Disciplinary Board Reporter

Volume 8

January 1, 1994 to December 31, 1994

Report of Cases
Decided by the Disciplinary Board
of the Oregon State Bar
and
Supreme Court Attorney Discipline Cases for 1994

Donna J. Richardson
Editor

Caroline Stein
Production Assistant

OREGON STATE BAR 1995

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

Decided by the
Disciplinary Board
of the
Oregon State Bar

and

Supreme Court
Attorney Discipline
Cases for 1994

Donna J. Richardson
Editor

Caroline Stein
Production Assistant

Volume 8

January 1, 1994 to December 31, 1994

Preface

This Reporter contains final decisions of the Oregon State Bar Disciplinary Board. The Disciplinary Board Reporter should be cited as 8 DB Rptr 1 (1994).

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. 270 of the 1995 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 me at 620-0222 or 1-800-452-8260, extension 404. Final decisions of the Disciplinary Board issued on or after January 1, 1995 are also available from me at the Oregon State Bar upon request. Please note that the statutes, disciplinary rules and rules of procedure cited in the opinions were those in existence at the time the opinions were issued. The statutes and rules may have since been changed or renumbered. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

Two sections have been added to the back of this publication. The first section includes Stipulations by the Supreme Court which do not appear either in the DB Reporter or the Advance Sheets. Cite as In re Jones, Or S Ct No. SC S00000 (1994). The last section contains 1994 Oregon Supreme Court attorney discipline decisions involving suspensions of more than sixty (60) days and those in which Supreme Court review was requested either by the Bar or the Accused. Both sections are included in the subject matter index, the table of Disciplinary Rules and Statutes, Table of Cases and the Table of Rules of Procedure. These, along with Supreme Court Stipulations are noted by **S Ct.**

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.

Donna J. Richardson
Executive Services Administrator
Oregon State Bar
1-800-452-8260, ext. 404
1-503-620-0222, ext. 404

TABLE OF CONTENTS

References are to Pages

Justices of the Supreme Court

Wallace P. Carson, Jr., Chief Justice
Edward Fadeley, Associate Justice
W. Michael Gillette, Associate Justice
Susan P. Graber, Associate Justice
Richard L. Unis, Associate Justice
George Van Hoomissen, Associate Justice
Robert D. Durham, Jr., Associate Justice

Oregon State Bar Board of Governors 1994-1995

Judy Shipler Henry, President
Scott McArthur, Vice President
Daniel A. Ritter, Treasurer
Charles F. Hinkle, Secretary
Jeff J. Carter
Charles S. Crookham
Lewis W. Dahlin
Sidney A. Galton
Barrie J. Herbold
Dennis C. Karnopp
Michael V. Phillips
Robert K. Udziela
Isaac Dixon, Public Member
Jere Overs, Public Member
Joe E. Smith, Public Member

Celene Greene, Executive Director

State Professional Responsibility Board 1994-1995

Sarah K. Rinehart, Chairperson
Joe D. Bailey
John H. Barlow
David Brewer
Ronald L. Bryant
Timothy Gerking
Judy D. Snyder
John W. Littlehales, Public Member
Joanne F. McAdam, Public Member

OREGON STATE BAR
DISCIPLINARY BOARD
1995

State Chair

Fred E. Avera (95)

State Chair-Elect

Todd A. Bradley (95-96)

Region 1

1. W. Eugene Hallman, Chair (95-97)
2. Myer Avedovech (95-97)
3. Stephen M. Bloom (94-96)
4. Wilford K. Carey (94-96)
5. Karen L. Franke (Public Member) (94-96)
6. Beatrice Jean Haskell (Public Member) (94-95)
7. Thomas C. Peachey (93-95)
8. Peter J. Richard (94-96)
9. Gregory A. Sackos (Public Member) (95-97)
10. Samuel Tucker (94-96)

Region 2

1. Howard E. Speer, Chair (92-95)
2. Donald K. Armstrong (94-96)
3. Ruby Brockett (Public Member) (95-97)
4. Nancie Fadeley (Public Member) (93-95)
5. Robert A. Ford (94-96)
6. Derek C. Johnson (95-97)
7. Mary Jane Mori (95-97)

Region 3

1. Arminda J. Brown, Chair (93-95)
2. Linda K. Beard (Public Member) (95-97)
3. Stephen D. Brown (93-95)
4. Leslie K. Hall (Public Member) (93-95)
5. Glenn H. Munsell (94-96)
6. Rebecca Gordon Orf (93-95)
7. John B. Trew (93-95)

Region 4

1. Nicholas D. Zafiratos, Chair (93-95)
2. Phillip R. Edin (Public Member) (95-97)
3. Guy B. Greco (93-95)
4. Robert Johnstone (95-97)
5. Douglas E. Kaufman (94-96)
6. Marion Sahagian (Public Member) (93-95)
7. Joseph D. St. Martin (94-96)

Region 5

1. Ann L. Fisher, Chair (95-97)
2. Amy Rebecca Alpern (95-97)
3. Richard R. Boyce (Public Member (94-96)
4. Todd A. Bradley (94-96)
5. William J. Brady, M.D. (Public Member) (94-96)
6. Stephen L. Brischetto (93-95)
7. Ralph E. Bunch (Public Member) (94-96)
8. C. Kevin Collins (Public Member) (93-95)
9. Gordon E. Davis (Public Member) (95-97)
10. Andrew P. Kerr (95-97)
11. Richard H. Kosterlitz, M.D. (Public Member) (95-97)
12. James S. Leigh (94-96)
13. Mark M. McCulloch (95-97)
14. Kurt Olsen (Public Member) (94-96)
15 Kathleen A. Pool (94-96)
16. Keith R. Raines (94-96)
17. Wilbert H. Randle, Jr. (Public Member) (93-95)
18. Leslie M. Roberts (95-97)
19. Helle Rode (95-97)
20. Julie R. Vacura (94-96)
21. Ronald L. Wade (93-95)
22. Steven T. Wax (93-95)
23. Morton A. Winkel (93-95)
24. Richard S. Yugler (94-96)

Region 6

1. Walter A. Barnes, Chair (93-95)
2. David M. Bishop (Public Member) (95-96)
3. William G. Blair (95-97)
4. Mary Grimes (94-96)
5. Donald Upjohn (94-96)
6. Miles A. Ward (93-95)
7. Michael K. Wilkes (Public Member) (93-95)

OREGON STATE BAR
DISCIPLINARY BOARD
1994

State Chair

Karla J. Knieps (94)

State Chair-Elect

Fred Avera (94-95)

Region 1

1. W. Eugene Hallman, Chair (92-94)
2. Myer Avedovech (92-94)
3. Stephen M. Bloom (94)
4. Wilford K. Carey (94-96)
5. LaSelle Cole (Public Member) (93-95)
6. Karen L. Franke (Public Member) (94-96)
7. Thomas C. Peachey (93-95)
8. Peter J. Richard (94-96)
9. Samuel Tucker (94-96)
10. Dr. Wallace Wolf (Public Member) (92-94)

Region 2

1. Martha L. Walters, Chair (92-94)
2. Stephen R. Blixseth (94-96)
3. Mary McCauley Burrows (Public Member) (92-94)
4. Nancie Fadeley, (Public Member) (93-95)
5. Robert Ford (94-96)
6. Howard E. Speer (92-94)
7. Thomas E. Wurtz (92-94)

Region 3

1. Arminda J. Brown, Chair (93-95)
2. Stephen D. Brown (94-96)
3. Leslie K. Hall (Public Member) (93-95)
4. Max Kimmell (Public Member) (92-94)
5. Glenn H. Munsell (94-96)
6. Rebecca Gordon Orf (93-95)
7. John B. Trew (93-95)

Region 4

1. Doug Kaufman, Chair (94-96)
2. Fred Avera (94-96)
3. Kenneth M. Doerfler, Sr. (Public Member) (92-94)
4. Guy B. Greco (93-95)
5. Joseph D. St. martin (94-96)
6. Marion Sahagian (Public Member) (93-95)
7. Nicholas D. Zafiratos (93-95)

Region 5

1. Sidney Galton, Chair (92-94)
2. Amy R. Alpern (93-94)
3. Richard Boyce (Public Member) (94-96)
4. Todd Bradley (94-96)
5. William Brady, M.D. (Public Member) (94-96)
6. Stephen L. Brischetto (93-95)
7. Ralph E. Bunch (Public Member) (94-96)
8. Thomas O. Carter (92-94)
9. C. Kevin Collins (Public Member) (93-95)
10. Ann L. Fisher (92-94)
11. Andrew P. Kerr (93-94)
12. Richard H. Kosterlitz, M.D. (Public Member) (93-94)
13. Phyllis Lee (Public Member) (92-94)
14. James Leigh (94-96)
15. Mark McCulloch (93-94)
16. Kurt Olsen (Public Member) (94-96)
17. Kathleen A. Pool (94-96)
18. Keith Raines (94-96)
19. Wilbert H. Randle, Jr. (Public Member) (93-95)
20. Julie Vacua (94-96)
21. Ronald L. Wade (93-95)
22. Steven T. Wax (93-95)
23. Morton A. Winkel (93-95)
24. Richard Yugler (94-96)

Region 6

1. Walter A. Barnes, Chair (93-95)
2. William G.Blair (92-94)
3. Mary Grimes (94-96)
4. Chalmers Jones (Public Member) (94-96)
5. Donald Upjohn (94-96)
6. Miles A. Ward (93-95)
7. Michael K. Wilkes (Public Member) (93-95)

TABLE OF OPINIONS

Volume 8 DB Rptr

Appearing in This Volume

(includes Supreme Court Stipulations and
Supreme Court decisions
as they appear in Advance Sheets
[indicated by **S Ct**])

E

F

H

J

K

L

M

O

P

R

S

W

TABLE OF CASES

Cited in Opinions

References are to Pages

TABLE OF DISCIPLINARY RULES AND STATUTES

Appearing in This Volume

TABLE OF RULES OF PROCEDURE (BR)

Appearing in This Volume

References are to Opinions and Pages

TABLE OF TRIAL PANEL/DISCIPLINARY BOARD MEMBERS

Appearing in This Volume

References are to Opinions

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-1
	)	
STEVEN R. BENNETT,	)	
	)	
Accused.	)	

Bar Counsel: Tina Stupasky, Esq.

Counsel for the Accused: None

Trial Panel: James Spickerman, Chair; Howard E. Speer; Nancie Fadeley, Public Member

Disposition: Violation of DR 6-101(B), DR 2-110(B)(2) and DR 1-103(C). 30 day suspension to be imposed when Accused is reinstated to active membership from current status as inactive.

Effective Date of Opinion: January 19, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of,	)	
	)	Case No. 92-1
STEVEN R. BENNETT,	)	
	)	TRIAL PANEL FINDINGS
Accused.	)	OF FACT AND CONCLUSION
	)	OF LAW

A formal complaint was filed herein against the Accused on or about December 7, 1992. On April 22, 1993, personal service was made upon the Accused of a certified copy of Notice to Answer and the Formal Complaint. The Accused at no time filed an Answer to the complaint nor did the Accused appear at the hearing set pursuant to BR. 2.4(h) and of which he was duly notified.

Pursuant to BR 5.8, the trial panel entered an order in the record finding the Accused in default and accordingly deemed the allegations in the formal complaint to be true. The trial panel, therefore, makes the following findings and conclusions of law:

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

A. The Accused violated DR 6-101(B) by failing to facilitate the administration and closure of an estate in a timely fashion and by failing to acknowledge and comply with requests from the Court as to the status of the probate.

B. The Accused violated DR 2-110(B)(2) for failing to withdraw as counsel for the personal representative after he ceased performing legal services on behalf of her and the estate.

C. The Accused violated DR 1-103(C) by failing to respond to letter from disciplinary counsel and necessitating a referral to the LPRC for an investigation and for failing to promptly respond to the LPRC investigator's request for response.

SANCTIONS

Pursuant to BR 5.8, the trial panel heard and considered evidence and legal authorities pertaining to the issue of sanction.

A brief statement of the facts of the case are necessary to address the issue of sanctions.

On May 21, 1986, the Accused was retained to represent the personal representative of the estate of Arthur Manly Knapp. The Accused proceeded with all initial steps to open the estate and on May 17, 1988, filed a first annual accounting. After that point, the Accused did little, if anything, on the estate. On September 13, 1989, a Circuit Judge requested an annual report or request for an extension of time. On November 6, 1989, the Accused indicated to the court that, although he was retiring from the practice of law, the annual report would be filed within ten (10) days. No report was ever tendered, nor did the accused ever further contact the court or withdraw as counsel for the personal representative. the court recontacted the personal representative in September of 1991 and she retained an attorney was obtained closure of the estate. Due to the delay, fiduciary returns were required to be filed for at least three years that would not have been necessary if the estate had been promptly closed.

The evidence indicated that, at some point after contact with the court in November of 1989, the Accused gave the personal representative her file and told her to get another attorney. The evidence was ambiguous as to the extent of delay that occurred after this point. The personal representative did not understand the necessity of the probate proceeding, and had previously cancelled the bond for the estate. The evidence further indicated that, after receiving the file, the personal representative contacted one attorney who insisted on a retainer she could not pay. Only after a communication from the court did she later contact the attorney who completed the estate. In sum, the evidence die indicate a substantial portion of the delay in the closing of the estate occurred after the file had been returned to the client and she was aware she should obtain substitute counsel.

The LPRC investigator wrote two letter to the Accused in January of 1992 to which the Accused did not respond. After contacting the Accused by telephone on January 28, 1992, the Accused advised that he would respond promptly but a response was not received until February 8, 1992.

In making a determination of sanctions, the trial panel looks to Oregon case law, as well as the American Bar Association Standards for Imposing Lawyer Discipline (ABA Standards). In re: Willer, 303 Or 241, 735 Pac. 2nd 594 (1987).

The ABA Standards call for the consideration of four factors:

(a) The ethical duty violated;

(b) The attorney's mental state, negligence, knowledge, or intent.

(c) The extent of the injury (whether actual or potential) caused by the attorney's misconduct; and

(d) The existence of aggravating or mitigating factors.

These factors as addressed as follows:

(1) Ethical Duty Violated.

The Standards state that the most important ethical duties are those obligations which a lawyer owes to a client. The Accused did not attend to the personal representative's affairs with promptness and diligence, Lawyers also must abide by statutory and procedural rules as officers of the court. Standards ar page 5. The Accused violated his duty to the court.

The Accused also violated his duty to the legal professional by failing to cooperate with the disciplinary counsel's office to the extent of not responding promptly to attempts to obtain a response from him. Standards at page 6. The Accused also failed to withdraw as attorney after he ceased performing legal services on behalf of the personal representative of the estate. Standards at page 6.

(2) Mental State.

The trial panel finds that with respect to not filing the annual accounting in the estate, the Accused acted knowingly. He corresponded with the court indicating that even though he was retiring from the practice of law, he would file the annual accounting and he did not do so. it is unclear as to when he turned over his file to a relative of the personal representative, but it is clear that some substantial delay occurred. The accused certainly was aware that when he had not notified the court of his withdrawal as attorney for the estate, nor notified the personal representative that he did not intend to act further as her attorney, it was a violation of these obligations.

The Accused's letter to the disciplinary counsel received February 8, 1992 corroborates the knowing nature of the Accused failure to fulfill his obligation to his client, the court, and to the bar investigator.

(3) Injury.

The trial panel finds that here has been some actual injury to the personal representative to a limited extent. There is no evidence that the Accused was paid for legal services that he did not render and, in fact, he returned a payment of $1,100.00 made to him. The record is unclear as to whether additional legal expense was caused by the Accused failure to conclude the estate or withdraw as counsel. The evidence does establish that accounting costs for the estate were increased in that fiduciary returns were required to be prepared for the years the estate remained unnecessarily open. Additionally, the evidence establishes that the personal representative suffered emotionally as of result of fear that the court action would be taken against her for the failure to file that annual reports.

In the panel's view, the evidence of the extent of injury to the client caused by actions or inactions of the Accused is ambiguous. As above stated, the record is unclear as to how much of the delay in completing the estate, and resulting increase in accounting costs occurred after the estate file was returned to the personal representative with the understanding that she was to find an attorney. Additionally, while the evidence shows the personal representative was distraught when she finally contacted the attorney who completed the estate, it is reasonable to attribute a portion of that concern to the fact she had cancelled the bond for the estate and had not taken action once she knew she had to obtain another attorney.

(4) Aggravating/Mitigating Circumstances.

The Standards 9.22(i).

The following section of Standards consider the factors of duty, mental state, actual injury and aggravating and mitigating factors:

4.42 suspension is generally appropriate when:

(a) a lawyer knowingly fails to provide services for a client and causes injury or potential injury to a client; or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

7.2 suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the professional, and causes injury or potential injury to a client, the public, or the legal system.

In aggravation, the Accused has substantial experience in the practice of law at the time he engaged in the misconduct.

In mitigation, the Accused has no prior disciplinary record. His eventual response to disciplinary counsel states his acknowledgment of violations. Consideration is given to the Accused's indication that his continued with the matter somewhat out of feeling of obligation to the family of the deceased, in that he had been a long time friend of the family.

As pointed out in the bar trial memorandum, the Oregon Supreme Court, where neglect of a legal matter is charged along, has imposed discipline ranging from public reprimand to a sixty (60) day suspension. See In re Odman, 297, Or 744 687 P2d 153 (1984), In re

Geurts[sic], 290 Or 241, 620 P2d 1373 (1980) and In re Holm, 285 Or 189, 590 P2d 233 (1979).

As stated by the bar, when neglect is combined with additional misconduct, the length of the suspension has increased in some cases. A review of those cases indicate, however, that the nature of the additional misconduct in the cited cases involved other ethical violations relating to an attorney's duty to his or her client. The additional violation in this case relates to the failure of the accused to promptly respond to inquiries from the bar and cooperate in the investigation. The essence of the violation of the duty to the client by not completing the probate or withdrawing as counsel is the same neglect that was involved in the accused leaving the practice of law and not responding to the bar inquiries. Based on the foregoing analysis, the trial panel imposes the following sanction:

The Accused is suspended from the practice of law for thirty (30) days. This suspension shall begin upon the Accused obtaining active status with the Oregon State Bar.

Dated this 16th day of December, 1993.

/s/ James W. Spickerman
James W. Spickerman
Trial Panel Chairperson

/s/ Howard Speer
Howard Speer
Lawyer Member

/s/ Nancy Fadeley
Nancy Fadeley
Lay Member

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-170
	)	
JACK R. HANNAM	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None Appointed

Disposition: Violation of DR 6-101(B). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: January 19, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 92-170
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
Jack R. Hannam,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused to accept a public reprimand is approved.

Dated this 19th day of January, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Sidney A. Galton
Sidney A. Galton
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-170
	)	
JACK R. HANNAM,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Jack R. Hannam, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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 is, and at all times mentioned herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily and after the opportunity to consult with counsel.

4.

On September 18, 1993, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary charges against the Accused alleging that the Accused violated DR 6-101(B).

5.

A formal complaint has not yet been filed against the Accused.

6.

The Accused admits that he violated DR 6-101(B). The Accused admits that in 1988 he undertook to represent the personal representative of the Estate of Elizabeth Dasso. The petition for probate was filed in October, 1988 and the Order Closing the Estate was signed on April 30, 1992.

7.

The Accused admits that between October, 1988 and April 30, 1992, he failed to file Annual Accountings or close the estate despite eight notices of delinquency from the court dated January 18, 1988, November 20, 1989, November 19, 1990, February 2, 1991, March 28, 1991, May 31, 1991, August 1, 1991 and February 21, 1992. These notices of delinquency referred to accountings and to the order approving the final accounting, and requested that the Accused submit these documents. On April 9, 1991, the probate court also rejected the final accounting the Accused had prepared for his client's signature for seven separate deficiencies. respectively. Finally, the Accused admits that he received a notice of court proceeding for failure to submit an order approving the final accounting dated February 21, 1992.

8.

The Accused cannot locate his client file relating to the Dasso estate because he has moved his office, nor does he recall what this file contains. The Accused does, however, admit that there were no factors beyond his control that caused his delay in filing the annual accounts or closing of the estate beyond those mentioned herein. There were no complications or complexities in the administration of the estate that delayed the Accused in closing it except that some of the family members would not waive notice and the state lost its file necessitating reapplication for the tax release.

9.

In June, 1992, the Accused suffered a stroke and has limited his law practice.

10.

The Accused was admitted to practice law in 1957 and has no record of previous disciplinary violations. His client suffered no monetary harm from the delay in the probate proceedings, but experienced frustration and anxiety and was required to miss one-half day of work to attend a show cause hearing.

11.

Pursuant to the above admissions and BR 3.6(c)(iii), the Accused agrees to accept a public reprimand for his violation of DR 6-101(B).

12.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved

by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of December, 1993.

/s/ Jack R. Hannam
Jack R. Hannam

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

I, Jack R. Hannam, 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/ Jack R. Hannam
Jack R. Hannam

Subscribed and sworn to before me this 23rd day of December, 1993.

/s/ Susan Fisher
Notary Public for Oregon
My commission expires: 11-17-95

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 16th day of December, 1993.

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

Subscribed and sworn to before me this 27th day of December, 1993.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-126
	)	
HAROLD R. DAUGHTERS	)	
	)	
Accused.	)	

Bar Counsel: Jens Schmidt, Esq.

Counsel for the Accused: None

Trial Panel: Thomas E. Wurtz, Chair; Jon Joseph, Nancie Fadeley, Public Member

Disposition: Violation of DR 2-110(B)(4) and DR 5-105(E). Stipulation for Discipline. 30 day suspension.

Effective Date of Opinion: March 19, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 92-126
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
HAROLD R. DAUGHTERS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on January 31, 1994, is approved upon the terms set forth therein.

Dated this 28th day of February, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Martha L. Walters
Martha L. Walters
Region 2 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 92-126
Complaint as to the Conduct of	)	
	)	STIPULATION FOR
HAROLD R. DAUGHTERS,	)	DISCIPLINE
	)	
Accused.	)	
	)	

Harold R. Daughters, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Harold R. Daughters, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

Pursuant to the authority of the State Professional Responsibility Board of the Bar, which authorized formal disciplinary proceedings against the Accused alleging that he violated DR 2-110(B)(4) and DR 5-105(E), the Bar filed its Formal Complaint on September 10, 1993. A copy of the Formal Complaint is attached hereto as Exhibit 1 and incorporated by reference herein. On or about October 15, 1993, the Accused filed an Answer, a copy of which is attached hereto as Exhibit 2 and incorporated by reference herein.

5.

The Formal Complaint alleges that, with respect to his representation of Debra and Brian Gordon in several criminal and civil matters, the Accused violated DR 2-110(B)(4) by continuing to represent the Gordons after they had discharged the Accused. The Formal Complaint also alleges that while representing the Gordons relative to the criminal matter, the Accused also represented a co-defendant in the same criminal matter and by so doing, he violated DR 5-105(E). While the Accused, in his Answer, denied that his conduct, as alleged, violated the above-referenced disciplinary rules, for purposes of this stipulation the Accused admits to the factual allegations in the Formal Complaint and stipulates that his conduct violated the disciplinary rules as set forth in the Formal Complaint.

6.

