

Disciplinary Board Reporter

Volume 4

January 1, 1990 to December 31, 1990

Report of Cases
Decided by the Disciplinary Board
of the Oregon State Bar

George A. Riemer
Editor

Donna J. Hatfield
Assistant Editor



5200 SW Meadows Road, Lake Oswego, OR 97035-0889
(503) 620-0222, ext. 404, or 1-800-452-8260, ext 404

DISCIPLINARY BOARD REPORTER

REPORT OF CASES

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Disciplinary Board
of the
Oregon State Bar

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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 4 DB Rptr 1 (1990).

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. 231 of the 1991 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, 1991 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 since have 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. 88-7
)
STEVEN J. PIERCE,)
)
Accused.)
_____)

Bar Counsel: Stephen P. Riedlinger, Esq.

Counsel for the Accused: Dale Rader, Esq.

Trial Panel: Ronald D. Schenck, chairperson; Jeffrey M. Wallace and Dr. Wallace Wolf, public member

Disposition: Accused found not guilty of violation of DR 4-101(B)(3), DR 5-105(A) and DR 5-105(B). Dismissed.

Effective Date of Opinion: January 11, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 88-7
)	
STEVEN J. PIERCE,	)	DECISION OF THE TRIAL PANEL
)	
Accused.)	
)	

Statement of the Case

The Oregon State Bar filed a "Formal Complaint" against the Accused charging that the Accused violated the standards of professional conduct, specifically:

- (1) DR 4-101(B)(3) of the Code of Professional Responsibility
- (2) DR 5-105(A) of the Code of Professional Responsibility
- (3) DR 5-105(B) of the Code of Professional Responsibility

The Formal Complaint arose out of a complaint against Accused by Alicee Zabel, a former client of the Accused.

The Oregon State Bar alleges that the violations arise out of the following factual situation:

Accused is an attorney admitted to practice in the State of Oregon and is a member of the Oregon State Bar and practices in Oregon.

That the Accused undertook to represent Alicee Zabel in April, 1986 and formed a corporation for Zabel in which Zabel and another party were shareholders. The corporation was called Tri Cities Housing.

That during this representation Zabel disclosed to Accused certain information:

- (1) That part of Zabel's capital contribution to the corporation would be the proceeds of a \$10,000.00 loan from Treasure Valley Bank.

(2) That Zabel was interested in entering into a lease option agreement to purchase the property on which the business was located, including some of the financial details of the option;

(3) The names of mobile home dealers with whom Zabel intended to work in operating the mobile home business; and

(4) Zabel's personal investments in Edward D. Jones and Company, a stock brokerage company in Ontario.

Accused completed the articles of incorporation and issuance of stock certificates.

The last service performed by Accused for Zabel was the issuance of a stock certificate on October 30, 1986.

In May, 1987 the Treasure Valley Bank contacted Accused to represent the bank against Zabel to collect a \$10,000.00 loan, a portion of which had been invested by Zabel into Tri Cities Housing.

The Accused did undertake to represent Treasure Valley Bank against Zabel to collect the promissory note, filed a complaint and petition for provisional process. Zabel did not appear and default judgment was entered. Judgment Debtor Examination papers were prepared and issued but the examination took place and no further proceedings were initiated in the case by the Accused.

Accused appeared and denied the accusations in the Formal Complaint.

Trial Panel consisting of Ronald D. Schenck, Chairperson, Jeffrey M. Wallace and Dr. Wallace Wolf was duly appointed by James R. Uerlings, Region 1 Chairman for the Oregon State Bar Disciplinary

Board. The matter came on regularly for hearing before the Trial Panel on September 6, 1989 at 9:00 a.m. in the Board Room of the Agriculture Home Extension Service Building, 710 S. W. 5th Avenue, Ontario, Oregon.

Facts

The pertinent facts presented by the parties at the hearing are as follows:

Stipulated or admitted:

Paragraphs 1, 2 and 3 of the Formal Complaint.

Facts found from the evidence by the Panel:

- (1) Alicee M. Zabel was a client of the Accused from April, 1986 to the end of October, 1986 as was her corporation, Tri Cities Housing.
- (2) Zabel did not disclose to Pierce:
 - (a) The source of the capital for the corporation;
 - (b) The loan from Treasure Valley Bank;
 - (c) Zabel's account with Edward Jones or other specific assets.
- (3) Zabel did tell Pierce that she had \$20,000.00 to invest in the corporation and owned other assets of unspecified kind and value.
- (4) Pierce met with Zabel regarding the corporation on three different occasions, all of rather short duration.
- (5) Accused did undertake to represent Treasure Valley Bank against Zabel to collect the \$10,000.00 note, given by Zabel to Treasure Valley Bank early in 1986, with said representation of Treasure Valley Bank commencing in late May, 1987 and continuing into July, 1987.

(6) Accused filed a complaint, had provisional process issued, and wrote letters on behalf of Treasure Valley Bank and against Zabel.

(7) Accused discussed the possible existence of a conflict of interest with Treasure Valley Bank in May, 1987.

(8) Accused did not disclose his representation of Treasure Valley Bank on the Zabel note with Zabel at any time nor get Zabel's consent to such representation after full disclosure to Zabel.

From the evidence the panel concludes that the Accused did not possess any confidential information as to Zabel's affairs gathered during Accused's representation of Zabel which the Accused could have used against Zabel in the Treasure Valley Bank action on the Zabel note.

The charge against Accused of violating DR 4-101(B)(3) was not supported by any evidence, let alone clear and convincing evidence.

The charges against the Accused of violating DR 5-105(A) and DR 5-105(B) present a closer question under the facts and when measured by the test set forth in *In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985).

This is a "closed file" case. Accused had represented Zabel and Zabel was the adverse party in Accused's representation of Treasure Valley Bank which placed Accused in a position adverse to Zabel, Accused's former client.

The test under *Brandsness* is then:

Was the Treasure Valley Bank case against Zabel "significantly related" to the formation of the corporation by Accused for Zabel?

The *Brandsness* test to determine whether or not matters are significantly related is two pronged:

(a) Information Specific

(b) Matter Specific

Reversing order:

Did Accused's representation of Zabel provide Accused with confidential information which Accused could have or did use to inflict injury or damage on Zabel in the Treasure Valley Bank case.

We have already found that Accused did not possess confidential information regarding Zabel so application of this portion of the test results in a finding in favor of the Accused. There was no "information specific" possessed by the Accused.

We are not sure what "injury or damage" means in the context of this test but it is moot here in any event and will be discussed under the second portion of the test.

The difficult question under the facts of this case is the "matter specific" test established by the court in *Brandsness*.

Would the representation of Treasure Valley Bank by Accused against Zabel on the note inflict, or likely inflict, injury or damage upon Zabel in the formation of the corporation?

The court in the *Brandsness* case in an attempt to aid attorneys in analyzing potential conflicts sets forth a number of examples at pages 1104 and 1105 of 702 P2d.

The court sets forth the following situations which create "matter specific" conflicts:

Lawyer represents employee in drafting employment contract. Learns client has history of alcohol abuse. Ceases to represent employee.

Commences representing employer.

Alcohol abuse surfaces again and employer hires lawyer to terminate employment contract.

Held - both matter specific and information specific rules violated.

"Matter specific" is the employment agreement.

The next example is the same except no confidential information is disclosed.

It is still a matter specific violation with the employment contract as the matter specific nexus.

The court says:

"The lawyer, in representing the employer violates the first rule but not the second. Representation of the employer in the termination would, or would likely, damage the former client in the matter of the employment contract,-----"

"The representation is a violation nonetheless because it is contrary to the first rule. In retaining a lawyer to perform a task, a client must be able to rely on the fact that a future client of the lawyer will never be able to gain from the lawyers own lack of diligence or care in the former representation."

The final example given by the court in *Brandsness* illustrates an "information specific" conflict and points out why a "matter specific" conflict is not present.

It is not a "matter specific" conflict because the lawyer originally drafted an employment contract for husband and then later represented wife against husband in a custody matter. The court states further:

"It can not [sic] be said that the present representation in the custody matter would, or would likely, damage the former client in the employment contract."

The essential facts of *Brandsness* are:

April, 1979, attorney represented husband and wife in acquisition of an incorporated business. Husband was President, wife was

Secretary/Treasurer. Husband and Wife were on the Board of Directors and attorney served as corporate counsel.

December, 1979 attorney prepared mutual wills for husband and wife.

1980-81 wife acquired other counsel to change her will and represent her on business matter.

Attorney continued to represent the corporation.

November, 1981 attorney represents husband in dissolution proceeding against wife.

Wife files charges with State Bar against attorney.

Held - DR 5-105 was violated with the matter specific being the corporation.

There is no similar "matter specific" nexus in the case before the panel.

To say that the corporation formed for Zabel by Pierce was a "matter specific" to both Pierce's representation of Zabel and his later representation of Treasure Valley Bank to collect a note owed Treasure Valley Bank by Zabel is simply not possible by any logical analysis. The same is even more true for the note given by Zabel to Treasure Valley Bank.

Where is the "significant relationship" between the formation of the corporation and the suit on the note?

The Bar asserts that the matter specific, significant relationship, can be found in the fact that the Zabel loan from Treasure Valley Bank was used to capitalize the corporate business which Pierce formed for Zabel.

The evidence with regard to the note is:

Pierce did not represent Zabel in obtaining the Treasure Valley Bank loan.

Mrs. Zabel's testimony regarding Pierce's knowledge of the existence of the note at the time the corporation was formed was very soft, to say the least, as was all of her testimony.

Pierce's testimony was that he had no knowledge of the Treasure Valley Bank-Zabel note until he was contacted by Treasure Valley Bank to collect it.

There was no clear testimony that the money obtained from Treasure Valley Bank, or any part of it, was actually used to capitalize Zabel's corporation.

Even if the evidence was clear and convincing that Pierce had knowledge of the Treasure Valley Bank loan and that it was used to capitalize the Zabel corporation, all at the time he formed the corporation, how could a "matter specific" significant relationship, be found?

Certainly if Pierce had represented Zabel in obtaining the Treasure Valley Bank loan, or vice versa, and then later represented one against the other on the note, we would have a significantly related, matter specific, problem. Or if Pierce had later represented one incorporator against another on a matter arising out of their business relationship, or on a matter the resolution of which involved delving into their business relationship, there would be a problem.

We have neither here. The bar asserts that "matter specific" conflicts of interest are not limited to those situations in which the attorney represents a former client on the same aspect of the transaction on which he or she

subsequently opposes the "former client" and cites *In re Thorp*, 296 Or 666, 679 P2d 857 and *In re Zafiratos*, 259 Or 276, 486 P2d 550.

The facts in the *Thorp* case are complicated, to say the least, but condensed to the essential for our purposes are as follows:

1974, Thorp commences representation of Miles and Miles' corporation.

Wells is Miles' brother-in-law.

Wells owned stock in Miles' corporation.

April, 1977 Wells sells his stock in the corporation back and received payment in the form of a promissory note from Miles and Hiatt (Hiatt was also a shareholder) as individuals.

Thorp was not involved in the Wells transaction.

June, 1977 - Miles instructs Thorp to prepare an agreement to redeem all of Hiatt's stock in Miles' corporation in exchange for corporation equipment.

Thorp prepared the agreement and it was executed.

On the same date Hiatt and Miles entered an agreement whereby Miles agreed to "hold and save Hiatt harmless" from all obligations of the corporation.

Thorp did not prepare or have any knowledge of the "save and hold harmless" agreement.

In 1979 Thorp withdrew from any further representation of Miles.

1980 Wells sues Miles and Hiatt on the promissory note.

Hiatt retains Thorp.

Thorp, acting for Hiatt, sues Miles by cross claim and the "hold and save harmless" agreement.

Held - violation of DR 5-105(A).

The Supreme Court went to tortious [sic] lengths to find that the Stock Redemption Agreement and the "hold and save harmless" were one transaction. It does not appear to be a necessary finding.

The crux of the conflict for Thorp was the representation of Miles and the Miles-Hiatt corporation for a number of years and the possible, if not actual, knowledge of Miles and the shareholders affairs as a result thereof.

Thorp could not represent one shareholder against another on a matter arising out of the corporate affairs with out [sic] significant risk of being able to use prior knowledge against Miles or of having his hands tied in representing Hiatt because of prior knowledge of Miles' affairs which he would feel duty bound not to disclose.

The differences between Thorp and the instant case are significant.

THORP

(A) Clients related and involved in the same matter out of which the original and the later representation arose, the corporation.

(B) A long and involved attorney-client relationship.

PIERCE

Clients not related or involved in the same matter (corporation) out of which the original representation arose.

A very short, single purpose attorney-client relationship.

The language of the Supreme Court in *Thorp* at 679 P2d p.864 is of special interest:

"We cannot tell from the record whether Thorp used confidential information obtained while representing Miles in the presentation of the cross claim. He withdrew before the case went to trial. All lawyers know that one cannot predict what will happen during a trial -- there is no way to foresee [foresee] what turns or twists a particular case will take. There is no means by which Thorp could have guaranteed Miles or Hiatt that during the

course of the trial some previously acquired confidential information would not have become relevant.

There is no direct evidence, but we infer that Hiatt did not employ Thorp solely to file and obtain a judgment against Miles on the cross claim. Hiatt probably also employed Thorp to collect the judgment, if one was obtained, against Miles. Less than one year elapsed between the time that Thorp withdrew from active representation of Miles until the filing of the cross claim. Miles was in serious financial trouble and the records shows numerous unsatisfied judgments against him. It does not take a great deal of imagination to think of situations in which a lawyer in Thorp's position could use prior knowledge of Miles' affairs to discover assets to satisfy a judgment. The other side of the coin is that if Thorp's hands were tied on discovery because of prior knowledge, then he could not adequately represent Hiatt."

The facts of the instant case do not come close to permitting the type of analysis just quoted from *Thorp*.

The facts are simpler in *Zafiratos*:

Accused represented Bettendorf in sale of house to Haggrens.

Subsequently Bettendorf sells personal property from the house to Jue.

Haggrens claimed a right to the personal property and Accused undertakes [undertakes] to represent Haggrens against Jue.

The court analyzed the problem as follows:

If Haggrens wins against Jue, Jue may have rights against Bettendorf, or if Jue wins, Haggrens may have rights against Bettendorf.

