause of complaint against said Accused, the Oregon State Bar alleges:

5. (or next number)

Incorporates by reference as fully set forth herein Paragraphs _____, _____, _____, and _____ of its first cause of complaint.

6. (or next number)

(State with certainty and particularity the actions of the Accused alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

7. (or next number)

The aforesaid conduct of the Accused violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its third cause of complaint against said Accused, the Oregon State Bar alleges:

8. (or next number)

Incorporates by reference as fully set forth herein Paragraphs _____, _____, _____, _____, and _____ of its first cause of complaint and Paragraphs _____, _____, _____, and _____ of its second cause of complaint.

9. (or next number)

(State with certainty and particularity the actions of the Accused alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

10. (or next number)

The aforesaid conduct of the Accused violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

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 _____ day of _____, 19_____.

OREGON STATE BAR

By: _____
Executive Director

RULE 12.2. NOTICE TO ANSWER. A copy of the formal complaint (statement of objections), accompanied by a notice to answer it within a designated time, shall be served on the accused (applicant). Such notice shall be in substantially the following form:

(Heading as in complaint/statement of objections)

NOTICE TO ANSWER

You are hereby notified that a formal complaint against you (statement of objections to your admission) (statement of objections to your reinstatement) has been filed by the Oregon State Bar, a copy of which formal complaint (statement of objections) is attached hereto and served upon you herewith. You are further notified that you may file with Disciplinary Counsel your verified answer within fourteen (14) days from the date of service of this notice upon you. In case of your default in so answering, the formal complaint (statement of objections) shall be heard and such further proceedings had as the law and the facts shall warrant.

(The following paragraph shall be used in a disciplinary proceeding only:)

You are further notified that you may, in lieu of filing your answer at this time, elect to file with Disciplinary Counsel of the Oregon State Bar, your written resignation from membership in the Oregon State Bar. You are not required or compelled to submit a resignation. You should consult an attorney of your choice before electing to do so. If you elect to resign, a resignation (Form B) in substantially the form appended hereto must be completed, executed, witnessed and filed with Disciplinary Counsel within the time granted to you for answer to the complaint. If your resignation is filed in substantially the form appended hereto, it will be submitted by Disciplinary Counsel to the Supreme Court of the State of Oregon, since that body only may accept a resignation. If you elect to resign, please refer to the attached formal complaint, incorporate it by reference in the resignation form and insert in the resignation form your current, correct residence address. If your resignation is accepted by the Supreme Court, you need not file an answer.

The address of the Oregon State Bar is 5200 S.W. Meadows Road, P.O. Box 1689, Lake Oswego, Oregon 97035-0889.

DATED this ____ day of _____, 19____.

OREGON STATE BAR

By: _____
Executive Director

RULE 12.3. ANSWER. The answer of the accused (applicant) shall be in substantially the following form:

(Heading as in complaint/statement of objections)

ANSWER

_____, (name of accused applicant), whose residence address is _____, in the County of _____, State of Oregon, and who maintains his [her] principal office for the practice of law or other business at _____, in the County of _____, State of Oregon, answers the formal complaint (statement of objections) in the above-entitled matter as follows:

1.

Admits the following matters charged in the formal complaint (statement of objections) as follows:

2.

Denies the following matters charged in the formal complaint (statement of objections) as follows:

3.

Explains or justifies the following matters charged in the formal complaint (statement of objections).

4.

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

5.

WHEREFORE, the accused (applicant) prays that the formal complaint (statement of objections) be dismissed.

DATED this ____ day of _____, 19____.

ACCUSED (APPLICANT)

Attorney for Accused (Applicant)

RULE 12.4. STATEMENT OF OBJECTIONS TO ADMISSION. In a contested admission proceeding, the statement of objections shall be in substantially the following form:

IN THE SUPREME COURT
OF THE STATE OF OREGON

In the Matter of the Application of _____)
for Admission to Practice Law) STATEMENT OF OBJECTIONS
in the State of Oregon) TO ADMISSION
)

The Oregon State Bar objects to the qualifications of the Applicant for admission on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Bar Examiners, that he [she] has the good moral character or general fitness required for admission to practice law in Oregon, that his [her] admission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, _____ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Bar Examiners to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for admission to practice law in the State of Oregon be denied.

DATED this ____ day of _____, 19 ____.

OREGON STATE BAR

By: _____
Executive Director

RULE 12.5. STATEMENT OF OBJECTIONS TO REINSTATEMENT. In a contested reinstatement proceeding, the statement of objections shall be in substantially the following form:

IN THE SUPREME COURT
OF THE STATE OF OREGON

| | | |
|--|------------------|---|
| In the Matter of the Application of _____ for Reinstatement as an Active Member of the State of Oregon |)))) | STATEMENT OF OBJECTIONS TO REINSTATEMENT |
|--|------------------|---|

The Oregon State Bar objects to the qualifications of the Applicant for reinstatement on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Governors, that he [she] has the good moral character or general fitness required for readmission to practice law in Oregon, that his [her] readmission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, _____ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Governors to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for reinstatement as an active member of the Oregon State Bar be denied.

DATED this ____ day of _____, 19____.

OREGON STATE BAR

By: _____
Executive Director

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of _____, a resident Oregon attorney, whose principal office address is _____, and that all such clients have been or will be promptly notified accordingly.

Dated at _____, this ____ day of _____, 19__.

(Signature of Attorney)

Subscribed and sworn to before me this ____ day of _____, 19__.

Notary Public for Oregon
My Commission Expires: _____

(Rule 12.7 amended by Order dated March 20, 1986.)

RULE 12.8. REQUEST FOR REVIEW. A request for review pursuant to BR 10.3 shall be in substantially the following form.

**IN THE SUPREME COURT
OF THE STATE OF OREGON**

In re: _____)
)
Complaint as to the conduct of _____) No. _____
)
) **REQUEST FOR REVIEW**
_____, Accused)

[The Accused/The Oregon State Bar] hereby requests the Supreme Court to review the decision of the Disciplinary Board trial panel rendered on [date] in the above matter.

DATED this ____ day of _____, 19__.