Although not a defense to the charges, mitigating circumstances were as follows: the termination of the Accused's services occurred by telephone, the day before one of the civil matters was scheduled for trial. The termination was an outgrowth of a disagreement between the Accused and the Gordons as to the Accused's fees for the various pending matters. Prior to ceasing work on the Gordons' behalf, the Accused wanted to make sure that the Gordons were

not prejudiced by his ceasing to work. A set-over was secured relative to the matter scheduled for trial the next day, and even though he knew that the Gordons had consulted with other counsel, he filed a Motion to Suppress with respect to one of the criminal matters. The Accused acknowledges that his withdrawal was required upon discharge, but notes that as he was paid a flat fee for his services, his continued activity on behalf of the clients was not based on a selfish motive, but solely to insure that his clients' interests were protected.

With respect to the conflict of interest violation, at the time the Accused agreed to represent both clients, search warrants had been executed, but no indictments had been returned. Based upon the search warrants and other discovery, the Accused assessed his representation of both potential co-defendants as being limited to filing a Motion to Suppress with no need to call either as a witness. During his initial discussions with both clients, he advised both that he could not represent either, if either decided to turn State's evidence. Both clients understood and agreed to the representation. The Accused acknowledges that a likely conflict of interest existed and that pursuant to DR 10-101(B), he should have recommended that each potential co-defendant seek independent legal advice to determine if consent should be given to the joint representation and that such recommendation should have been confirmed in writing. The Gordons actual injury was limited to having to obtain successor counsel, something which, as noted above, they did for other reasons.

7.

The Accused was issued a public reprimand in 1991 for violating DR 9-101(A) when, having lost a retainer check, but assuming that the check had been deposited in his client trust account, he paid a witness fee from an account which did not contain enough funds to cover the

check. The public reprimand also involved a violation of DR 2-110(A)(2), as the Accused ceased working on a legal matter without formally withdrawing. In re Daughters, 5 DB Rptr. 71 (1991). The Accused has no other prior disciplinary record.

8.

As a result of the Accused's misconduct, the Accused and the Bar agree that the Accused will be suspended from the practice of law for a period of 30 days.

9.

This Stipulation has been freely and voluntarily made by the Accused, as is evidenced by his verification below, with the knowledge and understanding that this Stipulation is subject to review by the Disciplinary Counsel and to approval by the State Professional Responsibility Board. If the State Professional Responsibility Board approves this Stipulation for Discipline, the parties agree that it will be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 31st day of January, 1994.

/s/ Harold R. Daughters
Harold R. Daughters

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

I, Harold R. Daughters, 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/ Harold R. Daughters
Harold R. Daughters

Subscribed and sworn to before me this 28th day of January, 1994.

/s/ Mary Baker
Notary Public for Oregon
My commission expires: 10-18-97

I, Lia Saroyan, 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 15th day of January, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 7th day of February, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-126
	)	
HAROLD R. DAUGHTERS,	)	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, Harold R. Daughters, 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 1991 and early 1992, the Accused represented Brian C. Gordon in two civil forfeiture cases, one pending in Josephine County, and the other in Coos County. He also represented Mr. Gordon in a criminal case pending in Coos County Circuit Court.

4.

In 1991 and early 1992, the Accused also represented Debra Gordon in a civil forfeiture case pending in Josephine County.

5.

On or about January 21, 1992, Mr. and Mrs. Gordon instructed the Accused to withdraw from all four of their cases. They further advised the Accused that they did not want to litigate the two upcoming Josephine County forfeiture cases.

6.

The Accused took no steps to withdraw from any of the four cases. On January 31, 1992 and February 3, 1992, he called the Josephine County District Attorney's office purporting to represent both Mr. and Mrs. Gordon. He asked that trial dates be set and attempted to negotiate settlements.

7.

At docket call on February 10, 1992, concerning the two Josephine County forfeiture cases, the Accused told the court that he represented Mr. Gordon. The Accused filed a motion to suppress documents in Mr. Gordon's Coos County criminal case on February 21, 1992.

8.

Despite being discharged by his clients in all four of the matters in which he was representing them, the Accused refused to withdraw.

9.

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

1. DR 2-110(B)(4) of the Code of Professional Responsibility.

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

10.

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

11.

On or about April 25, 1991, the Accused undertook to represent Brian C. Gordon and Mr. and Mrs. Gerald Spikes in connection with various criminal matters. No charges were then filed, but were anticipated. At that point, the facts of the case as set forth in the affidavit for a search warrant tended to indicate that Gordon and Spikes would be charged as co-conspirators in methamphetamine manufacturing and distribution.

12.

Mr. Gordon was so charged in October, 1991. Mr. Spikes was so charged in March, 1992. An actual or likely conflict of interest existed between Gordon and Spikes at all times during their representation by the Accused. To the extent consent was available to cure the conflict of interest, the Accused never undertook to make full written disclosure of the conflict to both clients or obtained their informed consent.

13.

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

1. 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 10th day of September, 1993.

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. 93-97
	)	
RONALD D. JONES,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(3), DR 7-102(A)(2) and DR 7-102(A)(5). Public Reprimand

Effective Date of Opinion: April 18, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-97
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
RONALD D. JONES,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar on February 24, 1994, and the Accused on March 7, 1994, is approved upon the terms set forth therein.

Dated this 18th day of April, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Arminda Brown
Arminda Brown
Region 3 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-97
	)	
RONALD D. JONES,	)	STIPULATION
	)	FOR DISCIPLINE
Accused.	)	
	)	

Ronald D. Jones, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Ronald D. Jones, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 25, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

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

4.

On September 18, 1993, the State Professional Responsibility Board (hereinafter "the Board") authorized the filing of a formal disciplinary complaint against the Accused, charging violations of DR 1-102(A)(3), DR 7-102(A)(2) and DR 7-102(A)(5).

5.

The facts upon which the formal disciplinary complaint was to be based are the following: The Accused represented Jim Klapatch in a marital dissolution matter. Jim did not have any money with which to pay attorneys fees, but persuaded the Accused to accept a mortgage on a piece of property Jim represented was jointly owned by him and his wife, Nancy. A mortgage was placed in the Accused's name in September of 1992. By October, 1992, the Accused realized that Jim's name was not on the deed, and therefore the mortgage was improper. Nancy Klapatch asserts and the Accused denies that she called him several times between December, 1992 and February, 1993, asking that the mortgage be removed.

6.

In December, 1992, Nancy complained to the Bar, alleging in part that the Accused had placed an illegal lien on her property. This complaint was forwarded to the Accused in February, 1993. On or about March 19, 1993, Nancy left a message at the Accused's office demanding that he remove the mortgage. On March 22, 1993, the Accused responded to the Bar's February letter, stating that "Neither Nancy nor Jim ever requested that I release the mortgage. If Jim will simply pay my fees up to date and they will prepare a deed of reconveyance I will gladly sign same."

7.

On March 23rd or 24th, 1993, the Accused released the mortgage.

8.

By failing to remove a mortgage for several months after he discovered it was improper, the Accused asserted a position known by him to lack legal authority and misrepresented his right to encumber the property.

9.

The Accused has a prior disciplinary record consisting of an admonition on August 25, 1992 for violating DR 6-101(B), and another admonition on October 12, 1993 for violating DR 4-101(B).

10.

Pursuant to the above admissions and BR 3.6(C)(3)[sic], the Accused agrees to accept a public reprimand for his violation of DR 1-102(A)(3) and DR 7-102(A)(2).

11.

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

EXECUTED this 7th day of March, 1994.

/s/ Ronald D. Jones
Ronald D. Jones

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

I, Ronald D. Jones, 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/ Ronald D. Jones
Ronald D. Jones

Subscribed and sworn to before me this 7th day of March, 1994.

/s/ Ellie Keck
Notary Public for Oregon
My commission expires: 10-16-95

I, Mary A. Cooper, 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 24th day of February, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 10th day of March, 1994.

/s/ Carol J. Krueger
Notary Public for Oregon
My commission expires: 4-15-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-164
	)	
STEVEN Y. ORCUTT,	)	
	)	
Accused.	)	

Bar Counsel: James M. Finn, Esq.

Counsel for the Accused: Steven R. Moore, Esq.

Trial Panel: None

Disposition: Violation of DR 1-102(A)(3) and ORS 9.527(4). Stipulation for Discipline. 60-day suspension.

Effective Date of Opinion: April 22, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-164
	)	
STEVEN Y. ORCUTT,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

THIS MATTER, coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on the 25th day of February, 1994, is approved upon the terms and conditions stated therein.

Dated this 3rd day of March, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Sidney A. Galton
Sidney A. Galton
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-164
	)	
STEVEN Y. ORCUTT,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Steven Y. Orcutt, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Steven Y. Orcutt, is and at all times mentioned herein was, an attorney at law duly admitted by the Oregon Supreme Court to the practice of law in this state and a member of the Oregon State Bar having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, after consultation with counsel and under the confidentiality restrictions of BR 3.6(h).

4.

On March 13, 1993, and on July 23, 1993, the State Professional Responsibility Board authorized the filing of a formal complaint against the Accused alleging violation of DR 1-102(A)(3) and ORS 9.527(4).

5.

On September 24, 1993, the Bar filed the above-described formal complaint, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein.

GENERAL FACTS

6.

The Accused formed a law partnership with Jeffrey A. Babener in or about October 1990.

7.

Between June and September, 1991, disputes arose between the Accused and Babener regarding the Accused's right to partnership draws. An additional dispute arose after Babener, without advance notice to the Accused, instructed the firm's accountant to revise the firm's 1990 partnership tax return in a manner which adversely affected the Accused financially.

8.

On October 14, 1991, once he became aware of Babener's instructions to the firm accountant, the Accused opened a bank account using the law firm's name and taxpayer identification number without informing Mr. Babener or the firm's bookkeeper of this account. The Accused was the only person authorized to sign on the account.

9.

Between October 14, 1991 and March 18, 1992, the Accused deposited payments from the clients that he had brought to the firm and for whom he had rendered legal services into the above-described account without disclosing to Babener or the firm's bookkeeper that he had received or deposited the payments. The Accused received and deposited into the separate account a total of $36,494.04.

10.

On or about December 12, 1991, the Accused and Babener agreed to dissolve their partnership on the terms set forth in the agreement that is attached hereto as Exhibit 2 and incorporated by reference herein. Before entering into this agreement, the Accused did not disclose to Babener that he had already collected a portion of the accounts receivable which were a subject of the agreement.

11.

Thereafter, the Accused did not disclose the bank account or his receipt of payments from clients to Babener or the bookkeeper until on or about March 18, 1992, when the bookkeeper contacted two of the Accused's clients whose payments appeared not to have been received. At this time, the bookkeeper learned from the clients that they had, in fact, paid their bills. On at least one previous occasion, the bookkeeper had inquired about the Accused's accounts receivable and he did not disclose his receipt of client payments.

VIOLATIONS

12.

The Accused admits that the conduct described herein violated DR 1-102(A)(3) and ORS 9.527(4).

MITIGATION

13.

The Accused did not spend any of the money he withheld until after his December 12, 1991 agreement with Babener. He understood that this agreement entitled him to these funds. Even after December 12, 1991, the Accused did not spend all of the withheld money so that he could pay his portion of the overhead expenses as agreed, but Babener and the Accused did not thereafter agree on the extent of this obligation.

14.

The Accused opened the separate bank account solely in response to actions which he believed were in violation of the partnership agreement, and as an offset against the expenses he had incurred or believed he would incur as a result of those violations.

15.

The Accused has cooperated fully with the Bar and did not understand the seriousness of his actions until the Supreme Court issued its opinions in In re Busby, 317 Or 213 (1993), decided on July 22, 1992 and In re Smith, 315 Or 260 (1992), decided December 31, 1992.

16.

The Accused sincerely regrets his conduct and has disclosed to Babener the amount and source of the funds placed in the separate account, but has been unable to settle the partnership dispute to date.

PRIOR DISCIPLINE

17.

The Accused has no record of disciplinary violations since his admission to the bar in 1975.

SANCTION

18.

Pursuant to the terms of this stipulation and BR 3.6(c)(iii) the Accused agrees to accept a 60 day suspension from the practice of law for his conduct, beginning March 1, 1994, or 30 days after final approval of this stipulation, should that occur after February 1, 1994.

19.

This Stipulation for Discipline will be submitted to the Disciplinary Board for consideration pursuant to BR 3.6(e).

EXECUTED this 25th day of February, 1994.

/s/ Steven Y. Orcutt
Steven Y. Orcutt

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

I, Steven Y. Orcutt, 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/ Steven Y. Orcutt
Steven Y. Orcutt

Subscribed and sworn to before me this 25th day of February, 1994.

/s/ Maria Sorrentino-Howze
Notary Public for Oregon
My commission expires: 10-10-95

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 the sanction specified herein was approved by the SPRB for submission to the Disciplinary Board on the 20th day of November, 1993.

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

Subscribed and sworn to before me this 1st day of March, 1994.

/s/ Carol J. Krueger
Notary Public for Oregon
My commission expires: 4-15-96

IN THE SUPREME COURT

FOR THE STATE OF OREGON

In Re:	
Complaint as to the Conduct of	Case No. 92-164
STEVEN Y. ORCUTT,	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, Steven Y. Orcutt, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3.

On or about October 1, 1990, the Accused formed a law partnership with Jeffrey A. Babener and Kimberlee Collins Morrow. Ms. Morrow withdrew from the partnership on or about June 15, 1991. The Accused and Mr. Babener formed a new law partnership under the

name of "Babener and Orcutt" effective approximately June 15, 1991. The parties did not enter into any written partnership agreements.

4.

Under the bookkeeping practices of Babener and Orcutt, all client billing and fee collection were handled by the firm bookkeeper.

5.

On or about October 14, 1991, the Accused opened a separate bank account at West One Bank using the firm's name and taxpayer I.D. number ("West One account"). The Accused was the only person authorized to sign on the West One account.

6.

Between October 14, 1991 and March 18, 1992, the Accused received payments of legal fees from clients for whom he had rendered legal services as a partner of Babener and Orcutt. The Accused did not disclose the receipt of these payments to Mr. Babener or to the firm bookkeeper. The Accused deposited approximately $36,494.04 of these payments into the West One account.

7.

On or about December 12, 1991, the Accused and Mr. Babener agreed that, retroactive to June 15, 1991, the Accused's receivables would be segregated from other Babener and Orcutt assets and that the Accused and Mr. Babener would agree at a later date to a division of those receivables between themselves. At the time they reached this agreement, the Accused knew that Mr. Babener was not aware that the Accused had already received approximately $17,411.57, in fees that he had deposited into the West One account.

8.

On or about January 2, 1992, the firm bookkeeper reviewed with the Accused the accounts receivable attributable to the clients for whom he had rendered legal services. The Accused did not disclose to her that some of these accounts had already been paid and that he had deposited the funds into the West One account.

9.

The Accused did not disclose the payment of the accounts receivable or the existence of the West One account to Mr. Babener or to the firm bookkeeper until on or about March 18, 1992, after the bookkeeper had contacted some of the clients whose accounts appeared to have been unpaid and learned that they had, in fact, already paid the Accused their outstanding fees.

10.

The Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and wilful deceit or misconduct in the legal profession in one or more of the following respects:

(a) by opening a separate bank account using the firm's name and taxpayer I.D. number without disclosing its existence to Mr. Babener or the firm bookkeeper;

(b) by failing to disclose to Mr. Babener or to the firm bookkeeper that he had received payments of legal fees between October 14, 1991 and March 18, 1992;

(c) by failing to disclose to Mr. Babener or the firm bookkeeper that he had deposited approximately $36,494.04 of these payments into the West One account; and

(d) by failing to disclose to Mr. Babener that he had already collected a portion of the accounts receivable at the time they struck their December 12, 1991 agreement.

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) of the Code of Professional Responsibility; and

2. ORS 9.527(4).

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

EXECUTED this 24th day of September, 1993.

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. 93-24
	)	
WILLIAM T. RHODES,	)	
	)	
Accused.	)	

Bar Counsel: Wayne S. Kraft, Esq.

Counsel for the Accused: None

Disposition: Violation of DR 2-110(B)(3) and DR 6-101(B). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: May 2, 1994

IN THE SUPREME COURT

FOR THE STATE OF OREGON

In Re:	)	
	)	No. 93-24
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
WILLIAM T. RHODES,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on April 28, 1994, is approved upon the terms set forth therein.

Dated this 2nd day of May, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Walter A. Barnes
Walter A. Barnes
Region 6 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-24
	)	
WILLIAM T. RHODES,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

William T. Rhodes, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, William T. Rhodes, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1979 , and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On September 21, 1993 at the direction of the State Professional Responsibility Board, the Bar initiated formal disciplinary proceedings by filing a Formal Complaint against the Accused and he was served with the Formal Complaint on October 21, 1993.

5.

A copy of the Formal Complaint is attached hereto as Exhibit 1 and by this reference incorporated herein.

6.

The Accused admits and the Bar stipulates to the facts set forth in the Formal Complaint as follows:

A. On or about March 15, 1989, the Accused undertook to represent a married couple in connection with the adoption of an infant girl who was born on April 5, 1989.

B. The biological mother of the child who lived in another state consented to the adoption on April 7, 1989, and the Accused filed a petition for adoption on behalf of the clients in Lane County Circuit Court on that date.

C. The Accused determined that it was advisable to obtain consent to the adoption from the biological father who lived in another state and undertook to locate him in order to obtain his consent. The Accused could not locate the biological father with the information given him by the biological mother.

D. On or about September 13, 1990, the Lane County Circuit Court, on its own motion, dismissed the adoption petition for want of prosecution.

E. On or about December 10, 1990, the Accused obtained the biological father's consent to the adoption. On or about May 3, 1991, the Accused filed a second petition for adoption on behalf of the clients.

F. On or about November 19, 1991, the Lane County Circuit Court requested that the Accused provide it with information as to progress of the adoption. The Accused did not provide the requested information.

G. On or about March 24, 1992 the Lane County Circuit Court notified the Accused that he had not responded to two previous letters and that the adoption would be dismissed for want of prosecution if the Accused did not respond to its previous correspondence in 15 days.

H. The clients thereafter terminated the Accused's representation and retained new counsel to conclude the adoption.

I. The Accused was a personal friend of the clients and, out of that friendship, he endeavored to assist them and contain the costs of the adoption proceedings to the fullest extent possible.

J. As the Accused encountered difficulties in locating the biological father and obtaining his consent and discovered other potential complications associated with out-of-state adoptions, he perceived a need to protect the clients from any information that might be emotionally difficult for them to accept. The Accused feared that one of the infant's birth relatives could successfully interfere with the adoption and this resulted in a psychological inability on the Accused's part to proceed with the adoption.

7.

The Accused further admits and the Bar stipulates to the following facts:

A. The Accused took no action on the adoption between December 10, 1990, when he obtained the biological father's consent, and May 3, 1991, when he filed the second petition for adoption except to review appellate court cases addressing the issue of notification of relatives. Thereafter, the Accused took no action to resolve the dilemma described in Paragraph 6(K).

B. The Accused failed adequately to communicate with the clients about the adoption and they suffered some anxiety and emotional distress as a result of the Accused's inaction.

8.

The Accused admits that failing to prosecute the first adoption and allowing it to be dismissed for want of prosecution; failing to take any action between December 10, 1990 and May 3, 1991; failing to complete the second adoption or provide information requested by the court; and failing adequately to communicate with the clients constituted neglect of a legal matter in violation of DR 6-101(B).

9.

The Accused admits that his psychological inability to proceed with the adoption and his relationship to the clients made it unreasonably difficult for him to carry out his employment by the clients effectively and that his failure to withdraw from representing them violated DR 2-110(B)(3).

10.

The following factors are relevant in mitigation of the sanction in this case:

A. The Accused knew the clients could not afford to pay the legal expenses associated with the adoption and charged no fee for his services. The Accused paid the court costs and half the cost of the home study because he strongly believed that the clients would be good parents.

B. The Accused believed that the delays in the adoption caused by his inaction would not be prejudicial to the clients' obtaining an adoption decree or successfully resisting potential future challenges to their parental rights.

C. During the 18 months after the Accused filed the first petition for adoption, his wife suffered post partum depression following the birth of her second child. This eventually culminated in a condition which resulted in the Accused's wife's complete confinement to bed for the first six months of 1990. The side effects of the Accused's wife's medication rendered her unable to provide even the most basic care for the Accused's infant and three year old daughter. The Accused was, thus, required to provide full time care for his wife and children and maintain his law practice simultaneously.

D. The Accused was aware of circumstances that made the adoptive mother emotionally vulnerable to difficulties or disappointments in the adoption proceeding and sought as her friend to shield her from information that might cause her disappointment or anxiety while he consulted with other lawyers in an effort to resolve his concerns about how to proceed on behalf of the clients with as little risk of later challenges to the adoption as possible.

E. The Accused is sincerely sorry for any anxiety or emotional distress his conduct may have caused the clients.

F. The Accused recognized that he was unable to decide upon a course of action to be pursued on behalf of the clients because of both his emotional involvement with them and his

own personal and emotional problems arising from his family circumstances and that he was suffering from indecision with respect to the adoption. As a result, the Accused sought and obtained counselling from the Catholic Church and from the Attorney Assistance Program of the PLF. He attended weekly meetings of the Attorney Assistance Program for six months.

11.

The Accused has previously been publicly reprimanded for failure to deposit client funds into a trust account, failure to maintain complete records of client funds in his possession and failure to render an appropriate accounting (DR 9-101(A) and former DR 9-101(B)(3) [current DR 9-101(C)(3)]). In re Rhodes, 5 DB Rptr 9 (1991).

12.

The Bar agrees to dismiss the charge of violation of DR 6-101 (A) (lack of competence) alleged in the Formal Complaint as unsupported by the facts.

13.

The Accused agrees to a public reprimand for his violation of DR 2-110(B)(3) and DR 6-101(B).

14.

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

EXECUTED this 28th day of April, 1994.

/s/ William T. Rhodes
William T. Rhodes

EXECUTED this 28th day of April, 1994.

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

I, William T. Rhodes, 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/ William T. Rhodes
William T. Rhodes

Subscribed and sworn to before me this 28th day of April, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

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 the sanction was approved by the SPRB for submission to the Disciplinary Board on the 19th day of March, 1994.

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

Subscribed and sworn to before me this 28th day of April, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

FOR THE STATE OF OREGON

In Re:	)	
	)	Case No. 93-24
Complaint as to the Conduct of	)	
	)	FORMAL COMPLAINT
WILLIAM T. RHODES,	)	
	)	
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, William T. Rhodes, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Clackamas, State of Oregon.

3.

On or about March 15, 1989, the Accused undertook representation of Charles and Bonnie Temple in connection with an open private adoption of an infant girl who was subsequently born on April 5, 1989. The birth mother provided her consent to

the adoption on April 7, 1989 and the Accused filed a petition for adoption on behalf of the Temples in Multnomah County Circuit Court on that date.

4.

The Accused determined that he was required to obtain a consent from the birth father, who was located out-of-state, and undertook to locate the birth father in order to obtain his consent. However, the Accused failed to timely or properly investigate the birth father's location.

5.

On or about September 13, 1990, the Multnomah County Circuit Court, on its own motion, dismissed the adoption petition due to inactivity on the matter.

6.

On or about December 10, 1990, the Accused obtained the birth father's consent to the adoption. On or about May 3, 1991, the Accused filed a second petition for adoption on behalf of the Temples.

7.

On or about November 19, 1991, the Multnomah County Circuit Court advised the Accused that it would dismiss the second petition for adoption due to inactivity on the matter.

8.

On or about March 15, 1992, the Multnomah County Circuit Court corresponded directly with the Temples to advise that it had not received requested information from Mr. Rhodes and that the petition would be dismissed for want of prosecution. The Temples terminated the Accused's representation of them and hired new counsel to conclude the adoption.