All three parties were involved in the question of what property was involved and who owned it or had a right to it.

The accused being involved as counsel for one of the parties in the original sale of all or a portion of the disputed property could not represent either of the other parties without risking using knowledge or

information gained in the original representation to the eventual detriment of the original client.

Bettendorf was undoubtedly a necessary party and, if brought into the case, Zafiratos would find himself adverse to his original client on a matter arising out of a transaction where he had represented her. The only party the accused could have represented in this situation was his original client, Bettendorf.

No cross claim or other right existed in *Zabel v. Treasure Valley Bank* or anyone else nor would one potentially arise in a third party against Zabel out of the Treasure Valley Bank case against Zabel.

The crux of the conflicts problem in these cases always comes down to the existence of confidential information in the accused attorney or a situation where there is great likelihood that the attorney by reason of the original representation will have prior knowledge, whether confidential or not, that will give him a leg up, an advantage, against his original client who he is now adverse to.

The court in *Zafiratos* says at page 553 of 486 P2d quoting the Rule of Professional Conduct 7:

"-----The obligation to represent the client with undivided fidelity and not to develop secrets or confidences also forbids the member from subsequently and knowingly accepting or continuing in employment by others in matters adversely affecting any interest of the client with respect to which confidence has been imposed."

The court comments:

"This canon is violated if a lawyer undertakes litigation for a subsequent client which is successful, might reasonably impose liability on a former client by reason of a transaction in which the lawyer represented the former client. See *Drinker*, Legal Ethics

111-112 (1953). The Accused in his representation of the Haggrens violated this canon." (emphasis added)

We are back to the "injury or damage" problem.

In the factual situation in *Thorp* and *Brandsness* it is not difficult to understand the concepts of "matter specific" and "significantly related".

In the minds of the Panel the "inflict injury or damage" language as a part of the matter specific definition creates great uncertainty and all unnecessarily.

As Dr. Wolf said at the hearing - surely injury or damage does not mean entry of a judgment on a simple note which is admittedly due!! Or does it?

If Pierce had represented Zabel in the note transaction with Treasure Valley Bank would it make any difference, (whether or not Pierce would have a conflict in later representing Treasure Valley Bank against Zabel to collect the note) whether or not Zabel would be injured, or damaged or potentially in any true conflict situation, and as well in those situations which may not involve a conflict of interest.

Possibly the rule would be better stated.

Matter Specific:

(a) Representation of the present client in the subsequent matter would or would likely place the attorney in a position of attacking the documents or transaction or an issue or proving the documents or transaction or issue, arising out of any matter in which the attorney previously represented the original, now adverse, client.

or:

(b) Representation of the present client in the subsequent matter would, or would likely place the attorney in a position of adversely affecting the interests of a former client arising out of any matter in which the attorney previously represented the original, now adverse, client.

The panel finds no matter specific relationship between the original representation of Zabel by Pierce, let alone one that is significantly related, and the later representation of Treasure Valley Bank by Pierce against Zabel.

In conclusion we would note that the panel was favorably impressed by the cooperation, openness and demeanor of Mr. Pierce. Mrs. Zabel had more good to say about Mr. Pierce than negative. It appeared to the panel that Mrs. Zabel's original complaint was made out of her frustration at the failure of her business more than out of any sincerely held feeling that Pierce had wronged her or betrayed her confidence.

Conflict of interest questions for attorneys seem to be arising much more frequently. There is obviously more interest in maintaining the integrity of the bar. There is also more sophistication in the public as to what ethical standards attorneys are supposed to follow.

DR 5-101 through 105 on its face is fairly easy to understand.

Most of the decided cases under DR 5-101 through 105 are, on their facts, clear as to why there was, or was not, a conflict problem. Most involved a failure, on the accused attorneys part to use good common sense.

Brandsness appears to this panel to add a dimension which we are confident most of the profession is not aware of.

If attorneys are going to be brought up on charges of breaching the disciplinary rules based on a conflict of interest in factual situations such as we have in this case, or similar factual situations, then the Bar better get the word out.

It appears to this panel that a great deal more debate leading to a more refined disciplinary rule in this area is required. This is especially so if the

Bar is going to push the type of analysis of factual situations based on the rule (DR 5-105) as it has in this case.

Conflict of interest controversies spill over into other areas and clients can suffer substantially if courts find a conflict and disqualify an attorney. *Bryant v. Ellis*, 301 Or 633, 742 P2d 811 (1986). Yet *Bryant* points out that "ordinarily persons need not have official approval of their choice of a lawyer. They are entitled to be represented by any member of the Bar who agrees to do so". 724 P2d at page 814.

There are conflicting interests. They need to be as clearly defined as possible. To [sic] great a zeal on either side can harm the Bar in the eyes of the public.

This case should not have gone to hearing on the first two charges at all.

We are sure that Mr. Pierce was subjected to great stress by these charges.

The DR 5-105 charge was not supported by the facts, and even if the facts had been proven, would have required a pretty long stretch to make the law fit.

In all fairness the members of the Oregon State Bar need clearer, better guidelines in this area.

DATED 12/11/89

Respectfully Submitted,

/s/ Ronald D. Schenck
Ronald D. Schenck-Chairperson

/s/ Jeffrey M. Wallace
Jeffrey M. Wallace-Member

/s/ Wallace Wolf
Dr. Wallace Wolf-Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the conduct of) Case No. 88-77
)
RONALD K. CUE,)
)
Accused.)
_____)

Bar Counsel: Randolph Lee Garrison, Esq.

Counsel for the Accused: Ronald K. Cue, Esq., pro se

Disciplinary Board: Dennis J. Graves, State Chairperson and Walter L. Cauble, Region 3 Chairperson

Trial Panel: Melvin E. Smith, Trial Panel Chairperson; Walter L. Cauble and Robert Root (Public Member)

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 6-101(B); Sixty-day suspension stayed/2 year probation.

Effective Date of Opinion: February 20, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-77
)	
RONALD K. CUE,	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1976 he was a member of the Oregon State Bar having his current office and place of business in Jackson County, State of Oregon.

From a review of the Stipulation, it appears that the Accused neglected a legal matter in the representation of Scott Fryer, the Respondent in a Dissolution of Marriage matter filed in Jackson County Circuit Court.

The conduct of the Accused described in the Stipulation constitutes neglect of a legal matter in violation of DR 6-101(B) of the Code of Professional Responsibility established by law and by the Oregon State Bar.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) Pursuant to BR 6.1, that Ronald K. Cue be suspended from the practice of law for a period of 60 days; provided however, the entirety of said 60 day suspension is stayed on the condition that Ronald K. Cue fully, completely and satisfactorily perform, complete and comply with the following described terms of probation.

(2) Pursuant to BR 6.1 and 6.2, imposition of the entire foregoing 60 day suspension shall be stayed, and Ronald K. Cue shall be on a period of probation of two years to commence on the date that the Stipulation for Discipline shall be effective.

(3) Upon approval of the Stipulation by the Disciplinary Board, a member of the Oregon State Bar acceptable to Disciplinary Counsel's Office shall be designated to serve as the supervisor of the Accused's probation.

(4) While on probation, Ronald K. Cue shall fully and completely comply with and satisfy the following terms and conditions of probation. Violation of any term of probation shall cause execution of the 60 day suspension to be imposed upon application by the Bar and order of the State Chairperson of the Disciplinary Board. The conditions of probation are:

- (a) Within 30 days of the effective date of the Stipulation, Ronald K. Cue shall undertake, undergo and successfully complete a substance abuse (including, but not limited to alcohol) evaluation by a person selected by the Oregon State Bar, Office of Disciplinary Counsel or his designate, and the person designated

to supervise probation. The expense of such evaluation is to be paid in full by Ronald K. Cue.

- (b) Within 15 days of completion of the evaluation described in paragraph 4(a) herein, Ronald K. Cue shall begin and, thereafter, successfully complete any program or programs of treatment as may be recommended by such evaluation for substance abuse (including, but not limited to alcohol abuse). Such programs of treatment are to be fully and completely paid by Ronald K. Cue. Such programs of treatment may include, but not be limited to, 30 day residential treatment programs, Alcoholics Anonymous, and outpatient follow-up treatment.
- (c) Ronald K. Cue shall participate in the program(s) of treatment described in paragraph 4(b) for so long during his period of probation as requested by the person performing the evaluation and the person appointed to supervise that probation.
- (d) Ronald K. Cue shall undergo, undertake, attend, successfully complete and pay for selected CLE programs having to do with "stress management", "office management" and "lawyer/client relationships", the nature and number of the programs to be selected by the person appointed to supervise Ronald K. Cue's probation.
- (e) Within 30 days of the effective date of the Stipulation, Ronald K. Cue shall undertake, undergo, attend, successfully complete and pay for an evaluation for stress management, as the same may be offered or recommended by or through and in connection with the

Professional Liability Fund or its designate. Further, within 15 days of completion of this evaluation, Ronald K. Cue shall begin and shall thereafter successfully complete and pay for any programs or procedures which may be recommended by the evaluation described in this subparagraph. Successful completion of these programs or procedures shall be within a time period designated by those persons performing the evaluation.

- (f) Within 30 days of the effective date of the Stipulation, Ronald K. Cue shall begin and thereafter undergo, undertake, attend, successfully complete and pay for counseling with a mental health professional, to the extent such counseling is recommended by the professional, to deal with personality "excesses", including but not limited to procrastination and a difficulty to say "no" to clients. The person to do such counseling shall be approved by the Oregon State Bar, Office of Disciplinary Counsel, or his designate, and the person appointed to supervise Ronald K. Cue's probation. Successful completion of the counseling shall be within a time period designated by the mental health professional.
- (g) Ronald K. Cue shall sign such waivers as may be necessary, and a copy of this document may be used as a signed waiver of any privilege with any person or entity described herein, such that any and all information concerning Ronald K. Cue can and will be disclosed to the Oregon State Bar, Office of Disciplinary counsel, or its designate. The waivers described in the paragraph shall

include, but not be limited to, any waiver necessary under 42 USC 290ee-3(a) (drug) and 42 USC 290dd-3(a) (alcohol).

- (h) Ronald K. Cue shall provide affidavits to the supervisor of his probation attesting to compliance with this probation beginning on the 30th day after the effective date of the Stipulation and every 90th day thereafter. In turn, the supervisor shall forward Mr. Cue's affidavits to the Bar, along with the supervisor's own reports regarding Mr. Cue's compliance or noncompliance with the terms of probation. To any extent necessary, Ronald K. Cue shall assist the supervisor in compiling information for the supervisor's reports. A failure to cooperate with reasonable requests for information made by the supervisor shall constitute a violation of this probation.
- (i) The person appointed to supervise Ronald K. Cue's probation shall file with Disciplinary Counsel's Office a written report of Mr. Cue's compliance with the terms of probation on the 35th day after the effective date of the Stipulation and every 90th day thereafter.
- (j) Ronald K. Cue shall cause those persons performing required evaluations of him to submit written reports of their evaluations and recommendations to Disciplinary Counsel's Office and to the person supervising the Accused's probation no later than 15 days after those evaluations are completed.
- (k) Ronald K. Cue shall cause those persons directing, supervising or performing ongoing treatment or therapy as required by the evaluations described in paragraphs 4(a), (e) and (f) to submit to the office of Disciplinary Counsel and the person designated to

supervise the Accused's probation written reports of the Accused's compliance with the terms of probation on a quarterly basis.

- (l) Ronald K. Cue shall not terminate any ongoing counseling or treatment required by the evaluations described in paragraphs 4(a), (e) and (f) without the written consent of the persons directing, supervising or performing that treatment or counseling. A copy of such consent shall be submitted to Disciplinary Counsel's Office and the person supervising the probation.

From the Stipulation it appears that the Accused has been admonished by the Oregon State Bar for neglect of a legal matter on two previous occasions: Oregon State Bar Case No. 83-103 (Complaint of Alfred W. Alfs), on February 3, 1984, and again in Case No. 85-129 (Peter Michael Sergi) on May 8, 1986. The Accused has not been previously reprimanded, suspended or disbarred.

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 6-101(B) of the Code of Professional Responsibility.

DATED this 20 day of February, 1990.

/s/ Dennis J. Graves
Dennis J. Graves
State Chairperson

/s/ Walter L. Cauble
Walter L. Cauble
Region 3 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-77
)	
RONALD K. CUE,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

Pursuant to the Oregon State Bar's Rule of Procedure 3.6, the Oregon State Bar (the Bar) and the Accused, Ronald K. Cue, stipulate and agree as follows:

BACKGROUND

The following is a statement that explains the particular facts and violation to which the Oregon State Bar and Ronald Cue stipulate and agree:

(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, Ronald K. Cue, 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 Jackson County, State of Oregon.

(3) On or about June 25, 1987, the Accused undertook to represent Scott J. Fryer (Fryer), the Respondent in a Dissolution of Marriage matter filed in Jackson County Circuit Court.

(4) From June 25, 1987, through April 29, 1988, the Accused failed to file an appearance on behalf of Fryer in the Dissolution action, despite repeated notice from Petitioner's counsel of Petitioner's Intent to take a Default Decree.

(5) On or about April 27, 1988, Petitioner obtained a Default Decree of Dissolution in the Fryer matter which was docketed on or about April 29, 1988. This Default Decree contained provisions which were unfavorable to Fryer and contained obligations which Fryer could not perform.

(6) Fryer was required to seek other legal representation to modify the Decree of Dissolution.

(7) The conduct of the Accused described above constitutes neglect of a legal matter in violation of DR 6-101(B) of the Code of Professional Responsibility established by law and by the Oregon State Bar.

(8) The Accused has previously been admonished twice by the Oregon State Bar for violation of DR 6-101, neglect of a legal matter.

(9) As a result of the above facts, the Oregon State Bar filed in the above-entitled matter a Formal Complaint substantially alleging the foregoing statements. Ronald K. Cue has received a copy of the Oregon State Bar's Formal Complaint and has acknowledged such receipt in an Acceptance of Service, dated and signed the 5th day of June, 1989.

(10) Pursuant to BR 2.4(f)(1), a trial panel has been duly and regularly appointed to hear and determine the allegations contained in the Oregon State Bar's Formal Complaint. A hearing on the Oregon State Bar's Formal Complaint is currently pending.