[signature of accused or counsel]

RULE 12.9 COMPLIANCE AFFIDAVIT. A compliance affidavit filed under BR 8.3 shall be in substantially the following form:

COMPLIANCE AFFIDAVIT

In re: Application of

(Name of attorney)

(Bar number)

For reinstatement as an active/inactive member of the OSB.
(circle one)

1. Full name _____ Date of Birth _____

2. a. Residence address _____
_____ Telephone _____

3. I hereby attest that during my period of disqualification from the practice of law due to suspension, resignation, inactive membership (circle one) from ____ to _____, (insert dates) I did not at any time engage in the practice of law except where authorized to do so.

4. I also hereby attest that I complied as directed with the following terms of probation: (circle applicable items)

- a. abstinence from consumption of alcohol and mind-altering chemicals/drugs, except as prescribed by a physician
- b. attendance at Alcoholics Anonymous meetings
- c. cooperation with Chemical Dependency Program
- d. cooperation with State Lawyers Assistance Committee
- e. psychiatric/psychological counseling
- f. passed Multi-State Professional Responsibility exam
- g. attended law office management counseling and/or programs
- h. other - (please specify) _____

i. none required

I, _____, the undersigned, being first duly sworn, depose and say that the above answers are true and correct as I verily believe.

(Name)

Subscribed and sworn to before me this ___ day of _____, 19__.

Notary Public in and for the
State of Oregon
My Commission Expires: _____

(Rule 12.9 established by Order dated March 13, 1989, effective April 1, 1989.)

**OREGON CODE OF
PROFESSIONAL RESPONSIBILITY
REVISED THROUGH
MAY 1, 1989**

**Revised
Code of Professional Responsibility**

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**DISCIPLINARY RULE 1
MAINTAINING THE INTEGRITY AND COMPETENCE
OF THE LEGAL PROFESSION**

DR 1-101 Misconduct in Application for Admission.

- (A) A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.
- (B) A lawyer shall not further the application for admission to the bar of another person known to the lawyer to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102 Misconduct; Responsibility for Acts of Others.

- (A) It is professional misconduct for a lawyer to:
 - (1) Violate these disciplinary rules, knowingly assist or induce another to do so, or do so through the acts of another;
 - (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
 - (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (4) Engage in conduct that is prejudicial to the administration of justice;
 - (5) State or imply an ability to influence improperly a government agency or official.
- (B) A lawyer shall be responsible for another lawyer's violation of these disciplinary rules if:
 - (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) The lawyer has direct supervisory authority over the other lawyer and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

DR 1-103 Disclosure of Information to Authorities; Duty to Cooperate.

- (A) A lawyer possessing unprivileged knowledge that another lawyer has committed a violation of DR 1-102 that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.
- (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 a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege.
- (D) A lawyer admitted to practice in this state shall, within 30 days after receiving notice thereof, report in writing to the general counsel of the Oregon State Bar the commencement against the lawyer of any disciplinary proceeding in any other jurisdiction.
- (E) The provisions of DR 1-103(A) shall not apply to lawyers who obtain such knowledge or evidence while:

- (1) Acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee; or
 - (2) Acting as a member, investigator, agent, employee, or as a designee of the Lawyer Alcoholism and Drug Dependencies Committee; or
 - (3) Acting as a board member, employee, investigator, agent or attorney for or on behalf of the Professional Liability Fund.
- (F) A lawyer who is the subject of a complaint or referral to the State Lawyers Assistance Committee shall, subject to the exercise of any applicable right or privilege, cooperate with the committee and its designees, including:
- (1) Responding to the initial inquiry of the committee or its designees;
 - (2) Furnishing any documents in the lawyer's possession relating to the matter under investigation by the committee or its designees;
 - (3) Participating in interviews with the committee or its designees; and
 - (4) Participating in and complying with a remedial program established by the committee or its designees.

DISCIPLINARY RULE 2
ADVERTISING, SOLICITATION, AND LEGAL EMPLOYMENT

DR 2-101**Publicity and Advertising.**

- (A) A lawyer shall not make any false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:
- (1) Contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading; or
 - (2) Is intended or is reasonably likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate these disciplinary rules or applicable law; or
 - (3) Compares the lawyer's services with other lawyers' services; or
 - (4) States or clearly implies that the lawyer actually handles matters in particular areas of law when in fact the lawyer routinely refers such matters to others for actual handling; or
 - (5) States or clearly implies that the lawyer is experienced at handling specific matters when in fact the lawyer is not; or
 - (6) Is intended or is reasonably likely to convey the impression that the lawyer is in a position to improperly influence any court or other public body or office.
- (B) The term "communication" includes statements made orally, in writing, or through any other medium of expression.
- (C) A copy of all written communications and a recording of all communications by use of electronic media, including radio, television, and microwave transmission, along with a record of when and where it was used, shall be kept by the lawyer approving its use for a period of one year after its last dissemination.
- (D) An advertisement, other than a direct mail advertisement, must be identified as such unless it is apparent from the context that it is a paid advertisement. Direct mail advertisements shall be identified on the envelope and on the top of each page by the word "ADVERTISEMENT", printed in at least 10 point bold type, which shall be larger and darker than the type used in the text of the communication.
- (E) All advertisements must clearly identify the name and office address of the lawyer or law firm whose services are being offered to the public.

- (F) A lawyer shall not compensate or give anything of value to a person in anticipation of or in return for professional publicity, except that a lawyer may pay the reasonable cost of advertising permitted by this rule.

DR 2-102 Firm Names and Letterheads.

- (A) A lawyer may use professional announcement cards, office signs, letterheads, telephone directory listings, legal directory listings, or other professional notices so long as the information contained therein complies with DR 2-101 and other applicable disciplinary rules.
- (B) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.
- (C) A lawyer in private practice shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm. A trade name may be used by a lawyer in private practice if it does not imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of DR 2-101(A). A law firm may use in its name the name or names of one or more of the deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.
- (D) Except as permitted by DR 2-102(C), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if at the time the lawyer ceased active and regular practice with the firm it was contemplated that the lawyer, within one year from the time that the lawyer ceased active and regular practice with the firm, would return to active and regular practice with the firm.
- (E) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.
- (F) Subject to the terms of DR 2-102(C), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

DR 2-103 Recommendation of Professional Employment.

