



**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

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Volume 3

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January 1, 1989 to December 31, 1989

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January 1, 1989 to December 31, 1989



## PREFACE

This Reporter contains final decisions of the Oregon State Bar Disciplinary Board. The Disciplinary Board Reporter should be cited, for example, as **3 DB Rptr 1 (1989)**.

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. 225 of the 1990 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, 1990 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 proves helpful to those interested in or affected by the bar's disciplinary procedures.

George A. Riemer  
General Counsel  
Oregon State Bar  
1-800-452-8260, Ext. 405  
1-503-620-0222, Ext. 405

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IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of ) Case No. 88-38  
 )  
Myron J. Gitnes, )  
 )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: Jeffrey D. Sapiro, Disciplinary Counsel

Counsel for the Accused: Myron J. Gitnes, pro se

Disciplinary Board: Chris L. Mullmann, State Chairperson; James R. Uerlings, Regional Chairperson

Disposition: Violation of DR 1-103(C). Stipulation for Discipline.  
Public Reprimand

Effective Date of Opinion: February 23, 1989

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 88-38
	)	
Myron J. Gitnes,	)	
	)	
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 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 agreed 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 by the Oregon Supreme Court to practice law in the State of Oregon. Since October 20, 1979, the Accused has been a member of the Oregon State Bar with his principal place of business in Klamath County, Oregon.

From a review of the stipulation, it appears the Accused admits the complaint concerning his conduct filed on March 21, 1988, and on March 28, 1988, the disciplinary counsel's office forwarded a copy of the complaint to the Accused requesting a response by April 18, 1988. The Accused did not respond to disciplinary counsel's request for information and, by letter dated May 17, 1988, the Accused was advised that it had received no response. On that same date the matter was referred to the Klamath/Lake County Local Professional Responsibility Committee for investigation.

A review of the stipulation indicates that the Accused did not exercise any applicable right or privilege to justify his failure to respond fully and truthfully to inquiries from, or cooperate with, disciplinary counsel's office in its investigation of the complaint.

Based on these facts, the Accused has stipulated that he has violated DR 1-103(C) of the Code of Professional Responsibility.

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, approve the stipulation and the sanction.

IT IS HEREBY ORDERED:

1. The Accused will receive a public reprimand for the violation of DR 1-103(C) of the Code of Professional Responsibility.

DATED this 24th day of January, 1989.

/s/ Chris L. Mullmann

Chris L. Mullmann  
State Chairperson

/s/ James R. Uerlings

James R. Uerlings  
Regional Chairperson



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 88-38
	)	
Myron J. Gitnes,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

---

Myron J. Gitnes, 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, Myron J. Gitnes, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 20, 1979, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Klamath County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily.

4.

A formal complaint (No. 88-38) was filed by the Oregon State Bar on November 2, 1988 against the Accused, and service was accepted by the Accused on November 4, 1988. A copy of the Bar's formal complaint is attached hereto as Exhibit 1 and is incorporated by reference herein. In lieu of filing an answer to the complaint, the Accused wishes to stipulate to the facts and his violation of DR 1-103(C) as set forth in the First and only Cause of Complaint.

5.

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

6.

The Accused has no prior record of disciplinary action.

7.

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 Oregon Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 6th day of January, 1989 by Myron J. Gitnes and this 16th day of January, 1989 by Jeffrey D. Sapiro for the Oregon State Bar.

/s/ Jeffrey D. Sapiro  
Jeffrey D. Sapiro  
Disciplinary Counsel

/s/ Myron J. Gitnes  
Myron J. Gitnes

I, Myron J. Gitnes, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Myron J. Gitnes  
Myron J. Gitnes

Subscribed and sworn before me this 6th day of January, 1989.

/s/ Joanna M. Cherry  
Notary Public for Oregon  
My commission expires: 10-6-89

I, Jeffrey D. Sapiro, being first duly sworn, say that I am 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 Supreme Court on the 14th day of January, 1989.

/s/ Jeffrey D. Sapiro  
Jeffrey D. Sapiro  
Disciplinary Counsel  
Oregon State Bar

Subscribed and sworn to before me this 14th day of January, 1989.

/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. 88-38
	)	
Myron Gitnes,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

---

For its FIRST AND ONLY 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, Myron Gitnes, 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 Klamath, State of Oregon.

3.

The Oregon State Bar received a complaint concerning the Accused's conduct from Stephen Cox on March 21, 1988. On March 28, 1988, the Disciplinary Counsel's office forwarded a copy of the Cox complaint to the Accused and requested his response to the allegations contained in the complaint by April 18, 1988. By the same correspondence, the Accused was further advised that failure to respond to Disciplinary Counsel could subject the Accused to discipline for violation of DR 1-103(C). The Accused did not respond to Disciplinary Counsel's request for information.

4.

By letter dated May 17, 1988, Disciplinary Counsel's office advised the Accused that it had received no response to its request for information. On the

same date, the matter was referred to the Klamath/Lake County Local Professional Responsibility Committee for investigation, pursuant Oregon State Bar Rule of Procedure 2.5(b)(2).

5.

The Accused did not have and did not exercise any applicable right or privilege to justify his failure to respond fully and truthfully to inquiries from, or cooperate with, the Disciplinary Counsel's office in its investigation of the Cox complaint. Disciplinary Counsel's office was and is an authority empowered to investigate the conduct of lawyers in Oregon.

6.

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

1. 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 2nd day of November, 1988.

OREGON STATE BAR

By: /s/Celene Greene  
CELENE GREENE  
Executive Director

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct	)	Case No. 87-104
	)	
LeAnn Bailey,	)	
	)	
Accused.	)	
	)	

---

Bar Counsel: Steven W. Seymour

Counsel for the Accused: Michael Bloom

Disciplinary Board: Chris L. Mullmann, State Chairperson  
Dennis J. Graves, Region 6 Chairperson

Disposition: Violation of DR 1-102(A)(2) and ORS 9.527(1).  
Stipulation for Discipline. Sixty day suspension, thirty  
days stayed conditional upon a two year period of  
probation.

Effective Date of Opinion: March 23, 1989

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	Case No. 87-104
	)	
Complaint as to the Conduct of	)	OPINION
	)	
LeAnn Bailey,	)	
	)	
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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since May 8, 1984, she was a member of the Oregon State Bar with her principal place of business in Wilsonville, Oregon.

From a review of the stipulation, it appears that the Accused pled guilty to the misdemeanor charges of driving while under the influence of intoxicants (ORS 813.010), unlawful possession of a weapon (ORS 166.250), and resisting arrest (ORS 162.315), all of which arose on October 27, 1985.

The Accused further admits that on November 2, 1987, she pled guilty to a resisting arrest charge arising out of an April 16, 1987, arrest. As part of her probation on both of these incidents she was to obey all laws and not use alcohol.

The Accused further admits that on or about November 17, 1987, she was arrested following an altercation at an individual's home and her blood alcohol level was .02 percent. The Accused was charged with violation of her probation and subsequently found to be in wilful violation of her probation.

The Accused stipulates that her conduct described in the complaint reflected adversely on her fitness to practice law in violation of DR 1-102(A)(2) and contrary

to ORS 9.527(1), and was of such a nature that if the Accused was applying for admission to the Bar, the application should be denied.

Pursuant to the Stipulation, the Accused agrees to a 60 day suspension from the practice of law, 30 days of which is stayed on the condition that the Accused meets the following probationary terms during a two-year period of probation.

- (A) The Accused shall comply with the terms of her probation with the Clackamas County Circuit Court established in State v. Bailey, Case No. 85-1078. The period of disciplinary probation established herein shall in no way affect early termination of probation imposed upon the Accused by the Clackamas County Circuit Court in the aforementioned case, should that court so order. The Accused hereby authorizes any officer or employee of Clackamas County who may supervise the Accused's probation to release to the Bar and its representatives such information as may be necessary to determine if the Accused has complied with her disciplinary or court probation.
- (B) The Accused shall refrain from the use of alcohol or any controlled substances not prescribed by a physician.
- (C) After the period of suspension imposed herein expires, and should the Accused reinstate to active membership in the Bar during the period of her disciplinary probation, a monitor shall be appointed to submit quarterly reports to the Disciplinary Counsel for the Bar concerning the number of the Accused's active client files, her attention to legal matters entrusted to her, and her compliance with the terms of her disciplinary probation. The monitor shall be an active member of the Bar, and mutually acceptable to both parties herein.
- (D) Dr. Robert Davis, the Accused's treating psychologist, or his successor, shall submit to the Bar, written verification of the Accused's participation in individual course treatment at the commencement of disciplinary probation and thereafter, on a quarterly basis, for so long as such treatment continues, and a final report of the Accused's psychological condition as it relates to her fitness to practice law upon termination of treatment, should termination occur within the period of disciplinary probation, or should the Bar so request such a report. The Accused hereby authorizes Dr. Davis or his successor to release to the Bar and its representatives such information as may be necessary for the Bar to determine the Accused's compliance with her disciplinary probation.
- (E) The Accused shall attend regular meetings of an Attorney Support Group sponsored by the Professional Liability Fund, or in the alternative, shall regularly attend meetings of Alcoholics Anonymous. The Accused shall provide documentation of such attendance to the Bar on a quarterly basis. Attendance shall be required until the



end of this disciplinary probation or until terminated at the discretion of the group leader, whichever occurs first.