(11) The following is a narrative statement concerning the facts and circumstances of this matter, which is intended to supplement the above-recited statements:

Scott Fryer's wife filed a Petition for Dissolution of Marriage. Scott Fryer was served with the Petition. Scott Fryer initially sought legal assistance from the Jackson County Legal Services--Center for Nonprofit Legal Services, Inc. Jackson County Legal Services referred Scott Fryer to Ronald K. Cue, because Jackson County Legal Services represented Scott Fryer's wife in the Dissolution action.

Thereafter, on 25 June 1987, Ronald K. Cue notified Jackson County Legal Services that he was representing Scott Fryer. Ronald K. Cue initially elected not to file an appearance with the Circuit Court in the Dissolution matter. Instead, Ronald K. Cue attempted to negotiate a Dissolution Judgment on terms which would be acceptable to both sides. From approximately June, 1987 through February, 1988, Ronald K. Cue negotiated with Jackson County Legal Services on child support and visitation issues. Letters were exchanged concerning the negotiations. The negotiations continued, and while the parties came close to an agreement, a final agreement acceptable to both sides was not reached.

With the impasse, on March 10, 1988, Jackson County Legal Services attorneys filed a Notice of Intention to take a Default if an appearance was not made by March 25, 1988. Ronald K. Cue received a copy of the Notice of Intention to take a Default. However Ronald K. Cue did not make any effort to make an appearance in the Dissolution Proceeding, nor did Ronald K. Cue notify Scott Fryer of opposing counsel's intention to take a Default Judgment.

Again, on March 30, 1988, Jackson County Legal Services wrote and notified Ronald K. Cue that it had filed a "Motion and Default" in the Dissolution Proceeding. Ronald K. Cue continued to take no steps to enter an appearance in the Dissolution Proceeding or notify Scott Fryer of opposing counsel's intention to take a Default Judgment. On April 27, 1988, the Jackson County Circuit Court signed a Default Decree Dissolving the Parties' Marriage and ordering Scott Fryer to pay \$150.00 per month in child support. The Decree also ordered Scott Fryer to bear all uninsured medical and dental costs. The Default Decree was docketed on April 29, 1988. Jackson County Legal Services sent a copy of the Decree to Ronald K. Cue.

Thereafter, Ronald K. Cue sent a copy of the Dissolution Decree to Scott Fryer on or about May 5, 1988. Scott Fryer received a copy of the Default Decree on or about May 6, 1988. This was the first time that Scott Fryer knew anything about Jackson County Legal Services' intention to take a Default Judgment in the Marriage Dissolution Proceeding.

Thereafter, Scott Fryer sought the services of another Jackson County Attorney, Richard Courtright. With Mr. Courtright's assistance, a Modification of the Default Decree was entered with the Jackson County Circuit Court on September 9, 1988. The Decree as modified reduced child support from \$150.00 to \$75.00 per month, effective July 1, 1988.

Ronald K. Cue admits that he was negligent in the handling of Mr. Fryer's case. Ronald K. Cue paid Scott Fryer \$450.00 which Mr. Fryer has used to pay child support and attorney's fees.

DESIGNATED FORM OF DISCIPLINE

The Oregon State Bar and Ronald K. Cue agree that the Accused will accept the following designated form of discipline in exchange for the herein described stipulations:

(1) Pursuant to BR 6.1, that Ronald K. Cue be suspended from the practice of law for a period of 60 days; provided however, the entirety of said 60 day suspension is stayed on the condition that Ronald K. Cue fully, completely and satisfactorily perform, complete and comply with the following described terms of probation.

(2) Pursuant to BR 6.1 and 6.2, imposition of the entire foregoing 60 day suspension shall be stayed, and Ronald K. Cue shall be placed on a period of probation of two years to commence on the date that this Stipulation for Discipline shall be effective (after review and approval by the State Chairperson and Disciplinary Board).

(3) Upon approval of this stipulation by the Disciplinary Board, a member of the Oregon State Bar acceptable to Disciplinary Counsel's Office shall be designated to serve as the supervisor of the Accused's probation.

(4) While on probation, Ronald K. Cue shall fully and completely comply with and satisfy the following terms and conditions of probation. Violation of any term of probation shall cause execution of the 60 day suspension to be imposed upon application by the Bar and order of the State Chairperson of the Disciplinary Board. The conditions of probation are:

- (a) Within 30 days of the effective date of this stipulation, Ronald K. Cue shall undertake, undergo and successfully complete a substance abuse (including, but not limited to alcohol) evaluation by a person selected by the Oregon State Bar, Office of Disciplinary Counsel or his designate, and the person designated to supervise probation. The expense of such evaluation is to be paid for in full by Ronald K. Cue.
- (b) Within 15 days of completion of the evaluation described in paragraph 4(a) herein, Ronald K. Cue shall begin and, thereafter, successfully complete any program or programs of treatment as may be recommended by such evaluation for substance abuse (including, but not limited to alcohol abuse). Such programs of treatment are to be fully and completely paid for by Ronald K. Cue. Such programs of treatment may include, but not be limited to, 30 day residential treatment programs, Alcoholics Anonymous, and outpatient follow-up treatment.

- (c) Ronald K. Cue shall participate in the program(s) of treatment described in paragraph 4(b) for so long during his period of probation as required by the person performing the evaluation and the person appointed to supervise that probation.
- (d) Ronald K. Cue shall undergo, undertake, attend, successfully complete and pay for selected CLE programs having to do with "stress management", "office management" and "lawyer/client relationships", the nature and number of the programs to be selected by the person appointed to supervise Ronald K. Cue's probation.
- (e) Within 30 days of the effective date of this stipulation, Ronald K. Cue shall undertake, undergo, attend, successfully complete and pay for an evaluation for stress management, as the same may be offered or recommended by or through and in connection with the Professional Liability Fund or its designate. Further, within 15 days of completion of this evaluation, Ronald K. Cue shall begin and shall thereafter successfully complete and pay for any programs or procedures which may be recommended by the evaluation described in this subparagraph. Successful completion of these programs or procedures shall be within a time period designated by those persons performing the evaluation.
- (f) Within 30 days of the effective date of this stipulation, Ronald K. Cue shall begin and thereafter undergo, undertake, attend, successfully complete and pay for counseling with a mental health professional, to the extent such counseling is recommended by the

professional, to deal with personality "excesses", including but not limited to procrastination and a difficulty to say "no" to clients. The person to do such counseling shall be approved by the Oregon State Bar, Office of Disciplinary Counsel, or his designate, and the person appointed to supervise Ronald K. Cue's probation.

Successful completion of the counselling shall be within a time period designated by the mental health professional.

- (g) Ronald K. Cue shall sign such waivers as may be necessary, and a copy of this document may be used as a signed waiver of any privilege with any person or entity described herein, such that any and all information concerning Ronald K. Cue can and will be disclosed to the Oregon State Bar, Office of Disciplinary Counsel, or its designate. The waivers described in this paragraph shall include, but not be limited to, any waiver necessary under 42 USC 290ee-3(a) (drug) and 42 USC 290dd-3(a) (alcohol).
- (h) Ronald K. Cue shall provide affidavits to the supervisor of his probation attesting to compliance with this probation beginning on the 30th day after the effective date of this stipulation and every 90th day thereafter. In turn, the supervisor shall forward Mr. Cue's affidavits to the Bar, along with the supervisor's own reports regarding Mr. Cue's compliance or noncompliance with the terms of probation. To any extent necessary, Ronald K. Cue shall assist the supervisor in compiling information for the supervisor's reports. A failure to cooperate with reasonable requests for information made by the supervisor shall constitute a violation of this probation.

- (i) The person appointed to supervise Ronald K. Cue's probation shall file with Disciplinary Counsel's Office a written report of Mr. Cue's compliance with the terms of probation on the 35th day after the effective date of this stipulation and every 90th day thereafter.
- (j) Ronald K. Cue shall cause those persons performing required evaluations of him to submit written reports of their evaluations and recommendations to Disciplinary Counsel's Office and to the person supervising the Accused's probation no later than 15 days after those evaluations are completed.
- (k) Ronald K. Cue shall cause those persons directing, supervising or performing ongoing treatment or therapy as required by the evaluations described in paragraphs 4(a), (e) and (f) to submit to the office of Disciplinary Counsel and the person designated to supervise the Accused's probation written reports of the Accused's compliance with the terms of probation on a quarterly basis.
- (l) Ronald K. Cue shall not terminate any ongoing counselling or treatment required by the evaluations described in paragraphs 4(a), (e) and (f) without the written consent of the persons directing, supervising or performing that treatment or counselling. A copy of such consent shall be submitted to Disciplinary Counsel's Office and the person supervising the probation.

5. In the event that Ronald K. Cue fails to comply with the terms of this probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and paragraph (4) of this

stipulation and to impose the suspension to which the Accused has stipulated herein.

PRIOR RECORD

Ronald K. Cue has been admonished by the Oregon State Bar for neglect of a legal matter on two previous occasions: Oregon State Bar Case No. 83-103 (Complaint of Alfred W. Alfs), on 3 February 1984, and again in Case No. 85-129 (Peter Michael Sergi) on 8 May 1986. The Accused has not been previously reprimanded, suspended or disbarred.

STIPULATION FREE AND VOLUNTARY

In accordance with BR 3.6(c), Ronald K. Cue specifically acknowledges:

(a) That this Stipulation for Discipline has been freely and voluntary made by Ronald K. Cue. No promises, threats or coercion has been made to or upon Ronald K. Cue in obtaining his agreement to this stipulation or the statements contained herein.

(b) The background, statement of particular facts and violations contained in this stipulation are true, accurate and a complete account of the matters recited therein.

(c) Ronald K. Cue agrees to accept the designated form of discipline found in this stipulation in exchange for the stipulation.

(d) Ronald K. Cue's prior record before the Oregon State Bar has been truly and accurately recited herein.

REVIEW AND APPROVAL OF STIPULATION

This Stipulation for Discipline is subject to review by the Bar's Disciplinary Counsel and to approval by the SPRB. If the SPRB approves this Stipulation for Discipline, the parties agree that the Bar will submit the

Stipulation to the Disciplinary Board for consideration pursuant to the provisions of Rule of Procedure 3.6.

EXECUTED by the Accused this 5 day of January, 1990, and by the Oregon State Bar this 26 day of January, 1990.

/s/ Ronald K. Cue
Ronald K. Cue

OREGON STATE BAR

By /s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel

I, Ronald K. Cue, 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/ Ronald K. Cue
Ronald K. Cue

Subscribed and sworn to before me this 5 day of January, 1990.

/s/ Patricia K. Gillette
Notary Public for Oregon
My commission expires:

I, Martha M. Hicks, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that I attest that I approved the foregoing Stipulation for Discipline as to form and that it was

approved in substance by the SPRB for submission to the Disciplinary Board on the 20 day of January, 1990.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before this 26 day of January, 1990.

/s/ Cherie M. Taylor
Notary Public for Oregon
My commission expires: 11/4/93

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-77
)	
RONALD K. CUE,	)	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, Ronald K. Cue, 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 Jackson County, State of Oregon.

3.

On or about June 25, 1987, the Accused undertook to represent Scott J. Fryer (Fryer), the respondent in a dissolution of marriage matter filed in Jackson County Circuit Court.

4.

From June 25, 1987, through April 29, 1988, the Accused failed to file an appearance on behalf of Fryer in the dissolution action, despite repeated notice from petitioner's counsel of petitioner's intent to take a default decree.

5.

On or about April 27, 1988, petitioner obtained a default decree of dissolution in the Fryer matter which was docketed on or about April 29, 1988. This decree contained provisions which were unfavorable to the Accused and obligations which Scott Fryer could not perform.

6.

Fryer was required to seek other legal representation to modify the decree of dissolution.

7.

The conduct of the Accused described above constituted neglect of a legal matter in violation of DR 6-101(B) of the Code of Professional Responsibility established by law and by the Oregon State Bar.

8.

The Accused has previously been admonished twice for violation of DR 6-101, neglect of a legal matter.

WHEREFORE, the Oregon State Bar demands that the Accused answer 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 16 day of May, 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. 89-9
)
HENRY G. CAMPBELL,)
)
Accused.)
_____)

Bar Counsel: Jack A. Billings, Esq.

Counsel for the Accused: Henry G. Campbell, Esq., pro se

Disciplinary Board: Dennis J. Graves, State Chairperson and James W. Spiekerman, Region 2 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline for violation of DR 6-101(B); Sixty-day suspension stayed/2 year probation

Effective Date of Opinion: March 16, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 89-9
)	
HENRY G. CAMPBELL,	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1963 he was a member of the Oregon State Bar having his current place of business in the County of Lane, State of Oregon.

From a review of the Stipulation, it appears that the Accused neglected a legal matter in the representation of Juanita R. Sheppard, Personal Representative of the Estate of William Dennis Buchan which has been in probate for approximately four years.

The conduct of the Accused described in the Stipulation constitutes neglect of a legal matter in violation of DR 6-101(B) of the Code of Professional Responsibility established by law and by the Oregon State Bar.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) The Accused agrees to a 60 day suspension from the practice of law, all of which is stayed, upon the condition that the Accused meet the following probationary terms during a two year term of probation:

(A) Within 30 days of the effective date of the Stipulation the Accused shall undertake a course of mental health treatment with a qualified mental health professional approved by the supervisor of the Accused's probation.

(B) The Accused shall participate in the program of treatment described in Paragraph 1(A) above for so long during his period of probation as required by the mental health professional conducting that treatment and the supervisor of the Accused's probation. The Accused shall not terminate that treatment without the prior written permission of the mental health professional conducting the treatment and the supervisor of the Accused's probation.

(C) The Accused shall sign such waivers of privilege as may be necessary to permit any and all information concerning the Accused to be disclosed to the Oregon State Bar and the Supervisor of his probation by the mental health professional described in Paragraph 1(A).

(D) As to inquiry into his compliance with the terms of his probation by the Bar, the Accused hereby waives any right or privilege of confidentiality he may have with respect to any information obtained by the

mental health professional described in Paragraph 1(A) or the PLF as described in Paragraph 1(H) and any communications the Accused may have with these persons and consents to the release to the Bar of any and all records, opinions and other information held by such persons relating to the Accused.

To the extent permitted by ORS 192.500, the Bar agrees that the records, opinions and other information obtained under this paragraph shall be exempt from public disclosure except insofar as they, in the sole discretion of the Bar, are deemed necessary for use in any disciplinary action or proceeding.