- (A) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure the lawyer's employment by a client, or as a reward for having made a recommendation resulting in the lawyer's employment by a client, except as permitted by DR 2-103(C).
- (B) A lawyer shall not request a person or organization to recommend or promote the use of the lawyer's services or the services of members of the lawyer's firm, except as permitted by DR 2-103(C).

- (C) A lawyer may be recommended, employed or paid by, or cooperate with, any organization through which legal services are provided or recommended so long as:
- (1) Such organization is not operated primarily for the purpose of procuring legal work or financial benefit for any specific lawyer or law firm. This subsection does not apply to lawyer referral, legal aid or public defender programs operated or sponsored by bar associations, law schools, nonprofit community organizations or governmental agencies; and
 - (2) The recipient of legal services provided by the organization is recognized as the client of the lawyer rendering the legal service, and not the organization; and
 - (3) No condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of the lawyer's client is imposed by the organization.

DR 2-104 Suggestion of Need of Legal Services.

- (A) Subject to the provisions of DR 2-101 and the restrictions in DR 2-104(B), a lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment only in the following circumstances:
- (1) If the prospective client is a close friend, relative, former client, or one whom the lawyer reasonably believes to be a client;
 - (2) Under the auspices of a public or charitable legal services organization; or
 - (3) Under the auspices of a bona fide political, social, civic, fraternal, employee, or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.
- (B) A lawyer shall not initiate personal contact otherwise permitted by DR 2-104(A) with, or send a written communication to, a prospective client for the purpose of obtaining professional employment if:
- (1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;
 - (2) The person has made known to the lawyer a desire not to receive communications from the lawyer; or
 - (3) The communication involves coercion, duress or harassment.
- (C) For the purpose of DR 2-104, "personal contact" means in-person or telephone contact with an individual or entity. Direct mail advertising is not considered "personal contact" under this rule, but is otherwise subject to the requirements of DR 2-101 and DR 2-104(B).

DR 2-105 Limitation of Practice.

In any communication subject to DR 2-101, a lawyer may disclose fields of law in which the lawyer practices or to which his or her practice is limited or in which it is concentrated.

DR 2-106 Fees for Legal Services.

- (A) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.
- (B) 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. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
 - (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
 - (3) The fee customarily charged in the locality for similar legal services.
 - (4) The amount involved and the results obtained.
 - (5) The time limitations imposed by the client or by the circumstances.
 - (6) The nature and length of the professional relationship with the client.
 - (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
 - (8) Whether the fee is fixed or contingent.
- (C) A lawyer shall not enter into an arrangement for, charge or collect:
- (1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or
 - (2) A contingent fee for representing a defendant in a criminal case.

DR 2-107 Division of Fees Among Lawyers.

- (A) A lawyer shall not divide a fee for legal services with another lawyer who is not a member of the lawyer's law firm or law office, unless:
- (1) The client consents to employment of the other lawyer after full disclosure that a division of fees will be made.
 - (2) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.
- (B) DR 2-107(A) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement.

DR 2-108 Agreements Restricting the Practice of a Lawyer.

- (A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.
- (B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts the lawyer's right to practice law.

DR 2-109 Acceptance of Employment.

- (A) A lawyer shall not accept employment on behalf of a person if the lawyer knows or it is obvious that such person wishes to:
- (1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for the person, merely for the purpose of harassing or maliciously injuring any other person.
 - (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

DR 2-110 Withdrawal from Employment.**(A) In general.**

- (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.
- (2) In any event, a lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client, including giving due notice to the lawyer's client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.
- (3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

- (1) The lawyer knows or it is obvious that the lawyer's client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any other person.
- (2) The lawyer knows or it is obvious that the lawyer's continued employment will result in violation of a Disciplinary Rule.
- (3) The lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively.
- (4) The lawyer is discharged by the lawyer's client.

(C) Permissive withdrawal.

If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

- (1) The lawyer's client:
 - (a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.
 - (b) Personally seeks to pursue an illegal course of conduct.
 - (c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under these disciplinary rules.
 - (d) By other conduct renders it unreasonably difficult for the lawyer to carry out the lawyer's employment effectively.
 - (e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under these disciplinary rules.
 - (f) After reasonable notice from the lawyer, fails to keep an agreement or obligation to the lawyer as to expenses or fees.
- (2) The lawyer's continued employment is likely to result in a violation of a Disciplinary Rule.
- (3) The lawyer's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

- (4) The lawyer's mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.
- (5) The lawyer's client knowingly and freely assents to termination of the lawyer's employment.
- (6) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

**DISCIPLINARY RULE 3
UNLAWFUL PRACTICE OF LAW**

DR 3-101 Unlawful Practice of Law.

- (A) A lawyer shall not aid a nonlawyer in the unlawful practice of law.
- (B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

DR 3-102 Dividing Legal Fees with a Nonlawyer.

- (A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
 - (1) An agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.
 - (2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.
 - (3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

DR 3-103 Forming a Partnership with a Nonlawyer.

- (A) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

**DISCIPLINARY RULE 4
CONFIDENCES AND SECRETS OF CLIENTS**

DR 4-101 Preservation of Confidences and Secrets of a Client.

- (A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.
- (B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:
 - (1) Reveal a confidence or secret of the lawyer's client.
 - (2) Use a confidence or secret of the lawyer's client to the disadvantage of the client.
 - (3) Use a confidence or secret of the lawyer's client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.
- (C) A lawyer may reveal:
 - (1) Confidences or secrets with the consent of the client or clients affected, but only after full disclosure to the client or clients.

- (2) Confidences or secrets when permitted by a Disciplinary Rule or required by law or court order or secrets which the lawyer reasonably believes need to be revealed to effectively represent the client.
 - (3) The intention of the lawyer's client to commit a crime and the information necessary to prevent the crime.
 - (4) Confidences or secrets necessary to establish a claim or defense on behalf of a lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations concerning the lawyer's representation of the client.
- (D) A lawyer shall exercise reasonable care to prevent the lawyer's employees, associates, and others whose services are utilized by the lawyer in connection with the performance of legal services from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

**DISCIPLINARY RULE 5
CONFLICTS OF INTEREST AND MEDIATION**

DR 5-101 Conflict of Interest: Lawyer's Self Interest.