- (F) If the Accused is in compliance with her disciplinary and court probation at the end of the 30 days during which she is suspended, she will be eligible to apply for reinstatement pursuant to BR 8.2. The failure of the Accused to seek reinstatement after 30 days does not preclude the imposition of the remaining 30 day suspension at a later date pursuant to paragraph 6(G).
- (G) In the event the Accused fails to comply with the terms of her disciplinary or court probation during her suspension or at any time during the period of disciplinary probation, Disciplinary Counsel may petition the State Chairperson of the Disciplinary Board to revoke the Accused's probation, impose the remaining 30 days suspension and continue the probation for an additional period not to exceed on [e] year.
- (H) In the event the Accused's probation is revoked and the remaining 30 days suspension of the Accused is imposed pursuant to paragraph 6(G), any readmission of the Accused is subject to the formal application requirements of BR 8.1.

From the Stipulation it appears that the Accused has no prior record of reprimands, suspensions or disbarment.

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

IT IS HEREBY ORDERED that the Accused be disciplined as set forth above for violation of DR 1-102(A)(2) of the Code of Professional Responsibility and ORS 9.527(1).

DATED this 27th day of February, 1989.

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

/s/ Dennis J. Graves  
Dennis J. Graves  
Region 6 Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 87-104
	)	
LeAnn Bailey,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

---

LeAnn Bailey, 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, LeAnn Bailey, was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 8, 1984, and was a member of the Oregon State Bar continuously until January 26, 1988, when she voluntarily transferred to inactive status. The Accused currently resides in Wilsonville, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily.

4.

A formal complaint (No. 87-104) was filed by the Oregon State Bar on June 22, 1988 against the Accused and service was made on the Accused on July 27, 1988. The Accused filed an Answer on August 10, 1988. Copies of the Bar's formal complaint and the Accused's Answer are attached hereto as Exhibits 1 and 2 and are incorporated by reference herein.

5.

The Accused wishes to stipulate to those facts admitted in her Answer and to the facts as described in paragraphs 5, 6, 7 and 8 of the First Cause of Complaint. The Accused further stipulates that her conduct described herein

reflected adversely on her fitness to practice law in violation of DR 1-102(A)(2) and, contrary to ORS 9.527(1), was of such nature that, if the Accused were applying for admission to the Bar, the application should be denied.

6.

As a result of the violations set forth herein, the Accused agrees to a 60-day suspension from the practice of law, 30 days of which is stayed on the condition that the Accused meets the following probationary terms during a two-year period of probation:

(A) The Accused shall comply with the terms of her probation with the Clackamas County Circuit Court established in State v Bailey, Case No. 85-1078. The period of disciplinary probation established herein shall in no way affect early termination of probation imposed upon the Accused by the Clackamas County Circuit Court in the aforementioned case, should that court so order. The Accused hereby authorizes any officer or employee of Clackamas County who may supervise the Accused's probation to release to the Bar and its representatives such information as may be necessary to determine if the Accused has complied with her disciplinary or court probation.

(B) The Accused shall refrain from the use of alcohol or any controlled substances not prescribed by a physician.

(C) After the period of suspension imposed herein expires, and should the Accused reinstate to active membership in the Bar during the period of her disciplinary probation, a monitor shall be appointed to submit quarterly reports to the Disciplinary Counsel for the Bar concerning the number of the Accused's active client files, her attention to legal matters entrusted to her, and her compliance with the terms of her disciplinary probation. The monitor shall be an active member of the Bar, and mutually acceptable to both parties herein.

(D) Dr. Robert Davis, the Accused's treating psychologist, or his successor, shall submit to the Bar, written verification of the Accused's participation in individual course treatment at the commencement of disciplinary probation and thereafter, on a quarterly basis, for so long as such treatment continues, and a final report of the Accused's psychological condition as it relates to her fitness to practice law upon termination of treatment, should termination occur within the period of disciplinary probation, or should the Bar so request such a report. The Accused hereby authorizes Dr. Davis or his successor to release to the Bar and its representatives such information as may be necessary for the Bar to determine the Accused's compliance with her disciplinary probation.

(E) The Accused shall attend regular meetings of an Attorney Support Group sponsored by the Professional Liability Fund, or in the alternative, shall regularly attend meetings of Alcoholics Anonymous. The Accused shall provide documentation of such attendance to the Bar on a quarterly basis. Attendance shall be required until the end of this disciplinary probation or until terminated at the discretion of the group leader, which ever occurs first.

(F) If the Accused is in compliance with her disciplinary and court probation at the end of the 30 days during which she is suspended, she will be eligible to apply for reinstatement pursuant to BR 8.2. The failure of the Accused to seek reinstatement after 30 days does not preclude the imposition of the remaining 30 day suspension at a later date pursuant to paragraph 6(G).

(G) In the event the Accused fails to comply with the terms of her disciplinary or court probation during her suspension or at any time during the period of disciplinary probation, Disciplinary Counsel may petition the State Chairperson of the Disciplinary Board to revoke the Accused's probation, impose the remaining 30 days suspension and continue the probation for an additional period not to exceed one year.

(H) In the event the Accused's probation is revoked and the remaining 30 days suspension of the Accused is imposed pursuant to paragraph 6(G), any readmission of the Accused is subject to the formal application requirements of BR 8.1.

7.

The Bar dismisses, for purposes of this stipulation only, its Second Cause of Complaint.

8.

The Accused has no prior record of reprimand or disbarment.

9.

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 this 9th day of January, 1989 by the Accused and this 24th day of January, 1989 by the Bar.

/s/Jeffrey D. Sapiro  
Jeffrey D. Sapiro  
Disciplinary Counsel  
Oregon State Bar

/s/ LeAnn Bailey  
LeAnn Bailey

I, LeAnn Bailey, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ LeAnn Bailey  
LeAnn Bailey

Subscribed and sworn before me this 9th day of January, 1989.

/s/ Eric R. Friedman  
Notary Public for Oregon  
My commission expires: 1/10/91

I, Jeffrey D. Sapiro, being first duly sworn, say that I am 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 Supreme Court on the 14th day of January, 1989.

/s/ Jeffrey D. Sapiro  
Jeffrey D. Sapiro  
Disciplinary Counsel  
Oregon State Bar

Subscribed and sworn to before me this 24th day of January, 1989.

/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. 87-104
	)	
LeAnn Bailey,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

---

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, LeAnn Bailey, 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, currently having her office and place of business in the County of Clackamas, State of Oregon.

3.

On or about October 27, 1985, the Accused was found slumped over the wheel of her parked car in the front yard of a home in West Linn, Oregon. Police officers called to the scene believed the Accused to be intoxicated. The Accused fought the officers during her arrest, in the course of which she was found to be armed with a loaded gun, and in possession of an open whiskey bottle and cocaine. The Accused was charged with possession of a controlled substance, driving while under the influence of intoxicants, unlawful possession of a weapon, two counts of resisting arrest, and assaulting a public safety officer.

4.

On or about April 16, 1987, police officers attempted to serve warrants for arrest which arose from the aforementioned charges, on the Accused in the home of Gene Pruatt. The Accused fought the officers during her arrest, and hand and

leg restraints were necessary to transport the Accused to jail. The Accused was again charged with resisting arrest.

5.