(E) Within 30 days of the effective date of the Stipulation, the Accused shall advise the Bar and the supervisor of his probation of the name and address of the treating mental health professional and shall supply the Bar with a signed waiver of any privilege relating to that mental health professional.

(F) The Accused shall provide affidavits to the supervisor of his probation attesting to compliance with this probation beginning on the 30th day after the effective date of the Stipulation and every 90th day thereafter. In turn, the supervisor shall forward the Accused's affidavits to the Bar, along with the supervisor's own reports regarding the Accused's compliance or non-compliance with the terms of probation. To any extent necessary, the Accused shall assist the supervisor in compiling information for the supervisor's reports. A failure to cooperate with reasonable requests for information made by the supervisor shall constitute a violation of this probation.

(G) Jon A. Joseph is hereby appointed to supervise the Accused's probation and shall file with Disciplinary Counsel's Office a written report of the Accused's compliance with the terms of probation on the 35th day after the

effective date of the Stipulation and every 90th day thereafter. Mr. Joseph shall, within 30 days of the effective date of the Stipulation, review the Accused's case load, preserving client confidentiality, to determine whether the Accused is neglecting legal matters entrusted to him. Should the supervisor discover any instances wherein the Accused has neglected a current legal matter entrusted to him, the supervisor shall report this neglect to the Disciplinary Counsel's office. The supervisor shall, from time to time, review the Accused's current client files and report the status thereof to Disciplinary Counsel's Office.

(H) The Accused shall, during the period of his probation, attend and pay for any and all continuing Legal Education courses or Professional Liability Fund (PLF) groups deemed advisable by the supervisor. Should any of these programs be ongoing courses of treatment or discussions, the Accused shall attend and participate therein for so long as deemed advisable by the supervisor of probation and the PLF.

From the Stipulation it appears that the Accused has been admonished by the Oregon State Bar for neglect of a legal matter on two previous occasions, but has no prior record of reprimand, suspension or other disciplinary sanction.

The Regional Chairperson and 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 6-101(B) of the Code of Professional Responsibility.

DATED this 16 day of March, 1990.

/s/ Dennis J. Graves

Dennis J. Graves
State Chairperson

/s/ James W. Spickerman

James W. Spickerman
Region 2 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 89-9
)	
HENRY G. CAMPBELL,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

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

3.

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

4.

A Formal Complaint (No. 89-9) was filed by the Oregon State Bar on September 14, 1989, against the Accused, and service was made on the Accused on September 25, 1989. The Accused filed an Answer on October 9, 1989. 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 all of the allegations of the complaint herein. The Accused further stipulates that his conduct described therein constituted neglect of a legal matter entrusted to him in violation of DR 6-101(B).

6.

As a result of the violation set forth herein, the Accused agrees to a 60-day suspension from the practice of law, all of which is stayed, upon the condition that the Accused meet the following probationary terms during a 2-year term of probation:

A. Within 30 days of the effective date of this stipulation, the Accused shall undertake a course of mental health treatment with a qualified mental health professional approved by the supervisor of the Accused's probation.

B. The Accused shall participate in the program of treatment described in paragraph 6A above for so long during his period of probation as required by the mental health professional conducting that treatment and the supervisor of the Accused's probation. The Accused shall not terminate that treatment without the prior written permission of the mental health

professional conducting the treatment and the supervisor of the Accused's probation

C. The Accused shall sign such waivers of privilege as may be necessary to permit any and all information concerning the Accused to be disclosed to the Oregon State Bar and the supervisor of his probation by the mental health professional described in paragraph 6A herein.

D. As to inquiry into his compliance with the terms of his probation by the Bar, the Accused hereby waives any right or privilege of confidentiality he may have with respect to any information obtained by the mental health professional described in paragraph 6A or the PLF as described in paragraph 6H and any communications the Accused may have with these persons and consents to the release to the Bar of any and all records, opinions and other information held by such persons relating to the Accused.

To the extent permitted by ORS 19.500, the Bar agrees that the records, opinions and other information obtained under this paragraph shall be exempt from public disclosure except insofar as they, in the sole discretion of the Bar, are deemed necessary for use in any disciplinary action or proceeding.

E. Within 30 days of the effective date of this stipulation, the Accused shall advise the Bar and the supervisor of his probation of the name and address of the treating mental health professional and shall supply the Bar with a signed waiver of any privilege relating to that mental health professional.

F. The Accused shall provide affidavits to the supervisor of his probation attesting to compliance with this probation beginning on the 30th day after the effective date of this stipulation and every 90th day thereafter. In

turn, the supervisor shall forward the Accused's affidavits to the Bar, along with the supervisor's own reports regarding the Accused's compliance or non-compliance with the terms of probation. To any extent necessary, the Accused shall assist the supervisor in compiling information for the supervisor's reports. A failure to cooperate with reasonable requests for information made by the supervisor shall constitute a violation of this probation.

G. Jon A. Joseph is hereby appointed to supervise the Accused's probation and shall file with Disciplinary Counsel's Office a written report of the Accused's compliance with the terms of probation on the 35th day after the effective date of this stipulation and every 90th day thereafter. Mr. Joseph shall, within 30 days of the effective date of this agreement, review the Accused's case load, preserving client confidentiality, to determine whether the Accused is neglecting legal matters entrusted to him. Should the supervisor discover any instances wherein the Accused has neglected a current legal matter entrusted to him, the supervisor shall report this neglect to the Disciplinary Counsel's Office. The supervisor shall, from time to time, review the Accused's current client files and report the status thereof to Disciplinary Counsel's Office.

H. The Accused shall, during the period of his probation, attend and pay for any and all Continuing Legal Education courses or Professional Liability Fund (PLF) groups deemed advisable by the supervisor. Should any of these programs be ongoing courses of treatment or discussions, the Accused shall attend and participate therein for so long as deemed advisable by the supervisor of probation and the PLF.

7.

In the event the Accused fails to comply with the terms of this probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the suspension to which the Accused has stipulated herein.

8.

The Accused has previously received two letters of admonition for violation of DR 6-101(B) but has no prior record of reprimand, suspension or other disciplinary sanction.

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 that the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 14 day of February, 1990 by the Accused and this 11 day of April, 1990 by the Bar.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

/s/ Henry G. Campbell
Henry G. Campbell

I, Henry G. Campbell, being first duly sworn, depose and 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/ Henry G. Campbell
Henry G. Campbell

Subscribed and sworn to before me this 14 day of February, 1990.

/s/ Jon J. Joseph
Notary Public for Oregon
My commission expires: 9-18-90

I, Martha M. Hicks, 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 20 day of January, 1990.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 11 day of April, 1990.

/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	)	Case No. 89-9
)	
HENRY G. CAMPBELL,	)	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, Henry G. Campbell, is, and at all times mentioned herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Lane, State of Oregon.

3.

In January, 1986, the Accused undertook to represent Juanita R. Sheppard (hereinafter, "Sheppard") personal representative of the Estate of William Dennis Buchan, which had been in probate for approximately four years.

4.

From January, 1986, through January, 1989, the Accused failed to take any action on behalf of Sheppard, including failing to file any annual accountings on behalf of Sheppard and failing to communicate with Sheppard despite her numerous telephone calls and letters to the Accused.

5.

Sheppard was required to seek other legal representation to file the proper accountings and close the estate.

6.

The conduct of the Accused described above constituted neglect of a legal matter in violation of DR 6-101(B) of the Code of Professional Responsibility established by law and by the Oregon State Bar.

7.

The Accused has previously been twice admonished for violation of DR 6-101, neglect of a legal matter.

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 14 day of September, 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. 87-49
)
DENNIS SARRIUGARTE,)
)
Accused.)
_____)

Bar Counsel: John Tuthill, Esq.

Counsel for the Accused: James Walton, Esq.

Disciplinary Board: Dennis J. Graves, State Chairperson and Victor C. Pagel,
Region 6 Chairperson

Disposition: Violation of former DR 1-102(A)(4), [current DR 1-102(A)(3)],
former DR 5-105(A) and former DR 9-102(A) [current DR 9-101(A)]. Charges
under former DR 5-105B, DR 5-104(A) and former DR 9-102(B)(4) [current DR
9-101(B)(4)] withdrawn. Stipulation for discipline. Public reprimand.

Effective Date of Opinion: March 30, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 87-49
)	
DENNIS SARRIUGARTE,	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1976 he was a member of the Oregon State Bar having his current place of business in the County of Marion, State of Oregon.

From a review of the Stipulation, it appears that the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in the representation of Sylvia Orton and Wayne Orton.

The conduct of the Accused described in the Stipulation constitutes conduct involving dishonesty, fraud, deceit and misrepresentation in violation of

former DR 1-102(A)(4) (current DR 1-102(A)(3)) of the Code of Professional Responsibility, former DR 5-105(A) of the Code of Professional Responsibility established by law and by the Oregon State Bar, as alleged in the Bar's First Cause of Complaint of the Amended Formal Complaint, except that the Accused does not admit dishonesty or fraud and misrepresentation except by failure to disclose.

The Accused admits his violation of former DR 9-102(A) (current DR 9-101(A)) of the Code of Professional Responsibility as alleged in the Bar's Second Cause of Complaint of the Amended Formal Complaint.

The Bar withdraws its charges that the Accused violated former DR 5-105(B) of the Code of Professional Responsibility, as alleged in its First Cause of Complaint, DR 5-104(A) of the Code of Professional Responsibility, as alleged in its Third Cause of Complaint and former DR 9-102(B)(4) of the Code of Professional Responsibility, as alleged in its Fourth Cause of Complaint.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) The Accused agrees to a public reprimand for having violated the ethical rules specified herein and described in the First and Second Causes of Complaint of the Bar's Amended Formal Complaint.

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

The Regional Chairperson and 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 former DR 1-102(A)(4) (current DR 1-102(A)(3)) of the

Code of Professional Responsibility, former DR 5-105(A) of the Code of Professional Responsibility, except that the Accused does not admit dishonesty or fraud and misrepresentation except by failure to disclose, and former DR 9-102(A) (current DR 9-101(A)) of the Code of Professional Responsibility.

DATED this 30 day of March, 1990.

/s/ Dennis J. Graves

Dennis J. Graves
State Chairperson

/s/ Victor C. Pagel

Victor C. Pagel
Region 6 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 87-49
)	
DENNIS SARRIUGARTE,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

Dennis Sarriugarte, 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 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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Bar continuously since that time, maintaining his office and place of business in Marion County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

On September 11, 1987, the State Professional Responsibility Board (hereinafter "the Board") authorized prosecution against the Accused alleging

several violations of the Code of Professional Responsibility. A copy of the Bar's Amended Formal Complaint is attached hereto and incorporated by reference herein.

5.

The Accused admits his violation of former DR 1-102(A)(4) (current DR 1-102(A)(3)) of the Code of Professional Responsibility and former DR 5-105(A) of the Code of Professional Responsibility, as alleged in the Bar's First Cause of Complaint of the Amended Formal Complaint, except that the Accused does not admit dishonesty or fraud and misrepresentation except by failure to disclose.

6.

The Accused admits his violation of former DR 9-102(A) (current DR 9-101(A)) of the Code of Professional Responsibility, as alleged in the Bar's Second Cause of Complaint of the Amended Formal Complaint.

7.

For the purpose of this Stipulation only, the Bar withdraws its charges that the Accused violated former DR 5-105(B) of the Code of Professional Responsibility, as alleged in its First Cause of Complaint, DR 5-104(A) of the Code of Professional Responsibility, as alleged in its Third Cause of Complaint and former DR 9-102(B)(4) of the Code of Professional Responsibility, as alleged in its Fourth Cause of Complaint.

8.

In explanation, but not justification, of his conduct in this matter, the Accused submits the following: The Accused was told by Mrs. Orton that the money was her separate funds that she had maintained throughout the

marriage and was derived from a prior dissolution settlement. The Accused had no knowledge that any of the money was joint funds.

After placing the money in his own name at the Oregon State University Credit Union, the Accused executed a promissory note to Mrs. Orton as evidence of her entitlement to the funds. The funds were returned to Mrs. Orton at the Accused's request prior to the dissolution proceeding. The Accused received no fees and kept none of the money.

The Accused had no intention of defrauding creditors, which is evidenced by the promissory note. The clear purpose of the transfer was to isolate Mrs. Orton's funds from use in the seed mill business.

The Accused recognizes that if the funds had been accepted by him and placed in his trust account, his action would still have been improper due to his relationship with both parties. The actions of the Accused were improvident, ill-advised and inappropriate.

9.

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

10.

The Accused agrees to a public reprimand for having violated the ethical rules specified herein and described in the First and Second Causes of Complaint of the Bar's Amended Formal Complaint.

11.

This Stipulation for Discipline is subject to review by the Disciplinary Counsel of the Oregon State Bar and to approval by the Board. If the Board

approves this Stipulation, the parties agree that it will be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

EXECUTED this 27 day of February, 1990 by Dennis Sarriugarte and
this 28 day of February, 1990 by Susan K. Roedl for the Oregon State Bar.

/s/ Dennis Sarriugarte
Dennis Sarriugarte

/s/ Susan K. Roedl
Susan K. Roedl
Assistant Disciplinary Counsel
Oregon State Bar

I, Dennis Sarriugarte, 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/ Dennis Sarriugarte
Dennis Sarriugarte

Subscribed and sworn before me this 27 day of February, 1990.

/s/ Taryn Hawkins
Notary Public for Oregon
My commission expires: 12-20-91

I, Susan K. Roedl, 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 Board for submission to the Disciplinary Board on the 14 day of February, 1990.

/s/ Susan K. Roedl
Susan K. Roedl
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 28 day of February, 1990.

/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	)	Case No. 87-49
)	
DENNIS SARRIUGARTE,	)	AMENDED 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, Dennis Sarriugarte, 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 Marion, State of Oregon.

3.

At all material times herein, the Accused represented Wayne and Sylvia Orton, husband and wife, in several matters, including a seed mill operation in which Wayne was a partner.

4.

On or about December 10, 1984, Sylvia delivered to the Accused and the Accused accepted the sum of \$9,820.36.

5.

Sylvia had obtained a substantial portion of the \$9,820.36 from marital assets, including a joint bank account she shared with Wayne.

6.