9.

By failing to prosecute the first petition for adoption, which the court dismissed on September 13, 1990, and by failing to prosecute the second petition for adoption, the Accused neglected a legal matter entrusted to him.

10.

By failing to respond to inquiries from the court in January and February 1992, resulting in the court's notifying the Temples that the second petition for adoption would be dismissed for want of prosecution, the Accused neglected a legal matter entrusted to him.

11.

The Accused had never handled an out-of-state adoption such as that contemplated by the Temples. Nevertheless, he did not consult or associate with counsel more experienced in this area of the law.

12.

The Accused failed to apply the legal knowledge, skill, thoroughness and preparation reasonably necessary to handle the Temples' adoption, and thereby failed to provide competent representation to a client.

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) of the Code of Professional Responsibility; and

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

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

14.

Incorporates by reference as fully set forth herein, paragraphs 1 through 8 and paragraph 11 of its First Cause of Complaint.

15.

The Accused was a personal friend of the Temples and, out of that friendship, he endeavored to assist them and contain the costs of the adoption proceedings to the fullest extent possible.

16.

As the Accused encountered difficulties in locating and obtaining the consent of the birth father and discovered other potential complications associated with out-of-state adoptions, he perceived a need to protect the Temples from any information that might be emotionally difficult for them to accept. The Accused feared that one of the infant's birth relatives could successfully interfere with the adoption, which resulted in an inability or paralysis on the Accused's part to proceed with the adoption.

17.

The Accused failed to withdraw from representing the Temples when his mental condition rendered it unreasonably difficult for him to carry out the employment effectively.

18.

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

1. DR 2-110(B)(3) of the Code of Professional Responsibility.

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

EXECUTED this 21st day of September, 1993.

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. 92-85
	)	
FRANK J. WONG,	)	
	)	
Accused.	)	

Bar Counsel: Randall Duncan, Esq.

Counsel for the Accused: None

Trial Panel: Scott Sorenson-Jolink, Chair; Andrew Kerr; Brian Dooney, Public Member

Disposition: Violation of DR 6-101(B), DR 7-101(A)(2) and DR 1-103(C). Public Reprimand

Effective Date of Opinion: April 7, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 92-85
Complaint as to the Conduct of	)	
	)	OPINION
FRANK J. WONG,	)	
	)	
Accused.	)	
	)	

THIS MATTER came on regularly for hearing on the 25th of January, 1994, on the stipulated facts as submitted by the parties regarding violations of DR 6-lOl(B) and DR 7-101(A)(2) and DR 1-103[(C)] of the Code of Professional Responsibility.

Present were the Panel, Martha Hicks, Counsel to the Bar Association, Randall Duncan, representing the Bar Association; and Frank J. Wong, the Accused, appearing on his own behalf.

Testimony was taken only regarding sanctions. Affidavits from the Complainant, from Assistant Disciplinary Counsel Hicks, from attorneys Donald P. Ross and John T. Wittrock were offered. In addition, the Panel reviewed a summary of Mr. Wong's oral presentation, heard his opening statement, and extensive personal statement, examined him as a witness, and allowed for cross-examination by the Bar Association. Closing statements were given and the hearing was adjourned. The Panel caused and does hereby issue its opinion:

FINDINGS AND OPINION

Given that the parties have stipulated to the facts in the case and that by doing so the accused, Frank J. Wong, has stipulated to violations of the Disciplinary Rules, we focus on sanctions for those violations.

We find that, in addition to the stipulated facts, Mr. Wong is an attorney of some thirteen years of practice and has had no previous disciplinary problems. His two months of failure to respond to Mrs. Jardine were obviously a cause of great remorse on his part. He clearly and mistakenly intended to continue attempting to finish a tax return for his client, a return for which he had preserved the client's rights by filing an extension. The extent of actual or potential injury caused by his misconduct was not known exactly, but, in fact, appears to be minimal.

We distinguish his situation from that in In Re Arbuckle, [308] OR 135, 775 P2d 832 (1989) because Mr. Wong is participating in this process, is expressing strong remorse at having neglected his client's case, and expressed on the record a clear and strong concern for all attorneys to participate in Bar Association activities and to observe the code of conduct with extreme care, to preserve the public trust in the profession. He was articulate in portraying this as an isolated incident.

We further find that his negligent behavior regarding completing his client's tax return does not rise to the level of intentionally failing to carry out a contract of employment. In fact, his intent was to eontinue to serve her. His efforts, by filing an extension, although laudable, were not enough to prevent the neglect because he failed to follow through thereafter. We found his behavior to be negligent and not to be intentional. It should also be noted that no fee was paid for whatever he did accomplish for the client.

The Oregon State Bar suggested a 30 to 60 day suspension was appropriate and the Accused sought community service as an appropriate penalty. We find the latter to be outside statutory authority and the former too severe.

We hold that a public reprimand of Frank J. Wong be issued by the Oregon State Bar.

DATED this 24th day of February, 1994.

/s/ Scott Sorenson-Jolink
Scott Sorenson-Jolink

/s/ Andrew P. Kerr
Andrew P. Kerr

/s/ Brian Dooney
Brian Dooney

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-72
	)	
LINDA J. TONER	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: Stephen R. Moore, Esq.

Trial Panel: None

Disposition: Violation of DR 3-101(A), DR 3-102, DR 5-101(A), DR 5-105(E) and DR 5-108(A). Stipulation for Discipline. 30 day suspension.

Effective Date of Opinion: June 18, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 93-72
	)	
LINDA J. TONER,	)	ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.	)	

THIS MATTER having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on May 11, 1994, is approved upon the terms set forth therein.

Dated this 3rd day of June, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Douglas E. Kaufman
Douglas E. Kaufman
Region 4 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-72
	)	
LINDA J. TONER,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Linda J. Toner, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Linda J. Toner, 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 her office and place of business in Washington County, State of Oregon.

3.

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

4.

On September 18, 1993, the State Professional Responsibility Board (hereinafter "the Board") directed that formal disciplinary proceedings be instituted against the Accused alleging that she violated DR 3-101(A), DR 3-102, DR 5-101(A), DR 5-105(E) and DR 5-108(A).

5.

The Accused admits that on or about August 13, 1992, she entered into a written retainer agreement with Ray Warren and Universal Living Trusts, Inc., a corporation engaged in the sale of revocable living trusts by non-lawyers to members of the public (hereafter "ULT"). A copy of the retainer agreement is attached hereto as Exhibit 1 and incorporated by reference herein.

6.

The Accused admits that she rented office space at the office of ULT. For the retainer paid to her, she agreed to review living trusts and related documents for the customers of ULT, and to use only the forms drafted and supplied by ULT for this legal work and all trusts. The Accused further admits that at all relevant times she had an attorney/client relationship with ULT and that ULT maintained within its office the files of the customers it referred to the Accused.

7.

On December 22, 1993, the Circuit Court of Marion County entered an Injunction against ULT (Case No. 92C10911, Oregon State Bar v. Universal Living Trusts, Ltd.) enjoining it from engaging in the practice of law. The Accused admits that during the course of her employment, ULT was engaged in activities that constituted the practice of law by non-lawyers and that she aided ULT in the practice of law in violation of DR 3-101(A) as set forth in the Injunction.

8.

The Accused admits that she had an attorney/client relationship with the customers of ULT, and that within that relationship, the following conflicts existed:

(A) The Accused had financial, business and personal interests in encouraging ULT's customers to purchase living trusts because of her attorney/client relationship with ULT, because her retainer from ULT was to increase as the number of trusts sold by the agents of ULT increased, she was required to use the forms drafted and prepared by ULT, and ULT was obligated to refer its customers exclusively to her. Because these financial, business and personal interests were likely to affect the exercise of her professional judgment on behalf of the clients referred by ULT, full disclosure of these interests was required by DR 5-101(A).

(B) The objective business interests of ULT and the interests of some or all of its customers were adverse, giving rise to a likely conflict of interest between these clients of the Accused, and requiring full disclosure of this conflict by DR 5-105(E).

(C) The Accused's sole compensation for representing the customers of ULT was paid by ULT, requiring full disclosure of the potential adverse impact of this compensation arrangement to the ULT customers under DR 5-108(A).

9.

The Accused admits that the written disclosure to the clients used by ULT, and attached hereto as Exhibit 2, was insufficient for the purposes of full disclosure under DR 10-101(B), and she therefore failed to make full disclosure of all these interests to her individual clients before undertaking to represent them, in violation of DR 5-101(A), DR 5-105(E) and DR 5-108(A).

10.

Pursuant to the above admissions and BR 3.6(c)(iii), the Accused agrees to accept a 30-day suspension for her violation of DR 3-101(A), DR 5-101(A), DR 5-105(E) and DR 5-108(A). The term of suspension shall begin 15 days after this stipulation is approved by the Disciplinary Board of the Oregon State Bar. The Bar agrees to dismiss the DR 3-102(A) charge now authorized for prosecution in this matter.

11.

In mitigation, the Accused offers the following:

(A) At the time she was retained by ULT the Accused had less than two years experience in the practice of law.

(B) There was no other more experienced lawyer in the offices of ULT available to consult with or advise the Accused in her practice.

(C) The Accused consulted with an attorney in the Bar's General Counsel's Office and was advised that reviewing living trusts and related documents for a non-lawyer who sold living trusts was not per se assisting a non-lawyer in the practice of law.

(D) The Accused relied upon ULT's representations that its agents were only providing estate planning information to their customers that was otherwise freely available to the public and that all questions regarding legal issues were to be referred to the Accused.

(E) The Accused reviewed and revised slightly ULT's existing disclosure statement in order to properly disclose the Accused's conflicts of interest. The Accused believed that the disclosure statement, attached hereto as Exhibit 2, was sufficient for this purpose.

(F) The Accused retained the right to reject any application for a living trust, even after purchase, if she believed that a trust was not needed under Oregon law, for financial reasons, or because of the mental and physical health of the applicant, and in fact, on several occasions rejected applications for these reasons and had ULT refund all payments.

(G) The Accused also retained the right to modify, change or replace ULT's forms as necessary to conform with legal requirements despite the terms of her retainer agreement, and did replace the documents that were in use.

(H) The Accused also voluntarily ceased representing ULT and its clients after only five months of employment and almost a year before ULT was enjoined from continuing business.

12.

The Accused has no prior record of reprimand, suspension or disbarment since she was admitted to the Bar in 1991.

13.

This Stipulation for Discipline is subject to review by 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 the terms of BR 3.6(e).

EXECUTED this 11th day of May, 1994 by Linda J. Toner and this 24th day of May, 1994 by Jeffrey D. Sapiro for the Oregon State Bar.

/s/ Linda J. Toner
Linda J. Toner

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

I, Linda J. Toner, 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/ Linda J. Toner
Linda J. Toner

Subscribed and sworn to before me this 11th day of May, 1994.

/s/ Rhonda M. Pengra
Notary Public for Oregon
My commission expires: 6-29-96

I, Jeffrey D. Sapiro, 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 the sanction was approved by the SPRB for submission to the Disciplinary Board on the 16th day of December, 1993.

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

Subscribed and sworn to before me this 24th day of May, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 93-180 & 93-193
	)	
VERNON L. RICHARDS,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 5-105(A), DR 5-105(E) and 5-108(A)(1). Stipulation for Discipline. Public Reprimand

Effective Date of Opinion: June 21, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 93-180; 93-193
	)	
VERNON L. RICHARDS,	)	ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.	)	

THIS MATTER having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on June 2, 1994, is approved upon the terms set forth therein.

Dated this 21st day of June, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Walter A. Barnes
Walter A. Barnes
Region 6 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 93-180; 93-193
	)	
VERNON L. RICHARDS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Vernon L. Richards, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Vernon L. Richards, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1969, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

At its March 19, 1994 meeting, the State Professional Responsibility Board (SPRB) authorized the filing of a formal complaint alleging that the Accused violated former DR 5-105(A) in connection with his preparation of a will for Ilse Madison (Case No. 93-180). The SPRB also authorized prosecution of an allegation that the Accused violated DR 5-105(E) and DR 5-108(A)(1) of the Code of Professional Responsibility in connection with his representation of Pauline Wagner, James Buckland, Harvey and Marjorie Stines and Gary Kadrmas (Case No. 93-193). The SPRB directed consolidation of the matters for prosecution.

5.

The circumstances of the Ilse Madison matter were the following: In 1984, Ilse Madison and her husband, Eugene Madison, retained the Accused to write a joint will for them. The joint will split the couple's assets between their children from prior marriages and bound the surviving testator not to change the terms of the will after the death of the other. Eugene died in May of 1988. Thereafter, in August, 1988, Ilse Madison asked the Accused to prepare a new will. The Accused did not remember drafting the 1984 will when Ilse asked him to draft a new one. He did as she requested, changing the designated split between the children in favor of her own children and changing the personal representative. The Accused's representation of Ilse in 1988 constituted a former client conflict of interest in that it was significantly related to the earlier representation of Ilse and Eugene in 1984. The Accused did not (and could not) receive Eugene's consent to this later representation because Eugene was deceased.

6.

The circumstances of the Wagner/Buckland matter were the following: In 1992 and 1993, the Accused defended the owners of several adjoining pieces of real property against an action to establish a utility access. A potential conflict existed between all of the Accused's clients in that the plaintiff, if successful, would be entitled to access across one of his client's property, thereby rendering their objective interests adverse. The Accused failed to obtain consent after full disclosure from each of his current clients, and therefore violated DR 5-105(E).

7.

One of the Accused's clients, James Buckland, could not be located. Mr. Buckland's cousin, Randy Wagner (who had no recorded interest in the property over which the easement might run), retained the Accused to represent Mr. Buckland's interests and assumed responsibility for the legal fees associated with the law suit. Mr. Buckland was not initially contacted by the Accused concerning this arrangement. By accepting legal fees from someone other than his client, the Accused violated DR 5-108(A)(1), although he later obtained an execution of quitclaim deed by Buckland to Pauline Wagner and a power of attorney from Pauline Wagner allowing Randy Wagner to direct the lawsuit.

8.

The Accused admits that his conduct with respect to the above matters violated former DR 5-105(A), DR 5-105(E), and DR 5-108(A)(1).

9.

The Accused's prior disciplinary record consists of one previous admonition in 1990 for violating DR 7-102(A)(7).

10.

In mitigation, the Accused's conduct in the Ilse Madison matter was unintentional. The clients in the Wagner/Buckland matter did not suffer any injury.

11.

In light of the violations admitted herein, the Accused agrees to accept a public reprimand.

12.

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

EXECUTED this 2nd day of June, 1994.

/s/ Vernon L. Richards
Vernon L. Richards

EXECUTED this 1st day of June, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

I, Vernon L. Richards, 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/ Vernon L. Richards
Vernon L. Richards

Subscribed and sworn to before me this 3rd day of June, 1994.

/s/ Tracy L. Crawford
Notary Public for Oregon
My commission expires: 11-29-94

I, Mary A. Cooper, 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 19th day of March, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 1st day of June, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

*

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 92-96; 93-22;
	)	93-51
	)	
STEPHEN P. RIEDLINGER,	)	
	)	
Accused.	)	

Bar Counsel: Carl W. Hopp, Esq.

Counsel for the Accused: Thomas H. Tongue, Jr., Esq.

Disciplinary Board: Myer Avedovech, Chairperson; Thomas C. Peachey; Karen L. Franke, Public Member

Disposition: Violation of DR 2-110(A)(2), DR 2-110(C), DR 5-105(C), and DR 7-110(B). 30 Day Suspension.

Effective Date of Opinion: August 15, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 92-96; 93-22; 93-51
	)	
STEPHEN P. RIEDLINGER,	)	TRIAL PANEL DECISION
	)	
Accused.	)	
	)	

This matter came before the Trial Panel of the Disciplinary Board for trial on May 25 and 26, 1994. The Oregon State Bar appeared through its disciplinary counsel, Lia Saroyan, and trial counsel, Carl W. Hopp Jr. The accused appeared in person and through his attorney, Thomas H. Tongue. The Bar's formal complaint contains three allegations of violations of the code of professional responsibility. The trial panel's findings and conclusions are as follows:

WITHDRAWING FROM REPRESENTATION OF A CLIENT IMMEDIATELY PRIOR TO TRIAL AND FAILING TO TAKE REASONABLE STEPS TO AVOID FORESEEABLY PREJUDICING CLIENT'S RIGHTS IN VIOLATION OF DR 2-110(C) AND DR 2-110(A)(2)

These allegations are set forth in paragraphs one through seven in the formal complaint filed herein.

The panel finds that the accused was retained to represent Gary Anderson in a Dissolution matter. That at the time of his retention, Mr. Anderson was incarcerated in the Union County Jail.

That the accused was contacted by Mr. Anderson's mother to see if he would represent Mr. Anderson. The accused indicated that he would visit him in jail to make arrangements with him for the representation in the dissolution matter.

In a letter dated December 11, 1991, to the accused from his client, he was directed to send all communication to EOCC and not to send any further communications to his mother, Mary Lou Anderson.

On January 2, 1992, the accused received a phone message from his client's mother which stated: "no satisfaction, no more bills!, it's over", and to please return her call. The accused did not return the call or verify the exact meaning of this phone message.

The panel finds that the accused was hired by Mr. Anderson and that only Mr. Anderson could terminate his services. That the accused in no way attempted to verify or get a clarification of what was meant by the January 2, 1992, phone message left by Mary Lou Anderson.

On February 4, 1992, the accused filed a motion to withdraw as Mr. Anderson's counsel alleging that Mr. Anderson no longer desired his service. The motion filed by the accused, was sent to Mary Lou's address in Washington, rather than to the accused as directed. This motion was filed eight days prior to the trial scheduled for February 12, 1992. Mr. Anderson did not learn that the accused had withdrawn from his representation until after the February 12, 1992 hearing. That the motion was not actually heard until February 19, 1992, signed Nun Pro Tunc February 12, 1992, by Judge Valentine.

The panel finds that Mr. Anderson was taking a hard line in the resolution of his dissolution by demanding his day in court. The accused did not, in his motion to withdraw as counsel of record, make any allegation that his client was maintaining an untenable and unrealistic position, and that he - could not continue to represent him due to his client's demands.

A default was entered on February 12, 1992, against Mr. Anderson as Mr. Anderson nor the accused appeared. All assets of this short term marriage regardless of ownership at the time of the marriage or appropriate distribution were awarded to Mrs. Anderson.

The accused maintained that there was no harm to Mr. Anderson due to the Judge's position in pretrial matters and that even if he had been there the result would have been the same. However, the panel finds that there was harm or potential harm in that Mr. Anderson was not allowed his day in court to present his side of the case. The panel finds based on Judge Valentine's testimony, that under normal circumstances, the position taken by Mr. Anderson was a realistic and valid position which would have required a hearing.

The panel having found that the accused undertook the representation of Mr. Anderson and being employed by Mr. Anderson; that the accused was to correspond directly with Mr. Anderson and not with Mary Lou Anderson; that Mr. Anderson did not terminate the accused nor was the position taken by Mr. Anderson in normal circumstance unrealistic or inappropriate; nor were there any grounds specified for mandatory or permissive to withdraw under DR 2-llO(B) or DR 2-llO(C).

The accused admits violating DR 2-110(A)(2).

The panel finds there is clear and convincing evidence of violation DR 2-110(C) and DR 2-110(A)(2) of the code of professional responsibility which prohibits the accused attorney from withdrawing without taking reasonable steps to avoid foreseeable prejudice and that there was no permissive withdrawal.

IMPROPER EX PARTE COMMUNICATIONS WITH THE JUDGE IN VIOLATION OF DR 7-110(B)

In litigation referred to in the matter of Warnock and Warnock, a dissolution matter, the accused is charged in the second cause of complaint by the Oregon State Bar of violating DR 7-110(B), the code of professional responsibility by communicating on the merits of the Warnock litigation to the trial judge without giving prompt written notice or upon giving adequate oral notice to opposing counsel. These allegations are set forth in paragraphs eight through fourteen of the formal complaint.

The panel finds that in the original petition filed by the accused on the behalf of Diane Warnock for Dissolution, the Petition sought joint custody of the children. This was in July of 1992. Prior to September 18, 1992, the accused was advised that Stephen Joseph had been retained to represent Mr. Warnock. That between the time of the filing of the petition - in July and the September 18th, the parties were sharing custody of the children based upon their work schedules. This was close to joint custody. The panel finds that on or about September 18, 1992, which was a Friday, the accused filed six motions and orders relative to the Warnock dissolution. Among those was a motion for Temporary Custody Ex Parte and an Order for Custody Ex Parte.

The panel further finds that the accused knew that Joseph, the opposing attorney was out-of-town and would not be able to appear.

The panel finds that copies of the six motions and orders were not hand delivered to opposing counsel's office on September 18, 1992, but rather mailed on September 18, 1992. That in the mailing the motion for Temporary Custody Ex Parte and an Order of Temporary Custody Ex Parte had not been included.

The panel finds that contemporaneously with the filing of the motions and order, the accused appeared on September 18, 1992, before Judge Eric Valentine, and obtained Judge Valentine's signature on the order awarding custody of the children to the accused client ex parte.

The panel finds that on September 18, 1992, that the accused did not inform Judge Valentine o£ the joint custody arrangement that had been going on for a number of months prior to this date nor did he inform Judge Valentine that the accused client had already taken the children the day before and was enrolling them in a different school district.

The panel finds that on Monday September 21, 1992, the accused talked with opposing counsel, Mr. Joseph, and agreed that if they could have a hearing at that time, they would have a statement in the order that no prejudice would be set by either party due to the ex parte temporary custody order. The panel further finds that on September 23, 1992, the matter of the ex parte order for custody of the minor children had not been resolved as far as opposing counsel, Joseph, was concerned. (Exhibit 31 clearly states opposing counsel Joseph's position to Mr. Riedlinger.)

The accused admits that he violated DR 7-110(B) in his answer paragraph VII.

The panel finds by clear and convincing evidence that DR 7-110(B) of the violation of the code of professional responsibility which prohibits improper ex parte communications with the judge on the merits of pending litigation.

FAILING TO FULLY DISCLOSE TO AND OBTAIN THE INFORMED CONSENT FROM A CURRENT AND A FORMER CLIENT WHOSE INTERESTS WERE ACTUALLY OR LIKELY ADVERSE VIOLATION OF DR 5-105(C)

FAILING TO FULLY DISCLOSE TO AND OBTAIN THE INFORMED CONSENT FROM A CURRENT AND A FORMER CLIENT WHOSE INTERESTS WERE ACTUALLY OR LIKELY ADVERSE VIOLATION OF DR 5-105(C)

The bar alleges on its third cause of complaint violation by the accused of DR 5-105(C) failing to fully disclose to and - obtain the informed consent from a former client whose interests were actually or likely adverse. These allegations are set forth in paragraphs fifteen through twenty-three of the formal complaint.

The accused admits that he violated this rule as alleged in his answer paragraph X.

DISPOSITION

The admissions by the accused of most of alleged violations of the code of professional responsibility; the trial panel's primary role is to determine the appropriate sanction for both the admitted and the disputed violations. The panel has reviewed the ABA standards for imposing lawyer sanction and Oregon Case Law that was provided and referred to by both the State Bar and the accused.

The ABA Standards require analyzing the facts presented in light of four factors; the ethical duty violated; the lawyers mental state at the time of the violation; the potential harm incurred as a result of the attorney's misconduct; and the existence of aggravating or mitigating factors.