On or about June 8, 1987, the Accused pled guilty to the misdemeanor charges of driving while under the influence of intoxicants (ORS 813.010), unlawful possession of a weapon (ORS 166.250), and resisting arrest (ORS 162.315), all of which charges arose out of the October 27, 1985 incident. The Accused was placed on three years probation, served two days in jail and was ordered to obey all laws, not possess or use alcohol, not possess or use illegal drugs or have drug paraphernalia, submit to urine analysis and observe other conditions of probation. The other charges were dismissed pursuant to a plea bargain.

6.

On November 2, 1987, the Accused pled guilty to the resisting arrest charge arising out of her April 16, 1987 arrest, and the Accused was placed on eighteen months probation with a condition to obey all laws and not use alcohol.

7.

On or about November 17, 1987, the Accused was arrested following an altercation with Pruatt at his home. The Accused's blood alcohol level was .02%. The Accused was charged with violation of her probation. On or about December 17, 1987, a hearing was conducted on the alleged probation violation. At such hearing the Accused admitted to her willing ingestion of methamphetamine on or about November 6, 1987 and admitted further that she knew such conduct constituted a felony in the State of Oregon. The Accused was found to be in willful violation of her probation.

8.

By reason of the foregoing convictions and wilful violation of her probation, the Accused committed criminal acts that reflect adversely on her honesty, trustworthiness or fitness to practice law, and committed acts or carried on a course of conduct of such nature that, if the Accused were applying for admission to the Bar, the application should be denied.

9.

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)(2) of the Code of Professional Responsibility.

(2) ORS 9.527(1).

FOR ITS SECOND AND FINAL CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

10.

Incorporates by reference as fully set forth herein paragraphs 1 and 2 of this FORMAL COMPLAINT.

11.

In or about October, 1985, Gene Pruatt, then being ill, gave a general power of attorney to the Accused. When Pruatt later asked the Accused to return the power of attorney, the Accused told him it had been destroyed.

12.

On or about November 19, 1987, after Pruatt had asked the Accused to return the power of attorney, the Accused used such power of attorney to cash a \$2,000 check on Pruatt's personal account. The Accused did not advise Pruatt she was going to use the power of attorney to obtain his money or obtain his consent to such use.

13.

On or about November 19, 1987, the Accused seized certain property from Pruatt under a purported note and security agreement, and used a truck owned by Pruatt for those purposes, without his authorization. The Accused subsequently filled out a promissory note previously signed in blank by Pruatt in connection with another legal matter in her own favor for \$7,000 at 20% interest, without Pruatt's authorization. The collateral agreement attached to the loan was prepared by the Accused and not signed by Pruatt. A lawsuit between the parties arising from that incident and from Pruatt's indebtedness to the Accused was later settled.

14.

By unauthorized use of a power of attorney without consent to obtain Pruatt's money, by seizure of Pruatt's property under a purported note and security agreement and through unauthorized use of Pruatt's truck, and by unauthorized negotiating of a promissory note without consent to obtain Pruatt's money, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, and further committed an act or carried on a course of conduct of such



nature that, if the member were applying for admission to the Bar, the application should be denied.

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
- (2) ORS 9.527(1).

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 22nd day of June, 1989.

Oregon State Bar

By: s/ Celene Greene  
Celene Greene  
Executive Director

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 86-101
	)	
Leonard Popick,	)	
	)	
Accused.	)	
_____	)	

Bar Counsel: Helen Smith

Counsel for the Accused: Wendell Birkland

Disciplinary Board: Chris L. Mullmann, State Chairperson  
James Damis, Region 5 Chairperson

Disposition: Violation of former DR 1-102(A)(4) [current DR 1-102(A)(3)], ORS 9.460(4) and ORS 9.527(5).  
Stipulation for Discipline.

Effective Date of Opinion: May 23, 1989

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	Case No. 86-101
	)	
Complaint as to the Conduct of	)	OPINION
	)	
Leonard Popick,	)	
	)	
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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since April 19, 1951, the Accused has been a member of the Oregon State Bar, with his principal place of business in Multnomah County, Oregon.

From a review of the stipulation it appears that the Accused admits that he represented an individual who had been injured in two automobile accidents. The driver of the other vehicle involved in the first collision was insured through Farmers Insurance Group ("Farmers"). The driver of the vehicle involved in the second collision, which occurred on November 6, 1984, was uninsured. Since the client was driving a vehicle belonging to his employer when he was involved in the [second] accident, a claim was made by the Accused on behalf of his client, [against] the employer's insurance company, Unigard Insurance Group ("Unigard").

The client began physical therapy for injuries he suffered in the first automobile accident and the injuries sustained in the [second] accident were similar to the first, so he sought additional physical therapy for those injuries.

The client's treating physician for injuries sustained in both accidents periodically provided the Accused with medical reports detailing his diagnosis, course of treatment and prognosis. One such report dated April 3, 1985, failed to mention injuries the client had suffered in the second accident. Instead, it only referred to the first accident.

The Accused forwarded this medical report and the doctor bills for the period of August 28, 1984, through April 3, 1985, and the physical therapy bills to Farmers. At the time the medical information was submitted, the Accused had no other medical information concerning subsequent accidents and the Accused made no mention of injuries sustained by the client subsequent to the August 27, 1984 accident. Farmers agreed to pay the client \$15,000 in full satisfaction of the client's claim against Farmers for the August accident. The Farmers claims representative affirmed with the Accused by letter as follows: "This offer includes medical expenses incurred to date. You advised me that you would protect our insured from any clients that maybe [sic] pending upon the settlement and that you will pay the medical expenses from this sum."

In January, 1986, after the information had been received documenting the injuries sustained in the November accident, the Accused, on behalf of the client, made a claim with Unigard and submitted the same physical therapy bill which had earlier been submitted to Farmers. In support of the claim to Unigard, the Accused submitted a new medical report he had received from the treating physician dated November 5, 1985, in which the doctor recited with approval the client's opinion that the physical therapy he received was primarily due to the injuries sustained in the November 6 accident. The Accused also submitted to Unigard the treating physician's medical report dated December 18, 1985, in which the physician stated, "It is my opinion and it is the patient's opinion that the patient's chronic cervical and back strains are primarily attributable to his accident of 11/6/84 and no subsequent accident, although he did have an increase in a number of symptoms later."

Based upon these facts, the Accused has stipulated the foregoing conduct violated the former DR 1-102(A)(4) [current DR 1-102(A)(3)] of the Code of Professional Responsibility and ORS 9.460(4) and ORS 9.527(5).

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 reprimands, suspensions or disbarment.

The regional chairperson and the state chairperson, on behalf of the Disciplinary Board, approve the stipulation and the sanction.

IT IS HEREBY ORDERED the Accused will receive a public reprimand for violation of the former DR 1-102(A)(4) [current DR 1-102(A)(3)] of the Code of Professional Responsibility and ORS 9.460(4) and ORS 9.527(5).

DATED this 28th day of May, 1989.

/s/ Chris Mullmann

Chris L. Mullmann  
State Chairperson

/s/ James Damis

James Damis  
Region 5 Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 86-101
	)	
Leonard Popick,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Leonard Popick, 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, Leonard Popick, was admitted by the Oregon Supreme Court to practice of law in Oregon on April 19, 1951, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily.

4.

A formal complaint (No. 86-101) was filed by the Oregon State Bar on August 31, 1987 against the Accused and an answer was filed by the Accused on September 22, 1987.

5.

The parties stipulate to the following facts regarding this matter:

- (a). The Accused represented an individual named Dannie Malafouris who had been injured in two automobile accidents. The driver of the other vehicle involved in the first collision, which occurred on August 27, 1984, was insured through Farmers Insurance Group ("Farmers"). The driver of the vehicle involved in the second collision, which occurred on November 6, 1984, was uninsured. Since Malafouris was driving a

vehicle belonging to his employer, Barbecue Time, Inc., when he was involved in the November 6, 1984 accident, a claim was made by the Accused on Malafouris' behalf with Malafouris' employer's insurance company, Unigard Insurance Group ("Unigard").