At the time Sylvia transferred the money to the Accused, a major creditor of the seed mill was threatening to foreclose the seed mill and the Accused was engaged in negotiating on behalf of Wayne to avoid foreclosure. In fact, the Accused and the Ortons had consulted a bankruptcy attorney shortly before Sylvia transferred the money to the Accused.

7.

At the time Sylvia transferred the money to the Accused, she advised him that she wanted to make the money unavailable to Wayne to prevent Wayne from using it to operate the seed mill or to satisfy creditors.

8.

The Accused accepted the \$9,820.36 from Sylvia in order to keep it unavailable to Wayne. During the time the Accused had possession of the money he had received from Sylvia, he did not advise Wayne that he had in his possession the money Sylvia had given him.

9.

By accepting funds from Sylvia obtained at least in part from marital assets in order to help her keep the money unavailable to Wayne, the Accused continued employment by Sylvia, or accepted proffered employment by her,

when the exercise of his independent professional judgment in behalf of Wayne would be or was likely to be adversely affected. It was not obvious that he could adequately represent the interests of both Sylvia and Wayne in connection with his holding the money for Sylvia. Furthermore, the Accused failed to make full disclosure to both of his clients of the possible effect of such representation on the exercise of the Accused's independent professional judgment on both Wayne and Sylvia.

10.

By accepting money obtained at least in part from marital assets in order to help Sylvia keep the money unavailable to Wayne, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

11.

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) [former DR 1-102(A)(4)] of the Code of Professional Responsibility; and
2. Former DR 5-105(A) of the Code of Professional Responsibility; and
3. Former 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:

12.

Incorporates by reference as fully set forth herein, paragraphs 1, 2, 3 and 4 of its First Cause of Complaint.

13.

The Accused deposited the \$9,820.36 given to him by Sylvia into a personal account in his own name at the Oregon State University Federal Credit Union Bank.

14.

The Accused failed to deposit and maintain the money in an identifiable trust account in the state in which his law office was situated.

15.

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

1. DR 9-101(A) [former *DR 9-102(A)*] of the Code of Professional Responsibility.

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

16.

Incorporates by reference as fully set forth herein paragraphs 1, 2, 3 and 4 of its First Cause of Complaint.

17.

On or about February 1, 1985, the Accused executed and delivered to Sylvia a promissory note in the amount of \$9,941.71 in favor of Sylvia.

18.

When the Accused accepted the money from and executed a promissory note in favor of Sylvia and delivered that note to her, he entered into a business transaction with his client in which he had an interest differing from

that of the client and in which the client reasonably expected the Accused to exercise his independent professional judgment for her protection.

19.

The Accused did not make full disclosure to Sylvia regarding their differing interests and did not recommend that she seek independent legal advice in connection with the business transaction.

20.

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

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

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

21.

Incorporates by reference as fully set forth herein paragraphs 1, 2, and 3 of its First Cause of Complaint.

22.

Prior to July 22, 1986, Wayne retained separate counsel to represent him in connection with his divorce proceedings against Sylvia.

23.

On or about July 22, 1986, Wayne's attorney requested in writing on behalf of Wayne that the Accused deliver Wayne's file and other materials relating to Wayne and Sylvia's financial matters.

24.

The Accused did not promptly release or deliver to Wayne's attorney the file or other materials as requested.

25.

Wayne was entitled to receive from the Accused the file and other materials requested by Wayne's attorney.

26.

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

1. Former DR 9-102(B)(4) [current *DR 9-101(B)(4)*] of the Code of Professional Responsibility.

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

EXECUTED this 2 day of February, 1990.

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. 88-60B
)
EDWARD F. LOHMAN,)
)
Accused.)
_____)

Bar Counsel: Kenneth B. Stewart, Esq.

Counsel for the Accused: Jack Faust, Esq.

Disciplinary Board: Dennis J. Graves, State Chairperson and Victor C. Pagel,
Region 6 Chairperson

Disposition: Disciplinary Board approval of stipulation for discipline; violation of
DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105B [current DR 5-105(E)] and
DR 7-102(A)(7). Public reprimand.

Effective Date of Opinion: June 8, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-60B
)	
EDWARD F. LOHMAN,	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1986 he was a member of the Oregon State Bar having his current place of business in the County of Clackamas, state of Oregon.

From a review of the Stipulation, it appears that the Accused engaged in conduct (1) involving dishonesty, fraud, deceit or misrepresentation; (2) that was prejudicial to the administration of justice; (3) that constituted a conflict of interest; and (4) counselled or assisted the client in conduct that the attorney

knew to be illegal or fraudulent in the representation of Peter N. Marks, a minor, John Marks and Carol Marks.

The conduct of the Accused described in the Stipulation constitutes conduct in violation of DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7) of the Code of Professional Responsibility.

The Accused admits his violation of DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7) of the Code of Professional Responsibility as alleged in the Formal Complaint.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) The Accused agrees to a public reprimand for having violated the ethical rules specified herein and described in the Formal Complaint.

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

The Regional Chairperson and 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 former DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7) of the Code of Professional

Responsibility.

DATED this 8 day of June, 1990.

/s/ Dennis J. Graves
Dennis J. Graves
State Chairperson

/s/ Victor C. Pagel
Victor C. Pagel
Region 6 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-60B
)	
EDWARD F. LOHMAN,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

Pursuant to the Oregon State Bar's Rule of Procedure 3.6, the Oregon State Bar (the "Bar") and the Accused, Edward F. Lohman, stipulate and agree as follows:

BACKGROUND

The following is a statement that explains the particular facts and violations to which the Oregon State Bar and Edward F. Lohman stipulate and agree:

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, Edward F. Lohman, 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 Clackamas County, State of Oregon.

3. On or about January 28, 1987, Samuel M. Lohman undertook to represent Peter N. Marks, a minor, through his parents and guardians, John and Carol Marks, in a personal injury action.

4. Samuel M. Lohman is or was a member of the law firm of which the Accused is also a member.

5. On or about May 5, 1987, Samuel M. Lohman arrived at a settlement agreement with the insurer (Farmers) for the driver of the vehicle that had struck Peter Marks. On or about May 15, 1987, a draft in the amount of \$25,000 was issued by Farmers, payable to John and Carol Marks as parents and guardians of Peter Marks, and Samuel M. Lohman.

6. After deductions for medical expenses and his attorney's fees, Samuel M. Lohman paid to John and Carol Marks the sum of \$13,750 from the above-described settlement amount. The Accused had knowledge of this payment.

7. Samuel M. Lohman did not advise John and Carol Marks to petition for the appointment of a conservator for Peter Marks.

8. Without the knowledge of the Accused, John and Carol Marks converted approximately \$11,000 of the above-described settlement proceeds to their own use.

9. In July, 1987, the Accused undertook to represent Peter Marks, through his parents and guardians, John and Carol Marks, in an uninsured motorist claim against Peter Marks' insurer (State Farm).

10. On or about October 29, 1987, the Accused entered into a settlement with State Farm for the sum of \$55,000. On November 3, 1987, a

draft in the amount of \$55,000 was issued by State Farm, payable to John and Carol Marks as parents and guardians of Peter Marks, and the Accused.

11. Prior to releasing the State Farm settlement proceeds to John and Carol Marks, the Accused advised them that a conservator for Peter Marks should be appointed. Prior to the filing of the petition for appointment of conservator for Peter Marks, the Accused was advised by John and Carol Marks that they had converted a portion of the Farmers settlement proceeds to their own use.

12. On or about November 6, 1987, the Accused prepared and filed in Clackamas County Circuit Court a petition for the appointment of John Marks as conservator for Peter Marks. Letters of conservatorship were issued by the court on or about November 9, 1987. As part of his representation of John Marks as conservator for Peter Marks, the Accused prepared an inventory. The inventory failed to disclose the receipt by John Marks of the \$13,750 from the Farmers settlement and his conversion of a portion thereof. The inventory, furthermore, included a certification that it was a complete inventory of the property of the estate of Peter Marks.

13. Although the Accused did not intend to file an inventory that falsely represented that it was a complete inventory, the Accused knew that the inventory described above was incomplete, knew that it did not satisfy the requirement of ORS 126.277 described below, and in the exercise of reasonable care should have known that the inventory purported to represent that it was a complete inventory. Nonetheless, the Accused presented the inventory to John Marks for signature.

14. ORS 126.277 requires that a conservator file, within 90 days after the date of appointment, an inventory of all property of the estate of the protected person that has come into the possession or knowledge of the conservator.

15. The Accused knew that John and Carol Marks had received the sum of \$13,750 as parents and guardians of Peter Marks. The Accused knew that the conservator was required to disclose his receipt of the \$13,750, and with these facts in mind, but believing he was protecting a client confidence, presented to John Marks for signature an inventory which omitted this disclosure.

16. The inventory was not signed by John Marks as conservator and was not filed with the court. Instead, John and Carol Marks sought independent counsel.

17. While the Accused was acting as attorney for Peter Marks through John and Carol Marks, his parents and guardians, and prior to drafting the above-described inventory, he also undertook to represent John and Carol Marks and John Marks as conservator for Peter Marks regarding the legal consequences of having converted the money.

18. In preparing the above-described inventory, the Accused sought to protect the confidences of John and Carol Marks that they had converted money belonging to Peter Marks. The Accused had a conflicting duty, on behalf of Peter Marks and his conservator, to recover this money and to advise the court of its conversion.

19. The Accused believed he was representing the Marks family, but by the exercise of reasonable care should have known that the exercise of his

independent professional judgment in behalf of one or more of his clients was or was likely to be adversely affected by his representation of another client.

20. The Accused did not disclose his conflict of interest to his clients, nor did he obtain the consent of all of his clients to the multiple representation.

STIPULATION

1. The Accused acknowledges that this Stipulation for Discipline has been freely and voluntarily made.

2. The Accused stipulates that, despite his belief that he was protecting the confidence of a client, and despite his lack of intent to deceive in preparing an incomplete inventory and presenting it to his clients for signature, his conduct described herein constituted conduct in violation of DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7).

3. As a result of the violations set forth herein, the Accused agrees to a public reprimand.

4. The Accused has no prior record of reprimand, suspension or other disciplinary sanction.

5. 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 that the Stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 20 day of April, 1990, by the
Accused and this 30 day of May, 1990, by the Bar.

/s/ Edward F. Lohman
Edward F. Lohman

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

I, Edward F. Lohman, being first duly sworn, depose and 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/ Edward F. Lohman
Edward F. Lohman

Subscribed and sworn to before me this 28 day of April, 1990.

/s/ Sally Waite
Notary Public for Oregon
My commission expires: 6-28-93

I, Martha M. Hicks, 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 19 day of May, 1990.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 31 day of May, 1990.

/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	)	Case No. 88-60B
)	
EDWARD F. LOHMAN,	)	FORMAL COMPLAINT
)	
Accused.)	
)	

For its FIRST CAUSE OF COMPLAINT against Edward F. Lohman 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, Edward F. Lohman, 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 Clackamas County, Oregon.

3.

On or about January 28, 1987, Samuel M. Lohman undertook the representation of Peter N. Marks, a minor, through his parents and guardians, John and Carol Marks, in a personal injury action. Samuel M. Lohman is a member of the law firm of which the Accused is also a member.

4.

On or about May 5, 1987, Samuel M. Lohman arrived at a settlement agreement with the insurer (hereinafter referred to as Farmers) for the driver of the vehicle which had struck Peter Marks. On or about May 15, 1987, a draft in the amount of \$25,000 was issued by Farmers payable to John and Carol Marks, as parents and guardians of Peter Marks, and Samuel M. Lohman.

5.

After deductions for medical expenses and his attorney's fees, Samuel M. Lohman paid to John and Carol Marks the sum of \$13,750 from the above-described settlement amount.

6.

Samuel M. Lohman did not advise John and Carol Marks to petition for the appointment of a conservator for Peter Marks nor did he advise them that the settlement proceeds must be used for the benefit of Peter Marks only.

7.

John and Carol Marks converted approximately \$11,000 of the above-described settlement proceeds to their own use.

8.

In July, 1987, the Accused undertook to represent Peter Marks, through his parents and guardians, John and Carol Marks, in an underinsured motorist claim against Peter Mark's insurer (hereinafter referred to as State Farm).

9.

On or about October 29, 1987, the Accused entered into a settlement agreement with State Farm for the amount of \$55,000. On November 3, 1987,

a draft in the amount of \$55,000 was issued by State Farm payable to John and Carol Marks, as parents and guardians of Peter Marks, and the Accused.

10.

Prior to releasing the State Farm settlement proceeds to John and Carol Marks, the Accused advised them that a conservator for Peter Marks should be appointed. Prior to the filing of the Petition for Appointment of Conservator for Peter Marks, the Accused was advised by John and Carol Marks that they had converted a portion of the Farmers settlement proceeds to their own use.

11.

On or about November 6, 1987, the Accused prepared and filed in Clackamas County Circuit Court a petition for the appointment of John Marks as conservator for Peter Marks. Letters of conservatorship were issued by the court on or about November 9, 1987. As part of his representation of John Marks as conservator for Peter Marks, the Accused prepared an inventory. The Inventory failed to disclose the receipt by John Marks of the \$13,750 from the Farmers settlement and his conversion of a portion thereof. Furthermore, the Inventory included a certification that it was a complete inventory of the property of the estate of Peter Marks. A copy of that Inventory is attached hereto as Exhibit 1 and incorporated by reference herein.

12.

The Accused knew that the inventory was false and misleading but, on several occasions, the Accused attempted to convince John Marks to sign it.

13.

By drafting for filing with the court the Inventory which failed to disclose the Farmers settlement and which included a certification that the

property listed therein was a complete inventory of Peter Marks' estate, and by attempting to persuade John Marks to sign the Inventory as drafted, the Accused engaged in conduct involving fraud, deceit, dishonesty or misrepresentation and prejudicial to the administration of justice.

14.

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

For a SECOND CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

15.

Realleges paragraphs 1 through 12 herein.

16.

ORS 126.277 requires that a conservator file within 90 days after the date of appointment, an inventory of all property of the state of the protected person that has come into the possession or knowledge of the conservator.

17.

The conduct of the Accused described herein constituted the counselling of a client in conduct the lawyer knows to be illegal or fraudulent and the concealment or knowing failure to disclose that which the lawyer is required by law to reveal.

18.

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

1. DR 7-102(A)(7) of the Code of Professional Responsibility; and
2. DR 7-102(A)(3) of the Code of Professional Responsibility.