- (A) Except with the consent of the lawyer's client after full disclosure, a lawyer shall not accept employment if the exercise of the lawyer's professional judgment on behalf of the lawyer's client will be or reasonably may be affected by the lawyer's own financial, business, property, or personal interests. As referred to in this rule, "employment" does not include serving in a pro tem capacity on any court, board or other administrative body where such service is occasional or for a limited period of time and compensation therefore is incidental to the lawyer's other sources of income.
- (B) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

DR 5-102 Lawyer as Witness.

- (A) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a witness on behalf of the lawyer's client except where:
 - (1) The testimony relates to an uncontested issue.
 - (2) The testimony relates to the nature and value of legal services rendered in the case.
 - (3) Disqualification of the lawyer would work a substantial hardship on the client.
 - (4) The lawyer is appearing pro se.
- (B) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness on behalf of the lawyer's client.
- (C) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a member of the lawyer's firm may be called as a witness other than on behalf of the lawyer's client, the lawyer may continue the representation until it is apparent that the lawyer's or firm member's testimony is or may be prejudicial to the lawyer's client.

DR 5-103 Avoiding Acquisition of Interest in Litigation.

- (A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
- (1) Acquire a lien to secure payment of fees or expenses due or to become due.
 - (2) Contract with a client for a reasonable contingent fee in a civil case, subject to the limitations imposed by DR 2-106.
- (B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the lawyer's client, except that a lawyer may advance or guarantee the expenses of litigation, provided the client remains ultimately liable for such expenses to the extent of the client's ability to pay.

DR 5-104 Limiting Business Relations with a Client.

- (A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, unless the client has consented after full disclosure.
- (B) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

DR 5-105 Conflicts of Interest: Former and Current Clients.

- (A) Conflict of Interest. A conflict of interest may be actual or likely.
- (1) An "actual conflict of interest" exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client.
 - (2) A "likely conflict of interest" exists in all other situations in which the objective personal, business or property interests of the clients are adverse. A "likely conflict of interest" does not include situations in which the only conflict is of a general economic or business nature.
- (B) Knowledge of Conflict of Interest. For purposes of determining a lawyer's knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer.
- (C) Former Client Conflicts - Prohibition. Except as permitted by DR 5-105(D), a lawyer who has represented a client in a matter shall not subsequently represent another client in the same or a significantly related matter when the interests of the current and former clients are in actual or likely conflict.
- (D) Former Client Conflicts - Permissive Representation. A lawyer may represent a client in instances otherwise prohibited by DR 5-105(C) when both the current client and the former client consent to the representation after full disclosure.
- (E) Current Client Conflicts - Prohibition. Except as permitted by DR 5-105(F), a lawyer shall not represent multiple current clients in any matters in which their interests are in actual or likely conflict.
- (F) Current Client Conflicts - Permissive Representation. A lawyer may represent multiple current clients in instances otherwise prohibited by DR 5-105(E) when their interests are not in actual conflict and when each client consents to the multiple representation after full disclosure.
- (G) Vicarious Disqualification of Affiliates. Except as permitted in subsections (D) and (F), when a lawyer is required to decline employment or to withdraw from employment

- under a Disciplinary Rule other than DR 2-110(B)(3) or DR 5-102(A), no other member of the lawyer's firm may accept or continue such employment.
- (H) **Disqualification Upon Termination of Employment.** When a lawyer terminates the lawyer's association in a firm, neither the lawyer nor any firm member with which the terminating lawyer subsequently becomes affiliated shall accept or continue employment prohibited by DR 5-105(C) through (G).
- (I) **Screening Procedure Upon Termination of Employment.** The prohibition stated in DR 5-105(H) shall not apply provided the personally disqualified lawyer is screened from any form of participation or representation in the matter. In order to ensure such screening:
- (1) The personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter or representation.
 - (2) At least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation.
 - (3) No violation of DR 5-105(H) or of the requirements of DR 5-105(I) shall be deemed to have occurred if the personally disqualified lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.

DR 5-106 Mediation.

- (A) A lawyer may act as a mediator for multiple parties in any matter if:
- (1) The lawyer clearly informs the parties of the lawyer's role and they consent to this arrangement; and
 - (2) The lawyer gives advice to a party only in the presence of all parties in the matter.
- (B) A lawyer serving as a mediator may draft a settlement agreement but must advise and encourage the parties to seek independent legal advice before executing it.
- (C) A lawyer serving as a mediator may not act on behalf of any party in court nor represent one party against the other in any related legal proceeding.
- (D) A lawyer shall withdraw as mediator if any of the parties so request, or if any of the conditions stated in DR 5-106(A) are no longer satisfied. Upon withdrawal, the lawyer shall not continue to act on behalf of any of the parties in the matter that was the subject of the mediation.

DR 5-107 Settling Similar Claims of Clients.

- (A) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client consents after full disclosure, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

DR 5-108 Avoiding Influence by Others Than the Client.

- (A) Except with the consent of the lawyer's client after full disclosure, a lawyer shall not:
- (1) Accept compensation for the lawyer's legal services from one other than the lawyer's client; or
 - (2) Accept from one other than the lawyer's client anything of value related to the lawyer's representation of or the lawyer's employment by the lawyer's client.
- (B) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (C) (1) A lawyer shall not be deemed in violation of DR 5-101(A) or DR 5-108(A) or (B) as a result of the lawyer's membership on the board of directors or advisory committee of an Oregon legal aid program, if the lawyer or a member of the lawyer's firm represents a client in an advocacy proceeding in which the legal aid program represents an opposing party; if:
- (a) The lawyer and members of the lawyer's firm scrupulously refrain from either expressly or impliedly influencing or attempting to influence the professional judgment of the legal aid program attorneys with respect to such proceeding;
 - (b) The lawyer refrains from voting on or engaging in any board or committee discussions involving matters which might involve a potential conflict of interest; and
 - (c) The lawyer discloses the lawyer's relationship with the legal aid program to the lawyer's client as soon as practicable after the lawyer becomes aware of the potential conflict of interest and obtains the lawyer's client's consent to continue such representation, and a member of the lawyer's firm discloses such relationship to the member's client as soon as possible after the member becomes aware of such potential conflict and obtains the member's client's consent to continue such representation.
- (2) A lawyer employed by a legal aid program shall not be deemed in violation of DR 5-101(A) or DR 5-108(A) or (B) as a result of the lawyer's representation of a client in an advocacy proceeding in which an opposing party is represented by a member of the board of directors or advisory committee of the legal aid program, if:
- (a) The lawyer does not permit the lawyer's professional judgment to be influenced by the relationship of the board or committee member to the legal aid program; and
 - (b) The lawyer discloses to the lawyer's client the relationship of the lawyer board or committee member and the legal aid program as soon as practicable after the lawyer becomes aware of such relationship and obtains the lawyer's client's consent to continue the representation.