- (b). Malafouris began physical therapy on November 5, 1984 for the injuries he suffered in the August 27, 1984 automobile accident. The injuries he sustained in the second accident on November 6, 1984 were similar to his previous injuries sustained in the August 27, 1984 accident. Therefore, Malafouris pursued physical therapy for both accidents at Rockwood Orthopedic and Sports Clinic ("Rockwood").
- (c). Malafouris' treating physician for the injuries he sustained in both accidents was Paul M. Puziss, M.D. Dr. Puziss periodically provided the Accused with medical reports detailing his diagnosis, course of treatment, and prognosis for Malafouris. One such report dated April 3, 1985 provided by Dr. Puziss to the Accused failed to mention the injuries Malafouris had suffered in the November 6, 1984 accident. Instead, only the August 27, 1984 accident was referenced.
- (d). The Accused forwarded that April 3, 1985 medical report by Dr. Puziss, the bills from Dr. Puziss covering the period from August 28, 1984 through April 3, 1985, and the physical therapy bills from Rockwood in the amount of \$4,013 covering the period November 5, 1984 through May 14, 1985, to Farmers. The information submitted by the Accused made no mention of injuries sustained by Malafouris subsequent to the August 27, 1984 accident. Farmers agreed to pay Malafouris \$15,000 in full satisfaction of his claim against Farmers arising out of the August 27, 1984 accident. In her letter of July 8, 1985 to the Accused which accompanied the \$15,000 settlement draft, Farmers claims representative Keely D. Russell confirmed with the Accused as follows: "This offer includes medical expenses incurred to date. You advised me that you would protect our insured from any liens that maybe (sic) pending upon this settlement and that you will pay the medical expenses from this sum."
- (e). The Accused thereafter, on behalf of Malafouris, also made a claim with Unigard for payment in its entirety of the same \$4,013 physical therapy bill from Rockwood which had already been settled by Farmers as per the July 8, 1985 letter by Russell. In support of the claim to Unigard, the Accused submitted Dr. Puziss' medical report dated November 5, 1985 in which Dr. Puziss recited Malafouris' opinion that the physical therapy he received was required primarily to treat the injuries he sustained in the November 6, 1984 accident. The Accused also submitted to Unigard Dr. Puziss' medical report dated December 18, 1985 in which Dr. Puziss stated, "It is my opinion and it is also the patient's opinion that the patient's chronic cervical and back strains are primarily attributable to his accident of 11/6/84 and no subsequent accident, although he did have an increase in a number of symptoms later."

6.

The Accused stipulates that the foregoing conduct violated former DR 1-102(A)(4) [current DR 1-102(A)(3)] of the Code of Professional Responsibility and ORS 9.460(4) and ORS 9.527(5). The Accused agrees to accept a public reprimand for these violations.

7.

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

8.

The Accused acknowledges that his explanation in no way justifies his conduct and is not a defense to the charge that the Accused's conduct violated the ethical rules specified herein.

9.

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

10.

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 this stipulation is to be submitted to the Disciplinary Board, together with information copies of the formal complaint and answer, for consideration pursuant to the terms of BR 3.6.

EXECUTED this 12th day of April, 1989.

/s/Leonard Popick  
Leonard Popick

/s/Donald L. Williams  
Donald L. Williams  
Assistant Disciplinary Counsel  
Oregon State Bar

I, Leonard Popick, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/Leonard Popick  
Leonard Popick



Subscribed and sworn before me this 12th day of April, 1989.

/s/ Will Markel  
Notary Public for Oregon  
My commission expires: 2/18/92

I, Donald L. Williams, 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 22nd day of April, 1989.

/s/ Donald L. Williams  
Donald L. Williams  
Assistant Disciplinary Counsel  
Oregon State Bar

Subscribed and sworn to before me this 24th day of April, 1989.

/s/ Marth Hicks  
Notary Public for Oregon  
My commission expires: 2/10/93

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-101
	)	
Leonard Popick,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

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For its FIRST AND ONLY 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 attorney.

2.

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

3.

The Accused represented an individual named Dannie Malafouris who had been injured in two automobile accidents. The driver of the other vehicle in the first collision which occurred on August 27, 1984, was insured through Farmers Insurance Group ("Farmers"). The driver of the vehicle involved in the second collision, which occurred on November 6, 1984, was uninsured. Since Malafouris was driving a vehicle belonging to his employer, Barbecue Time, Inc., when he was involved in the November 6, 1984 accident, a claim was made by the Accused on Malafouris' behalf with Malafouris' employer's insurance company, Unigard Insurance Group ("Unigard").

4.

Malafouris began physical therapy on November 5, 1984 for the injuries he suffered in the August 27, 1984 automobile accident. The injuries he sustained in the second accident on November 6, 1984 were similar or identical to his

previous injuries sustained in the August 27, 1984 accident. Therefore, Malafouris pursued physical therapy for both accidents at Rockwood Orthopedic and Sports Clinic ("Rockwood").

## 5.

Malafouris treating physician for the injuries he sustained in both accidents was Paul M. Puziss, M. D. Dr. Puziss periodically provided the Accused with medical reports detailing his diagnosis, course of treatment, and prognosis for Malafouris. One such report dated April 13, 1985 provided by Dr. Puziss to the Accused failed to mention the injuries Malafouris had suffered in the November 6, 1984 accident. Instead, only the August 27, 1984 accident was referenced.

## 6.

The Accused forwarded that April 3, 1985 medical report by Dr. Puziss, the bills from Dr. Puziss covering the period from August 28, 1984 through April 3, 1985, and the physical therapy bills from Rockwood covering the period November 5, 1984 through May 14, 1985 totalling \$4,015 to Farmers. Based on the information submitted by the Accused, which made no mention of injuries sustained by Malafouris subsequent to the August 27, 1984 accident, Farmers agreed to pay Malafouris \$15,000 in full satisfaction of his claim against Farmers arising out of the August 27, 1984 accident. In her letter of July 8, 1985 to the Accused which accompanied the \$15,000 settlement draft, Farmers claims representative Keely D. Russell confirmed that Farmers' settlement offer had been accepted by Malafouris as per a July 1, 1985 telephone conversation with the Accused. In the July 8, 1985 letter, Russell confirmed with the Accused as follows: "This offer includes medical expenses incurred to date. You advised me that you would protect our insured from any liens that maybe (sic) pending upon this settlement and that you will pay the medical expenses from this sum."

## 7.

The Accused, on behalf of Malafouris, also made a claim with Unigard for payment in its entirety of the same \$4,015 physical therapy bill from Rockwood which had already been fully reimbursed by Farmers as per the July 8, 1985 letter by Russell. In support of the claim to Unigard, the Accused submitted Dr. Puziss' medical report dated November 5, 1985 in which Dr. Puziss recited Malafouris' opinion that the physical therapy he received was required primarily to treat the injuries he sustained in the November 6, 1984 accident. No specific

mention is made of the August 27, 1984 accident in the November 5, 1985 medical report but Malafouris' elbow pain was noted from a September 25, 1985 accident. The Accused also submitted to Unigard Dr. Puziss' medical report dated December 18, 1985 in which Dr. Puziss stated, "It is my opinion and it is also the patient's opinion that the patient's chronic cervical and back strains are primarily attributable to his accident of 11/6/84 and no subsequent accident, although he did have an increase in a number of symptoms later."

8.

In processing the claim at Unigard, senior adjuster Lyle A. Cerny communicated with Russell at Farmers on July 26, 1985. In a letter to Russell dated July 31, 1985, Cerny requested that Russell provide him with a list or copy of the medical bills Farmers had paid as part of its settlement with Malafouris of the August 27, 1984 accident. In his July 31, 1985 letter, Cerny explained the reason behind his request for information was "to insure that these bills do not reoccur on the uninsured motorist claim when it is presented to us." In reply, Russell advised Cerny by a letter dated August 23, 1985 that Farmers had paid the Rockwood physical therapy bill of \$4,015 for the period covering November 5, 1984 though (sic) May 14, 1985. Russell made a note on August 23, 1985 on her Farmers investigation log that the attorney and doctor had kept the fact of the second loss on November 6, 1984 from her resulting in Farmers paying special damages which it in all likelihood did not owe.

9.

Despite receipt of full payment of the physical therapy bill as part of a complete settlement with Farmers, and despite the fact that the physical therapy treatment Malafouris received on November 5, 1984 preceded the November 6, 1984 accident for which the Accused was submitting a claim to Unigard, the Accused submitted to Unigard a claim for payment of the same physical therapy bill in its entirety that had been submitted to and paid by Farmers. By seeking such double payment without making an adequate disclosure of the two accidents and of the claim being made as to each accident to Unigard, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and employed means inconsistent with truth.