For a THIRD CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

19.

Realleges paragraphs 1 through 12 herein.

20.

While the Accused was acting as attorney for Peter Marks through John and Carol Marks, his parents and guardians, and prior to drafting the Inventory (Exhibit 1), he also undertook to represent John and Carol Marks as individuals and John Marks as conservator for Peter Marks.

21.

In preparing the Inventory (Exhibit 1), the Accused sought to protect the confidences of John and Carol Marks that they had converted money belonging to Peter Marks. The Accused had a duty, on behalf of Peter Marks and his conservator, to recover this money and to advise the court of its conversion by John and Carol Marks.

22.

By attempting to protect the confidences of John and Carol Marks in the face of a conflicting duty to Peter Marks and his conservator, the Accused continued employment when he knew, or by the exercise of reasonable care,

should have known that the exercise of his independent professional judgment in behalf of one of his clients was or was likely to be adversely affected by his representation of another client. The Accused failed to fully and adequately disclose the conflict of interest to his clients.

23.

The Accused failed to disclose fully and adequately the conflict of interest to all of his clients and failed to obtain the consent of all of his clients to the multiple representation.

24.

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

1. Former DR 5-105(B) [current DR 5-105(E)] 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 6 day of September, 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. 88-60A
)
ROBERT LOHMAN,)
)
Accused.)
_____)

Bar Counsel: Kenneth B. Stewart, Esq.

Counsel for the Accused: Jack Faust, Esq.

Disciplinary Board: Dennis J. Graves, State Chairperson and Victor C. Pagel,
Region 6 Chairperson.

Disposition: Disciplinary Board approval of stipulation for discipline; violation of
DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)] and
DR 7-102(A)(7). Public Reprimand.

Effective Date of Opinion: June 8, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-60A
)	
ROBERT LOHMAN,	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1955 he was a member of the Oregon State Bar having his current place of business in the County of Clackamas, state of Oregon.

From a review of the Stipulation, it appears that the Accused engaged in conduct (1) involving dishonesty, fraud, deceit or misrepresentation; (2) that was prejudicial to the administration of justice; (3) that constituted a conflict of interest; and (4) counselled or assisted the client in conduct that the attorney knew to be illegal or fraudulent in the representation of Peter N. Marks, a minor, John Marks and Carol Marks.

The conduct of the Accused described in the Stipulation constitutes conduct in violation of DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7) of the Code of Professional Responsibility.

The Accused admits his violation of DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7) of the Code of Professional Responsibility as alleged in the Formal Complaint.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) The Accused agrees to a public reprimand for having violated the ethical rules specified herein and described in the Formal Complaint.

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

The Regional Chairperson and 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 former DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(e)], and DR 7-102(A)(7) of the Code of Professional Responsibility.

DATED this 9 day of June, 1990.

/s/ Dennis J. Graves
Dennis J. Graves
State Chairperson

/s/ Victor C. Pagel
Victor C. Pagel
Region 6 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-60A
)	
ROBERT LOHMAN,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

Pursuant to the Oregon State Bar's Rule of Procedure 3.6, the Oregon State Bar (the "Bar") and the Accused, Robert Lohman, stipulate and agree as follows:

BACKGROUND

The following is a statement that explains the particular facts and violations to which the Oregon State Bar and Robert Lohman stipulate and agree:

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, Robert Lohman, 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 Clackamas County, State of Oregon.

3. On or about January 28, 1987, Samuel M. Lohman undertook to represent Peter N. Marks, a minor, through his parents and guardians, John and Carol Marks, in a personal injury action.

4. Samuel M. Lohman and Edward F. Lohman are or were members of the law firm of which the Accused is also a member.

5. On or about May 5, 1987, Samuel M. Lohman arrived at a settlement agreement with the insurer (Farmers) for the driver of the vehicle that had struck Peter Marks. On or about May 15, 1987, a draft in the amount of \$25,000 was issued by Farmers, payable to John and Carol Marks as parents and guardians of Peter Marks, and Samuel M. Lohman.

6. After deductions for medical expenses and his attorney's fees, Samuel M. Lohman paid to John and Carol Marks the sum of \$13,750 from the above-described settlement amount. The Accused had knowledge of this payment.

7. Samuel M. Lohman did not advise John and Carol Marks to petition for the appointment of a conservator for Peter Marks.

8. Without the knowledge of the Accused, John and Carol Marks converted approximately \$11,000 of the above-described settlement proceeds to their own use.

9. In July, 1987, Edward Lohman undertook to represent Peter Marks, through his parents and guardians, John and Carol Marks, in an uninsured motorist claim against Peter Marks' insurer (State Farm).

10. On or about October 29, 1987, Edward Lohman entered into a settlement with State Farm for the sum of \$55,000. On November 3, 1987, a

draft in the amount of \$55,000 was issued by State Farm, payable to John and Carol Marks as parents and guardians of Peter Marks, and Edward Lohman.

11. Prior to releasing the State Farm settlement proceeds to John and Carol Marks, the Accused advised them that a conservator for Peter Marks should be appointed. Prior to the filing of the petition for appointment of conservator for Peter Marks, the Accused was advised by John and Carol Marks that they had converted a portion of the Farmers settlement proceeds to their own use.

12. On or about November 6, 1987, with the knowledge and approval of the Accused, Edward F. Lohman prepared and filed in Clackamas County Circuit Court a petition for the appointment of John Marks as conservator for Peter Marks. Letters of conservatorship were issued by the court on or about November 9, 1987. As part of his representation of John Marks as conservator for Peter Marks, Edward F. Lohman prepared an inventory. The inventory failed to disclose the receipt by John Marks of the \$13,750 from the Farmers settlement and his conversion of a portion thereof. The inventory, furthermore, included a certification that it was a complete inventory of the property of the estate of Peter Marks.

13. Although the Accused did not intend to file an inventory that falsely represented that it was a complete inventory, the Accused knew that the inventory described above was incomplete, knew that it did not satisfy the requirement of ORS 126.277 described below, and in the exercise of reasonable care should have known that the inventory purported to represent that it was a complete inventory. Nonetheless, the Accused presented the inventory to John Marks for signature.

14. ORS 126.277 requires that a conservator file, within 90 days after the date of appointment, an inventory of all property of the estate of the protected person that has come into the possession or knowledge of the conservator.

15. The Accused knew that John and Carol Marks had received the sum of \$13,750 as parents and guardians of Peter Marks. The Accused knew that the conservator was required to disclose his receipt of the \$13,750, and with these facts in mind, but believing he was protecting a client confidence, presented to John Marks for signature an inventory which omitted this disclosure.

16. The inventory was not signed by John Marks as conservator and was not filed with the court. Instead, John and Carol Marks sought independent counsel.

17. While the Accused was acting as attorney for Peter Marks through John and Carol Marks, his parents and guardians, and prior to drafting the above-described inventory, he also undertook to represent John and Carol Marks and John Marks as conservator for Peter Marks regarding the legal consequences of having converted the money.

18. In presenting to John Marks the above-described inventory, the Accused sought to protect the confidences of John and Carol Marks that they had converted money belonging to Peter Marks. The Accused had a conflicting duty, on behalf of Peter Marks and his conservator, to recover this money and to advise the court of its conversion.

19. The Accused believed he was representing the Marks family, but by the exercise of reasonable care should have known that the exercise of his

independent professional judgment in behalf of one or more of his clients was or was likely to be adversely affected by his representation of another client.

20. The Accused did not disclose his conflict of interest to his clients, nor did he obtain the consent of all of his clients to the multiple representation.

STIPULATION

1. The Accused acknowledges that this Stipulation for Discipline has been freely and voluntarily made.

2. The Accused stipulates that, despite his belief that he was protecting the confidence of a client and despite his lack of intent to deceive in allowing the preparation of an incomplete inventory and presentation of that inventory to his clients, his conduct described herein constituted conduct in violation of DR 1-102(A)(3), DR 1-102(A)(4), former DR 5-105(B) [current DR 5-105(E)], and DR 7-102(A)(7).

3. As a result of the violations set forth herein, the Accused agrees to a public reprimand.

4. The Accused has no prior record of reprimand, suspension or other disciplinary sanction.

5. 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 that the Stipulation is to be submitted to the Disciplinary Board for consideration

pursuant to the terms of BR 3.6.

EXECUTED this 20 day of April, 1990, by the Accused and this 30 day of May, 1990, by the Bar.

/s/ Robert Lohman
Robert Lohman

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

I, Robert Lohman, being first duly sworn, depose and 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/ Robert Lohman
Robert Lohman

Subscribed and sworn to before me this 20 day of April, 1990.

/s/ Sally Waite
Notary Public for Oregon
My commission expires: 6-28-93

I, Martha M. Hicks, 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 19 day of May, 1990.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 30 day of May, 1990.

/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	)	Case No. 88-60A
)	
ROBERT LOHMAN,	)	FORMAL COMPLAINT
)	
Accused.)	
)	

For its FIRST CAUSE OF COMPLAINT against Robert Lohman 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, Robert Lohman, 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 Clackamas County, Oregon.

3.

On or about January 28, 1987, Samuel M. Lohman undertook the representation of Peter N. Marks, a minor, through his parents and guardians, John and Carol Marks, in a personal injury action. Samuel M. Lohman is a member of the law firm of which the Accused is also a member.

4.

On or about May 5, 1987, Samuel M. Lohman arrived at a settlement agreement with the insurer (hereinafter referred to as Farmers) for the driver of the vehicle which had struck Peter Marks. On or about May 15, 1987, a draft in the amount of \$25,000 was issued by Farmer's payable to John and Carol Marks, as parents and guardians of Peter Marks, and Samuel M. Lohman.

5.

After deductions for medical expenses and his attorney's fees, Samuel M. Lohman paid to John and Carol Marks the sum of \$13,750, from the above-described settlement amount.

6.

Samuel M. Lohman did not advise John and Carol Marks to petition for the appointment of a conservator for Peter Marks nor did he advise them that the settlement proceeds must be used for the benefit of Peter Marks only.

7.

John and Carol Marks converted approximately \$11,000 of the above-described settlement proceeds to their own use.

8.

In July, 1987, Edward F. Lohman and the Accused undertook to represent Peter Marks, through his parents and guardians, John and Carol Marks, in an underinsured motorist claim against Peter Mark's insurer (hereinafter referred to as State Farm).

9.

Edward F. Lohman is a member of the law firm of which the Accused is also a member.

10.

On or about October 29, 1987, Edward F. Lohman entered into a settlement agreement with State Farm for the amount of \$55,000. On November 3, 1987, a draft in the amount of \$55,000 was issued by State Farm payable to John and Carol Marks, as parents and guardians of Peter Marks, and Edward Lohman.

11.

Prior to releasing the State Farm settlement proceeds to John and Carol Marks, Edward F. Lohman and the Accused advised them that a conservator for Peter Marks should be appointed. Prior to the filing of the Petition for Appointment of Conservator for Peter Marks, the Accused was advised by John and Carol Marks that they had converted a portion of the Farmer's settlement proceeds to their own use.

12.

With the knowledge and approval of the Accused, on or about November 6, 1987, Edward F. Lohman prepared and filed in Clackamas County Circuit Court a Petition for the appointment of John Marks as conservator for Peter Marks. Letters of conservatorship were issued by the court on or about November 9, 1987. As part of his representation of John Marks as conservator for Peter Marks, Edward F. Lohman prepared an Inventory, also with the knowledge and approval of the Accused. The Inventory failed to disclose the receipt by John Marks of the \$13,750 from the Farmers settlement and his

conversion of a portion thereof. Furthermore, the Inventory included a certification that it was a complete inventory of the property of the estate of Peter Marks. A copy of that Inventory is attached hereto as Exhibit 1 and incorporated by reference herein.

13.

The Accused knew that the inventory prepared for the conservator was false and misleading, but, on several occasions, the Accused attempted to convince John Marks to sign it.

14.

By drafting for filing with the court the Inventory which failed to disclose the Farmers settlement and which included a certification that the property listed therein was a complete inventory of Peter Marks' estate, and by attempting to persuade John Marks to sign the Inventory as drafted, the Accused engaged in conduct involving fraud, deceit, dishonesty or misrepresentation and prejudicial to the administration of justice.

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

For a SECOND CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

16.

Realleges paragraphs 1 through 12 herein.

17.

ORS 126.277 requires that a conservator file within 90 days after the date of appointment, an inventory of all property of the estate of the protected person that has come into the possession or knowledge of the conservator.

18.

The conduct of the Accused described herein constituted the counselling of a client in conduct the lawyer knows to be illegal or fraudulent and the concealment or knowing failure to disclose that which the lawyer is required by law to reveal.

19.

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

1. DR 7-102(A)(7) of the Code of Professional Responsibility; and
2. DR 7-102(A)(3) of the Code of Professional Responsibility.

For a THIRD CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges:

20.

Realleges paragraphs 1 through 12 herein.

21.

While the Accused was acting as attorney for Peter Marks through John and Carol Marks, his parents and guardians, and prior to the drafting of the Inventory (Exhibit 1), he also undertook to represent John and Carol Marks as individuals and John Marks as conservator for Peter Marks.

22.

In preparing the Inventory (Exhibit 1), the Accused sought to protect the confidences of John and Carol Marks that they had converted money belonging to Peter Marks. The Accused had a duty, on behalf of Peter Marks and his conservator, to recover this money and to advise the court of its conversion by John and Carol Marks.

23.

By attempting to protect the confidences of John and Carol Marks in the face of a conflicting duty to Peter Marks and his conservator, the Accused continued employment when he knew, or by the exercise of reasonable care, should have known that the exercise of his independent professional judgment in behalf of one of his clients was or was likely to be adversely affected by his representation of another client. The Accused failed to fully and adequately disclose the conflict of interest to his clients.

24.

The Accused failed to disclose fully and adequately the conflict of interest to all of his clients and failed to obtain the consent of all his clients to the multiple representation.

25.

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

1. Former DR 5-105(B) [current DR 5-105(E)] 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 6 day of September, 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. 88-83B
)
JOHN G. MEYER,)
)
Accused.)
_____)

Bar Counsel: Larry W. Stuber, Esq.

Counsel for the Accused: Robert D. Carl, Jr., Esq.