The panel concludes that the accused admits that he improperly withdrew from representing Mr. Anderson and in so doing violated a duty owed to the profession. The accused also admitted that he violated a duty with respect to the current client, Green, and former client, Ash, by undertaking representing Green in a matter which he would have been called upon to impeach a former client.

He further admits that he violated the duties of the legal system when he contacted Judge Valentine without giving opposing counsel, Joseph, appropriate notice.

The panel finds by clear and convincing evidence that the accused did not take responsibility for any of his actions but rather had an excuse or blamed the errors on someone else in his office. The panel further finds by clear and convincing evidence that there was either actual or potential harm in each of the three instances referred to in this decision.

The panel finds that the accused acted with knowledge, when the accused acts with a conscience awareness of the nature or tenet circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result.

The panel finds that the accused conduct in those violations admitted by the accused and those violations which the panel found, breached his duty to conduct himself in compliance with the disciplinary rules. The accused conduct was either extremely careless or was conduct which exhibited disregard for the disciplinary rules.

It is the decision of the trial panel that the accused be suspended from the practice of law for a period of thirty days.

DATED this 22nd day of July, 1994.

/s/ Myer Avedovich
Myer Avedovich, OSB# 65007

/s/ Thomas C. Peachey
Thomas C. Peachey

/s/ Karen L. Franke
Karen L. Franke

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-159
	)	
GEORGE W. SOHL,	)	
	)	
Accused.	)	

Bar Counsel: Richard D. Adams, Esq.

Counsel for the Accused: None

Disciplinary Board: Glenn Munsell, Chair; Arminda Brown; Leslie Hall, public member.

Disposition: Violation of DR 6-101(B), DR 9-101(C)(4) and DR 1-103(C). Stipulation for Discipline. 30 Day Suspension.

Effective Date of Opinion: August 16, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 93-159
	)	
GEORGE W. SOHL	)	ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.	)	
	)	

THIS MATTER having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on August 5, 1994, is approve upon the terms set forth therein. The thirty (30) day suspension is to be effective September 2, 1994.

Dated this 16th day of August, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Arminda J. Brown
Arminda J. Brown
Region 3 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-159
	)	
GEORGE W. SOHL,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

George W. Sohl, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, George W. Sohl, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

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

4.

On January 15, 1994, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he violated DR 6-101(B), DR 9-101(C)(4) (formerly 9-101(B)(4)) and DR 1-103(C), all in connection with the same matter. For purposes of this stipulation, the Accused and the Bar agree to the facts and disciplinary rule violations alleged in the formal complaint, a true and correct copy of which is attached as Exhibit A.

5.

Although not a defense to the charges, mitigating circumstances present in this case include health problems and a cooperative attitude toward these proceedings.

6.

The Accused and the Bar agree that in fashioning the appropriate sanction, the disciplinary board should consider the ABA Standards and Oregon case law. The Standards require an analysis of the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury, and existence of aggravating or mitigating factors. In this case, the Accused violated duties to his clients to act diligently. He also violated his duty to the profession to respond to inquiries from the Bar. The Accused's mental state with respect to all violations was negligent. It appears that his client may, as a theoretical matter have suffered some injury by failing to have a request for reconsideration timely filed (recognizing, however, that as a practical matter such requests are rarely granted. The Professional Liability Fund has turned down the client's malpractice claim based on insufficient evidence of injury.) Aggravating and mitigating factors which may apply to this case are the

following: in aggravation, the Accused has a prior disciplinary offense in that he has been admonished before for violating DR 6-101(B), and he has substantial experience in the practice of law. In mitigation, the Accused was experiencing health problems at the time of his conduct and has, since the filing of this complaint, demonstrated a cooperative attitude toward the proceedings.

The Standards provide that a suspension or public reprimand is generally appropriate when a lawyer is negligent, does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. With respect to failure to respond to the Bar, a public reprimand is the appropriate sanction in most cases.

7.

The following Oregon Supreme Court decisions appear to be on point: In re Loew, 292 Or 806, 742 P2d 1171 (1982) [30-day suspension for failing to file appellant brief and misrepresentations to client about status of case]; In re Paauwe, 294 Or 171, 654 P2d 1117 (1982) [30-day suspension for failing to file appellate brief]; In re Guerts, 290 Or 241, 620 P2d 1373 (1980) [30-day suspension for neglecting personal injury matter for two years and failing to respond to Bar inquiry]. In light of the Accused's previous admonition, a short suspension would be appropriate.

8.

The Accused was previously admonished for neglect of a legal matter in November of 1991.

9.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused should receive a 30-day suspension.

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

EXECUTED this 1st day of August, 1994.

/s/ George W. Sohl
George W. Sohl

EXECUTED this 5th day of August, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

I, George W. Sohl, 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/ George W. Sohl
George W. Sohl

Subscribed and sworn to before me this 29th day of July, 1994.

/s/ Steve Chase
Notary Public for Oregon
My commission expires: 3-14-97

I, Mary A. Cooper, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for Discipline and that it was approved by the SPRB for submission to the Disciplinary Board on the 5th day of August, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 5th day of August, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-159
	)	
GEORGE W. SOHL,	)	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, George W. Sohl, 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 Jackson, State of Oregon.

3.

On or about November 4, 1991, the Accused agreed to represented Philip Pike (hereinafter "Pike") in pursuing workers' compensation benefits. On or about January 2, 1992,

the Accused received, on Pike's behalf, a notice of closure denying benefits and knew that a request for reconsideration needed to be filed by June 30, 1992.

4.

Between January 2 and June 30, 1992, Pike called the Accused's office numerous times seeking information as to the status of his claim.

5.

The Accused failed to file a request for reconsideration on Pike's behalf within the applicable statute of limitations. The Accused failed to return Pike's telephone calls. At no time did the Accused advise Pike that he would not be assisting Pike in his legal matter or that Pike needed to seek the assistance of other counsel.

6.

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

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

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

7.

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

8.

From mid-June 1992 through March 22, 1993 Pike and successor counsel Michael Balocca (hereinafter "Balocca") made repeated verbal and written requests of the Accused for the return of Pike's file to one or both of them.

9.

The Accused failed to return Pike's file despite numerous requests.

10.

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(B)(4) of the Code of Professional Responsibility

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

11.

Incorporates by reference as fully set forth herein, paragraphs 1 through 5 of its First Cause of Complaint and paragraph 8 of its Second Cause of Complaint.

12.

On or about May 21, 1993, Disciplinary Counsel's Office received a letter from successor counsel Balocca relative to the Accused's handling of Pike's legal matter.

13.

On or about May 25, 1993, Balocca's letter was forwarded to the Accused with a request that he tender an explanation to the Bar on or before June 15, 1993. The Accused was advised that he could seek an extension of time in which to tender a response and that a failure to respond constituted a violation of DR 1-103(C).

14.

The Accused failed to tender a response nor did he seek an extension of time in which to file one.

15.

On or about June 16, 1993, Disciplinary Counsel's Office sent a follow-up letter requesting that the Accused respond by June 23, 1993. The Accused tendered a response.

16.

From August 10, 1993 until September 21, 1993, Disciplinary Counsel sent three letters to the Accused seeking additional information. The Accused responded to none of those letters. On October 1, 1993, Disciplinary Counsel's Office referred Balocca's complaint to the Jackson/Josephine County LPRC for an investigation.

17.

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

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

WHEREFORE, the Oregon State Bar demands that the Accused make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged

herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

EXECUTED this 28th day of February, 1994.

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. 93-38; 93-47
	)	
GERALD J. SCANNELL, JR.	)	
	)	
Accused.	)	

Bar Counsel: David Orf, Esq.

Counsel for the Accused: W.V. Deatherage, Esq.

Disciplinary Board: John B. Trew, Chairperson; Steven D. Brown; Leslie K. Hall, Public Member

Disposition: Violation of DR 4-101(B); DR 5-105(C). Public reprimand.

Effective Date of Opinion: August 24, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-38; 93-47
Complaint as to the Conduct of	)	
	)	TRIAL PANEL
GERALD J. SCANNELL, JR.,	)	DECISION
	)	
Accused.	)	
	)	

This is a lawyer disciplinary proceeding instituted by the Oregon State Bar (hereinafter Bar) against Gerald J. Scannell, Jr. (hereinafter Accused). The Bar's Formal Complaint alleged two causes of complaint against the Accused. The matter came before the Trial Panel for hearing on July 7, 1994. The Oregon State Bar appeared by and through Lia Saroyan, Assistant Disciplinary Counsel, and David Orf, Bar Counsel. The Accused appeared personally and was represented by William Deatherage. Witnesses testified at the hearing. The Oregon State Bar's exhibits, numbers 1 through 47, and Accused's exhibits numbers 48 through 53, were received into evidence.

FIRST CAUSE OF COMPLAINT

The first cause of complaint alleges that the Accused knowingly revealed a client confidence or secret to opposing counsel and the court without client consent in violation of DR 4-101(B). The Accused denies these violations.

STATEMENT OF FACTS.

The Accused has been a member of the Oregon State Bar since 1957. In 1987 Robert Wall (hereinafter Wall) purchased a van from Jim Sigel Chevrolet, Inc. (hereinafter Sigel).

Problems developed with the van and in April of 1988 the Accused filed a claim for damages in Josephine County Circuit Court on behalf of Wall against Chevrolet Division, General Motors Corporation (hereinafter GM), General Motors Acceptance Corporation (hereinafter GMAC). Answers, counter claims and replys were filed in the case. In September of 1989, the Accused at Wall's request moved to associate Alan Kornfield (hereinafter Kornfield), an attorney licensed in California but not in Oregon, to act as trial counsel. The Accused and Kornfield communicated concerning the pleadings and strategy for trial. The Accused added a negligence claim and the amended complaint was filed on or about July 1990. GM filed a Motion to Dismiss and Motion to Make More Definite and Certain. Kornfield sent the Accused a letter outlining items to be addressed in the Accused's response to the motion. On November 2, 1990 Sigel filed a Motion for Summary Judgement seeking dismissal from the case. Judge Coon ruled on GM's motions without a hearing. On November 5, 1990 the judge granted GM's motions to dismiss all claims, held in abeyance ruling on Sigel's Motion for Summary Judgment and gave the Accused until December 10, 1990 to file a second amended complaint. On November 30, 1990, Kornfield provided the Accused with a draft Second Amended Complaint. The Second Amended Complaint was filed on December 6, 1990.

On December 17, 1990, GM again filed motions to dismiss against the Second Amended Complaint. Kornfield reviewed the new motions. On January 3, 1991 Kornfield wrote the Accused a letter. The letter included an enclosure consisting of a Declaration of Alan Kornfield Re: Opposition to Summary Judgment. (Exhibit 8) The Kornfield letter indicated that he had "tried to give you (the Accused) my thoughts, and hope they are helpful, but you (the Accused) will have to fill in applicable Oregon law".

Kornfield reminded the Accused to file a response in opposition to GM's latest motions to dismiss and gave him his opinion as to which legal points needed to be addressed and how. The letter closed by requesting the following:

> "Please file both oppositions timely, and rush a copy to me in advance of the January 14 hearing. If there is anything else I can do, please let me know."

The Accused filed no Memorandum in Opposition to Sigel's Motion for Summary Judgment. On January 9, 1991, he faxed all three defense counsel the Declaration of Alan Kornfield Re: Opposition to Motion for Summary Judgment.

The hearing on GM's motions to dismiss and Sigel's Motion for Summary Judgment was set for January 14, 1991. On January 14, 1991, the Accused faxed all counsel a Memorandum in Opposition to Defendant's Motion to Dismiss and a Motion and Affidavit to Withdraw. Attached to his memorandum was a copy of Kornfield's - January 3, 1991 letter to the Accused. (Exhibit 10)

The matters were heard by Judge Coon that same day. On January 25, 1991, Judge Coon granted both motions to dismiss and the motion for summary judgment. (Exhibits 11 and 12) Because of the Accused's withdrawal, Kornfield was given leave to file a third amended complaint. No complaint was filed and a judgment of dismissal was entered on March 28, 1991.

The Accused testified that sometime prior to January of 1991 he had lost all contact with Wall. However, the Accused did agree that during that same period of time, he had correspondence and contacts with Kornfield. The Accused testified that he provided no prior notice to either Kornfield or Wall of either his intent to withdraw as counsel for Wall or his intent to attach Kornfield's January 3, 1991 letter to the Accused's memorandum. (Exhibit 10)

The Accused testified that he received no consent from Wall or Kornfield to disclose Kornfield's January 3, 1991 letter.

CAUSES OF COMPLAINT AND ELEMENTS

1. In the first cause of the complaint, it is alleged that the Accused knowingly revealed a client confidence or secret to opposing counsel and the court without client consent in violation of DR 4-101(B). The Accused denies these violations.

The necessary elements of the violation alleged are:

(A) A lawyer shall not knowingly

(B) reveal a

(C) confidence or secret of the lawyer's client

(D) unless permitted under DR 4-101(C).

A "secret" is defined as:

(A) Information gained in a current or former professional relationship that either

(B) the client has requested be held inviolate or

(C) disclosure of which would be embarrassing or would be likely to be detrimental to the client.

A "confidence" is defined as information protected by the attorney/client privilege.

Conclusion.

The trial panel finds that Kornfield's January 3, 1991 letter as a "confidence." The attorney/client privilege is codified in the Oregon Evidence Code (OEC 503) and ORS 40.225. The Accused received no consent from either Kornfield or Wall to disclose the January 3, 1991 letter. The letter itself displays no intent to disclose. The letter was designed to address some of Kornfield's concerns and suggested strategy. It included an analysis of strengths and

weaknesses of legal arguments, characterizations of Judge Coon and Kornfield's assessments of what was needed to overcome the various defense motions. The letter outlined for the Accused those issues and activities which required his attention and effort in the rendition of legal services to Wall.

Kornfield's January 3, 1991 letter was a confidential communication made for the purpose of facilitating the rendition of professional legal services to Wall. As such, it was a "confidence" and because the Accused did not obtain Wall's consent prior to revealing this communication, he violated DR 4-lOl(B).

SECOND CAUSE OF COMPLAINT

In the second cause of complaint, it alleged that the Accused undertook to draft wills for an elderly couple, Harlan and Zobeida James in September of 1990. The provisions of the will included a contract to the effect that neither party would revoke or destroy their wills once the originals were signed.

Following Harlan James' death, Zobeida James contacted the Accused and asked him to prepare another will substantially changing the provisions of the wills executed by her and Harlan James. The Accused prepared a new will according to her directions and she executed it on or about May 19, 1992. Zobeida James died shortly thereafter and the Accused filed a petition for probate regarding the latter will with the court.

This conduct is alleged to be in violation of DR 5-105(C). The Accused has denied the violations.

STATEMENT OF FACTS.

The Accused represented Harlan James in 1990 in connection with the drafting of two wills, one in August and one in September. The Accused also represented Harlan James in 1991 in connection with drafting a codicil to the September 1990 will.

Harlan James' will of September 28, 1990 provided that in the event that Zobeida James predeceased him, upon his death, his property would pass to his step-children and his son Ernest James. (Exhibit 28) The Accused also drafted a will for Zobeida James which provided that if Harlan James predeceased Zobeida, all of her property would go to her children and Ernest James. The September 28, 1990 will of Zobeida James was not produced. The Accused testified that Zobeida James' September 28, 1990 will contained a paragraph nine identical to the paragraph nine contained in Harlan James' September 28, 1990 will. (Transcript pages 37-38)

The September 28, 1990 wills of both James' contained the following:

> "Whereas it has been agreed between myself and my wife, ZOBEIDA JAMES, that we shall each make a separate Will bearing the same date disposing of our property owned by us jointly as husband and wife and situated for the most part in the State of Oregon, in such a way that our children and step-children shall derive a certain benefit therefrom after the death of the survivor of us, and that after said Wills are so made, neither of us will revoke or destroy either of such Wills or make any other Will or codicil without the full consent and agreement of both."

Following Harlan James' death, Zobeida James came to the Accused's office on or about May 18, 1992 and asked him to prepare another will changing the provisions of her September 28, 1990 will. The Accused prepared a new will according to Zobeida James' directions and she executed it on or about May 19, 1992. Zobeida James died shortly thereafter.

The Accused testified that Zobeida James advised him in May of 1992 that she had taken care of Ernest James and that he had agreed to accept compensation in lieu of inheriting from

Zobeida James. The Accused testified that Zobeida James advised him that she had cancer and was on her way to Hawaii. The Accused testified that he did not contact Ernest James to determine whether or not the facts as related to him by Zobeida James were indeed correct.

The Accused testified that he did not refer Zobeida James to another attorney for independent legal advice. (Transcript page 41) The Accused testified that he advised Zobeida James that he thought there was a problem with changing her will but that she insisted that she had an agreement with Ernest James. (Transcript page 41)

Following Zobeida James' death, the Accused proceeded to file a petition to admit the May 19, 1990 will to probate. (Exhibit 32) An order admitting will to probate was signed on or about September 16, 1992. (Exhibit 33) In the meantime, Mr. Ernest James retained attorney Oscar Nealey who filed a petition to contest the will. (Exhibit 34) The Accused subsequently withdrew from his representation as to the probate of Zobeida James' will. An Order Voiding Will and Declaring Valid Will was subsequently entered by Judge William MacKay on September 16, 1993.

The Accused presented affidavits from Pilar Fernandez, (Exhibit 48); Conrad Negrone, (Exhibit 49); Donald James, (Exhibit 50); Juanita B. James, (Exhibit 51). These affidavits allege that the affiants were present at a meeting in "which Ernest James and Zobeida James agreed that Ernest James would accept certain items in lieu of his interest in the estate. The affidavits were prepared by the Accused and notarized in January and February of 1993. (Transcript page 55)

Mr. Ernest James testified that he had received items from Harlan James' properties, but that he had never had any discussion with Zobeida James about receiving property in settlement of his interest in the estate.

Attorney Oscar Ray Nealey testified that he was retained by Mr. Ernest James and successfully had the May 19, 1992 will of Zobeida James declared invalid.

On cross examination, attorney Oscar Nealey testified that there was a choice of remedies. That he could have sued on a contractual theory on behalf of Ernest James but, in his opinion, they had a better change of prevailing by proceeding to move against the will in probate.

The Accused offered into evidence his handwritten notes from his meeting with Zobeida James on May 18, 1992. (Exhibit 52)

CAUSES OF COMPLAINT AND ELEMENTS.

The necessary elements of the violation alleged are:

(A) a lawyer who represents a client in a matter shall not subsequently represent another client

(B) in the same or a significantly related matter

(C) when the interest of current or former clients are in actual or likely conflict.

"The same or any significantly related matter" is defined as:

(A) representation of a present client in a subsequent matter which would or would likely

(B) inflict injury or damage upon the former client

(C) in connection with any proceeding, claim/ controversy, transaction, investigation, charge, accusation, arrest or other particular matter.

"Actual or likely conflict" exists when:

(A) a lawyer has a duty to contend for something on behalf of one client

(B) that the lawyer has the duty to oppose on behalf of another client.

CONCLUSION.

The trial panel finds that by preparing a will for Zobeida James which was inconsistent with the will the Accused had earlier prepared for Harlan James the Accused violated DR 5-105(C). The Accused had a lawyer/client relationship with Harlan James. The drafting of Zobeida James' new will in May 1992 was significantly related to the Accused's representation of Harlan James.

The Accused argues that when Zobeida James executed her will in May of 1992, she advised the Accused that the legatees and devisees of the 1990 will had consented to her drafting a new will. Ernest James testified that there was no such agreement. The defense presented affidavits tending to indicate such an agreement existed. However, the panel finds that the Accused's defense is irrelevant and that even if Ernest James had agreed to take outside of the will, that fact would not prevent a conflict.

The panel finds that the fact that there were different remedies available to Ernest James, i.e. to file a breach of contract instead of a will contest, does not change the Accused's ethical responsibilities. The Accused may not represent both sides to an agreement and then advise one of the parties to breach that agreement. See In re: Jans, 295 OR 289, 666 P2d 830 (1983); Oregon Ethics Opinion 1991-92.

In In re: Brandsness 299 OR 420, 702 P2d 1098 (1985), the Oregon Supreme Court established a test for determining when a lawyer has a conflict. A former client conflict exists when the following factors co-exist:

(1) the adverse party is one with whom the lawyer had a lawyer/client relationship;

(2) the representation of the present client puts the lawyer in a position adverse to the former client; and

(3) the present matter is significantly related to a matter in which the lawyer represented the former client.

Brandsness 299 OR at 427.

The Accused argues that once Harlan James died, the attorney/client relationship terminated as did any future ethical considerations. The Accused cites Mallon 3rd Edition Legal Malpractice, Section 8.2 at page 410 which states "death of either the attorney or client usually terminates the relationship."

On the other side, the Bar urges the panel to draw that "bright line" and find that death does not terminate the attorney/client relationship and that therefore, all ethical considerations continue. The Bar cites In re: Adams, 293 OR 727, 652 p2d 287 (1982) in which the Supreme Court observed that "a lawyer owes a duty to a client long after the professional employment is terminated", and argues that it should not matter whether the client is alive or dead when the lawyer engages in impermissible conduct. (In re: Zafiratos, 259 OR 276, 281, 486 P2d 550 (1971).)

The panel declines to draw the "bright line" requested by the Bar. In discussing the attorney/client relationship, the panel does find persuasive the position that each set of circumstances must be examined on a case by case basis.

The panel finds that under these specific circumstances the Accused was precluded from representing Zobeida James relative to changing her will because at the time she sought his counsel, it was impossible (due to Harlan James' intervening death) to fully disclose the conflict of both the current and the former client and obtain the consent from both.

SANCTIONS.

The panel has made a determination that ethical violations occurred. In deciding the sanction to be imposed, the Supreme Court looks to the ABA Standards for Imposing Lawyer Sanctions (1991) ABA Standards. In re: Spies 316 OR 530, 541, 852 P2d 831 (1993). The standards require analyzing the facts presented in light of four factors: the ethical duty violated, the lawyer's mental state at the time of the violation, the harm or potential harm incurred as a result of the attorney's misconduct, and the existence of aggravating or mitigating factors. In re: Willer, 303 OR 241, 735 P2d 594 (1987).

(1) Ethical Duty Violated.

The panel finds that the Accused did reveal a confidence of a client and did represent one client when that representation could inflict injury on another.

(2) Mental State.

The standards utilize three mental states: intent, knowledge or negligence. Standards at 7. The panel finds with respect to attaching Kornfield's January 3, 1991 letter to the Accused's memorandum, the Accused acted with negligence. ("Negligence is the - failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of a care that a reasonable lawyer would exercise in a situation") Standards at 7.

The panel finds with respect to the changing of Zobeida James' will the Accused acted with negligence.

(3) Injury.

If the purpose of the disciplinary process is to protect the public, an injury need not be actual, but only potential, to support the imposition of a sanction. In re: Williams 314 OR 530, 840 P2d 1280 (1992). Anytime an attorney reveals a client confidence there is definitely a potential for injury. There is no way for the panel to determine the precise impact that the revelation of Kornfield's letter played in granting the defendant's motions.

Ernest James arguably suffered injury because he was required to retain an attorney to fight for what was rightfully his, incurring litigation cost and perhaps a delay in the receipt of his inheritance. Ernest James was reimbursed for his attorney fees through the Oregon State Bar Professional Liability Fund.

(4) Aggravating and Mitigating Factors.

The Standards envision the consideration of aggravating and mitigating factors. Aggravating factors are any factors or considerations that may justify an increase in the degree of discipline to be imposed. Standards, 9.21 at 49. Mitigating factors are any factors or considerations that may justify a reduction in the degree of discipline to be imposed. Standards, 9.32 at 50.