## 10.

By failing to inform the claims representative for Farmers at any time during the negotiation and settlement of Malafouris' claim against Farmers arising out of the August 27, 1984 automobile accident of the fact that Malafouris had been similarly injured in an accident on November 6, 1984 resulting in physical therapy treatment being attributable to both accidents, the Accused mislead Russell by his silence and omission of facts necessary to make his statements considered as a whole not materially misleading. In this regard, the Accused engaged in conduct which involved dishonesty, fraud, deceit or misrepresentation and employed means inconsistent with truth.

## 11.

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) [current DR 1-102(A)(3)] of the Code of Professional Responsibility;
2. ORS 9.460(4); and
3. ORS 9.527(5)

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

EXECUTED this 31st day of August, 1987.

OREGON STATE BAR

By: /s/ Celene Greene  
**CELENE GREENE**  
Executive Director

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	Case No. 87-22
Complaint as to the Conduct of	)	
	)	
John H. Otting,	)	
	)	
Accused.	)	
_____	)	

Bar Counsel: Barry M. Mount

Counsel for the Accused: John Otting, pro se

Trial Panel: William Canessa, Trial Panel Chairperson  
Jerry K. McCallister and Frank Price

Disposition: Violation of DR 1-103(C). Sixty day suspension.

Effective Date of Opinion: June 5, 1989

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	No. 87-22
Complaint as to the Conduct of	)	
	)	
John H. Otting,	)	TRIAL PANEL DECISION
	)	
Accused.	)	
	)	

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The Complaint charges the accused with the violation of failing to respond to a disciplinary investigation by the Bar in violation of DR 1-103(C).

The accused answered by admitting all of the material allegations of the complaint.

On April 14, 1989, a hearing was held before the trial panel.

SUMMARY OF TESTIMONY

The accused has been a member of the Oregon State Bar since 1964. He has been disciplined by the Oregon State Bar on one occasion in Case No. 86-20, in which the accused was suspended from the practice of law for 30 days.

The accused admitted by his answer that on or about January 8, 1987, the Oregon State Bar General Counsel's office received a complaint from Bruce Johnson regarding the conduct of the accused. On or about January 12, 1987, the General Counsel's office mailed a copy of Mr. Johnson's complaint to the accused along with a request that the accused respond to the complaint by February 2, 1987. The General Counsel's office did not receive a response from the accused by February 2, 1987. On or about February 6, 1987, the General Counsel's office referred Mr. Johnson's complaint to the Multnomah County Local Professional Responsibility Committee ("LPRC") for investigation. The accused subsequently cooperated with the LPRC in its investigation of Mr. Johnson's complaint. The State Professional Responsibility Board dismissed the substantive aspects of Mr. Johnson's complaint on April 25, 1987.

The accused testified that at the time of the Bar investigation he was experiencing depression and severe financial problems which led to a discontinuance of his office practice. The accused admits that he failed to respond

to the Oregon State Bar's letter, but that he fully cooperated with the LPRC's investigator when personally contacted.

### FINDINGS AND CONCLUSIONS

DR 1-103(C) states:

A lawyer who is subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of the general counsel, the local professional responsibility committees, the state professional responsibility board and the board of governors as requested, subject only to the exercise of any applicable right or privilege.

The trial panel finds that the accused violated this provision.

### SANCTION

In analyzing what is the appropriate sanction, we refer to the Standards for Imposing Lawyer Sanctions adopted by the American Bar Association. In re Willer, 303 Or 214, 735 P2d 594 (1987).

1. Duty to client violated: The accused failed to respond to the Bar's inquiry, which does not involve a direct duty owed to a client.

2. Mental state: Even though the accused was in a state of depression, he chose not to respond to the Oregon State Bar's letter and, therefore, he acted intentionally.

3. Injury: In this case, it appears that there was no injury.

4. Aggravating and Mitigating Circumstances: During this episode, the accused was in a state of depression which resulted in his failure to respond or handle problems. When personally contacted by the LPRC, he fully cooperated.

The fact that the accused has been suspended from the practice of law for a period of 30 days for a similar reason resulting from a hearing before a trial panel on April 30, 1987, is an aggravating factor. At the time of this failure to respond to the Bar's letter, the accused had been already formally charged by the Bar for failing to cooperate in another investigation.

In his answer filed in this proceeding along with a letter attached thereto dated October 27, 1988, the accused apologizes to the Bar for not responding to its inquiry, and unquestionably accepted full responsibility for this failure. The trial panel finds this a mitigating factor in this case. Based upon the foregoing analysis, the trial panel imposes the following sanction:



The accused is suspended from the practice of law for 60 days. This suspension shall begin upon the accused's reinstatement to the Oregon State Bar.

DATED this 9th day of May, 1989.

/s/ William R. Canessa  
William R. Canessa  
Trial Panel Chairperson

IN THE SUPREME COURT  
FOR THE STATE OF OREGON

In re:	)	
	)	No. 86-141
	)	
Complaint as to the Conduct of	)	
	)	
Harrison R. Winston,	)	
	)	
Accused.	)	
	)	

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Bar Counsel: Steven L. Wilgers

Counsel for the Accused: Harrison R. Winston, pro se

Trial Panel: Alan B. Holmes, Trial Panel Chairperson,  
Stephen H. Miller and Max W. Kimmel (Public  
Member)

Disposition: Accused found not guilty of violation of ORS 9.460(1);  
ORS 9.527(2); ORS 9.527(5); ORS 167.065(1)(b); DR  
1-102(A)(2) and DR 1-102(A)(3).

Effective date of Opinion: July 28, 1989

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	No. 86-141
	)	
Harrison R. Winston,	)	FINDINGS AND CONCLUSIONS
	)	
Accused.	)	
	)	

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THIS MATTER came before the trial panel for hearing June 16, 1989 at Roseburg, Oregon, the Oregon State Bar appearing by Steven L. Wilgers, the accused appearing pro se. The trial panel consisted of Alan B. Holmes, chairperson, Stephen H. Miller, attorney and Max W. Kimmel, lay member. Emma Leah Handy, RPR served as court reporter.

The Bar alleges in its First Cause of Complaint that the accused during the summer of 1985 made alcoholic liquor available to two minor female girls under the age of 21 years and further provided to them a film depicting explicit sexual conduct; that on or about October 13, 1987 the accused was convicted of the furnishing alcohol offense in the District Court of Douglas County, and that by virtue of such conduct the accused failed to support the laws of this state, and that the offense of which he was convicted is a crime involving moral turpitude. The Bar further alleged the accused' [s] conduct involved fraud, deceit or dishonesty all in violation of ORS 9.460(1); ORS 9.527(2); ORS 9.525(5) [9.527(5)] and former [current] DR 1-102(A)(3) of the Code of Professional Responsibility.

For its Second Cause of Complaint the Bar alleged that in October, 1986 the accused made alcoholic liquor available to three minor persons under the age of 21 years, furnished to the minors a film depicting explicit sexual conduct, that on February 25, 1988 the accused was convicted of furnishing liquor to a minor in Douglas County District Court and that again all of such conduct violated the statutes referred to in count one and as well, DR 1-102(A)(2) of the Code of Professional Responsibility.

The accused answered the Complaint admitting conviction of the offenses of furnishing alcoholic beverages to a minor as alleged, denied the allegations

concerning the film material and denied that the offenses of which he was convicted were crimes involving moral turpitude.

At hearing, the accused reaffirmed his Motion to Dismiss these proceedings asserting that on the face of the Complaint it failed to state a cause of action against him. That Motion was taken under consideration by the trial panel which reserved ruling thereon. Thereafter testimony concerning the issues was taken and after the parties rested the trial panel met to discuss the issues in closed session. No additions or corrections were made to the transcript within the time prescribed therefore, and the trial panel thereupon makes the following:

#### FINDINGS

1. The accused was convicted of the misdemeanor offenses alleged.
2. The allegation of both causes of action of the complaint as to the accused furnishing obscene material to minors, apparently in violation of ORS 167.065(1)(b) was neither proved by clear and convincing evidence nor is such conduct, if proved, a violation of law, such statute having been held unconstitutional under State vs. Woodcock, 75 Or App 659 (1985). The committee was provided no evidence or the testimony of any witness concerning the nature or content of the film material.

#### OPINION

No authority has been provided to the trial panel, nor has the trial panel been able to locate from any jurisdiction, authority to substantiate the Bar's position that the crime of furnishing liquor to a minor is per se, a crime involving moral turpitude. We cannot conclude that under no circumstances could the conviction of such offense or offenses when coupled with additional allegations not be considered to be a crime involving moral turpitude. For that reason, the Motion to Dismiss is denied.