- (3) No lawyer, as a member of the board of directors or advisory committee of any Oregon legal aid program, shall influence or attempt to influence actions of the legal aid program in any manner which may benefit a client of such lawyer or his or her firm differently in kind or degree from members of the general public, regardless of whether any advocacy proceeding involving any client of the legal aid program and client of the lawyer board or committee member or his or her firm is pending or contemplated.
- (D) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
 - (1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
 - (2) A nonlawyer is a corporate director or officer thereof, except as authorized by law; or
 - (3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

DR 5-109 Conflicts of Interest: Public Employment.

- (A) A lawyer shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after full disclosure.
- (B) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after full disclosure.

**DISCIPLINARY RULE 6
COMPETENCE AND DILIGENCE**

DR 6-101 Competence and Diligence.

- (A) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- (B) A lawyer shall not neglect a legal matter entrusted to the lawyer.

DR 6-102 Limiting Liability to Client.

- (A) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

**DISCIPLINARY RULE 7
ZEALOUSLY REPRESENTING CLIENTS WITHIN
THE BOUNDS OF THE LAW**

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

- (1) Fail to seek the lawful objectives of the lawyer's client through reasonably available means permitted by law and these disciplinary rules except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the lawyer's client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
- (2) Fail to carry out a contract of employment entered into with a client for professional services but the lawyer may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105.
- (3) Prejudice or damage the lawyer's client during the course of the professional relationship except as required under DR 7-102(B).

(B) In the lawyer's representation of a client, a lawyer may:

- (1) Where permissible, exercise the lawyer's professional judgment to waive or fail to assert a right or position of the lawyer's client.
- (2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law.

(A) In the lawyer's representation of a client, a lawyer shall not:

- (1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the lawyer's client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.
- (2) Knowingly advance a claim or defense that is unwarranted under existing law except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.
- (3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.
- (4) Knowingly use perjured testimony or false evidence.
- (5) Knowingly make a false statement of law or fact.
- (6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.
- (7) Counsel or assist the lawyer's client in conduct that the lawyer knows to be illegal or fraudulent.
- (8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

- (1) The lawyer's client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the lawyer's client to rectify the same, and if the lawyer's client refuses or is unable to do so, the lawyer

shall reveal the fraud to the affected person or tribunal except when the information is a confidence as defined in DR 4-101(A).

- (2) A person other than the lawyer's client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer.

- (A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when the lawyer knows or it is obvious that the charges are not supported by probable cause.
- (B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the defendant, mitigate the degree of the offense or reduce the punishment.

DR 7-104 Communicating with a Person Represented by Counsel.

- (A) During the course of the lawyer's representation of a client, a lawyer shall not:
- (1) Communicate or cause another to communicate on the subject of the representation, or on directly related subjects, with a person the lawyer knows to be represented by a lawyer on that subject, or on directly related subjects, unless the lawyer has the prior consent of the lawyer representing such other person or is authorized by law to do so. This prohibition includes a lawyer representing the lawyer's own interests.
- (2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

DR 7-105 Threatening Criminal Prosecution.

- (A) A lawyer shall not threaten to present criminal charges to obtain an advantage in a civil matter.

DR 7-106 Trial Conduct.

- (A) A lawyer shall not disregard or advise the lawyer's client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.
- (B) In presenting a matter to a tribunal, a lawyer shall disclose:
- (1) Legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the lawyer's client and which is not disclosed by opposing counsel.
- (2) Unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.
- (C) In appearing in the lawyer's professional capacity before a tribunal, a lawyer shall not:
- (1) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.
- (2) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

- (3) Assert the lawyer's personal knowledge of the facts in issue except when testifying as a witness.
- (4) Assert the lawyer's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant or as to the guilt or innocence of a criminal defendant but the lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.
- (5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply.
- (6) Engage in undignified or discourteous conduct which is degrading to a tribunal.
- (7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 Trial Publicity.

- (A) A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer intended to affect the fact-finding process or the lawyer knows or reasonably should know the statements pose a serious and imminent threat to the fact-finding process in an adjudicative proceeding and acts with indifference to that effect.
- (B) The foregoing provision of DR 7-107 does not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative or other investigative bodies.
- (C) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under DR 7-107(A).

DR 7-108 Communication with or Investigation of Jurors.

- (A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.
- (B) During the trial of a case:
 - (1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.
 - (2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.
- (C) DR 7-108(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.
- (D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.
- (E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.
- (F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.
- (G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of their families, of which the lawyer has knowledge.

- DR 7-109 Contact with Witnesses.**
- (A) A lawyer shall not suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or produce.
 - (B) A lawyer shall not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein.
 - (C) A lawyer shall not pay, offer to pay, or acquiesce in payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case but a lawyer may advance, guarantee or acquiesce in the payment of:
 - (1) Expenses reasonably incurred by a witness in attending or testifying.
 - (2) Reasonable compensation to a witness for the witness' loss of time in attending or testifying.
 - (3) A reasonable fee for the professional services of an expert witness.
- DR 7-110 Contact with Officials.**
- (A) A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal except as permitted by Section C(4) of Canon 5 of the Code of Judicial Conduct but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Section B(2) under Canon 7 of the Code of Judicial Conduct.
 - (B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending except:
 - (1) In the course of official proceedings in the cause.
 - (2) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.
 - (3) Orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.
 - (4) As otherwise authorized by law or by Section A(4) of Canon 3 of the Code of Judicial Conduct.