In 1980, the Accused was suspended for a period of 60 days and placed on probation for two years. See In re: Scannell, 289 OR 699, 617 P2d 256 (1980). In mitigation, the prior disciplinary matter occurred over 14 years ago. Standards, 9.32 (m).

With respect to the Accused's handling of the James matter, the Accused testified and introduced some evidence to support his belief that Ernest James had made some agreement to accept compensation in lieu of taking under Zobeida James' will. The Accused further testified that he had warned Zobeida James that changing her will could create problems. The panel does not find mitigating the fact that Zobeida James was pressuring the Accused to complete the will prior to her immediate departure to Hawaii. Further, the Panel does not find as mitigating the fact that the Accused practices law in a small or rural community. The ethical standards apply equally no matter where the attorney practices law.

The panel finds that the appropriate sanction in this case is a public reprimand.

DATED this 24th day of August, 1994.

/s/ Leslie K. Hall
Leslie K. Hall, Public Member

/s/ John B. Trew
John B. Trew

/s/ Stephen D. Brown
Stephen D. Brown

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-46; 93-112
	)	
ENVER BOZGOZ,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: Barbara DiIaconi, Esq.

Disciplinary Board: None

Disposition: Violation of DR 5-105(C). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: September 9, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-46; 93-112
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
ENVER BOZGOZ,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on August 18, 1994, to accept a public reprimand, is approved upon the terms set forth therein.

Dated this 9th day of September, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ W. Eugene Hallman
W. Eugene Hallman
Region 1 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-46; 93-112
	)	
ENVER BOZGOZ,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Enver Bozgoz, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Enver Bozgoz, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 16, 1966, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Klamath County, Oregon.

3.

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

4.

In January 1994, the State Professional Responsibility Board of the Oregon State Bar, authorized formal disciplinary proceedings against the Accused alleging that he violated DR 5-105(C) in connection with the handling of two client matters. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

Troy Mason (hereinafter "Troy") met with the Accused on August 19, 1992 for an initial consultation regarding possible representation in an anticipated dissolution and custody matter. During the meeting, Troy discussed with the Accused some of the reasons he wanted the divorce, including the death of his oldest child, his desire to obtain custody of his remaining child and what Troy believed to be his wife's irresponsible behavior with respect to the care of his children. At the conclusion of this meeting, Troy did not retain the Accused for further representation.

The Accused and Troy had no other contact. Thereafter, Troy retained Jan Perkins (hereinafter "Perkins") relative to the dissolution and custody matter. On Troy's behalf, Perkins, on November 10, 1992, filed a petition for dissolution of marriage and a motion for an order to show cause in the Klamath County Circuit Court.

On or about December 8, 1992, the Accused agreed to represent Linda Mason (hereinafter "Linda"), Troy's wife, with respect to the dissolution proceedings instituted by Troy. On or about December 24, 1992, the Accused file a motion, affidavit in opposition to petitioner's show cause and order to show cause. At the time of this agreement, the Accused

had no recollection of his previous meeting he had with Troy three months before, and performed no conflict check to insure that he did not have a former client conflict.

The Accused's conversation with Troy in August 1992 provided the Accused with confidences or secrets which foreseeably could have been used against Troy in the Accused's representation of Linda in the same matter. However, at the time the Accused agreed to represent Linda, he had no recollection of his prior conversation with Troy.

Because the interests of Troy and Linda in the dissolution were adverse and because the Accused had learned confidences or secrets in the same matter from Troy in a previous consultation, the Accused was faced with a former client conflict of interest.

At no time did the Accused obtain informed consent from Troy and Linda to represent Linda in the dissolution. Upon notification of the alleged conflict the Accused immediately withdrew from the representation of Linda.

The Accused admits that by agreeing to represent Linda without obtaining the informed consent of Linda and Troy he violated DR 5-105(C).

6.

Patrick Cooney (hereinafter "Patrick") met with the Accused on July 31, 1992 for an initial consultation regarding possible representation in an anticipated dissolution and custody matter. During this meeting, Patrick discussed with the Accused some of the reasons he wanted a divorce, including possible neglect and abuse by his wife, his wife's instability, Patrick's own financial situation and Patrick's desire for sole custody. At the conclusion of this meeting, Patrick did not retain the Accused for further representation.

The Accused and Patrick had no other contact with Patrick regarding legal representation. Thereafter, Patrick and his then-wife, Dawn Cooney (hereinafter "Dawn"), filed a joint petition for dissolution which was signed by Judge Isaacson on or about November 25, 1992. Pursuant to the decree, the parties were awarded joint custody of their only child, Christopher.

Difficulties developed between Patrick and Dawn with respect to visitation. On or about March 9, 1993, Patrick, represented by David Mannix, filed a petition for restraining order to prevent abuse. In that petition, Patrick sought custody of Christopher.

On or about March 9, 1993, the Accused agreed to represent Dawn in response to Patrick's petition for a restraining order and filed on that date a writ of assistance seeking custody of Christopher.

At the time of this agreement, the Accused had no recollection of his previous meeting he had with Patrick seven months before and performed no conflict check to insure that he did not have a former client conflict. A hearing on the respective parties' petitions was held March 9, 1993.

The interests of Patrick and Dawn were in actual or likely conflict at the March 1993 hearing. The Accused's meeting with Patrick in July 1992 provided the Accused with confidences or secrets which foreseeably could have been used against Patrick in the Accused's representation of Dawn in the petition for restraining order to prevent abuse. However, at the time the Accused agreed to represent Dawn he had no recollection of his prior meeting with Patrick. Further, the subject matter of the March 9, 1993 hearing was significantly related to the consultations which Patrick had with the Accused in July 1992.

Because the interests of Patrick and Dawn in the restraining order matter were actually or likely adverse, and because this action was significantly related to the consultation which the Accused had with Troy, the Accused was faced with a former client conflict of interest.

At no time did the Accused obtain informed consent from Patrick or Dawn to represent Dawn in the restraining order matter. Upon notification of the alleged conflict, the Accused immediately withdrew from representation of Dawn.

The Accused admits that by agreeing to represent Dawn without obtaining the informed consent of both Patrick and Dawn he violated DR 5-105(C).

7.

Although not a defense to the charges, mitigating circumstances include: at the time the Accused agreed to represent Linda and Dawn he did not know, but should have known, of the conflicts and when the above-referenced conflicts of interest were brought to the Accused's attention, he promptly withdrew from representing Linda and Dawn.

8.

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards and Oregon case law. Those standards require analyzing the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duty of loyalty owed to his former clients. ABA Standards at 5.

b. The Accused was negligent in not determining whether a former client conflict existed prior to undertaking to represent Linda and Dawn. ABA Standards at 7.

c. No actual injury occurred. However, the potential for injury existed but for the Accused's withdrawal upon learning of the former conflict. ABA Standards at 7.

d. Aggravating factors to be considered are:

1. The Accused was admonished in 1983 for violating DR 7-106(C)(7) when he took a default against a defendant without giving notice to the defendant's counsel and for violating DR 7-104(A)(1) when he communicated with a represented party. He was also admonished in 1991 for violating DR 3-101(B) when he filed and made an appearance in the State of California while neither a member of the California State Bar nor admitted *pro hac vice*. Standards 9.22(a).

2. The Accused has substantial experience in practicing law having been admitted to the Bar in 1966. Standards 9.22(i).

e. Mitigating factors to be considered:

1. The Accused was not acting dishonest or with a selfish motive. Standards 9.32(b).

2. When the conflict was brought to his attention the Accused withdrew from the representation. Standards 9.32(d).

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation will adversely affect an other client and causes potential injury to that client. Standards 4.33 at 31.

Oregon case law is consistent with this recommended sanction. See In re Brandsness, 299 Or 420, 702 P2d 1098 (1985). While the Accused has had some prior discipline, none involved a violation of the same disciplinary rule. Further, the contacts with the "former clients" giving rise to discipline herein were limited in both instances to an initial consultation.

9.

Consistent with the Standards and Oregon case law, the Bar and the Accused agrees that the Accused receive a public reprimand.

10.

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

EXECUTED this 1st day of August, 1994.

/s/ Enver Bozgoz
Enver Bozgoz

EXECUTED this 18th day of August, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

I, Enver Bozgoz, 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/ Enver Bozgoz
Enver Bozgoz

Subscribed and sworn to before me this 1st day of August, 1994.

/s/ Diane Bozgoz
Notary Public for Oregon
My commission expires: 1-22-96

I, Lia Saroyan, 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 26th day of August, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 26th day of August, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-49
	)	
ROBERT N. EHMANN,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(4). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: October 10, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-49
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
ROBERT N. EHMANN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on September 15, 1994, to accept a public reprimand, is approved.

Dated this 10th day of October, 1994.

/s/ Karla Knieps
Karla J. Knieps
State Chairperson

/s/ W. Eugene Hallman
W. Eugene Hallman
Region 1 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-49
	)	
ROBERT NORMAN EHMANN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Robert N. Ehmann, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Robert N. Ehmann, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1975, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in ~~Morrow~~ Umatilla County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, and subject to the restrictions in BR 3.6(h).

4.

In June 1994, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he violated DR 1-102(A)(4) in connection with the handling of a probate. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

In June 1991, the Accused commenced representing Ms. Ferryl Williams, (hereinafter "Williams") the personal representative in the estate of Helen Williams. As of June 1991, the Accused was Williams' third attorney, the probate had been pending in the Linn County Circuit Court since 1989 and the Accused was aware that Probate Judge Goode had expressed concern to prior counsel as to the length of time it was taking to complete the probate.

Upon being retained, Williams advised the Accused that she was convinced that the estate had additional assets (the inventory, filed in October 1990, listed assets of $6,228.99 and claims in excess of $79,000). Williams advised the Accused that she wanted additional time to locate those assets and instructed him to so advise the court.

In June of 1991, the Accused wrote Judge Goode advising that a private investigator had been retained by Williams and the investigator needed an additional six months to perform the investigation. On June 11, 1991, Judge Goode wrote the Accused and advised him that the court needed a reason for the investigation and the additional time.

As of July 2, 1991, the Accused had not responded to Judge Goode's letter. On that date, Judge Goode wrote a second letter seeking the Accused's response. The Accused did not respond to Judge Goode. On July 19, 1992, Judge Goode issued an order setting a show cause

hearing for August 2, 1991. Prior to the hearing, a telephone conference occurred between the Accused and Judge Goode and the Accused was given an additional six months to investigate the case.

In late January 1992, Judge Goode wrote the Accused requesting an estimate of time needed to close the estate. The Accused responded timely and advised that he expected to close the estate in 60 days.

On April 22, 1992, Judge Goode again wrote the Accused, advised that 60 days had elapsed and reminded him that more than nine months had passed since he had initially sought a six month continuance. Judge Goode ordered the Accused to submit the final account within 30 days.

No account was tendered and on May 29, 1992, the court issued another show cause order. Prior to the hearing, the Accused filed the final account.

In late June 1992, Judge Goode wrote the Accused and advised that while he had signed the order approving the final account, the estate could not close until tax releases were obtained from the Oregon Department of Revenue.

The Accused did not respond to Judge Goode's June 30, 1992 letter. On October 22, 1992, having still not received the Oregon Department of Revenue tax releases, Judge Goode again wrote the Accused seeking information as to the status of the case. Judge Goode further instructed the Accused to supply the court by November 5, 1992, a copy of the transmittal letter to the Oregon Department of Revenue seeking the tax release.

The Accused did not respond to the judge by November 5, 1992 at which time, Judge Goode brought his concerns as to the Accused's handling of this estate to the attention of the Oregon State Bar.

In December 1992, the Accused resigned as counsel for Williams. At the time of his resignation, the estate matter was still open.

The Accused admits that he failed to timely respond to some of Judge Goode's requests and failed to respond at all to Judge Goode's letters of June and October 1992 and that by so doing he violated DR 1-102(A)(4).

6.

Although not a defense to the charges, mitigating circumstances include: at all times during the representation of Williams, Williams believed (and still does) that additional estate assets existed. At all times during the representation, the Accused attempted to zealously represent Williams and Williams has never expressed dissatisfaction with the services rendered. The Accused acknowledges that because his client wanted the estate to remain open and the court desired it closed, he was put in a difficult spot. He further acknowledges that to the extent that he did not timely comply with the court's requests, the noncompliance was not neglect but was an attempt to "buy more time" to enable his client to find what she believed were missing assets.

7.

The Accused and the Bar agree that in fashioning the appropriate sanction, the Disciplinary Board should consider the ABA Standards and Oregon case law. The Standards require analyzing the Accused's conduct in light of four factors, the ethical duty violated, the

attorney's mental state, actual or potential injury and the existence of aggravating or mitigating factors.

a. In violating DR 1-102(A)(4), the Accused violated his duty owed to the legal profession. Standards at 5.

b. By failing to respond to the court in a timely fashion, the Accused acted with knowledge. Standards at 7.

c. The procedural functioning of the Williams probate was adversely affected due to the Accused's failure to comply with Judge Goode's request to close the estate in a timely fashion.

d. Aggravating factors to consider:

1. The Accused was publicly reprimanded in July 1991 for neglecting two clients legal matters and failing to promptly return one client's property. In re Ehmann, 5 DB Rptr. 59 (1991). Standards 9.22(a).

2. The Accused has substantial experience in the practice of law. Standards 9.22(i).

e. Mitigating factors to consider:

1. The Accused had no dishonest or selfish motive. Standards 9.32(b).

8.

The Standards provide that a reprimand is the appropriate sanction in most cases involving a violation of a duty owed to the profession. Most of Oregon cases involving a lawyer's failure to complete probates timely are cases in which the lawyer is charged with neglecting a legal matter. In those cases, absent misrepresentations to the court or other

aggravating factors which are not present in this matter, a public reprimand is an appropriate sanction. In re Odman, 297 Or 744, 687 P2d 153 (1984); In re Snyder, 279 Or 897, 559 P2d 1273 (1976).

9.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a public reprimand.

10.

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

EXECUTED this 2nd day of September, 1994.

/s/ Robert N. Ehmann
Robert N. Ehmann

EXECUTED this 28th day of September, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

I, Robert N. Ehmann, 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/ Robert N. Ehmann
Robert N. Ehmann

Subscribed and sworn to before me this 2nd day of September, 1994.

/s/ Pamela M. Weston
Notary Public for Oregon
My commission expires: 8-18-95

I, Lia Saroyan, 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 24th day of September, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 28th day of September, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

*

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-113
	)	
GINO G. PIERETTI,	)	
	)	
Accused.	)	

Bar Counsel: Michael J. Gentry, Esq.

Counsel for the Accused: Daniel F. McNeil, Esq.

Disciplinary Board: Ann L. Fisher, Chairperson; Keith Raines; Kurt Olsen, Public Member

Disposition: Violation of DR 1-102(A)(3) and DR 6-101(A). Public Reprimand.

Effective Date of Opinion: September 10, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	Case No. 92-113
	)	
Complaint as to the Conduct of	)	OPINION OF TRIAL PANEL
	)	
GINO G. PIERETTI,	)	
	)	
Accused.	)	
	)	

This disciplinary proceeding came on for hearing before the Trial Panel on July 26, 1994, following a formal complaint by the Oregon State Bar ("Bar") against the Accused, Gino G. Pieretti. The Bar appeared by and through Lia Saroyan, Assistant Disciplinary Counsel, and Michael Gentry, Bar Counsel. The Accused appeared personally and was represented by Dan F. McNeil. Testimony was received. The Bar Exhibits 1, 2, 5, 6 and 7 and the Accused's Exhibits A, B, C, D, E, F, G, J, K, L, M and N were received into evidence. Following the Trial Panel's consideration and decision in this case, the Accused provided a post-hearing memo and proposed exhibits. Because the Trial Panel had already ruled, the additional material was not considered.

SUMMARY OF EVIDENCE

The Accused gave extensive testimony. He has been a member of the Bar for approximately thirty-five years. Although he has considerable legal experience, he has had very little experience representing a plaintiff in a medical malpractice action. He accepted representation of the plaintiff in a medical malpractice action because he was personally acquainted with the plaintiff, had observed her medical difficulties, and she came to him on the eve of the likely day the statute of limitations was to run.

Because of time and other constraints, the Accused advised the plaintiff (hereafter "client" or "plaintiff") that he would require her help in developing the case. The Accused was involved in attempting to set up a practice in Cannon Beach and in handling matters in California and Washington. He recognized that he has a limited time to work on any new cases. At his request, his client discussed her situation with her then treating physician and requested that he testify on her behalf as to her condition and the prior care (or lack therefor) she had received. After doing so, the client advised the Accused that the treating physician was available and willing to testify.

Defendants in that case filed a Motion for Summary Judgment stating that there was no factual basis for plaintiff's claim. The Accused reviewed his file, including the product insert for the medication prescribed to the client, other available literature on the medication, and some medical records. He was unable to review all of the relevant medical records because defendants were slow with discovery, filing the summary judgement motion before discovery had significantly taken place and before receiving all of the relevant medical records. the doctors involved had been dilatory in sending the client's records to the Accused despite the client's execution of a release for that purpose.

The Accused filed a Rule 47E. affidavit attesting that "a qualified expert has reviewed this file, is available to testify and will testify to admissible facts and opinions...sufficient to controvert the allegations of the affidavit filed by defendants." On that basis, summary judgment was denied. Later, discovery was held and the case was scheduled for trial. Near the time set for trial, the treating physician decided that he would not testify and the Accused was unable to

find, with the time available, another physician in the local area willing to do so. As a result, the case was dismissed with prejudice and without cost to any party.

LEGAL ISSUES

This matter is limited to: 1) does ORCP 47 require that an attorney (prior to filing a 47E. affidavit) personally retain an expert for the specific purpose of testifying on behalf of the attorney's client and 2) personally verify the willingness and availability of the expert to testify regarding the defendant doctor's negligence? The Accused accepted the representation by his client that the treating physician would testify and on that basis prepared the affidavit.[1]

ORCP 47, (effective 1984) in pertinent part, states:

* * *

> D. Form of affidavits; defense required. Except as provided by section E of this rule, supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein...
>
> E. Affidavit of attorney when expert opinion required. Motions under this rule are designed to be used as discovery decides to obtain the names of potential expert witnesses or to obtain their facts or opinions. If a party, in opposing a motion for summary judgment, is required to provide the opinion of an expert to establish a genuine issue of material fact, an affidavit of the party's attorney stating that an unnamed qualified expert has been retained who is available and willing to testify to admissible facts or opinions creating a question of fact, will be deemed sufficient to controvert the allegations of the moving party and an adequate basis for the court to deny the motion. The affidavit shall be made in good faith based on admissible facts or opinions obtained from a qualified expert who has actually been retained by the attorney who is available and willing to testify and who has actually rendered an opinion or voiced facts which, if revealed by affidavit, would be a sufficient basis for denying the motion for summary judgment.

---

[1]An attorney may utilize a treating physician as an expert. Burton, et al. v. Rogue Valley Medical Center, et al., 122 Or App 22, 856 P.2d 639 (1991).

ALLEGATIONS

The Bar alleges three counts of violations of a lawyer's ethical duties as follows:

Count 1. DR 1-102(A)(3) regarding conduct involving fraud, deceit or misrepresentation.

DR 7-102(A)(5) regarding improper influence on a government official.

ORS 9.460(2) regarding false statements.

Count 2. DR 1-102(A)(4) regarding conduct prejudicial to administration of justice.

Count 3. Dr 6-101(A) regarding competent representation.

The Bar contends that the Accused was required to personally verify the doctor's availability and to have reviewed the file with him. By preparing and submitting the affidavit to the Court, the Accused is alleged to have breached his ethical obligations, including his obligations regarding fraud and misrepresentation.

FINDINGS

The Trial Panel finds:

1. The Accused was straightforward and his testimony credible.

2. The Accused believed his client when she told him that the physician was available and willing to testify.

3. The Accused did not personally verify the availability and willingness of the physician to testify at trial on behalf of his client.

4. The Accused reviewed some medical records, product information, and medical literature prior to preparing the affidavit which collectively supported the medical malpractice claims asserted on behalf of his client.

5. The Accused believed that his affidavit complied with the intent and spirit of ORCP 47E.

6. The Accused has no intent to deceive.

7. There was at least a colorable claim that treatment the plaintiff received was inappropriate and that her physician failed to fully explain the possible side effects to the client prior to treating her.

8. The Accused was negligent in determining whether the statements regarding the expert physician's willingness to testify were true and such action has the potential to cause injury.

9. The Accused was negligent in determining whether he was competent to handle a legal matter (specifically the Rule 47E. affidavit) and such action has the potential of injuring the client.

10. The Accused has practiced law for over thirty years and has no prior disciplinary actions. This was an isolated instance.

SANCTIONS

The Trial Panel finds that the Accused has violated DR 1-102(A)(3) and DR 6-101(A). The Trial Panel recommend dismissing the remaining counts because insufficient evidence was presented to sustain them.

The appropriate sanction for violation of DR 1-102(A)(3) is a reprimand in situations such as this. The Trial Panel bases this upon the ABA *Standards for Imposing Lawyer Sanctions* ("ABA Standards") which state:

6.1 False Statements, Fraud, and Misrepresentation

> Absent aggravating or mitigating circumstances,...the following sanctions are generally appropriate in cases involving conduct that is prejudicial to the administrations of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court...

6.13 Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The Accused was negligent by failing to verify that the physician was willing and able to testify.

This approach is consistent with the cases cited in the ABA Standards.

> Reprimand is appropriate when a lawyer is merely negligent. For example, in Gilbert E. Miltry, D.P. 144/81 (Michigan Attorney Disciplinary Bd. 1981), the lawyer was publicly reprimanded where he accidentally filed a motion for a bond which contained inaccurate statements. Similarly, in In re Couglin, 91 N.J. 374, 450 A. 2d 1326 (1982), the court held that a public reprimand should be imposed on a lawyer who did not follow proper procedures in acknowledging a deed (neglecting to secure the grantor's acknowledgment in his presence). The court note that 'his actions were not grounded on any intent of self-benefit, nor was any one harmed as a result of his actions.' 450 A. 2d at 1327. In Davidson v. State Bar, 17 Cal. 3d 570, 551 P. 2d 1211, 131 Cal. Rptr. 379 (1976), the court imposed a public reprimand on a lawyer who failed to disclose to the court the locations of his client in a child custody case when his conduct occurred in confused circumstances caused by contradictory *ex parte* custody orders.

The situation in this matter is similar to the facts in In Re Baker, 7 DB Rptr 145 (1993).

The Trial Panel finds that the Accused was negligent in not determining whether his analysis of 47E was accurate. Neither side briefed that specific issue. The Bar introduced the testimony of one of the defense attorneys in the underlying malpractice action who testified based upon his experience as a defense attorney, that the common understanding of the defense bar was that a separate expert had been specifically retained for the purpose of testifying at trial.

The ABA Standard states that reprimand in generally appropriate in such instances.

> 4.5 Lack of Competence
>
> Absent aggravating or mitigating circumstances... the following sanctions are generally appropriate in cases involving failure to provide competent representation to a client...
>
> 4.53 Reprimand is generally appropriate when a lawyer:
>
> (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
>
> (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

See also, the cases cited in ABA Standards at 4.53.

No evidence was presented reflecting aggravated factors. In mitigation, the Accused testified to his over thirty years of practice with the Bar and his lack of prior disciplinary actions.