## DECISION

On the merits the Complaint against the accused is dismissed.

Dated this 28 day of July, 1989.

/s/ Alan B. Holmes

Alan B. Holmes

Chairperson

/s/ Stephen H. Miller

Stephen H. Miller

Law Member

/s/ Max W. Kimmel

Max W. Kimmel

Lay Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	Case No. 88-36
Complaint as to the Conduct of	)	
	)	DISPOSITION
G. Robert Warrington,	)	
	)	
Accused.	)	
_____	)	

Bar Counsel: Michael J. Esler

Counsel for Accused: G. Robert Warrington, pro se

Trial Panel: Vicki Hopman Yates, Trial Panel Chairperson;  
Thomas O. Carter and James S. Bode (Public Member)

Disposition: Accused found guilty of violation of DR 1-103(C) and  
DR 6-101(A)(3) [Current DR 6-101(B)]. Sixty day  
suspension stayed subject to three year probation.

Effective date of Opinion: August 7, 1989

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	Case No. 88-36
Complaint as to the Conduct of	)	
	)	
G. Robert Warrington,	)	OPINION
	)	
Accused.	)	
	)	

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This matter was set for hearing in Portland, Oregon, on June 14, 1989, and continued on July 7, 1989, in Lake Oswego, Oregon, before the trial panel consisting of Vicki Hopman Yates, Thomas O. Carter and James S. Bode.

Michael S. Esler is the counsel on behalf of the Oregon State Bar.

G. Robert Warrington appeared pro se.

The Accused has been charged with conduct that violates the Code of Professional Responsibility as:

First Cause of Complaint: Former DR 6-101(A)(3) [Current DR 6-101(B)] of the Code of Professional Responsibility and

Second Cause of Complaint: DR 1-103(C) of the Code of Professional Responsibility.

FINDINGS OF FACT

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

2. The Accused, G. Robert Warrington, was, at all times mentioned herein, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in the State and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3. On or about January 30, 1984, Leader National Insurance Company retained the Accused to defend its' insured, Felix Dolan. Mr. Warrington acknowledged receipt of the file by letter dated February 1, 1984 and had some telephone contact with a representative of Leader National, Joseph Sewell, until early 1986.

4. Between early 1986 and July, 1987, Leader National was unable to contact the Accused concerning the status of the Dolan case, despite numerous letters and telephone calls to the Accused's office.

5. In July, 1987, another Leader National representative, Sue Navy, contacted the Accused by telephone about the status of the case. The Accused could not provide all the information requested by Ms. Navy and failed to follow-up on her request.

6. Leader National retained attorney Thomas K. Thorpe in February 1988 to substitute as attorney for Leader National in the Dolan case. Mr. Thorpe wrote to the Accused, enclosed a Substitution of Attorneys, and requested delivery of the Dolan file. The Accused failed to respond to Mr. Thorpe's inquiries.

7. Leader National filed a complaint with the Oregon State Bar regarding the Accused's handling of the Dolan case.

8. Subsequent to the filing of said complaint, the Accused failed to respond to the complaint forwarded to him by the Disciplinary Counsel of the Oregon State Bar. The Accused also failed to respond to the inquiries from the Local Professional Responsibility Committee.

9. The Accused did not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

10. Leader National Insurance Company did not suffer any monetary damage due to the actions of the Accused with respect to the Dolan case.

11. The Accused is a late stage alcoholic in need of long term treatment.

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

#### CONCLUSIONS

1. The Accused violated former DR 6-101(A)(3) [Current DR 6-101(B)] by his neglect of a legal matter entrusted to him.

2. The Accused violated DR 1-103(C) in that he failed to cooperate with and respond to inquiries from and comply with reasonable requests of the general counsel and the Local Professional Responsibility Committee.

#### DISPOSITION AND OPINION

Based upon the foregoing Findings of Facts and Conclusions, the Trial Panel orders that the Accused is suspended from the practice of law within the State of Oregon for a period of sixty days, which period of suspension is stayed on the condition that the following probationary terms are satisfied:



1. Probation shall be for a period of three years from the date of this Opinion.

2. The probation is to be supervised by Don Muccigrosso, Senior Loss Prevention Attorney of the Alcohol and Chemical Dependency Program of the Oregon State Bar Professional Liability Fund, or his successor (hereinafter "supervisor of probation.")

3. The Accused shall refrain entirely from the use of alcohol and other drugs and be actively involved in an alcoholic rehabilitation program.

4. The Accused shall fully cooperate with the supervisor of probation in the supervision of his practice of law and the monitoring of the Accused's continued participation in an alcohol rehabilitation program.

5. The Accused shall not appear in Court, advise clients or engage in any other activities which require active membership in the Oregon State Bar for 45 days from the effective date of this decision.

6. Within two weeks from the effective date of this decision, the Accused shall move into a halfway house chosen by the supervisor of probation and reside in that halfway house for as long as the supervisor of probation deems it necessary but, at a minimum, for a period of three months.

7. The Accused, through the supervisor of probation, shall file with the Bar on a quarterly basis, beginning within two weeks from the effective date of this decision, written reports describing the status of the Accused's activities in the practice of law and the progress the Accused is making in avoiding problems that may affect his ability to competently and diligently practice law.

8. The Alcohol and Chemical Dependency Program of the Oregon State Bar Professional Liability Fund usually provides confidential assistance to attorneys. However, in this case, the probation is conditioned on the waiver by the Accused of that confidentiality with respect to the supervisor of probation's reporting to the Bar, at any time, about the status of the Accused's activities in the practice of law and the progress the Accused is making in avoiding problems that may affect his ability to competently and diligently practice law.

9. Any and all fees for supervision of probation or for costs connected therewith shall be paid by the Accused.

10. Should the Accused fail to comply with these provisions of probation, the Accused will be subject to summary suspension of his right to practice law upon motion of the Oregon State Bar.

11. If the stay of the Accused's suspension is revoked, the Accused must formally reapply for Admission to the Oregon State Bar at the end of the sixty day suspension period.

DATED this 7th day of August, 1989.

/s/ Vicki Hopman Yates  
VICKI HOPMAN YATES

/s/ Thomas O. Carter  
THOMAS O. CARTER

/s/ James S. Bode  
JAMES S. BODE



IN THE SUPREME COURT  
FOR THE STATE OF OREGON

In re:	)	
	)	Nos. 87-55, 88-21,
	)	88-88
Complaint as to the Conduct of	)	
	)	
Richard W. Todd,	)	
	)	
Accused.	)	
	)	

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Bar Counsel: Cynthia L. Barrett

Counsel for the Accused: Richard W. Todd, pro se

Trial Panel: Susan G. Whitney, Trial Panel Chairperson  
Larry A. Dawson and Irwin J. Caplan (public member)

Disposition: Accused found guilty of violation of DR 7-102(A)(1) [Third Cause]; guilty of violation DR 9-101(A) [former DR 9-102(A)] and DR 9-101(B)(3) [former DR 9-102(B)(3)] [Fifth Cause]; and not guilty of violation of DR 1-103(C); DR 1-102(A)(3) [former DR 1-102(A)(4)]; DR 1-102(A)(4) [former DR 1-102(A)(5)]; DR 7-102(A)(2) and ORS 9.527(4). Thirty day suspension.

Effective date of Opinion: November 24, 1989

IN THE SUPREME COURT  
FOR THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 87-55; 88-21; 88-88
	)	
Richard W. Todd,	)	TRIAL PANEL DECISION
	)	
Accused.	)	
	)	

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This is a lawyer disciplinary proceeding instituted by the Oregon State Bar against Richard W. Todd. The Bar's Second Amended Formal Complaint alleges five causes of complaint against the Accused. The trial panel's findings and conclusions are as follows:

FIRST CAUSE OF COMPLAINT

In the fall of 1983, Todd purchased the rights to log timber on a tract of land in Columbia County known as Fish Pond. The purchase was made with the proceeds from a \$775,000 loan from the Fish Pond Association of Investors, a limited partnership. Todd engaged HSC Logging, Inc. to perform logging services. In November 1983, Todd assigned to the Oregon State Forester his interest in a certificate of deposit at the United States National Bank, in the face amount of \$106,000, to secure the performance of Todd's logging obligations. In July 1984, HSC Logging commenced litigation in Washington County Circuit Court against Todd and the Oregon State Forester. HSC claimed that it had not been paid for logging services rendered in the sum of \$60,000. Todd asserted a counterclaim against HSC in excess of \$280,000. Todd retained attorney Glenn Feest to represent him in the litigation.