**DISCIPLINARY RULE 8
IMPROPER CONDUCT AS A PUBLIC OFFICIAL
OR JUDICIAL CANDIDATE; IMPROPER CRITICISM
OF THE JUDICIARY**

- DR 8-101 Action as a Public Official.**
- (A) A lawyer who holds public office shall not:
 - (1) Use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
 - (2) Use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.
 - (3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
 - (4) Either while in office or after leaving office use confidential government information obtained while a public official to represent a private client.

- (a) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which at the time the information is used the government is prohibited by law from disclosing to the public or has legal privilege not to disclose and which is not otherwise available to the public.
- (B) The foregoing provisions of DR 8-101(A) do not preclude a lawyer from acting under a law which specifically authorizes the performance of a governmental function, despite a conflict of interest, if the lawyer complies with all requirements of such law.
- DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers.**
- (A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.
- (B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.
- DR 8-103 Lawyers as Candidates for Judicial Office.**
- (A) A lawyer who is a candidate for judicial office to be filled either by public election or by appointment shall comply with the applicable provisions of Canon 7 of the Code of Judicial Conduct.

**DISCIPLINARY RULE 9
CLIENT FUNDS AND PROPERTY**

- DR 9-101 Preserving Identity of Funds and Property of a Client.**
- (A) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable trust accounts 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:
- (1) Funds reasonably sufficient to pay account charges may be deposited therein.
 - (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (B) A lawyer shall:
- (1) Promptly notify a client of the receipt of the client's funds, securities or other properties.
 - (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
 - (3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them.
 - (4) Promptly pay or deliver to a client as requested by the client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive. Under circumstances covered by DR 9-101(A)(2), the undisputed portion of the funds held by the lawyer shall be disbursed to the client.

- (C) (1) Each trust account referred to in (A) and (B) above shall be an interest bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the lawyer or law firm in the exercise of reasonable care.
- (2) A lawyer or law firm who receives client funds which are so nominal in amount, or are expected to be held for such a short period of time, that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest bearing trust account for such funds. The account shall be maintained in compliance with the following requirements:
- (a) The trust account shall be maintained in compliance with DR 9-101(A) and (B);
 - (b) No earnings from the account shall be made available to the lawyer or law firm;
 - (c) All earnings from the account, net of any transaction costs, shall be remitted to the Oregon Law Foundation;
 - (d) The account shall be operated in accordance with such other operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.
- (3) All client funds shall be deposited in the account specified in subdivision (2) unless they are deposited in:
- (a) A separate interest bearing account for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in (A) and (B) of this rule for the principal funds of the client; or
 - (b) A pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to each client. Interest so earned must be held in trust as property of each client in the same manner as is provided in (A) and (B) of this rule for the principal funds of the client.
- (4) In determining whether to use an account specified in subdivision (2) or an account specified in subdivision (3), a lawyer or law firm shall consider:
- (a) The amount of interest which the funds would earn during the period they are expected to be deposited;
 - (b) The cost of establishing and administering the account, including the cost of the lawyer or law firm's services; and
 - (c) The capability of financial institutions described in subsection (1) to calculate and pay interest to individual clients.

DISCIPLINARY RULE 10 DEFINITIONS

DR 10-101 Definitions.

As used in the Disciplinary Rules of the Code of Professional Responsibility:

- (A) "Firm member" or "member of a firm" means a partner, an associate, whether full or part-time or on contract, or any other lawyer serving as "Of Counsel" or otherwise working for a firm. An office sharer is not a "firm member" or "member of a firm" absent indicia sufficient to establish a defacto law firm among the lawyers involved.

- (B) "Full disclosure" means an explanation sufficient to apprise the recipient of the potential adverse impact on the recipient, of the matter to which the recipient is asked to consent. Full disclosure shall also include a recommendation that the recipient seek independent legal advice to determine if consent should be given. Full disclosure shall be contemporaneously confirmed in writing.
- (C) "Law firm" or "firm" means a proprietorship, partnership or professional legal corporation engaged in the practice of law. "Law firm" or "firm" also includes a law department of a corporation or government agency, a private or public legal aid or public defender organization and a public interest law firm.
- (D) "Partner" includes a shareholder in a professional legal corporation.
- (E) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.
- (F) "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized to practice law.
- (G) "State" means any state of the United States, the District of Columbia, Puerto Rico, and any other United States territory or possession.
- (H) "Tribunal" mean all courts and all other adjudicatory bodies.

OREGON CODE OF JUDICIAL CONDUCT

**REVISED THROUGH
FEBRUARY 16, 1989**

OREGON CODE OF JUDICIAL CONDUCT
Adopted by the Supreme Court March 11, 1975

Including Amendments Received
Through February 16, 1989

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CANON 1**A Judge Should Uphold the Integrity and Independence
of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2**A Judge Should Avoid Impropriety and the Appearance
of Impropriety in All Activities**

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the office to advance the private interests of others, nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

CANON 3**A Judge Should Perform the Duties of the Office
Impartially and Diligently**

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the court.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity; a judge should require similar conduct of lawyers, and of staff members, court officials and others subject to the direction and control of the judge.

(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither

initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about pending or impending proceedings in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit a judge from making public statements in the court of official duties or from explaining for public information the procedures of the court.

(7) Upon request on the court's own motion, a judge may allow television coverage, still photography and audio recording in a trial courtroom or in any area on the courthouse premises under the control and supervision of the court, provided that such coverage accords with the following standards of conduct:

(a) A judge has discretion to deny a request for television coverage if the judge makes findings on the record setting forth substantial reasons for the denial. The judge shall not allow television coverage if there is reasonable likelihood that:

- i. television coverage would interfere with the rights of the parties to a fair trial or would affect the presentation of evidence or outcome of the trial; or
- ii. television coverage would unduly detract from the solemnity, decorum or dignity of the court; or
- iii. any cost or increased burden resulting from television coverage would interfere with the efficient administration of justice.

(b) No television coverage, still photography or audio recording of any of the following proceedings shall be permitted: all dissolution, juvenile, paternity, adoption, custody, visitation, support, mental commitment, trade secrets, and family abuse prevention act restraining order proceedings, and, at a victim's request, sex offense proceedings, and any other proceeding in which the publicity might impair the fairness of a future trial.