[2]. The Accused also submitted substantial evidence regarding his character, both through written letters on his behalf and live testimony. Such evidence supports a lesser sanction that requested by the Bar.

After giving careful review of all of the evidence presented, the Trial panel recommends that the Accused be given a Public Reprimand for violation of DR 1-102(A)(3) and DR 6-101(A).

DATED this 15th day of August 1994.

/s/ Keith Raines
Keith Raines

/s/ Kurt Olsen
Kurt Olsen

/s/ Ann Fisher
Ann Fisher

[2]The Bar agreed that that was an accurate representation.

*

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-81; 93-86
	)	
JAMES KULLA,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: Peter R. Jarvis, Esq.

Disciplinary Board: None

Disposition: Violation of DR 5-105(C); DR 9-101(A). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: September 22, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-81; 93-86
	)	
JAMES KULLA,	)	
	)	
Accused.	)	
	)	

THIS MATTER having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on September 15, 1994, to accept a public reprimand is approved.

Dated this 22nd day of September, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Douglas E. Kaufman
Douglas E. Kaufman
Region 4 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	No. 93-81; 93-86
	)	
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
	)	STIPULATION FOR
JAMES KULLA,	)	DISCIPLINE
	)	
Accused.	)	
	)	

James Kulla, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, James Kulla, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln County, Oregon.

3.

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

4.

In November 1993, the State Professional Responsibility Board of the Oregon State Bar, authorized formal disciplinary proceedings against the Accused alleging that he violated DR 5-105(C) with respect to one client and DR 9-101(A) with respect to two clients. The Accused and the Bar Agree to the following facts and disciplinary rule violations.

5.

A. Colbert Matter.

On December 26, 1991, the Accused met with Stanley (hereinafter "Stanley") concerning possible problems with a tenant of Stanley. On or about December 31, 1991, Mr. and Mrs. Colbert (hereinafter "Colbert") met with Russell Baldwin (hereinafter "Baldwin"), an attorney employee of the Accused, regarding difficulties they, as tenants, were having with their landlord, Stanley. For that meeting, the Colberts paid $25 to the Accused's firm.

On January 6, 1992, another attorney employee of the Accused,[sic] was formally retained by Stanley to evict the Colberts.

On or about January 7, 1992, at a weekly attorney meeting, the Accused learned of the firm's contacts with both Stanley and the Colberts. The Accused then told Baldwin that the firm would not represent Stanley. Thereafter the firm represented Stanley, but not the Colberts until January 6, 1992. After the January 7 meeting, the firm performed a total of 1.1 hours of work for Stanley, and its work was limited to a review of a lease with no action being taken.

Because the interests of Colbert's and Stanley were in actual or likely conflict, the Accused had a former client conflict of interest.

The Accused did not obtain full consent from the Colberts and Stanley pursuant to DR 10-101(B) with respect to this matter.

The Accused admits that the above-referenced conduct violated DR 5-105(C).

B. Ward Settlement Disbursement.

In March 1990, Baldwin, an attorney employee of the Accused represented Catherine Ward (hereinafter "Ward") relative to a personal injury lawsuit. On or before March 23, 1990, Baldwin received a $4,000 settlement check from the adverse party's insurer and gave that check to the Accused's bookkeeper.

On March 22, 1990, the Accused's partner signed three checks from the office trust account relating to the Ward litigation: one check for $2,044.58 payable to the Accused's firm for attorney fees and medical bills owed by Ward, one check for $435 payable to John Meyer (hereinafter "Meyer"), and one check for $1,519.82 payable to Ward.

On March 23, 1990, the firm's bookkeeper deposited the $4,000 settlement check into the firm's trust account. On that same date, the $2,044.58 check to the firm was negotiated resulting in these funds being disbursed from the firm's trust account to the firm's general account. On that same date, the checks to Meyer and Ward were also disbursed. At the time of these disbursals, the $4,000 settlement check had not cleared the bank.

A portion of the $2,044.58 disbursal from the firm's trust account to the firm's general account belonged to the firm for fees and a portion was due to Ward's medical providers. Rather and promptly pay the medical providers, the Accused retained the funds earmarked for that purpose for a period of time in the firm's general account.

By drawing on funds in the Accused's trust account before the settlement check cleared the bank, the Accused drew on funds of other clients. By transferring client funds to the firm's general account and holding those funds for disbursal to creditors at some future date, the Accused failed to maintain client funds in a client trust account.

The Accused admits that the above-referenced conduct violated DR 9-101(A).

C. Desmarais Retainer Disbursement.

In or about June 1991, the Accused's firm represented Celeste Desmarais (hereinafter "Desmarais") in two legal matters. On or about August 27, 1991, Desmarais paid a $4,000 retainer to the Accused's firm. The Accused's firm deposited that check into the firm's client trust account. On that same date, the Accused wrote two checks payable to the firm for attorney expenses: one for $48.52 and one for $1,039.43. At the time these disbursals were made from the Trust account, the $4,000 check had not cleared the bank.

By drawing on funds deposited in the Accused's trust account before the retainer check cleared the bank, the Accused drew on funds of other clients.

The Accused admits that the above-referenced conduct violated DR 9-101(A).

6.

Although not a defense to the charges, mitigating circumstances include:

a. The Accused did not believe at the time that the meeting between Baldwin and the Colberts had created an attorney-client relationship or had provided Baldwin with confidences or secrets of the Colberts that could be used to their detriment.

b. The Accused had no actual knowledge of the trust account violations when they occurred. At the time that the Accused's partner signed the three checks in the Ward matter, the

Accused did not know that funds to pay the medical service providers had been placed in the firm's general account. The Accused took action to reverse this step as soon as he became aware of the problem.

7.

The Accused and the Bar agree that in fashioning the appropriate sanction, the Disciplinary Board should consider the ABA Standards and Oregon case law. The Standards require analyzing the Accused's conduct in Light of four factors: the ethical duty violated, the attorneys mental state, actual or potential injury and the existence of aggravating or mitigating factors.

Ethical Duty

a. With respect to the DR 5-105(C) violation, the Accused violated the duty of loyalty owed to a former client. Standards at 5.

b. With respect to the DR 9-101(A) violations, the Accused violated the preserve client property. Standards at 5.

Mental State

a. With respect to the violations where mental state is at issue, the Accused acted negligently. Standards at 7.

Potential or Actual Injury

a. Although there was a potential for injury with respect to the Colbert -Stanley matter, no actual injury occurred since the firm could not have continued to represent the Colberts in any event and since the firm did not in fact take any steps or advise Stanley to take any steps that worked to the Colberts' detriment.

b. No actual injury occurred as a result of the DR 9-101(A) violations.

Aggravating/Mitigating Factors

a. Aggravating factor to consider:

1. The Accused has substantial experience in the practice of law. Standards 9.22(i).

b. Mitigating factors to consider:

1. The Accused has no prior discipline. Standards 9.32(a).

2. The Accused had no dishonest or selfish motive. Standards 9.32(b).

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client will adversely affect another client and causes injury to a client. Similarly, a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes potential injury to a client.

Oregon case law generally supports a public reprimand particularly in light of the fact that the Accused has no prior discipline. See In re Hill 295 Or 71, 663 P2d 764 (1983); In re Moran 1 DB Rptr 235 (1987); In re Mannis 295 Or 594, 665 P2d 1224 (1983).

8.

The Accused has no prior discipline.

9.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a public reprimand.

10.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved

by SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 7th day of September, 1994.

/s/ James Kulla
James Kulla

EXECUTED this 15th day of September, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

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

/s/ James Kulla
James Kulla

Subscribed and sworn to before me this 7th day of September, 1994.

/s/ Jeanne Wheeler
Notary Public for Oregon
My commission expires:5-5-97

I, Lia Saroyan, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that 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 19th day March, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 15th day of September, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 93-45; 93-81;
	)	93-86
FREDERICK RONNAU,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: Peter R. Jarvis, Esq.

Disciplinary Board: None

Disposition: Violation of DR 5-101(A); DR 5-105(C) (two counts); DR 9-101(A); DR 7-104(A)(1). Stipulation for Discipline. 30 day Suspension.

Effective Date of Opinion: Order signed September 22, 1994. Suspension effective October 15, 1994.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	Case Nos. 93-45; 93-81
	)	93-86
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
FREDERICK RONNAU,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on September 15, 1994, consisting of a thirty (30) day suspension beginning October 15, 1994, is approved.

Dated this 22nd day of September, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Douglas E. Kaufman
Douglas E. Kaufman
Region 4 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	No. 93-81; 93-86
	)	
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
	)	STIPULATION FOR
FREDERICK RONNAU,	)	DISCIPLINE
	)	
Accused.	)	
	)	

Frederick Ronnau, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Frederick Ronnau, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1975, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln County, Oregon.

3.

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

4.

In September 1993, the State Professional responsibility Board of the Oregon State Bar, authorized the issuance of a letter of admonition to the Accused for violating DR-5-101(A) and DR 5-105(C) with respect to a client matter. In November 1993, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he violated DR 5-105(C) with respect to one client, DR 9-101(A) with respect to two clients and DR 7-104(A) with respect to one client. For purposes of this Stipulation all matters are consolidated and the Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

A. Wilson Matter.

On or about June 1990, the Accused's firm represented Robert and Jennie Wilson (hereinafter "Sellers") in the sale of two parcels of property to Harry and Nancy Fonda (hereinafter "Buyers"). The Accused's firm prepared the land sale contract consummating the sale. Included in the contract were property descriptions prepared by Willamette Valley Title Company.

On or about April 1991, Buyers contacted the Accused regarding a problem with the property descriptions contained in the land sale contract. While the parties had agreed to sell two parcels, the property description reflected the transfer of three.

On or about April 1991, the Accused commenced representing Buyers regarding the erroneous property description. At the time the Accused agreed to this representation, the Accused failed to apprise Buyers that the error was arguably attributable to the Accused's firm

as counsel for Sellers and that the Buyers might wish to consult other counsel not connected to the error.

On behalf of Buyers, the Accused prepared an amended contract. On or about July 23, 1991, the Accused sent a draft amended contract clearly marked as such to Sellers, the realtor and the title company. The amended contract was to the Sellers' advantage because it returned to them property that was inadvertently conveyed to the Buyers. Several months later, Sellers signed and returned the draft contract to the Accused. By that time, however, the Buyers were no longer willing to sign the agreement as written.

On or about September 30, 1991, the Accused advised Sellers that Buyers would not sign the amended contract absent payment by Sellers of Buyers' costs in preparing the amended contract. These costs included the payment of the Accused's attorney fees for representing Buyers. The Accused did not state that he would represent neither side in any controversy between Buyers and Sellers.

Because the interests of Buyers and Sellers were in actual or likely conflict after the Buyers refused to sign the amended contract, the Accused had a former client conflict of interest.

The Accused did not obtain full consent from Buyers and Sellers pursuant to DR 10-101(B) with respect to this matter.

The Accused admits that the above-referenced conduct violated DR 5-101(A) and 5-105(C).

B. Colbert Matter.

On December 26, 1991, the Accused's partner met with Mr. Stanley (hereinafter "Stanley") concerning possible problems with a tenant of Stanley. On or about December 31, 1991, Mr. and Mrs. Colbert (hereinafter "Colberts") met with Russell Baldwin (hereinafter "Baldwin"), an attorney employee of the Accused, regarding difficulties they, as tenants, were having with their landlord, Stanley. For that meeting, the Colberts paid $25 to the Accused's firm. On January 6, 1992, another attorney employee of the Accused was formally retained by Stanley to evict the Colberts.

On or about January 7, 1992, at a weekly attorney meeting, the Accused learned of the firm's contracts with both Stanley and the Colberts. The Accused then told Baldwin that the firm would not represent the Colberts but would represent Stanley. Thereafter, the firm represented Stanley until January 16, 1992. After the january 7 meeting, the firm performed a total of 1.1 hours of work for Stanley, and its work was limited to review of a lease with no action being taken.

Because the interests of Colberts and Stanley were in actual or likely conflict, the Accused had a former client conflict of interest.

The Accused did not obtain full consent from the Colberts and Stanley pursuant to DR-10-101(B) with respect to this matter.

The Accused admits that the above-referenced conduct violated DR 5-105(C).

C. Ward Settlement Disbursement.

In March 1990, Baldwin, an attorney employee of the Accused represented Catherine Ward (hereinafter "Ward") relative to a personal injury lawsuit. On or before March 23, 1990,

Baldwin received a $4,000 settlement check from the adverse party's insurer and gave that check to the Accused's bookkeeper.

On March 22, 1990, the Accused signed three checks from the office trust account relating to the Ward litigation: one check for $2,044.58 payable to the Accused's firm for attorney fees and medical bills owed by Ward, one check for $435 payable to John Meyer (hereinafter "Meyer"), and one check for $1,519.82 payable to Ward.

On March 23, 1990, the firm's bookkeeper deposited the $4,000 settlement check into the firm's trust account. On that same date, the $2,044.58 check to the firm was negotiated resulting in these funds being disbursed from the firm's trust account to the firm's general account. On that same date, the checks to Meyer and Ward were also disbursed. At the time of these disbursals, the $4,000 settlement check had not cleared the bank.

A portion of the $2,044.58 disbursal from the firm's trust account to the firm's general account belonged to the firm for fees and a portion was due to Ward's medical providers. Rather than promptly pay the medical providers, the Accused retained the funds earmarked for that purpose for a period of time in the firm's general account.

By drawing on funds in the Accused's trust account before the settlement check cleared the bank, the Accused drew on funds of other clients. By transferring client funds to the firm's general account and holding those funds for disbursal to creditors at some future date, the Accused failed to maintain client funds in a client trust account.

The Accused admits that the above-referenced conduct violated DR 9-101(A).

D. Desmarais Retainer Disbursement.

In or about June 1991, the Accused's firm represented Celeste Desmarais (hereinafter "Desmarais") in two legal matters. On or about August 27, 1991, Desmarais paid a $4,000 retainer to the Accused's firm and it was deposited into the firm's client trust account. On that same date, the Accused's firm wrote two checks payable to the firm for attorney expenses: one for $48.52 and one for $1,039.43. At the time these disbursals were made from the trust account, the $4,000 check had not cleared the bank.

By drawing on funds deposited in the Accused's trust account before the retainer check cleared the bank, the Accused drew on funds of other clients.

The Accused admits that the above-referenced conduct violated DR 9-101(A).

E. Desmarais Contact.

On or about April 3, 1992, Desmarais terminated the Accused's firm from further representing her on all her legal matters. On or about April 3, 1992, Desmarais advised the Accused that effective immediately, Baldwin would be her attorney and the firm should not contact her directly.

On or about April 8, 1992, the Accused wrote Baldwin regarding the subject matter of Desmarais representation. The Accused sent a copy of his letter directly to Desmarais without Baldwin's consent.

The Accused admits that the above-referenced conduct violated DR 7-104(A)(1).

6.

Although not a defense to the charges, mitigating circumstances include:

a. With respect to the Wilson matter, the Accused undertook that representation in the belief that Sellers and Buyers were agreed as to how to proceed and that the error at issue was not attributable to the Accused's firm.

b. The Accuse did not believe at the time that the meeting between Baldwin and the Colberts had created an attorney-client relationship or had provided Baldwin with confidences or secrets of the Colberts that could be used to their detriment.

c. The Accused had no actual knowledge of the trust account violations when they occurred. At the time that the Accused signed the three checks in the Ward matter, the Accused did not know that funds to pay the medical service provider had been placed in the firm's general account. The Accused took action to reverse this step as soon as he became aware of the problem.

d. At the time of the April 8, 1992 letter to Baldwin, the Accused was still counsel of record for Desmarais. He believed that he was authorized and entitled to communicate directly with Desmarais and that the direction to the contrary by Desmarais pertained only to attempts to persuade Desmarais to remain a client of the Accused's firm.

7.

The Accused and the Bar agree that in fashioning the appropriate sanction, the Disciplinary Board should consider the ABA Standards and Oregon case law. The Standards require analyzing the Accused's conduct in light of four factors: the ethical duty violated, the attorney's mental state, actual or potential injury and the existence of aggravating or mitigating factors.

Ethical Duty

a. With respect to the DR 5-101(A) and the DR-105(C) violations, the Accused violated the duty of loyalty owed to a former client. Standards at 5.

b. With respect to the DR 9-101(A) violations, the Accused violated the duty to preserve client property. Standards at 5.

c. With respect to the DR 7-104(A)(1) violation, the Accused violated a duty owed to the legal system. Standards at 5.

Mental State

a. With respect to the violations where mental state is at issue, the Accused acted negligently. Standards at 7.

Potential or Actual Injury

a. Ms. Wilson incurred additional costs as a result of the dispute with the Buyers but the representation of the Buyers by other counsel would also have caused Ms. Wilson to incur such costs.

b. Although there was a potential for injury with respect to the Colberts-Stanley matter, no actual injury occurred since the firm could not have continued to represent the Colberts in any event and since the firm did not in fact take any steps, or advise Stanley to take any steps that worked to the Colberts' detriment.

c. No actual injury occurred as a result of the DR 9-101(A) violations.

d. Ms. Desmarais' injury was limited to being upset by receiving a copy of the Accused's letter from the Accused. It is likely, however, that Baldwin would have sent her a copy of that letter in any event.

Aggravating/Mitigating Factors

a. Aggravating factors to consider:

1. The proceeding involves multiple offenses. Standards 9.22(d).

2. The Accused has substantial experience in the practice of law. Standards 9.22(i).

b. Mitigating factors to consider:

1. The Accused has no prior discipline. Standards 9.32(a).

2. The Accused had no dishonest or selfish motive. Standards 9.32(b).

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyers own interest or will adversely affect another client and causes injury to a client. A reprimand is also generally appropriate when a lawyer is negligent in dealing with client property and causes potential injury to a client. Similarly, the Standards provide that a reprimand is appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party.

Supreme Court and Disciplinary Board decisions involving one or two violations of the same disciplinary rules would support a public reprimand. See In re Hill, 295 Or 71, P2d 764 (1983); In re Moran 1 DB Rptr 235 (1987); In re Mannis, 295 Or 594, 668 P2d 1224 (1983).

As this Stipulation involves multiple offenses involving four clients, a short suspension would be more consistent with case law. In re Williams, 314 Or 530, 840 P2d 1280 (1992); In re Wilson, 1 DB Rptr 225 (1986).

8.

The Accused has no prior discipline.

9.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a 30 day suspension.

10.

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

EXECUTED this 8th day of September, 1994.

/s/ Frederick Ronnau
Frederick Ronnau

EXECUTED this 15th day of September, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

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

/s/ Frederick Ronnau
Frederick Ronnau

Subscribed and sworn to before me this 8th day of September, 1994.

Subscribed and sworn to before me this 8th day of September, 1994.

/s/ Kenneth E. Hamlin, Jr.
Notary Public for Oregon
My commission expires:4-24-95

I, Lia Saroyan, being first duly sworn, say that I am Assistant Disciplinary Counsel for the Oregon State Bar and that 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 19th day March, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 15th day of September, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires:3-9-96

*

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-164
	)	
DAVID J. BERENTSON,	)	
	)	
Accused.	)	

Bar Counsel: David L. Slader, Esq.

Counsel for the Accused: Jon S. Henricksen, Esq.

Disciplinary Board: Morton Winkel, Chair; Todd Bradley; Dr. William Brady, Public Member

Disposition: Violation of DR 1-103(C) and DR 6-101(B). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: November 8, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-164
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
DAVID J. BERENTSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on September 19, 1994, to accept a public reprimand is approved upon the terms set forth therein.

Dated this 8th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Ann L. Fisher
Ann L. Fisher
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-164
	)	
DAVID J. BERENTSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

David J. Berentson, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, David J. Berentson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, and subject to the restrictions in BR 3.6(h).

4.

In January 1994, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he violated DR 1-103(C) and DR 6-101(B). The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

In or about February 1991, the Accused was retained to represent Jeanne C. Dudley (hereinafter "Dudley") with respect to the probate of the estate of her husband, Thomas Edward Dudley (Washington County Circuit Court Probate File No. C910426PE). The Accused filed a petition for probate of will on or about July 18, 1991 and a personal representative was appointed in August 1991.

As of April 5, 1992, the estate was ready for closure, pending receipt of the Oregon Tax release. On April 6, 7, 1992, the sole heir (surviving spouse of deceased) informed the Accused that she had found (3) three mining stocks (South African). The Accused received the Oregon Tax release on April 11, 1992, and thereafter looked into the new assets (mining stocks), but failed to thereafter get the estate closed by the Oregon Tax release expiration date of October 31, 1992.

On or about December 21, 1992, Washington County Probate commissioner Rita Cobb (hereinafter "Cobb") wrote the Accused as no annual accounting had been filed and requested that he file the accounting or provide an explanation for the delay within 30 days. The Accused did not file a response or the annual accounting.

Having not received a response to her December 21, 1992, letter, on or about May 11, 1993, Cobb wrote to the Accused again, seeking an explanation as to why the annual accounting had not been filed. The Accused failed to respond to Cobb's May 1993 letter.

As of November 16, 1993, the Accused had neither closed the estate nor contacted the court relative to his progress in that regard. On November 16, 1993, Cobb issued an order to show cause requesting that the personal representative appear to show cause why he should not be removed for failing to administer the estate in a timely manner.

On behalf of the personal representative, the Accused appeared and advised the court that once new tax release certificates were received from the Department of Revenue, the final account would be submitted to the court for closure. The probate closed in June 1994.

The Accused admits that he failed to timely handle the Dudley probate and for so doing violated DR 6-101(B).

6.

On or about September 9, 1993, the Oregon State Bar received a letter from Dudley relative to the Accused's handling of her husband's probate. On or about September 15, 1993, Dudley's letter and enclosures were sent to the Accused with a request that he tender an explanation to the Bar by October 6, 1993. The Accused was also advised that he could request an extension of time in which to tender a response and that a failure to respond constituted a violation of DR 1-103(C).

On or about October 8, 1993, Disciplinary Counsel's Office sent the Accused a follow-up letter seeking a response on or before October 15, 1993.

The Accused neither responded to Disciplinary Counsel's letter nor sought an extension of time in which to tender a response. Due to the Accused's failure to respond, on October 20, 1993, Dudley's complaint was referred to the Multnomah County LPRC for an investigation. Once referred, the Accused fully cooperated with the LPRC investigator.

The Accused admits that by failing to timely respond to the inquiries from the Bar he violated DR 1-103(C).

7.

Although not a defense to the charges, mitigating circumstances include: Once the tax release expired in October 1992, the Accused "froze" into inaction due primarily from embarrassment at allowing the release to lapse. Similarly, upon being contacted by the Bar, the Accused was ashamed and embarrassed and, rather than respond, hid.

8.

The Accused has no prior discipline.

9.

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards and Oregon case law. The Standards require analyzing the Accused's conduct in light of a variety of factors: the ethical duty violated, the attorney's mental state, actual or potential injury and the existence of aggravating or mitigating factors.

a. 1. In violating DR 6-101(B), the Accused violated the duty of diligence owed to his client. Standards at 5.

2. In violating DR 1-103(C), the Accused violated the duty owed to the legal profession. Standards at 5.

b. With respect to both violations, the Accused acted negligently.

c. Injury:

1. No monetary injury was suffered by Dudley due to the delay in closing the probate.

2. The Accused's failure to respond to Bar counsel's inquiries increased the scope of review required by the LPRC.

d. Aggravating factors to consider:

1. The Accused has substantial experience in the practice of law. Standards 9.22(i)

e. Mitigating factors to consider:

1. The Accused has no prior disciplinary record. Standards 9.32(a)

2. The Accused had no dishonest or selfish motive. Standards 9.32(b)

3. The Accused has expressed remorse to both his client and the Bar. Standards 9.32(l).

10.