Disciplinary Board: Dennis J. Graves, State Chairperson and James M. Gleeson, Region 4 Chairperson

Disposition: Violation of DR 2-110(A)(1), DR 2-110(A)(2), former DR 6-101(A)(2) [current DR 6-101(A)], and former DR 6-101(A)(3) [current DR 6-101(B)].
Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: September 10, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-83B
)	
JOHN G. MEYER,)	
	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1967 he was a member of the Oregon State Bar having his current place of business in the County of Lincoln, State of Oregon.

From a review of the Stipulation, it appears that the Accused improperly withdrew as attorney of record and neglected a legal matter in the representation of Kathleen Farstad, a minor.

The conduct of the Accused described in the Stipulation constitutes conduct involving improper withdrawal as attorney of record and neglect of a legal matter in violation of DR 2-110(A)(1) of the Code of Professional

Responsibility, DR 2-110(A)(2) of the Code of Professional Responsibility, former DR 6-101(A)(2) [current DR 6-101(A)] of the Code of Professional Responsibility, and former DR 6-101(A)(3) [current DR 6-101(B)] of the Code of Professional Responsibility established by law and by the Oregon State Bar, as alleged in the Bar's Formal Complaint.

The Accused admits his violation of DR 2-110(A)(1), DR 2-110(A)(2), former DR 6-101(A)(2) [current DR 6-101(A)], and former DR 6-101(A)(3) [current DR 6-101(B)] of the Code of Professional Responsibility as alleged in the Bar's Formal Complaint.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) The Accused agrees to a public reprimand for having violated the ethical rules specified herein and described in the Bar's Formal Complaint.

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

The Regional Chairperson and 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 2-110(A)(1) of the Code of Professional Responsibility, DR 2-110(A)(2) of the Code of Professional Responsibility, former DR 6-101(A)(2) [current DR 6-101(A)] of the Code of Professional Responsibility, and former DR

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

DATED this 10 day of September, 1990.

/s/ Dennis J. Graves
Dennis J. Graves
State Chairperson

/s/ James M. Gleeson
James M. Gleeson
Region 4 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

W/ drawal

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-83B
)	
JOHN G. MEYER,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

Pursuant to the Oregon State Bar's Rule of Procedure 3.6, the Oregon State Bar (the "Bar") and the Accused, John G. Meyer, stipulate and agree as follows:

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, John G. Meyer, 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 Lincoln County, State of Oregon.

3. The Accused and Dan W. Poling, also an attorney at law duly admitted in Oregon, represented Kathleen Farstad, a minor (hereinafter referred to as "the client") by and through a guardian ad litem, in a medical malpractice lawsuit (hereinafter referred to as "the litigation"). The complaint in the litigation was filed in the Lincoln County Circuit Court on February 7, 1984, and the trial date was set for January 27, 1987, after three continuances.

The Accused and Poling were attorneys of record for the client in this litigation.

4. At all relevant times herein the Accused believed that Judge A. R. McMullen, who was assigned as trial judge in the litigation, was prejudiced against him and Poling. In April 1986 the Accused and Poling filed a motion for disqualification of Judge McMullen in the litigation. That motion was denied on or about May 16, 1986.

5. On or about January 12, 1987, the Accused and Poling filed in the Oregon Supreme Court a petition for a writ of mandamus seeking the removal of Judge McMullen from the litigation and a motion requesting an expedited hearing on the mandamus petition or, alternatively, a stay of the trial court proceedings. The petition and motion were denied by the Oregon Supreme Court on January 22, 1987.

6. On or about January 22, 1987, after consultation with and upon the advice of the Accused and Poling, and after consultation with and advice from the guardian ad litem, also an attorney, the client, who had reached the age of majority, terminated the services of the Accused and Poling in the litigation and filed a motion for a continuance of the January 27, 1987, trial date. The Accused was aware of the possibility that the client's motion for a continuance would not be granted and that the client would be required to proceed to trial without legal representation.

7. There was not sufficient time between January 22, 1987, and the January 27, 1987, trial date for the client to obtain substitute counsel. Prior to January 27, 1989, the Accused did not deliver to the client her file, inform her of the identity of the medical witnesses to be called on her behalf, or take

other reasonable steps to avoid foreseeable prejudice to her rights. The Accused believed the Court would grant the client a continuance of her trial date.

8. The Accused failed to file a consent to terminate his representation of the client with the court and failed to obtain an order of the court allowing his withdrawal as attorney of record in the litigation as required by ORS 9.380.

9. In his preparation for the litigation, the Accused failed to depose the defendant doctors or any other potential witnesses, failed to obtain a medical expert for trial investigation or testimony on the client's behalf, failed to resolve the issue of the disqualification of Judge McMullen sufficiently in advance of the trial date to allow for adequate preparation by new counsel, if necessary, and failed to make arrangements for substitute counsel to conduct the trial if the January 27, 1987, trial date was not continued.

10. The Accused and Poling were hampered in their case preparation by the client's limited financial resources and inability to advance litigation costs. At one point sufficiently prior to trial, the client received through the efforts of the Accused an insurance settlement in the amount of \$2,000.00, in a separate action against another defendant. The client used this money for other purposes, knowing that the Accused and Poling needed the funds to pay for discovery and to compensate experts, and knowing that she could not otherwise pay these expenses.

11. The client appeared before Judge McMullen on January 27, 1987, without counsel and was granted a continuance of the trial. At trial, a jury returned a verdict against the client.

STIPULATION

1. The Accused acknowledges that this Stipulation for Discipline has been freely and voluntarily made.
2. The Accused stipulates that his conduct described herein constituted conduct in violation of DR 2-110(A)(1), DR 2-110(A)(2), former DR 6-101(A)(2) [current DR 6-101(A)] and former DR 6-101(A)(3) [current DR 6-101(B)].
3. As a result of the violations set forth herein, the Accused agrees to a public reprimand.
4. The Accused has no prior record of reprimand, suspension or other disciplinary sanction.
5. The 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 that the Stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 27 day of June, 1990.

/s/ John G. Meyer
John G. Meyer

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

I, John G. Meyer, 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/ John G. Meyer
John G. Meyer

Subscribed and sworn to before me this 27 day of June, 1990.

/s/ De Anne Johnson
Notary Public for Oregon
My Commission expires: 10-6-91

I, Martha M. Hicks, 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 Supreme Court on the 21 day of July, 1990.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 25 day of July, 1990.

/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	)	Case No. 88-83B
)	
JOHN G. MEYER,)	
	)	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, JOHN G. MEYER, 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 Lincoln, State of Oregon.

3.

DAN W. POLING (hereinafter "Poling"), 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 Lincoln, State of Oregon.

4.

The Accused and Poling represented Kathleen Farstad, a minor (hereinafter referred to as "the client") by and through a guardian ad litem, in a medical malpractice lawsuit (hereinafter referred to as "the litigation"). The complaint in the litigation was filed in the Lincoln County Circuit Court on February 7, 1984, and the trial date was set for January 27, 1987, after three continuances. The Accused and Poling were attorneys of record for the client in this litigation.

5.

At all relevant times herein the Accused was aware of and believed that Judge A. R. McMullen, who was assigned as trial judge in the litigation, was prejudiced against him and Poling. In April 1986 the Accused filed a motion for disqualification of Judge McMullen in the litigation. That motion was denied on or about May 16, 1986.

6.

On or about January 12, 1987, the Accused and Poling filed in the Oregon Supreme Court a petition for a writ of mandamus seeking the removal of Judge McMullen from the litigation and a motion requesting an expedited hearing on the mandamus petition or, alternatively, a stay of the trial court proceedings. The petition and motion were denied by the Oregon Supreme Court on January 22, 1987.

7.

On or about January 22, 1987, after consultation with and upon the advice of the Accused and Poling, the client, who had reached the age of majority, terminated the services of the Accused and Poling in the litigation

and filed a motion for a continuance of the January 27, 1987, trial date. The Accused was aware of the substantial possibility that the client's motion for a continuance would not be granted and that the client would be required to proceed to trial without legal representation.

8.

There was not sufficient time between January 22, 1987, and the January 27, 1987, trial date for the client to obtain substitute counsel. Prior to January 27, 1989, the Accused did not deliver to the client her file, inform her of the identity of the medical witnesses to be called on her behalf, or take other reasonable steps to avoid foreseeable prejudice to her rights.

9.

The Accused failed to file a consent to terminate his representation of the client with the court and failed to obtain an order of the court allowing his withdrawal as attorney of record in the litigation as required by ORS 9.380.

10.

In failing to timely resolve the issue of Judge McMullen's disqualification, failing to withdraw in a timely manner to allow his client sufficient time to retain other counsel, failing to secure a continuance of the litigation prior to his withdrawal, failing to take other reasonable steps to avoid foreseeable prejudice to the client, and failing to file with the court a consent to the termination of his representation of the client to or obtain the court's permission to withdraw as attorney of record, the Accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 2-110(A)(1); and

2. DR 2-110(A)(2)

of the Code of Professional Responsibility.

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.

The Accused neglected a legal matter entrusted to him by his client and/or did not competently represent the client in one or more of the following particulars:

1. The Accused failed to depose the defendant doctors or any other potential witnesses;
2. The Accused failed to obtain a medical expert for trial investigation or testimony on the client's behalf;
3. The Accused failed to resolve the issue of the disqualification of Judge McMullen sufficiently in advance of the trial date to allow for adequate preparation by new counsel, if necessary;
4. The Accused failed to file a consent to the termination of his employment with the court or to obtain the court's permission to withdraw from representation of the client; and
5. The Accused failed to make arrangements for substitute counsel to conduct the trial if the January 27, 1987, trial date was not continued.

13.

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

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

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

EXECUTED this 29 day of August, 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. 88-83A
)
DAN W. POLING,)
)
Accused.)
_____)

Bar Counsel: Larry W. Stuber, Esq.

Counsel for the Accused: Robert D. Carl, Jr., Esq.

Disciplinary Board: Dennis J. Graves, State Chairperson and James M. Gleeson, Region 4 Chairperson

Disposition: Violation of DR 2-110(A)(1), DR 2-110(A)(2), former DR 6-101(A)(2) [current DR 6-101(A)], and former DR 6-101(A)(3) [current DR 6-101(B)].
Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: September 10, 1990.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-83A
)	
DAN W. POLING,	)	DECISION 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 times, was admitted by the Oregon Supreme Court to practice law in Oregon. Since 1956 he was a member of the Oregon State Bar having his current place of business in the County of Lincoln, State of Oregon.

From a review of the Stipulation, it appears that the Accused improperly withdrew as attorney of record and neglected a legal matter in the representation of Kathleen Farstad, a minor.

The conduct of the Accused described in the Stipulation constitutes conduct involving improper withdrawal as attorney of record and neglect of a legal matter in violation of DR 2-110(A)(1) of the Code of Professional

Responsibility, DR 2-110(A)(2) of the Code of Professional Responsibility, former DR 6-101(A)(2) [current DR 6-101(A)] of the Code of Professional Responsibility, and former DR 6-101(A)(3) [current DR 6-101(B)] of the Code of Professional Responsibility established by law and by the Oregon State Bar, as alleged in the Bar's Formal Complaint.

The Accused admits his violation of DR 2-110(A)(1), DR 2-110(A)(2), former DR 6-101(A)(2) [current DR 6-101(A)];, and former DR 6-101(A)(3) [current DR 6-101(B)] of the Code of Professional Responsibility as alleged in the Bar's Formal Complaint.

Pursuant to the Stipulation, the Accused agrees to accept the following designated form of discipline in exchange for the herein described stipulations:

(1) The Accused agrees to a public reprimand for having violated the ethical rules specified herein and described in the Bar's Formal Complaint.

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

The Regional Chairperson and 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 2-110(A)(1) of the Code of Professional Responsibility, DR 2-110(A)(2) of the Code of Professional Responsibility, former DR 6-101(A)(2) [current DR 6-101(A)] of the Code of Professional Responsibility, and former DR

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

DATED this 10 day of September, 1990.

/s/ Dennis J. Graves
Dennis J. Graves
State Chairperson

/s/ James M. Gleeson
James M. Gleeson
Region 4 Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-83A
)	
DAN W. POLING,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
)	

Pursuant to the Oregon State Bar's Rule of Procedure 3.6, the Oregon State Bar (the "Bar") and the Accused, Dan F. Poling, stipulate and agree as follows:

BACKGROUND

The following is a statement that explains the particular facts and violations to which the Oregon State Bar and Dan W. Poling stipulate and agree:

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, Dan W. Poling, 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 Lincoln County, State of Oregon.

3. The Accused and Meyer, also an attorney at law duly admitted in Oregon, represented Kathleen Farstad, a minor (hereinafter referred to as "the

client") by and through a guardian ad litem, in a medical malpractice lawsuit (hereinafter referred to as "the litigation"). The complaint in the litigation was filed in the Lincoln County Circuit Court on February 7, 1984, and the trial date was set for January 27, 1987, after three continuances. The Accused and Meyer were attorneys of record for the client in this litigation.

4. At all relevant times herein the Accused believed that Judge A. R. McMullen, who was assigned as trial judge in the litigation, was prejudiced against him and Meyer. In April, 1986, the Accused and Meyer filed a motion for disqualification of Judge McMullen in the litigation. That motion was denied on or about May 16, 1986.

5. On or about January 12, 1987, the Accused and Meyer filed in the Oregon Supreme Court a petition for a writ of mandamus seeking the removal of Judge McMullen from the litigation and a motion requesting an expedited hearing on the mandamus petition or, alternatively, a stay of the trial court proceedings. The petition and motion were denied by the Oregon Supreme Court on January 22, 1987.

6. On or about January 22, 1987, after consultation with and upon the advice of the Accused and Meyer, and after consultation with and advice from the guardian ad litem, also an attorney, the client, who had reached the age of majority, terminated the services of the Accused and Meyer in the litigation and filed a motion for a continuance of the January 27, 1987, trial date. The Accused was aware of the possibility that the client's motion for a continuance would not be granted and that the client would be required to proceed to trial without legal representation.

7. There was not sufficient time between January 22, 1987, and the January 27, 1987, trial date for the client to obtain substitute counsel. Prior to January 27, 1989, the Accused did not deliver to the client her file, inform her of the identity of the medical witnesses to be called on her behalf, or take other reasonable steps to avoid foreseeable prejudice to her rights. The Accused believed the Court would grant the client a continuance of her trial date.