On November 2, 1984, Todd, who was apparently in default on his loan obligation to Fish Pond, executed a Confession of Judgment in favor of Fish Pond in the amount of \$426,532, plus interest and attorney fees. The Confession was filed with the court on May 23, 1986. Also on November 2, 1984, Todd executed a Security Agreement in favor of Fish Pond, granting Fish Pond a security interest in the U.S. National Bank Certificate of Deposit, and proceeds therefrom, and in all proceedings resulting from Todd's counterclaim in the pending HSC litigation.

In January 1986, the Oregon State Forester deposited the proceeds of the matured Certificate of Deposit with the Washington County Circuit Court and was discharged from the HSC litigation.

In 1985 Todd and Eagle Mortgage Company (the general partner of Fish Pond), as co-plaintiffs both represented by Feest, filed suit against HSC and the Employer's Insurance of Wausau in Washington County Circuit Court, asserting a claim against HSC's performance bond. Eagle Mortgage was later dismissed from the case. The case was consolidated with the HSC litigation.

In August, 1986, Todd consulted with Feest concerning the potential disposition of the proceeds of the sums being held by the Court in the event that Todd entered into a settlement agreement with HSC. Thereafter, Feest advised Todd that he intended to withdraw from his representation of Todd and Fish Pond, and, on September 3, 1986, Feest sent a certified letter to Todd and to Fish Pond advising both that he intended to withdraw within 10-14 days thereafter.

On September 12, 1986, Feest was advised by counsel for HSC that Todd had settled the case with HSC that morning. HSC and Todd had agreed that HSC would receive \$60,000 from the funds held by the Court, with the balance to go to Todd. Also on September 12, 1986, Todd and the attorney for HSC appeared before the Honorable Judge Bonebrake in Washington County Circuit Court and presented a Stipulated Order of Dismissal which directed the clerk to disburse \$60,000 to HSC and all remaining sums to Todd. Judge Bonebrake signed the Order, although Feest was still attorney of record for Todd, no Order allowing his withdrawal having been presented or signed. Prior to presenting the Stipulated Order to the Court, Todd gave no notice to Fish Pond, nor did he inform the court of Fish Pond's security interest or the Confession of Judgment he had executed in favor of Fish Pond. Todd had consulted with independent counsel, and it was his intent to place some undetermined portion of the settlement funds in that firm's trust account, pending the claims of Fish Pond. The following Monday, September 15, 1986, general counsel for Fish Pond, having been advised by Feest of the settlement being held by the Court, filed a Complaint to Intervene and obtained a temporary restraining order against disbursement of the funds. Fish Pond's claim to the funds was upheld at a later preliminary injunction hearing.

The Bar alleges that the aforesaid conduct violated former DR 1-102(A)(4) [current DR 1-102(A)(3)]; former DR 1-102(A)(5) [current DR 1-102(A)(4)]; DR 7-

102(A)(2); and ORS 9.527(4), in that Todd engaged in conduct involving dishonesty, fraud, deceit and misrepresentation; engaged in conduct prejudicial to the administration of justice; knowingly advanced a claim that was unwarranted under existing law; and engaged in willful deceit or misconduct in the legal profession.

The Panel concludes that Todd's conduct did not violate any of the foregoing standards and therefore finds Todd not guilty of the violations charged in the First Cause of Complaint.

It is our opinion that the Bar has not proved the allegations of the First Cause by clear and convincing evidence. While all relevant pleadings concerning the various Washington County lawsuits were received into evidence, Todd was the only witness who testified in person concerning these charges. We found Todd to be a generally credible witness and were impressed with his candor and demeanor. The Bar failed to present additional testimony which we believe would have aided our evaluation of these charges. We were not provided with a transcript of the proceedings before Judge Bonebrake on September 12, 1986, nor with the testimony of the Judge, or any of the other parties or lawyers involved in that hearing and the later preliminary injunction hearing. The deposition of Feest was introduced into evidence. However, we find his testimony to be less convincing than Todd's because Feest had a potential, if not actual, conflict in representing both Todd and Fish Pond in the litigation, and therefore his testimony may have been colored by his understandable desire to present the events in a light most favorable to him.

The crux of the First Cause is that Todd failed to advise the Court of Fish Pond's security interest and Judgment when he petitioned for distribution of the court-held funds. It was not shown to our satisfaction that Todd had a duty under the circumstances to so advise the court. (HSC's counsel was aware of the security interest, but did not disclose it to Judge Bonebrake and has not been accused of any wrongdoing by the Bar.) Nor was it satisfactorily shown that the Court could have or would have handled the matter differently had Todd advised the court of the security interest and Judgment. There were a variety of ways in which Fish Pond could have protected its security interest in the funds long prior to September 12, 1986. They had not done so, perhaps because of Feest's dual representation. Fish Pond was represented by counsel in the proceedings and had been informed of the settlement agreement with HSC and the proposed

distribution. Fish Pond had not foreclosed on its security interest, and Todd had good faith defenses had they so foreclosed. In fact, he deemed his debt to Fish Pond to have been satisfied or at least believed that he had an offset equal to the debt. There was no evidence that Todd intended to defraud the Court or his creditor. He was cognizant of the security interest and of the claims of Fish Pond and expected to address those issues in some forum as soon as Fish Pond learned, by whatever means, of the disbursement of the funds.

### SECOND CAUSE OF COMPLAINT

The Bar alleges that Todd presented false testimony under oath at the September 24, 1986, preliminary injunction hearing requested by Fish Pond. It is alleged that this conduct violated the same standards set forth in the First Cause of Complaint. We conclude that the Bar has failed to prove these charges by clear and convincing evidence and therefore find Todd not guilty of the violations charged in the Second Cause of Complaint.

The Bar charges that Todd testified under oath that he was unaware of a retainer agreement between Feest and Fish Pond. He vigorously reasserted his unawareness at the hearing on these charges. The Bar did not provide a transcript of this alleged false testimony by Todd. We do not know what questions were asked, nor the precise text of the answers given by Todd. While we were generally apprised of the nature of the testimony, we believe the context in which it was given is critical to a determination that it was false.

### THIRD CAUSE OF COMPLAINT

In February 1976, Kerry S. Gilbert and others filed an assumed business name registration with the Oregon Corporation Division for the name "A.P.T.S. Properties." The registration lapsed in February 1986 after the registered agent changed his address and failed to notify the Division. In December 1986, A.P.T.S. Properties entered into a land sales contract with the Oregon Land Company, Inc. In March 1987, Todd was engaged as in-house counsel for Prestige House and various related companies owned by Eric Randolph, one of which was Oregon Land Company. Todd was asked by a principal of Oregon Land to review the contract with A.P.T.S. Properties, and in the course of so doing was informed by the Corporation Division on April 7, 1987, that it had never had a registration for A.P.T.S. Properties. On the same day, Todd registered the name A.P.T.S. Properties in his own name. On April 12, 1987, Todd filed suit on behalf of



Oregon Land Company against A.P.T.S. Properties, seeking damages for fraud. Thereafter, A.P.T.S. Properties filed a foreclosure action, and the two cases were consolidated for trial. Todd admitted that he filed the assumed business name registration to make it more difficult for A.P.T.S. to prosecute its claims against Oregon Land Company in that Todd would offer his own testimony to rebut A.P.T.S. Properties' proof of registration in the foreclosure trial. He also testified that he might actually use the name in the future for his own real estate ventures.

In June 1987, the attorney for Gilbert and his associates demanded that Todd release his interest in the business name. Todd did not respond. In November 1987, Gilbert and his associates filed an assumed business registration for A.P.T.S. Properties, and, in December 1987, filed suit against the Accused and others seeking damages for Todd's alleged wrongful registration of the business name. Todd released his interest in the business name in May, 1988, simply because he believed it was the right thing to do.

The Bar alleges that the aforesaid conduct violated DR 7-102(A)(1) of the Code of Professional Responsibility in that Todd took action on behalf of a client when he knew or when it was obvious that such action would serve merely to harass or maliciously injure another.

The Panel finds Todd guilty of a violation of DR 7-102(A)(1). We base this conclusion solely on the decision rendered by the Supreme Court in In re Glass, 308 OR 297 (1989). We would not conclude that Todd's conduct violated DR 7-102(A)(1), but we believe that we have no alternative in light of Glass.