(c) Without the trial judge's permission, there shall be no television coverage, still photography or audio recording in the courtroom or in the chambers of any of the following: recesses of a court proceeding; proceedings in chambers; conferences involving counsel and the trial judge at the bench; conferences involving counsel and their clients; and proceedings in a jury trial from which the jury is excluded.

(d) There shall be no television coverage, still photography or audio recording of voir dire or of any juror anywhere in the courthouse.

(e) Each witness, except a party-witness in civil cases, shall be advised by the attorney or party who intends to call that witness in advance of giving testimony that television

coverage will be allowed during the proceeding. Each such witness shall have the right to refuse to be subject to television coverage by advising the court outside of the jury's presence of his or her refusal in advance of testifying.

(f) Equipment and personnel.

i. Only television cameras operated by the judge or the court's staff shall be permitted in any trial court proceeding. Operation of television cameras by media personnel shall not be permitted.

ii. Still photography and audio recording shall be permitted only with equipment that is not audible in the courtroom. The court may limit the number and location of still cameras and recording devices.

iii. Television cameras shall be mounted on a tripod or installed in the courtroom. The television cameras shall not be moved while the proceedings are in session. Such equipment shall be screened where practicable or located as unobtrusively as possible in the courtroom to provide the least possible distraction.

iv. No artificial lighting devices of any kind shall be allowed for television or photographic purposes.

v. Only the court's audio-video system shall be used for television coverage of proceedings. If an audio-video system is not available, it may be installed by the court at the media's expense. Microphones for use of counsel and judges shall be equipped with on/off switches.

vi. Upon request, the trial judge shall provide to the media, at the media's expense, a copy of all televised proceedings.

(g) In authorizing television coverage, still photography and audio recording, if based on substantial reasons in the record, a judge may impose such other restrictions or limitations as may be necessary to preserve the dignity of the court and to protect the parties, witnesses and jurors. A judge may terminate television coverage, still photography and audio recording at any point upon finding that:

i. rules established by this Canon or other rules imposed by the judge have been violated; or

ii. substantial rights of individual participants or rights to a fair trial will be prejudiced or the outcome of a case will be affected by such coverage.

(h) Other than as authorized by these rules, no recording, television or photographic equipment not operated by the court or the court's staff shall be allowed in any courtroom.

(i) Nothing in the Canon shall alter or affect the rules of the Supreme Court promulgated under "Video-Trial Project No. 88-38." Under that project, the audio-video coverage constitutes the entire record. In all other courts, the record shall be preserved with court reporters or audio-tape. Restrictions on releasing audio-video coverage in courts participating in the Video-Trial Project shall be set forth in separate rules.

(8) Subject at all times to the authority of the Chief Justice or the judge presiding in a proceeding to (a) control the conduct of proceedings before the court, (b) ensure decorum and prevent distractions, and (c) ensure the fair administration of justice in the pending cause, radio, television and still photograph coverage of public judicial proceedings in the appellate courts of this state shall be allowed in accordance with the following standards of conduct and technology:

(a) Equipment and Personnel.

(i) One television or videotape electronic camera, operated by not more than one person, shall be permitted to cover any appellate court public proceeding.

(ii) One still photographer, utilizing not more than two still cameras and related equipment, shall be permitted to cover any public proceeding in any appellate court.

(iii) Where available, audio pickup for all media purposes shall be accomplished from existing audio systems present in the courtroom, except if the audio pickup is attached to and operated as part of a television or videotape electronic camera. If no technically suitable audio system exists in the courtroom, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the Chief Justice or the judge presiding in a proceeding.

(iv) "Pooling" arrangements required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the Chief Justice or other judge presiding in a proceeding to mediate any dispute as to the appropriate representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the Chief Justice or other judge presiding in a proceeding shall exclude all radio, television and still photography coverage.

(b) Sound and Light Criteria.

(i) Only photographic and audio equipment that does not produce distracting light or sound shall be employed. No artificial lighting device of any kind shall be employed.

(ii) All media personnel shall eliminate all excessive noise while in the courtroom, e.g., any equipment coverings and/or cassette cases will be removed or

opened before being brought into the courtroom and may not be replaced or closed inside the courtroom.

(iii) It shall be the duty of media personnel, if requested, to demonstrate to the Chief Justice or other judge presiding in a proceeding adequately in advance of any proceeding that the equipment sought to be utilized meets the light and sound criteria herein.

(c) Location of Equipment and Personnel.

(i) Television equipment shall be positioned in a location in the courtroom designated by the Chief Justice. Videotape recording equipment, which is not a component part of a television camera, shall be located in an area outside the courtroom designated by the Chief Justice.

(ii) A still camera photographer shall remain in a location in the courtroom designated by the Chief Justice.

(iii) Broadcast media representatives shall not move about the courtroom while proceedings are in session, and microphones or taping equipment, once positioned as required by (a)(iii) and (c)(i) above, shall not be moved during the proceeding.

(iv) Television or audio equipment shall be placed in the courtroom prior to commencement and removed after adjournment of proceedings each day or during a recess. Television film magazines (as distinct from videotape) and still camera film or lenses shall not be changed in the courtroom except during a recess in the proceeding.

(d) Courtroom Light Sources. With the concurrence of the Chief Justice, modifications and additions may be made in light sources existing in the courtroom, provided such modifications or additions are installed and maintained without public expense.

(e) Appearance Code. To maintain the proper dignity and decorum of the proceedings, media personnel while in the courtroom shall be required to dress in a manner consistent with the attire required of lawyers appearing before the court.

B. Administrative Responsibilities.

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff members and court officials subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge should utilize opportunities to criticize and correct unprofessional conduct of lawyers and judges brought to the judge's attention; if adverse comment is not a sufficient corrective, a judge should send the matter at once to the proper investigating and disciplinary authorities.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously was associated served during such association as a lawyer concerning the matter or the judge or such lawyer has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or have any other interest that could be substantially affected by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is, to the judge's knowledge, likely to be a material witness in the proceeding.