8. The Accused failed to file a consent to terminate his representation of the client with the court and failed to obtain an order of the court allowing his withdrawal as attorney of record in the litigation as required by ORS 9.380.

9. In his preparation for the litigation, the Accused failed to depose the defendant doctors or any other potential witnesses, failed to obtain a medical expert for trial investigation or testimony on the client's behalf, failed to resolve the issue of the disqualification of Judge McMullen sufficiently in advance of the trial date to allow for adequate preparation by new counsel, if necessary, and failed to make arrangements for substitute counsel to conduct the trial if the January 27, 1987, trial date was not continued.

10. The Accused and Meyer were hampered in their case preparation by the client's limited financial resources and inability to advance litigation costs. At one point sufficiently prior to trial, the client received through the efforts of Meyer, an insurance settlement in the amount of \$2,000.00, in a separate action against another defendant. The client used this money for other purposes, knowing that the Accused and Meyer needed the funds to pay for discovery and to compensate experts, and knowing that she could not otherwise pay these expenses.

11. The client appeared before Judge McMullen on January 27, 1987, without counsel and was granted a continuance of the trial. At trial, a jury returned a verdict against the client.

STIPULATION

1. The Accused acknowledges that this Stipulation for Discipline has been freely and voluntarily made.
2. The Accused stipulates that his conduct described herein constituted conduct in violation of DR 2-110(A)(1), DR 2-110(A)(2), former DR 6-101(A)(2) [current DR 6-101(A)] and former DR 6-101(A)(3) [current DR 6-101(B)].
3. As a result of the violations set forth herein, the Accused agrees to a public reprimand.
4. The Accused has no prior record of reprimand, suspension or other disciplinary sanction.
5. The 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 that the Stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4 day of June, 1990.

/s/ Dan W. Poling
Dan W. Poling

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

I, Dan W. Poling, being first duly sworn, depose and 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/ Dan W. Poling
Dan W. Poling

Subscribed and sworn to before me this 4 day of June, 1990.

/s/ Rosalie Peach
Notary Public for Oregon
My commission expires: 12-3-93

I, Martha M. Hicks, 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 21 day of July, 1990.

/s/ Martha M. Hicks
Martha M. Hicks
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 25 day of July, 1990.

/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	)	Case No. 88-83A
)	
DAN W. POLING,	)	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, DAN W. POLING, 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 Lincoln, State of Oregon.

3.

JOHN G. MEYER (hereinafter, "Meyer"), 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 Lincoln, State of Oregon.

4.

The Accused and Meyer represented Kathleen Farstad, a minor (hereinafter referred to as "the client") by and through a guardian ad litem, in a medical malpractice lawsuit (hereinafter referred to as "the litigation"). The complaint in the litigation was filed in the Lincoln County Circuit Court on February 7, 1984, and the trial date was set for January 27, 1987, after three continuances. The Accused and Meyer were attorneys of record for the client in this litigation.

5.

At all relevant times herein the Accused was aware and believed that Judge A. R. McMullen, who was assigned as trial judge in the litigation, was prejudiced against him and Meyer. In April, 1986, Meyer filed a motion for disqualification of Judge McMullen in the litigation. That motion was denied on or about May 16, 1986.

6.

On or about January 12, 1987, the Accused and Meyer filed in the Oregon Supreme Court a petition for a writ of mandamus seeking the removal of Judge McMullen from the litigation and a motion requesting an expedited hearing on the mandamus petition or, alternatively, a stay of the trial court proceedings. The petition and motion were denied by the Oregon Supreme Court on January 22, 1987.

7.

On or about January 22, 1987, after consultation with and upon the advice of the Accused and Meyer, the client, who had reached the age of majority, terminated the services of the Accused and Meyer in the litigation

and filed a motion for a continuance of the January 27, 1987, trial date. The Accused was aware of the substantial possibility that the client's motion for a continuance would not be granted and that the client would be required to proceed to trial without legal representation.

8.

There was not sufficient time between January 22, 1987, and the January 27, 1987, trial date for the client to obtain substitute counsel. Prior to January 27, 1987, the Accused did not deliver to the client her file, inform her of the identity of the medical witnesses to be called on her behalf, or take other reasonable steps to avoid foreseeable prejudice to her rights.

9.

The Accused failed to file a consent to terminate his representation of the client with the court and failed to obtain an order of the court allowing his withdrawal as attorney of record in the litigation as required by ORS 9.380.

10.

In failing to timely resolve the issue of Judge McMullen's disqualification, failing to withdraw in a timely manner to allow his client sufficient time to retain other counsel, failing to secure a continuance of the litigation prior to his withdrawal, failing to take other reasonable steps to avoid foreseeable prejudice to the client, and failing to file with the court a consent to the termination of his representation of the client or to obtain the court's permission to withdraw as attorney of record, the Accused violated the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 2-110(A)(1); and

2. DR 2-110(A)(2)

of the Code of Professional Responsibility.

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.

The Accused neglected a legal matter entrusted to him by his client and/or did not competently represent the client in one or more of the following particulars:

1. The Accused failed to depose the defendant doctors or any other potential witnesses;
2. The Accused failed to obtain a medical expert for trial investigation or testimony on the client's behalf;
3. The Accused failed to resolve the issue of the disqualification of Judge McMullen sufficiently in advance of the trial date to allow for adequate preparation by new counsel, if necessary;
4. The Accused failed to file a consent to the termination of his employment with the court or to obtain the court's permission to withdraw from representation of the client; and
5. The Accused failed to make arrangements for substitute counsel to conduct the trial if the January 27, 1987, trial date was not continued.

13.

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

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

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

EXECUTED this 29 day of August, 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. 88-86
KEITH J. ROHRBOUGH,)
Accused.)
_____)

Bar Counsel: Gilbert B. Feibleman, Esq.

Counsel for the Accused: Keith J. Rohrbough, Esq. pro se

Trial Panel: Mary Dahlgren, Chairperson; Nori J. McCann Cross and Debra K. Vassallo, Public Member.

Disposition: Violation of former DR 5-105(A). Public Reprimand.

Effective Date of Opinion: November 9, 1990

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the conduct of	)	Case No. 88-86
)	
KEITH J. ROHRBOUGH,	)	TRIAL PANEL OPINION
)	
Accused.)	
)	

This matter came before the Trial Panel for trial on July 23, 1990, in the Marion County Courthouse. The Oregon State Bar appeared through its counsel, Gilbert B. Feibleman. The Accused appeared in person and represented himself. Also appearing were Martha M. Hicks, Assistant Disciplinary Counsel for the Oregon State Bar, and Donald W. Dorgan, witness-complainant. The Bar alleged in its complaint that the Accused violated former DR 5-105(A), which provided as follows:

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

The Bar moved to amend the Complaint and there being no objection thereto, the Complaint was amended. The word "not" was removed from the first part of paragraph nine on page three, and that paragraph now reads as follows: "The Accused did record the Agreement of Exchange and he did not inform Dorgan that the property had been traded by Taylor-Johnson. Taylor-Johnson did not pay the promissory note to Dorgan at the time it traded the property or thereafter."

The Bar further moved to substitute a copy of the Assignment of Interest (referred to as Exhibit "1" in paragraph seven of the Complaint) for the Agreement of Exchange erroneously attached to the Complaint. The Accused did not object and the correct document (the Assignment of Interest) was substituted as Exhibit "1" to the Complaint.

Having considered the testimony and exhibits, the Panel makes the following findings of fact, conclusions of law, and opinion:

FINDINGS OF FACT

1. Accused represented Complainant, Donald E. Dorgan, in 1977 and 1978 in his divorce; in the purchase of a tavern business in 1980; and in a custody matter in 1986. Dorgan's wife was awarded real property in the divorce which, if sold within five years, would result in Dorgan receiving one-third of the proceeds. Mrs. Dorgan sold the property to the Taylor-Johnson Pension and Profit Sharing Trust Fund ("Taylor-Johnson") and failed to pay Mr. Dorgan his share. Accused then represented Mr. Dorgan in a suit against Mrs. Dorgan and Taylor-Johnson, securing a priority interest in the property for Mr. Dorgan in 1980. A Default Judgment in the amount of \$6,887.73 was entered against Mr. Dorgan's ex-wife on February 4, 1981.

2. Trial of Mr. Dorgan's suit against Mrs. Dorgan and Taylor-Johnson was on April 12, 1982, and the judgment was entered on June 2, 1982, giving Mr. Dorgan's lien of \$6,000 priority as to Taylor-Johnson. Before entry of the judgment (between April 12 and June 2), Bill Johnson (Taylor-Johnson) contacted Accused and asked him to prepare an Assignment of Interest for Mr. Dorgan's signature, whereby Mr. Dorgan would assign his interest in the property to Taylor-Johnson in exchange for cash of \$2,000 and a note for

\$4,000 with interest at 12 percent, all due and payable within one year from April 28, 1982, or on sale of the property by Taylor-Johnson, whichever first occurred. Accused prepared the Assignment, and Dorgan signed it on May 11, 1982.

3. Accused held the Assignment without recording it to "protect Mr. Dorgan's interest." Accused had an attorney-client relationship with both Dorgan and Taylor-Johnson in drafting and negotiating the Assignment.

4. In September 1982, four months after negotiating the Assignment, Accused prepared an Agreement of Exchange for Taylor-Johnson, whereby Taylor-Johnson transferred the property to another party. Accused did not advise Dorgan of the transfer, an event that might have triggered maturity of Dorgan's note with Taylor-Johnson.

5. Accused had a continuing attorney-client relationship with Dorgan and Taylor-Johnson during all relevant times, in that he was still holding the Assignment of Interest (from Dorgan to Taylor-Johnson), which he did not intend to record until Taylor-Johnson paid off the \$4,000 promissory note to Dorgan; and, he prepared the Agreement of Exchange on behalf of Taylor-Johnson for third parties on the same property. The representation of Taylor-Johnson put the Accused in a position adverse to Dorgan. Accused would need to argue on Dorgan's behalf that the exchange constituted a sale (thus triggering maturity of the note), and, would have needed to argue the reverse on behalf of Taylor-Johnson.

6. Accused made no disclosure of an actual or potential conflict of interest to Dorgan or Taylor-Johnson that his independent professional judgment would or could be adversely affected by his representation of both

parties on the same property. The testimony of Accused showed that he was unclear which party he was representing when he drafted and negotiated the Assignment and appeared to believe he did not represent Dorgan thereafter until the 1986 custody matter.

CONCLUSIONS

The case of *In re Johnson*, 300 OR 52, 707 P2d 573 (1985), establishes three levels of conflict of interest in the representation of multiple clients: "actual," "likely," and "unlikely."

Where a conflict of interest between multiple clients is only "likely," rather than actual, an attorney may represent multiple clients only if the attorney complies with the requirements of DR 5-105(C), if each client consents to the multiple representation after full disclosure of the possible effect on the exercise of the attorney's independent professional judgment on behalf of each client.

Based on the above fact situation, the conflict here was "likely." Accused did not comply with the disclosure and consent requirements of DR 5-105(C) and his conduct was, therefore, unethical.

DISPOSITION

The trial panel has considered the sanction to be imposed based on the ABA Standards for Imposing Lawyer Sanctions. Section 3.0 lists the factors to be considered, as follows:

- (a) The duty violated. Accused violated a duty to his client. Mr. Dorgan had a right to rely on Accused to exercise his independent professional judgment on his behalf, and to rely on Accused to advise him of any circumstances that could affect his rights.

(b) The lawyer's mental state. (Intentional, knowing, or negligent.)

Nothing in the record suggests that Accused acted with any conscious objective or purpose to accomplish a particular result. However, Accused's conduct rises above the level of mere negligence. The panel was concerned with Accused's testimony that he was representing Taylor-Johnson, then that he was representing Dorgan, and then that he wasn't sure which party he was representing at the time. Accused achieved a preferential position for Dorgan through litigation against Taylor-Johnson, and he was withholding recordation of the Taylor-Johnson Assignment until Dorgan's note was paid. Within four months after preparing the Assignment, Accused prepared the Agreement of Exchange for Taylor-Johnson with third parties, and did not advise Dorgan that the Agreement could potentially trigger maturity of Dorgan's note with Taylor-Johnson. Accused testified that the whole world, including Dorgan, was on notice of the event after the Assignment of Exchange was recorded. Hence, he felt he had no duty to separately inform Dorgan, even though he was representing him at the time and even though it was obvious that Dorgan's relationship with Taylor-Johnson was that of creditor-debtor.

Because Accused was repeatedly and continuously involved in the affairs concerning these clients and this particular property over a short period of time, the panel concludes that the mental state was that of knowledge, rather than negligence.

(c) Extent of the actual or potential injury caused to the client. The Agreement of Exchange triggered or could have triggered maturity of

Taylor-Johnson's debt to Dorgan. Had Dorgan been aware of the Agreement, it is possible that he could have collected the entire debt at that time, as opposed to some amount, if any, received later on settlement with Taylor-Johnson. (There was no evidence on the final amount received by Dorgan.)

Potential for injury also existed because it was in Taylor-Johnson's interest to record the Assignment from Dorgan at the time Accused represented Taylor-Johnson in the exchange transaction. Dorgan would then have had no security for the note. By representing both Dorgan and Taylor-Johnson on and during these multiple transactions regarding the same property, in which Dorgan and Taylor-Johnson had conflicting interests, Accused had conflicting loyalties and there was potential for injury to both clients: to Dorgan, in not being able to collect on his note; to Taylor-Johnson, in having Dorgan demand payment if he had been told of the exchange.

(d) The existence of aggravating or mitigating factors. This is a one-count case, and there is no evidence of dishonesty or selfish motive on the part of Accused. Accused has no prior record of discipline.

Pertinent American Bar Association standards are the following:

Section 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Section 4.33 Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

Although the Standards indicate that suspension is probably the appropriate sanction, the panel believes that a public reprimand is the most appropriate sanction in this case. Accused knew or should have known of his conflict of interest, but this was an isolated incident, Accused has no prior record, there was no evidence of actual damage to the client, and Accused has fully cooperated with the Bar.

Respectfully submitted this 24 day of September, 1990.

/s/ Mary Dahlgren
MARY DAHLGREN
Panel Chairperson

/s/ Nori J. McCann Cross
Nori J. McCann Cross
Panel Member

/s/ Debra K. Vassallo
Debra K. Vassallo
Panel Member

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