The Standards provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client. Standards at 33. Similarly, a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession. Standards at 46.

Oregon case law also supports a public reprimand. See In re Odman, 297 Or 744, 687 P2d 153 (1984); In re Greene, 276 Or 1117, 557 P2d 644 (1976). This is the Accused's first offense and any injury was minimal.

11.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a public reprimand.

12.

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

EXECUTED this 19th day of September, 1994.

/s/ David J. Berentson
David J. Berentson

EXECUTED this 28th day of September, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

I, David J. Berentson, 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/ David J. Berentson
David J. Berentson

Subscribed and sworn to before me this 19th day of September, 1994.

/s/ Virginia S. Misner
Notary Public for Oregon
My commission expires: 5-2-95

I, Lia Saroyan, 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 24th day of September, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 28th day of September, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

*

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-178
	)	
KEVIN F. KERSTIENS,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: Stephen R. Moore, Esq.

Disciplinary Board: None

Disposition: Violation of DR 5-105(C) and (E). Public Reprimand.

Effective Date of Opinion: Order signed November 8, 1994.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-178
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
KEVIN F. KERSTIENS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on October 10, 1994, to accept a public reprimand is approved upon the terms set forth therein.

Dated this 8th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Ann L. Fisher
Ann L. Fisher
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-178
	)	
KEVIN F. KERSTIENS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Kevin F. Kerstiens, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Kevin F. Kerstiens, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily and under the confidentiality restrictions of BR 3.6(h).

4.

On May 21, 1994, the State Professional Responsibility Board of the Oregon State Bar authorized the filing of formal disciplinary proceedings against the Accused, alleging that he violated DR 5-105(C) and DR 5-105(E) in connection with his representation of Victor Bitar and Parry Teeny and their respective companies, Partek and TDI. For purposes of this stipulation, the Accused and the Bar agree to the facts and the disciplinary rule violations described herein.

5.

The Accused is a partner at the law firm of Schwabe, Williamson & Wyatt. In 1989, TDI and Partek entered into an agreement under which TDI licensed Partek to use a plastic recycling technology developed by TDI and Teeny. The Accused represented TDI and Teeny in these negotiations. Also in 1988 and 1989, the Accused represented Teeny and TDI in a transaction whereby TDI loaned money to Mr. Bitar's company, Partek, so that it could lease a forklift. Mr. Bitar had separate counsel in this transaction. In May - September, 1990, the Accused represented Mr. Bitar and Mr. Bitar's company, Partek, in negotiations with Phillips Recycling. During these negotiations, Mr. Bitar sought to contract with Phillips regarding the plastic recycling technology Partek was licensed to use. In order to finalize the deal with Phillips, Partek needed to purchase the plastic recycling technology from TDI. During these negotiations, Mr. Bitar asked the Accused to prepare an agreement for the sale of the plastic recycling technology from TDI to Partek. The Accused drafted a sales agreement, which was executed by the parties on September 19, 1990. The Accused billed Mr. Bitar for these services.

6.

At the time the Accused drafted the sales agreement discussed supra, he represented both TDI and Teeny and Partek and Bitar. Partek and TDI (and their majority shareholders, Bitar and Teeny) were on opposite sides of the sales agreement drafted by the Accused. The Accused therefore had an actual conflict of interest, DR 5-105(A)(1), in simultaneously representing them, even though their mutual interests appeared to be in common as regards Phillips. Even if the conflict was only "likely", the Accused nevertheless violated DR 5-105(E) because no full written disclosures were given to the clients.

7.

The following year, in March of 1991, Partek sued Parry Teeny in federal court on the sales agreement, seeking a declaration of ownership rights to the plastic recycling technology and compensatory damages for Parry Teeny's alleged interference with Partek's contract with Phillips. With the Accused's knowledge, lawyers from the Schwabe firm undertook to represent Teeny in this litigation, and filed a motion to dismiss the case. In a memorandum opposing the motion, Partek claimed that the Schwabe firm had a conflict of interest because it had represented Partek in the negotiations for the contracts regarding the sale and licensing of the technology. In April of 1991, TDI filed a lawsuit against Partek in state court, alleging that TDI, not Partek, was the owner of the plastic recycling technology.

8.

In response to Bitar/Partek's objections in the federal case, the Schwabe firm withdrew as counsel. A new law firm was substituted in its place. The federal action settled in May, 1991.

9.

The parties agree that the earlier matter (preparation of the sales agreement regarding the plastic recycling technology) and the later matters (the federal and state lawsuits, wherein both parties claimed ownership of the plastic recycling technology) were "significantly related" within the meaning of DR 5-105(C). Thus, neither the Accused nor the Schwabe firm could represent Parry Teeny or TDI in the later action without the consent of both former and current clients. DR 5-105(C), (D) and (G). No attempt was ever made to obtain this consent. These acts thus violated DR 5-105(C).

10.

The Accused and the Bar agree that in fashioning the appropriate sanction, the Disciplinary Board should refer to the ABA Standards and Oregon case law. The Standards require an analysis of the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury, and existence of aggravating or mitigating factors. In this case, the Accused violated his duty to his clients to avoid conflicts of interests. The Accused's mental state with respect to these violations was negligent and not deliberate. The clients potentially may have been injured by the conflicting loyalties. An aggravating factor which applies in this case is the Accused's substantial experience in the practice of law. Mitigating factors which apply in this case are absence of a prior disciplinary record, absence of a dishonest or selfish motive, cooperative attitude toward disciplinary proceedings, and good character or reputation.

The Standards provide that a reprimand is appropriate when a lawyer is negligent in determining whether the representation of a client will adversely affect another client, and causes injury or potential injury to a client.

11.

The following Oregon Supreme Court and Disciplinary Board decisions appear to be on point: In re Cohen, 316 Or 657, 853 P2d 286 (1993) [attorney publicly reprimanded for representing two clients with likely, then actual, conflicts of interest]; In re Schenck, 5 DB Rptr. 83 (1991) [attorney publicly reprimanded for actual conflict of interest in preparing a contract agreement for both parties]; In re Clark, 7 DB Rptr. 69 (1993) [attorney publicly reprimanded for improperly representing one partner against the other in a partnership dissolution, after having represented both partners in their joint purchase of the assets of the partnership].

12.

The Accused has no prior disciplinary record.

13.

Consistent with these standards and Oregon case law, the Bar and the Accused agree that the Accused should be publicly reprimanded.

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

EXECUTED this 10th day of October, 1994.

/s/ Kevin F. Kerstiens
Kevin F. Kerstiens

EXECUTED this 4th day of October, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

I, Kevin F. Kerstiens, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in this Stipulation are true and correct as I verily believe.

/s/ Kevin F. Kerstiens
Kevin F. Kerstiens

Subscribed and sworn to before me this 10th day of October, 1994.

/s/ Belinda Jesenik
Notary Public for Oregon
My commission expires: 11-23-96

I, Mary A. Cooper, 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 the sanction was approved by the SPRB for submission to the Disciplinary Board on the 21st day of May, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 4th day of October, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-10
	)	
TIMOTHY J. VANAGAS,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None appointed

Disposition: Violation of DR 2-108(A), DR 5-101(A) and DR 9-101(A). Stipulation for Discipline. Public Reprimand

Effective Date of Opinion: November 8, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-10
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
TIMOTHY J. VANAGAS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on October 6, 1994, to accept a public reprimand, is approved upon the terms set forth therein.

Dated this 8th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Ann L. Fisher
Ann L. Fisher
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-10
	)	
TIMOTHY J. VANAGAS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Timothy J. Vanagas, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Timothy J. Vanagas, 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 office and place of business in Multnomah County, State of 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 June 23, 1994, the State Professional Responsibility Board (hereinafter "the Board") authorized formal disciplinary proceedings against the Accused for alleged violation of DR 2-108(A), DR 5-101(A) and DR 9-101(A).

5.

A formal complaint against the Accused has not yet been filed, but the Accused admits the following facts and violations of the Code of Professional Responsibility.

6.

In April, 1988, the Accused was retained by Glenn Butler, Farley Flynn and Roger Misterek to represent them in their age discrimination and wrongful discharge claims against Portland General Electric (PGE). The Accused asked for and received a retainer of $16,666 from Butler and Flynn who each paid approximately $8,333. The Accused asked for and received a retainer of $8,333 from Misterek. By October, 1988, the Accused had received a total of $25,000 from these three clients which he deposited into his trust account.

7.

On December 14, 1988, without the knowledge or consent of Butler, Flynn or Misterek, the Accused withdrew from his clients trust account $24,000 of the above-described retainer.

8.

The Accused's file notes indicate and he believed that his fee agreement with Butler, Flynn and Misterek provided for a minimum fee of $25,000, even though that agreement was not in writing. The Accused believed, therefore, that he was entitled to the full $25,000 when he received it from these clients. Although the Accused had not done enough work for Butler,

Flynn and Misterek before December 14, 1988 to have earned the full $24,000 he withdrew from his trust account, he later rendered to them legal services worth $24,000. He was not aware that agreements providing for minimum fees to which the lawyer is immediately entitled must be in writing to be enforceable.

9.

The Accused admits that his conduct described in paragraphs 6 and 7 herein constituted withdrawal of client funds from a trust account before they were due to the Accused and failure to maintain the funds of his clients in a trust account in violation of DR 9-101(A).

10.

During the time the Accused represented Butler, Flynn and Misterek, he also represented five other former PGE employees in their pension claims against PGE. On May 1, 1990, on behalf of these five clients and Misterek, the Accused presented a written settlement offer to PGE, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein. At the time he made this offer of settlement, Butler and Flynn had not authorized the Accused to negotiate a settlement on their behalf and in April, 1990, had withdrawn an offer of settlement they had made to PGE.

11.

In his May 1, 1990 letter to PGE, the Accused conveyed his clients' settlement offer and in addition made the following offer on behalf of himself:

> We have discussed on several occasions the issue of whether I would agree not to pursue other claims against PGE. In exchange for the sum $25,000, I would agree not to pursue any employment claim not currently filed; nor would I render any assistance to other persons/attorneys making such claims. If PGE does not wish to contract with me, I nonetheless solicit it's [sic] response to the foregoing demand of my clients.

The May 1, 1990 letter formalized proposals that the Accused had previously made to PGE regarding his future representation of people who might have future claims against PGE. PGE did not accept or respond to the Accused's May 1, 1990 offer.

12.

The Accused admits that his own financial interest in contracting with PGE reasonably could have affected the exercise of his professional judgment on behalf of Butler, Flynn, Misterek and the five other clients described herein. The Accused also admits that he did not give full disclosures to or obtain consent from any of these clients to his continued employment after he began to negotiate for a contract with PGE on the terms described in paragraph 10.

13.

The Accused admits that the offer described in paragraphs 10-11 constituted an agreement that restricted his right to practice law in connection with the settlement of a controversy or suit, and that the Accused continued employment when his own financial interests could reasonably have affected the exercise of his professional judgment on behalf of his clients without having obtained the consent of his clients to his continued employment after full disclosure, in violation of DR 2-108(B) and DR 5-101(A).

14.

The Accused was not aware that his May 1, 1990 offer to PGE might violate the Code of Professional Responsibility. His clients, moreover, suffered no apparent damage as a result of the Accused's proposal to PGE, nor did that proposal adversely affect the Accused's representation of the clients. He admits that he should have evaluated whether his clients' interests might have been affected by his own negotiations with PGE.

15.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions and Oregon case law. The ABA Standards require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duties to his clients and to the legal profession. ABA Standards §4.0 and 7.0.

b. With regard to the Accused's state of mind, the Accused should have known but did not in fact know that his conduct violated the Code of Professional Responsibility when he:

1. Withdrew client funds from trust without a written minimum fee agreement entitling him to do so and thus without having earned the full amount he withdrew;

2. Offered to restrict his practice in connection with the settlement of his clients' claim without knowledge of the relevant disciplinary rules; and

3. Failed to determine whether his clients' interests might have been affected by his own negotiations with PGE.

c. The Accused caused no actual injury to his clients' interests by his conduct. He later earned the prematurely withdrawn fees and PGE did not accept his May 1, 1990 proposal. His representation of his clients' interests was, moreover, not

adversely affected by his interest in settling personally with PGE. However, the potential for injury as a result of the Accused's conduct existed.

ABA Standards at 7.

d. Aggravating factors to be considered are:

1. The Accused acted with a selfish motive in withdrawing the clients' funds before he had earned them and in attempting to negotiate a personal settlement with an opposing party;

2. The Accused committed multiple disciplinary offenses in his representation of the clients described herein; and

3. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1976. ABA Standards §9.22.

e. Mitigating factors to be considered:

1. The Accused has no record of prior disciplinary offenses;

2. The Accused has displayed a cooperative attitude towards these proceedings; and

3. The Accused acknowledges the wrongfulness of his conduct and is sorry for it. ABA Standards §9.32.

16.

The ABA Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes potential injury to the client. ABA Standards §4.13. The ABA Standards also suggest that a public reprimand is appropriate for a negligent violation of DR 2-108(A) which causes potential injury. ABA Standards §7.3.

Finally, a public reprimand is generally appropriate where a lawyer is negligent in determining whether the representation of a client may be materially affected by his own interests and causes potential injury thereby. ABA Standards §4.33. There is no Oregon disciplinary case law regarding DR 2-108(B). See, however, former Legal Ethics Opinion (LEO No. 258 and current LEO 1991-47. Regarding DR 5-101(A) and DR 9-101(A), see In re Snyder, 276 Or 897, 559 P2d 1273 (1976); In re Harrington, 301 Or 18, 718 P2d 725 (1986); and In re Rhodes, 5 DB Rptr 9 (1991).

17.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a public reprimand.

18.

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

EXECUTED this 30th day of September, 1994.

/s/ Timothy J. Vanagas
Timothy J. Vanagas

EXECUTED this 6th day of October, 1994.

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

I, Timothy J. Vanagas, 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/ Timothy J. Vanagas
Timothy J. Vanagas

Subscribed and sworn to before me this 30th day of September, 1994.

/s/ Eileen Smith
Notary Public for Oregon
My commission expires: 6-20-98

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 23rd day of June, 1994.

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

Subscribed and sworn to before me this 6th day of October, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-103
	)	
JONATHAN ROSS,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: J. Scott Kramer, Esq., Philadelphia, PA

Disciplinary Board: None

Disposition: Violation of DR 2-110(A)(1) & (2) and DR 6-101(B). Stipulation for Discipline - 30-day suspension.

Effective Date of Opinion: Order signed November 15, 1994. Suspension effective December 1, 1994.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 93-103
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
JONATHAN ROSS,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on March 25, 1994, consisting of a thirty (30) day suspension beginning December 1, 1994, is approved.

Dated this 15th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Ann L. Fisher
Ann L. Fisher
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-103
	)	
JONATHAN ROSS,	)	STIPULATION
	)	FOR DISCIPLINE
Accused.	)	
	)	

Jonathan Ross, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Jonathan Ross, was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 24, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On November 20, 1993, the State Professional Responsibility Board (hereinafter "the Board") authorized the filing of a formal disciplinary complaint against the Accused, charging violations of DR 2-110(A)(1) and (2) and DR 6-101(B).

5.

The facts upon which the formal disciplinary complaint was to be based are the following:

In October, 1992, the Accused was retained to represent Brad Horn in a dissolution action. The Accused appeared on behalf of Mr. Horn, and -- with Mr. Horn's approval -- negotiated an agreement to pay temporary child support. This agreement was not finalized because the Accused claims he was unable to obtain Mr. Horn's signature on a stipulated order of temporary support, nor did Mr. Horn pay the agreed-upon retainer fee. The Accused maintains and Mr. Horn denies that Mr. Horn failed to return the Accused's telephone calls. In any event, because opposing counsel, Joel Overlund, did not receive the stipulation regarding temporary support, he notified the Accused that he was setting a show cause hearing for January 27, 1993 to determine temporary support. Mr. Horn did not receive notice of this hearing. Neither the Accused nor Mr. Horn appeared. Judge Nachtigal unsuccessfully attempted to reach Mr. Ross by phone at the hearing. She therefore awarded temporary support based solely on evidence presented by Mr. Horn's wife.

In November, 1992, the court clerk notified the parties' attorneys that trial was set for April 14, 1993. The Accused does not remember whether he received the notice or advised his client of it. Mr. Horn denies that he was ever informed of any trial date. On January 31, 1993

(after the January 27, 1993 show cause hearing, at which neither the Accused nor Mr. Horn appeared) the Accused wrote Mr. Horn that because he was not current on his fees, the Accused would close the file and take no further action. The Accused considered this letter to effect his withdrawal from Mr. Horn's employment. The Accused did not request court permission to withdraw, nor did he notify opposing counsel. Mr. Horn did not understand this letter to mean that the Accused was withdrawing from his representation. Neither the Accused nor Mr. Horn appeared at the dissolution trial in April before Judge Stephen Herrell. Judgment was rendered for child support, alimony and visitation based on the testimony of Mr. Horn's wife. The Accused sent Mr. Horn a copy of the final judgment and decree, which Mr. Horn considered unacceptable. Mr. Horn states that before he received the Accused's letter enclosing the final decree, he believed that the dissolution proceeding was still in the temporary support stage.

6.

By unilaterally announcing his withdrawal from employment on January 31, 1993, four days after he had failed to appear on behalf of his client at a temporary support hearing, the Accused failed to take reasonable steps to avoid prejudicing Mr. Horn's interests. He also failed to request court permission to withdraw.

7.

By committing the following acts, the Accused failed to take reasonable steps to avoid prejudicing his client's interests and also neglected a legal matter entrusted to him:

1. He failed to notify his client of pending court dates;

2. He failed to request a continuance of the temporary support hearing until he could reach his client;

3. He failed to appear on behalf of his client at the temporary support hearing;

4. He withdrew from employment without telling his client that a temporary support judgment had been rendered against him and without advising his client to seek counsel to consider setting it aside;

5. He failed to advise his client to seek counsel to set aside the decree of dissolution.

6. He failed to clearly and unambiguously inform the client he was withdrawing from the representation; and

7. He failed notify the court or opposing counsel of his withdrawal.

8.

The Accused stipulates that these acts and omissions violated DR 2-110(A)(1), DR 2-110(A)(2), and DR 6-101(B), and apologizes for these violations.

9.

Mr. Horn was injured by losing the opportunity to present his case in court. Based on the other parties' evidence, he was ordered to pay child support in an amount exceeding that discussed in earlier settlement negotiations. He was also ordered to comply with certain conditions regarding drug treatment before being allowed reasonable child visitation.

10.

Pursuant to the above admissions and BR 3.6(C)(III)[sic], the Accused agrees to accept a 30 day suspension for his violations of DR 2-110(A)(1) and (2) and DR 6-101(B). The suspension shall begin 10 days after the date on which this stipulation is approved by the disciplinary board of the Oregon State Bar.

11.

The Accused has no prior record of prior discipline and was admitted to practice law in the state of Oregon in 1991.

12.

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

EXECUTED this 25th day of March, 1994.

/s/ Jonathan Ross
Jonathan Ross

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

I, Jonathan Ross, 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/ Jonathan Ross
Jonathan Ross

Subscribed and sworn to before me this 25th day of March, 1994.

/s/ John Sterns
Notary Public for Oregon
My commission expires: 9-9-97

I, Mary A. Cooper, 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 30th day of March, 1994.

/s/ Mary A. Cooper
Mary A. Cooper
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 30th day of March, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-115
	)	
DEAN VAN LEUVEN,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(3), DR 3-101(A) and ORS 9.160. Stipulation for Discipline. 30-day Suspension

Effective Date of Opinion: Order signed November 16, 1994. Suspension begins December 17, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 94-115
	)	
DEAN R. VAN LEUVEN,	)	STIPULATION FOR DISCIPLINE
	)	
Accused.	)	
	)	

Dean R. Van Leuven, attorney at law (hereinafter "the Accused") and the Oregon State Bar (hereinafter "the Bar") hereby stipulate to the following matters pursuant to Oregon State Bar 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, Dean R. Van Leuven, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1969. The Accused transferred to inactive status effective December 22, 1989. He was subsequently suspended July 11, 1992 for failure to pay his 1992 Bar dues.

3.

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

4.

On or about March 9, 1994, the Accused reviewed and signed a letter bearing a letterhead identifying the Accused as an attorney-at-law, which letter demanded for and on behalf of an alleged client, one Carol Sutton, that certain activities cease and threatening to "prepare and file complaints with the appropriate authorities".

5.

The letter was prepared by a non-lawyer and friend of the Accused. The Accused reviewed and signed the letter knowing that he was suspended and not authorized to practice law in the State of Oregon, that Carol Sutton was not his client, and that he had never met nor spoken with Carol Sutton.

6.

As a result of the conduct described above, the Bar conducted an investigation and instituted a disciplinary proceeding against the Accused, alleging violations of DR 1-102(A)(3), DR 3-101(A) and ORS 9.106[sic]. The Code of Professional Responsibility. A copy of the Bar's Formal Complaint is attached hereto as Exhibit A.

7.

The Accused admits to the above-described conduct and further admits the conduct constitutes violation of the disciplinary rules set forth in the Formal Complaint.

8.

Mitigating factors in terms of sanctions include: The Accused has no prior disciplinary record; he has cooperated in the investigation and prosecution of this disciplinary matter; no

actual damage occurred as a result of the described conduct; and the Accused does not presently intend to again be an active member of the Bar.

9.

In exchange for this Stipulation, the Accused agrees to accept a thirty (30) day suspension from the practice of law, which suspension shall be effective 30 days after final approval of this stipulation. The Accused understands and agrees that, should he thereafter seek reinstatement to the Bar, he shall be required to submit a formal reinstatement application pursuant to BR 8.1 or 8.2 as may apply, and to demonstrate the requisite character and fitness under that rule.

10.

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

Executed this 4th day of November, 1994.

/s/ Dean R. Van Leuven
Dean R. Van Leuven

/s/ Jane E. Angus
Jane E. Angus
Assistant Disciplinary Counsel
Oregon State Bar

STATE OF OREGON)
) ss.
County of Lane)

I, DEAN R. VAN LEUVEN, being first duly sworn, say that I am the Accused in the above-referenced proceeding and that I attest that the statements contained in the Stipulation are true and correct as I verily believe.

/s/ Dean R. Van Leuven
Dean R. Van Leuven

SUBSCRIBED AND SWORN to before me this 4th day of November, 1994.

/s/ Greg Ripke
Notary Public for Oregon
My Commission Expires: 1-1-98

STATE OF OREGON)
) ss.
County of Clackamas)

I, JANE E. ANGUS, 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 authorized by the State Professional Responsibility Board for submission to the Disciplinary Board on the 23rd day of June, 1994.

/s/ Jane E. Angus
Jane E. Angus
Assistant Disciplinary Counsel
Oregon State Bar

SUBSCRIBED AND SWORN to before me this 9th day of November, 1994.

/s/ Carol J. Krueger
Notary Public for Oregon
My Commission Expires: 4-15-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-115
	)	
DEAN R. VAN LEUVEN,	)	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, DEAN R. VAN LEUVEN, was admitted by the Oregon Supreme Court to the practice of law in Oregon on the 12th day of September, 1969. The Accused transferred to inactive status effective December 22, 1989 and was subsequently suspended from the practice of law on July 11, 1992 for failure to pay 1992 Bar dues.

3.