We have reviewed Todd's assumed business name registration application and find that he made no misrepresentation on that form. The form does not require a declaration, under penalty of perjury, that the registrant intends to conduct business under that name. Todd testified that when he made inquiry of the clerk at the Corporation Division office, he was informed that there was no record of anyone ever registering the name A.P.T.S. Properties. The accused also testified that it was his belief and intent that registration of the name was the simplest and most effective way to disprove the legal status of A.P.T.S. Properties to enter into contracts or maintain a legal action. We find this testimony to be credible, although the act of registration was aggressive and perhaps ill-advised.

We are mindful of the provisions of DR 7-102(A)(1) whereby a lawyer must represent a client zealously and shall not intentionally "fail to seek the lawful objectives of the lawyer's client through reasonably available means permitted by law and these disciplinary rules." We sympathize with Todd's inability to determine the dividing line between zealous representation and conduct intended merely to harass.

#### FOURTH CAUSE OF COMPLAINT

In July 1987, Gilbert filed a Complaint with the Oregon State Bar concerning Todd's registration of the assumed business name. In Todd's response letter, dated August 12, 1987, Todd states parenthetically that the client on whose behalf he reviewed the Oregon Land/A.P.T.S. real estate contract was not Oregon Land Company.

Todd testified that the contract was originally brought to him by Ken Paton, who had executed the contract as a principal of Oregon Land Company. At the time, Todd was not entirely clear as to the relationship of the various individuals associated with Oregon Land Company and its related companies. In any event, it was not until April 20, 1988, that Todd fully disclosed that he had reviewed the contract at the request of Paton, a principal of Oregon Land.

The Bar alleges that the aforesaid conduct violates DR 1-103(C), in that Todd did not respond fully and truthfully to an inquiry during a Bar Disciplinary Investigation. The Panel concludes that the Bar has failed to prove the Fourth Cause by clear and convincing evidence.

The Panel was not provided with all the relevant documentation and testimony which might support the charge. Todd's August 12, 1987 letter is apparently written in response to the Bar's letter of July 23, 1987, which was not available at the hearing. We therefore do not know what information was requested by the Bar. Further, in his August letter, Todd offers to provide further information and asks for suggestions as to how he should proceed in the matter, given his concern about the attorney-client relationship. There is no evidence that the Bar responded to Todd's offer or request. There is no evidence of any further communications between the Bar and Todd until the April 20, 1988 interview. Therefore, it appears to us that the first time Todd was directly asked for the information it was in fact fully disclosed by him.

### FIFTH CAUSE OF COMPLAINT

In the fall of 1985, Todd agreed to assist his cousin Judi Howe and her husband Mark in locating a suitable child for adoption. The Howes lived in California, and Todd had not seen his cousin for many years. The initial request for assistance was made through their respective mothers, who were sisters. At the time, Todd did not have an office in Oregon for the practice of law, having turned his clients over to another lawyer in late 1984. Most of the contacts by the Howes were to Todd's residence in the State of Washington. Initially, Todd requested that the Howes send him \$5,000. The evidence was disputed whether this sum included any attorney fees. Todd did not deposit the \$5,000 in a trust account.

In December 1985, the Howes requested that the \$5,000 be returned, and Todd very promptly returned \$3,995. He kept \$1,005 to cover what he claims are some of the expenses incurred in his unsuccessful search for a child, but he never rendered an accounting to the Howes concerning the disposition of the \$1,005.

The Bar claims that the aforesaid conduct violates former DR 9-102(A) [current DR 9-101(A)] and former DR 9-102(B)(3) [current DR 9-101(B)(3)] of the Code of Professional Responsibility. We agree. Todd admits that he did not deposit the funds in a trust account and that he did not render an accounting to the client of the funds not returned. The dispute centers around whether or not there was a lawyer-client relationship between Todd and the Howes. Todd denies that Mark and Judi Howe retained his services as an attorney and, therefore, that he had any duties to the Howes under the Disciplinary Rules.

Judi Howe (whose testimony was presented by deposition) contends that she and her husband retained Todd as a lawyer to assist them in an adoption, which included locating a child and performing all necessary legal work for the adoption. Our decision, however, is based primarily on evidence other than the statements of Judi Howe, whose testimony was colored by unnecessary personal animosity toward Todd.

The existence of a lawyer-client relationship can be inferred from the conduct of the parties. In determining whether a lawyer-client relationship exists, a number of factors should be considered: the client's intent to hire a person as a lawyer; the client's primary purpose to be achieved by the lawyer; the nature of the task to be performed by the lawyer; and whether the lawyer informs the

clients of the absence of an attorney-client relationship. In re Mettler, 305 Or 12, 748 P2d 1010 (1988); In re O'Byrne, 298 OR 535, 694 P2d 955 (1985); In re Robertson, 290 Or 639, 624 P2d 603 (1981).

The following facts lead to the conclusion that a lawyer-client relationship existed. The Howes knew that Todd was an attorney. Todd never informed them that he was not actively practicing law at the time he undertook to perform services for them, nor did he inform them that he was not acting as their attorney. After agreeing to assist the Howes, Todd consulted the Oregon CLE Manual and reviewed other materials at a law library in the State of Washington concerning the legality of a third party locating a child for adoption. He testified that he wanted to be careful that he was not in the business of buying babies or paying mothers to have babies. During the period of time 1985 through early 1987 Todd was not actively practicing law and did not maintain a regular office for the practice of law, but there is no evidence that he ever was on inactive status. Todd admits that at all pertinent times he was duly admitted to practice law in the State of Oregon and a member of the Oregon State Bar.

We conclude that a lawyer-client relationship existed and are therefore required to find that Todd violated former DR 9-102(A) and former DR 9-102(B)(3). We do so with reluctance because it is our opinion that Todd's failure to render a proper accounting was an aberration brought about by Todd's frustration at clearly excessive phone calls from his cousin asking about his progress in finding a child and by the family relationship. Todd acknowledged that his conduct was petulant, and we are convinced it would not happen again. Todd is primarily guilty of allowing family "politics" to affect his judgment. We find that no person was damaged by his conduct, as Todd was out of pocket much more than the \$1,005 not refunded to the Howes. He refunded the Howes' deposit within two weeks after they requested a refund, and provided considerable services to the Howes for which he was not compensated. However, technically a violation occurred, and it cannot be overlooked. Simply because the client is a family member does not mean that the trust account requirements can be ignored. If Todd was not intending to act as a lawyer in his representation of the Howes, he had a duty to so inform them in writing at the onset of the representation.

### DISPOSITION

It is the decision of the Panel that Todd be suspended from the practice of law for a period of thirty (30) days from the effective date of this decision. Further, Todd should take and pass the Professional Responsibility Ethics examination within one year from the effective date of this decision. If Todd does not pass the examination within one year, he will be suspended until he passes the examination. The second suspension period, if necessary, shall begin one-year from the effective date of this decision and shall end when Todd passes the examination.

To assist us in determining the appropriate sanction, we have reviewed the Standards for Imposing Lawyer Sanctions approved by the American Bar Association in 1986. The ABA Standards call for a consideration of (1) the ethical duty violated, (2) the lawyer's mental state, (3) the extent of the injury, actual or potential, caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating factors.

We impose the sanction of suspension primarily because the ethical duty violated involves funds received from a client and Todd's failure to maintain those funds in a trust account. While we found no actual injury to the client, the potential for injury was great. Further, as previously mentioned, we feel bound by the Supreme Court's decision in Glass to impose a period of suspension for the violation involving the assumed business registration. We have imposed a relatively short period of suspension because we find that Todd's misconduct was negligent rather than willful. The Howes suffered no injury as a result of Todd's misconduct, and the extent of the injury to A.P.T.S. Properties was slight if not totally avoidable. In mitigation, Todd has no previous disciplinary record, and we appreciated his candor and cooperation at the hearing. He recognizes and admits his mistakes and expresses remorse. Also, there has been considerable delay in the disciplinary proceedings. We are confident that further misconduct will not occur in the future, and we believe that Todd's review of the Ethical Standards in preparation for the Ethics examination will serve as an additional reminder to

him of the very high standards imposed upon those who are privileged to engage in the professional practice of law.

DATED this 27th day of October, 1989.

/s/ Susan G. Whitney  
Susan G. Whitney  
Trial Panel Chairperson

/s/ Larry Dawson  
Larry A. Dawson

/s/ Irwin Caplan  
Irwin J. Caplan



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