(2) A judge should inform himself about his or her personal and fiduciary financial interests and make reasonable efforts to be informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

(3) For purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

(b) "fiduciary" includes such relationships as personal representative, trustee and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

D. Remittal of Disqualification. A judge disqualified by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties, by their lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the judge's financial interest is insubstantial, the judge is no longer disqualified and may participate in the proceeding. The agreement, signed on behalf of all parties by their lawyers, shall be incorporated in the record of the proceeding.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System and the Administration of Justice

A judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.

B. A judge may appear at public hearings before an executive or legislative body or official on matters concerning the law, the legal system and the administration of justice; a judge may

otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. A judge may serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. A judge may assist such an organization in raising funds and may participate in managing and investing the funds, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

A Judge Should Conduct Extra-Judicial Activities to Minimize the Risk of Conflict With Judicial Duties

A. Avocational Activities. A judge may write, lecture, teach and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities of such avocational activities do not detract from the dignity of judicial office or interfere with the performance of judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal or civil organization or use or permit the use of the prestige of the judicial office for that purpose, but may be listed as an officer, director or trustee of such an organization. A judge should not be a speaker or guest of honor at an organization's fund-raising events, but may attend such events.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though the board has the responsibility for approving investment decisions.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirement of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, including the operation of businesses not in conflict in interest with, or taking the judge away from, performance of, judicial duties; however, a judge is prohibited from engaging in banking, public utility or insurance businesses and other businesses of like nature.

(3) A judge should manage personal investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should dispose of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of the judge's family residing in the judge's household should accept gifts, bequests, favors or loans from anyone except as follows:

(a) a judge may accept gifts incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for official use; or invitations to the judge and the judge's spouse to attend bar related functions or activities devoted to the improvement of the law, the legal system or the administration of justice;

(b) a judge or a member of the judge's family residing in the judge's household may accept ordinary social hospitality; gifts, bequests, favors or loans from relatives; wedding or engagement gifts; loans from lending institutions in the regular course of business on the same terms generally available to persons who are not judges; or scholarships or fellowships awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the judge's household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

(5) For the purposes of this section, "member of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(6) Information acquired by a judge in a judicial capacity should not be used or disclosed in financial dealings or for any other purpose not related to judicial duties.

D. **Fiduciary Activities.** A judge should not serve as the personal representative, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary, a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as a fiduciary he or she will be engaged in proceedings that would ordinarily come before the judge or if the estate, trust or ward becomes

involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator.

F. Practice of Law. A judge should not practice law.

G. Extra-Judicial Appointments. A judge should not accept appointment to a governmental committee, commission or other position that conflicts with judicial functions. A judge may represent the judge's country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.

CANON 6

A Judge May Receive Reasonable Compensation and Reimbursement for Extra-Judicial Activity Permitted by This Code

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code if the source of such payments does not give the appearance of influencing the judge in judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse.

C. Public Reports. A judge must file a statement of economic interest as required by state law.

CANON 7

A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to the Judicial Office

Definitions:

"Political activity" is (1) making a public statement for, or (2) contributing or soliciting funds, services or property to, or (3) lending one's name to, a political purpose or political organization.

A "political purpose" is the purpose to elect or defeat one or more candidates for a nonjudicial public office or the purpose to promote or influence the passage or defeat of laws or regulations at any level of government. A "political organization" is any group whose primary purpose is a political purpose.

A. A judge may not engage in political activity which:

(1) involves persons, organizations or specific issues that will require a judge's disqualification under Canon 3(C); or

(2) creates a reasonable doubt about a judge's impartiality toward persons, organizations or factual issues that foreseeably may come before the court on which the judge serves, whether or not actual disqualification becomes necessary; or

(3) lends the support of the judicial office (as distinct from the judge as a private individual) to a cause other than the administration of justice; or

(4) jeopardizes the confidence of the public or of government officials in the political impartiality of the judicial branch of government.

B. A judge may not:

(1) request or encourage members of the judge's family to do anything that a judge may not do under this canon;

(2) authorize any public official or employee or other person under the judge's direction or control to do anything that a judge may not do under part A of this canon or to do on the judge's behalf anything that the judge may not do under part B of this canon;

(3) misrepresent his or her identity, qualifications, present position, education, prior experience or other fact;

(4) make pledges or promises of conduct in office other than the faithful, impartial and diligent performance of the duties of the office;

(5) seek support for himself or herself or invite opposition to a candidate because of membership by either candidate in a political organization;

(6) publicly identify himself or herself as a member of a political party beyond registering under the election laws;

(7) personally solicit campaign contributions; but a judge may establish committees to secure and manage financing and expenses to promote the judge's election and to obtain public statements of support for the judge's candidacy;

(8) use or permit the use of campaign contributions for the private benefit of the judge or a member of the judge's family.

C. A judge whose oath does not preclude candidacy for an elective nonjudicial office altogether must resign before becoming a candidate for such an office.

D. The provisions of this canon apply to each judge in the state at all times and to any other person who becomes a candidate for an elective judicial office. A person becomes a candidate for an elective judicial office when the person announces the candidacy or when steps are taken, with the person's approval, to place his or her name on an election ballot.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. **Part-Time Judge.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canon 5C(2), D, E, F and G;

(2) should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, or act as a lawyer in proceedings in which the judge has served as a judge or in any other proceeding related thereto.

B. **Judge Pro Tempore.** A Judge pro tempore is a person who is appointed to act temporarily as a judge upon a particular court. Such persons may be eligible members of the bar, retired judges, senior judges and active judges.

(1) An active judge serving pro tempore upon another court and any person appointed to serve pro tempore substantially full time for a year or more is required to comply with all the provisions of the Code.

(2) A person, not an active judge, appointed to serve with his or her consent pro tempore upon a court on an occasional basis should comply with Canons 1, 2, 3, 4, 5 A and B, 6 A and B and should refrain from political activity described in Canon 7 while serving pro tempore. Such a person is not required to comply with 5 C, D, E, F and G, but should refrain from accepting a judicial assignment with which his or her private affairs or other public responsibilities would create a conflict or appearance of conflict.

(3) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the person has served as a judge or in any other proceeding related thereto.

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

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