On or about March 9, 1994, the Accused reviewed and signed a letter bearing a letterhead identifying the Accused as an attorney-at-law, which letter demanded, for and on behalf of an alleged client, Carol Sutton, that a third party cease certain activity, and

alternatively threatening to prepare and file complaints with the appropriate authorities. A true copy of the letter is attached hereto as Exhibit "1" and by this reference made a part hereof.

4.

Exhibit "1" was prepared by a non-lawyer and friend of the Accused. The Accused reviewed and signed the letter knowing that he was suspended and not authorized to practice law in the State of Oregon, that Carol Sutton was not his client, and that he had never met nor spoken with Carol Sutton.

5.

The Accused knew that the representations described in Exhibit "1" were false and constituted the practice of law in a jurisdiction where he was not authorized to practice.

6.

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

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

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

3. ORS 9.160.

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 13th day of October, 1994.

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. 94-25
	)	
MICHAEL E. KNAPP,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: Peter R. Jarvis, Esq.

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(3) (two counts). Stipulation. 45-Day Suspension.

Effective Date of Opinion: Order signed November 17, 1994. Suspension effective November 18, 1994.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 94-25
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
MICHAEL E. KNAPP,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on November 2, 1994, consisting of a forty-five (45) day suspension beginning November 18, 1994, is approved.

Dated this 17th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Ann L. Fisher
Ann L. Fisher
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-25
	)	
MICHAEL E. KNAPP,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Michael E. Knapp, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Michael E. Knapp, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1988, and has been a member of the Oregon State Bar since that time, having his office and place of business in Lane County, Oregon at the time of the events described herein, and currently maintaining his office and place of business in Marion County, Oregon.

3.

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

4.

On September 24, 1994, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he violated DR 1-102(A)(3) in connection with his departure from his prior law firm. The Accused and the Bar agree to the following facts and disciplinary rule violations to resolve this matter.

5.

THE FORMS CHARGE

Since being admitted to the Bar in 1988, the Accused had been an associate with the Eugene, Oregon firm of Hershner, Hunter, Moulton, Andrews, & Neill (hereinafter "the firm"). In the spring of 1993, the Accused told the firm he would be leaving April 30, 1993 to begin solo practice in Salem. Although the Accused was told that upon his departure he could only take copies of the firm's legal forms from his own department, Creditor's Rights and Bankruptcy, he decided to take or retain additional forms as well without informing the firm of his intention to do so.

In the evening of April 26, 1993, after regular hours, a firm member noticed that forms in his area were being copied. The computer network showed that the Accused was making the copies. When asked if he was copying forms, the Accused denied he was making copies but stated he might have accidently done so while searching for a particular form.

On the Accused's last day with the firm, the Accused was asked if he had taken or retained any unauthorized copies of forms and he admitted he had. The Accused was asked to return the forms and he agreed to do so.

On May 4, 1993, the Accused returned to the firm approximately 1,500 pages of forms. This constituted all of the forms which the Accused had not been authorized to copy.

THE FEE CHARGE

On April 13, 1993, the Accused opened a firm file for Mr. Brooks, agreeing to collect a judgment for the client for a flat fee of $100 plus costs. The Accused asked Brooks to send the firm a check for the costs but the Accused decided to keep the flat fee. The firm's financial and billing records indicate that the Accused collected the judgment incurring $17.50 in costs but recording no time for the collection. The firm received payment of the costs but not the fee. The work on the collection was after hours and did not involve use of the Accused's secretary. However, the Accused did use the firm computer, paper, envelopes and resources to collect the judgment. The Accused did not turn over the $100 fee to the firm.

6.

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards and Oregon case law. Those standards require analyzing the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury, and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duty to the public by failing to maintain his personal integrity. ABA Standard 5.1 and In re Corey Smith, 315 Or 260, 843 P2d 449 (1992).

b. The Accused acted with intent to accomplish a particular result. ABA Standards III.

c. There was actual or potential injury in that the Accused did copy and initially retain the forms against the instructions of the firm and that he failed to turn over to the firm the $100 that he earned while employed by the firm. ABA Standards III.

d. Aggravating factors to be considered are:

1. Dishonest or selfish motive; 9.22(b)

2. Indifference to making restitution. 9.22(j).

e. Mitigating factors to be considered:

1. Absence of prior disciplinary record; 9.32(a)

2. Full and free disclosure. 9.32(e)

f. Factors neither aggravating nor mitigating are:

1. The Accused did ultimately return all unauthorized copies of forms and has now paid the firm the $100 plus 9% interest. 9.32.(a)

g. Case law:

1. In re Busby, 317 Or 213, 855 P2d 156 (1993);

2. In re Corey Smith, 315 Or 260, 843 P2d 449 (1992).

7.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused shall receive a 45-day suspension from the practice of law for two violations of DR 1-102(A)(3).

8.

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

EXECUTED this 2nd day of November, 1994.

/s/ Michael E. Knapp
Michael E. Knapp

EXECUTED this 15th day of November, 1994.

/s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

I, Michael E. Knapp, 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/ Michael E. Knapp
Michael E. Knapp

Subscribed and sworn to before me this 2nd day of November, 1994.

/s/ Judy L. Van Noy
Notary Public for Oregon
My commission expires: 11-19-96

I, Chris L. Mullmann, 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 24th day of September, 1994.

/s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 15th day of November, 1994.

Victoria Fichtner
Notary Public for Oregon
My commission expires: 11-19-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 94-19; 94-20
	)	
DAVID C. FORCE,	)	
	)	
Accused.	)	

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 2-110(A)(1), DR 2-110(A)(2), DR 6-101(B) and DR 7-101(A)(2). Stipulation for Discipline. 30 day suspension.

Effective Date of Opinion: Order signed November 15, 1994. Suspension effective November 28, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 94-19; 94-20
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
DAVID C. FORCE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER, having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on November 2, 1994, consisting of a thirty (30) day suspension beginning November 28, 1994, is approved.

Dated this 15th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Martha L. Walters
Martha L. Walters
Region 2 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 94-19; 94-20
	)	
DAVID C. FORCE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

David C. Force, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, David C. Force, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On July 23, 1994, the State Professional Responsibility Board (SPRB) authorized a formal disciplinary proceeding against the Accused based on two client complaints:

No. 94-19 involving the complaint of Robert H. Yount and alleging violations of DR 6-101(B), DR 7-101(A)(2) and DR 7-101(A)(3); and No. 94-20 involving the complaint of William R. Peterson, alleging violations of DR 2-110(A)(1), DR 2-110(A)(2) and DR 6-101(B).

The Bar and the Accused hereby stipulate to the following facts, violations and sanction as a resolution of these matters.

Yount Matter

5.

On or about June 14, 1989, the Accused was retained to represent Robin H. Yount ("Yount") in pursuit of claims against the City of Bandon, Oregon, for false arrest, malicious prosecution and slander. On or about January 28, 1991, the Accused filed a lawsuit on his client's behalf in U.S. District Court for the District of Oregon. Depositions followed in the fall of 1991. The Accused became aware of facts regarding the case which he believed rendered the claim frivolous, and which had not been disclosed to him by the client prior to discovery. He believed that continuing to prosecute the claim would subject the client to great risk of sanctions including payment of the defendants' attorney fees, which had been claimed by the defendants in their Answer.

In October 1991, the Accused received notice from the federal court that the Yount lawsuit was scheduled to be dismissed for lack of prosecution. An order of dismissal was issued

by the court on October 31, 1991, and a judgment of dismissal was entered on November 7, 1991.

The Accused did not contest the dismissal of the lawsuit, as he concluded that a dismissal without prejudice would not prompt claims by the defendant for costs or attorney fees, and this conclusion proved to be correct. However, the Accused failed to consult with his client regarding these conclusions over the merits of the lawsuit, the fact that the dismissal of the lawsuit was imminent or, after the fact, that the lawsuit had been dismissed. The Accused had intended to notify his client of these conclusions, and of his conclusion that he could not ethically pursue the claims further, in writing, but failed to follow up and insure that such a letter had been mailed prior to leaving the firm with which he was associated during 1991, in early 1992. Yount did not learn of the dismissal until several months later.

6.

The Accused stipulates that by allowing the lawsuit to be dismissed without consultation with or consent from Yount, and by failing to notify Yount of the dismissal once it occurred, he violated DR 6-101(B) and DR 7-101(A)(2). The Accused further stipulates that he violated DR 7-101(A)(3) in that his failure to consult with Yount denied Yount the opportunity to consider the Accused's conclusions regarding the merits of the lawsuit and the opportunity to consult another lawyer for a second opinion.

Peterson Matter

7.

In or about early 1992, the Accused was retained to represent William R. Peterson in pursuit of a claim against Peterson's former employer for statements made to a subsequent

employer which allegedly resulted in Peterson's termination. Force filed a lawsuit sometime thereafter on his client's behalf in Clackamas County District Court alleging defamation and intentional infliction of emotional distress. The matter was set for an arbitration on December 28, 1992. The arbitration was held that day but was not concluded. The parties acknowledged that another day had to be scheduled in the future for this purpose.

At or about the time of the first day of arbitration, Peterson provided information to the Accused which led the Accused to conclude that Peterson's claim had little merit. The Accused learned that defense counsel was aware of these adverse facts and would use them, if necessary, in a trial de novo before a jury. The Accused believed the adverse facts would make a successful trial result impossible, and also that their public disclosure would be extremely harmful to the client in other matters outside the scope of the litigation, including another action which the client indicated he intended to commence through another attorney. The defendant had made two prior settlement offers which the Accused urged the client to accept, but which the client continued to reject. The Accused further believed that additional adverse matters unknown to the defendant which the Accused learned after the first day of arbitration may have precluded ethically the Accused's further participation in the matter.

Following the first day of arbitration, the Accused received, but did not respond to, inquiries from defense counsel regarding the scheduling of the continuation of the arbitration. The Accused then received, on or about May 10, 1993, notice from Clackamas County District Court that Peterson's lawsuit would be dismissed for lack of prosecution on June 1, 1993. Thereafter, the Accused consulted with his client who expressed a desire to proceed with the claim through arbitration. The Accused asked the client to reimburse the Accused for costs

advanced to date and for costs anticipated to conclude the arbitration. Peterson did not pay these costs to the Accused.

No further action was taken by the Accused in the Peterson matter and it was dismissed for lack of prosecution. The Accused remained attorney of record until after Peterson filed a complaint with the Bar. On or about April 13, 1994, after consultation with the Bar, the Accused filed a notice of withdrawal as Peterson's lawyer, along with a motion for relief from the order of dismissal and to reinstate the case. The motion for relief and to reinstate was denied by the court on April 25, 1994.

8.

The Accused stipulates that, by failing to withdraw as attorney of record, either because of his conclusion over the merits of the cause or because of his client's failure to pay costs, and thereafter allowing the lawsuit to be dismissed, the Accused violated DR 2-110(A)(1) and DR 2-110(A)(2). The Accused further stipulates that, by failing to pursue the client's claim and to keep the client reasonably informed of developments for as long as the Accused was attorney of record, and by allowing the matter to be dismissed, he violated DR 6-101(B).

Sanction

9.

The Accused and the Bar agree that in arriving at the appropriate sanction in this matter, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions ("Standards") and Oregon case law. The Standards require analysis of the Accused's conduct in light of four factors: ethical duty violated, the Accused's mental state, actual or potential injury and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duty of diligence owed to his clients. Standards 4.4.

b. The Accused acted with knowledge and, for DR 7-101(A)(2) and (A)(3), with intent. Standards at 7.

c. Whether the clients were injured as a result of the dismissals is unknown. Under the Accused's analysis, neither claim had merit. Peterson has made a claim with the Professional Liability Fund, but it has been denied for lack of actual damages. The clients were injured to the extent they were denied the opportunity to know of and consult with the Accused regarding the Accused's conclusions as to the merits of each case, and the opportunity to consult with another lawyer for a second opinion.

d. Aggravating factors to be considered are:

1. The Accused has a prior disciplinary record in that he received a letter of admonition in April 1991 for violations of DR 2-110(A)(2) and DR 6-101(B). Standards 9.22(a).

2. There are multiple offenses present. Standards 9.22(d).

3. The Accused has substantial experience in the practice of law. Standards 9.22(i).

e. Mitigating factors to be considered are:

1. There is an absence of any dishonest or selfish motive. Standards 9.32(b).

2. The Accused has made full and free disclosure during the course of the Bar's investigation. Standards 9.32(e).

3. The Accused is remorseful for his misconduct. Standards 9.32(l).

The Standards provide that a suspension is generally appropriate when a lawyer either knowingly fails to perform services for a client and causes injury or potential injury to the client, or engages in a pattern of neglect and causes injury or potential injury to a client. Standards 4.42.

10.

A suspension is consistent with Oregon case law under facts and violations similar to those present here. In re Geurts[sic], 290 Or 241, 620 P2d 1373 (1980), 30 day suspension for neglecting a client's legal matter, not excused by the lawyer's conclusion that the client's claim lacked merit; In re Boland, 288 Or 133, 602 P2d 1078 (1979), a lawyer suspended for six months for multiple failures to appear in court on behalf of client, allowing matters to be dismissed for lack of prosecution and permitting a default judgment to be entered against a client.

11.

In light of the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 30 days, to be effective November 28, 1994.

12.

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

EXECUTED this 2nd day of November, 1994.

/s/ David C. Force
David C. Force

EXECUTED this 4th day of November, 1994.

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

I, David C. Force, 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/ David C. Force
David C. Force

Subscribed and sworn to before me this 2nd day of November, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

I, Jeffrey D. Sapiro, being first duly sworn, say that I am Disciplinary Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for Discipline and that it was approved by the SPRB chairperson for submission to the Disciplinary Board on the 4th day of November, 1994.

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

Subscribed and sworn to before me this 4th day of November, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-77
	)	
DONALD K. ROBERTSON,	)	
	)	
Accused.	)	

Bar Counsel: Theodor Heap, Esq.

Counsel for the Accused: Stephen R. Moore, Esq.

Disciplinary Board: Steve Brischetto (Chair); James Leigh; Richard Boyce (public member)

Disposition: Violation of DR 5-101(A). Disciplinary Board approval of Stipulation for Discipline. 30 day suspension.

Effective Date of Opinion: Order signed November 8, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	No. 92-77
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
DONALD K. ROBERTSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

THIS MATTER having coming on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the Stipulation entered into between the Oregon State Bar and the Accused on October 14, 1994, consisting of a thirty (30) day suspension beginning December 1, 1994, is approved upon the terms set forth therein.

Dated this 8th day of November, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Ann L. Fisher
Ann L. Fisher
Region 5 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-77
	)	
DONALD K. ROBERTSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Donald K. Robertson, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Donald K. Robertson, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1958, and has been a member of the Oregon State Bar since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On December 22, 1993, pursuant to authorization from the State Professional Responsibility Board of the Oregon State Bar a formal complaint was filed against the Accused alleging that he violated DR 1-102(A)(3) and DR 5-101 (A) in connection with the handling of a client matter. A copy of the formal complaint is attached hereto as Exhibit A. The Accused and the Bar agree to the following facts and disciplinary rule violations to resolve this matter.

5.

On or about December 31, 1986, the Accused entered into a contract whereby he, his wife Roberta J. Robertson, Donald D. Jones and Marlene Jones agreed to purchase the Ace Court Apartments and the Chalet Terrace Apartments from Kenneth E. Davis and Kathleen D.J. Davis. The Accused prepared both real estate contracts for the parties' signatures.

The Accused and the other purchasers defaulted under the purchase contracts by failing to make required payments to the mortgagee.

During the period of default, the Accused undertook to negotiate for all parties to these contracts, including on behalf of Mr. and Ms. Davis in their efforts to negotiate a moratorium on their payment obligation to Benj. Franklin. By letter dated February 12, 1988, the Accused advised Benj. Franklin that he represented the Davises in connection with the mortgage and requested a three-month moratorium. The Accused did not provide a copy of the letter to his clients.

The Accused continued to represent Mr. and Ms. Davis in attempting to refinance the Chalet Terrace and Ace Court Apartments. During this time the purchasers remained in default under both real estate contracts.

During the period in which the Accused was in default of his obligations to the Davises the exercise of the Accused's professional judgment on behalf of the Davises was, or reasonably may have been, affected by his financial, business, property or personal interests to the extent he was a debtor of the Davises'; and the Davises should have had the benefit of independent legal advice regarding default remedies.

The Accused did not make full disclosure of the nature of his conflict to the Davises or obtain their consent to his continued representation of them.

The Accused stipulates that his conduct described above constituted a conflict of interest in violation of DR 5-101(A).

6.

For purposes of this Stipulation, the Bar dismisses all remaining allegations of disciplinary violations contained in its formal complaint.

7.

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards and Oregon case law. Those standards require analyzing the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury, and the existence of aggravating and mitigating circumstances.

a. The ethical duty violated was the failure to avoid conflicts of interest, a duty owed to his clients, which the Standards assume to be the most important of his duties. 4.32

b. Although the Accused contends that he acted without conscious awareness of this conflict, he admits that it was obvious and that he should have been aware of it at the time. Under the test of the Standards, the Accused acted with knowledge. ABA Standards III

c. Because of subsequent litigation between the parties it is difficult to assess injury. There was at least potential injury in that the Davises should have had independent counsel regarding other available remedies against the purchasers in default.

d. Aggravating factors to be considered are:

1. The Accused was suspended from the practice of law in 1981 for a period of thirty days by order of the Supreme Court. In re Robertson, 290 Or 639, 624 P2d 603 (1981). He was also admonished in 1977 for borrowing money from a client without advising the client to seek independent legal advice and for failure to promptly repay the loan. 9.22(a)

2. The Accused has substantial experience in the practice of law having been admitted in 1958. 9.22(i)

e. Mitigating factors to be considered:

1. The Accused has made full and free disclosure and has cooperated in the Bar's investigation. 9.32(e)

2. His prior suspension and admonition are remote in time. 9.32(m)

8.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a thirty day suspension from the practice of law. The Supreme Court has noted that suspension is appropriate for conflict of interest cases where the conflict is so obvious

that the lawyer should know better. In re Robertson, supra. And it matters not if there was no conflict of interest at the outset of the representation. DR 5-101(A), which requires an attorney to refuse employment when his interests may impair his judgement, prohibits continued as well as initial acceptance of employment. In re David Moore, 299 Or 496, 703 P2d 961 (1985). Because his professional judgment was likely to be influenced by his personal interests it was necessary to make full disclosure to his client and obtain consent to continue his representation of the Davises. In re Baer, 298 Or 29, 688 P2d 1324 (1984). See also OSB Formal Op. No. 1991-32.

9.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6 and that it be effective on December 1, 1994, or thirty days after final approval, which shall last occur.

EXECUTED this 14th day of October, 1994.

/s/ Donald K. Robertson
Donald K. Robertson, Accused

EXECUTED this 25th day of October, 1994.

/s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

I, Donald K. Robertson, 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/ Donald K. Robertson
Donald K. Robertson, Accused

Subscribed and sworn to before me this 17th day of October, 1994.

/s/ Janiece M. Wood
Notary Public for Oregon
My commission expires: 10-3-96

I, Chris L. Mullmann, 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 24th day of October, 1994.

/s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 25th day of October, 1994.

Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-114
	)	
L. BRITTON EADIE,	)	
	)	
Accused.	)	

Bar Counsel: William B. Kirby, Esq.

Counsel for the Accused: None

Disciplinary Board: Nicholas Zafiratos, Chair; Fred Avera & Kenneth Doerfler (public member)

Disposition: Violation of DR 1-102(A)(3), DR 7-102(A)(1), DR 7-102(A)(5), DR 7-104(A)(1) and ORS 9.460(2). Disciplinary Board approval of Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: December 19, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-114
	)	
L. BRITTON EADIE,	)	ORDER APPROVING NO-CONTEST
	)	PLEA
Accused.	)	
	)	

THIS MATTER, having come on to be heard upon the No Contest Plea of the Accused and the agreement of the Oregon State Bar to accept said No Contest Plea in exchange for public reprimand; and good cause appearing therefor,

IT IS HEREBY ORDERED that the No Contest Plea executed by the Accused and the Oregon State Bar on December 7, 1994, is approved upon the terms set forth therein.

Dated this 19th day of December, 1994.

/s/ Karla J. Knieps
Karla J. Knieps
State Chairperson

/s/ Douglas E. Kaufman
Douglas E. Kaufman
Region 4 Chairperson

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 93-114
	)	
L. BRITTON EADIE,	)	NO CONTEST PLEA
	)	
Accused.	)	
	)	

L. Britton Eadie, attorney at law, (hereinafter "the Accused") hereby enters a no contest plea to the Third Cause of Complaint of the Formal Complaint attached hereto as Exhibit 1 and incorporated by reference herein. As a result of this Plea of No Contest, the Oregon State Bar agrees to dismiss the remaining causes of complaint in the Formal Complaint.

The Accused enters into this No Contest Plea freely and voluntarily. Further, he acknowledges that this plea is made under the restrictions set forth in Rule of Procedure 3.6(h).

At its meeting of March 19, 1994, the Bar's State Professional Responsibility Board (SPRB) authorized formal disciplinary proceeding against the Accused in Case No. 93-114 alleging that the Accused violated DR 1-102(A)(3); DR 7-102(A)(1), DR 7-102(A)(5); DR 7-104(A)(1) and ORS 9.460(2) in connection of his representation of Ammar Hadi Fitouri.

By this Plea of No Contest, the Accused does not desire to defend against the Third Cause of Complaint alleging contact of a represented party in the absence of counsel and without permission of the represented party's attorney, in violation of DR 7-104(A)(1).

The Accused agrees to accept a public reprimand in exchange for the No Contest Plea.

The Accused has no prior record of discipline.

This Plea of No Contest is subject to approval as to form by Disciplinary Counsel and substantive approval by the SPRB. If approved by the SPRB pursuant to BR 3.6(b), the plea shall be submitted to the Disciplinary Board for review by the State Chairperson and the Regional Chairperson pursuant to BR 3.6(e).

EXECUTED this 7th day of December, 1994.

/s/ L. Britton Eadie
L. Britton Eadie

EXECUTED this 7th day of December, 1994.

/s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

I, L. Britton Eadie, being first duly sworn, say that I am the Accused in the above-referenced proceeding and that I attest that the statements contained in this No Contest Plea are true and correct as I verily believe.

/s/ L. Britton Eadie
L. Britton Eadie

SUBSCRIBED AND SWORN to before me this 7th day of December, 1994.

/s/ Victoria Fichtner
Notary Public for the State of Oregon.
My Commission Expires: 3-26-97

I, Chris L. Mullmann, 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 No Contest Plea and that the sanction was approved by the SPRB for submission to the Disciplinary Board on December 6, 1994.

/s/ Chris L. Mullmann
Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

SUBSCRIBED AND SWORN to before me this 7th day of December, 1994.

/s/ Victoria Fichtner
Notary Public for the State of Oregon
My Commission Expires: 3-26-97

Formal Complaint No. 93-114; L. Britton Eadie, 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, L. Britton Eadie, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Washington, State of Oregon.

3.

While involved in litigation in Washington County and during trial, the Accused attempted to serve or have served a subpoena duces tecum upon Kenneth L. Baker while Mr. Baker was a member of the Oregon Legislature. No personal service of the subpoena was effectuated upon Mr. Baker. Despite the lack of personal service, the Accused filed an affidavit with the court swearing that the subpoena "was properly served on Kenneth L. Baker, attorney at law, and the former attorney for petitioner, by personal service on August 11, 1993,..." In filing the affidavit, the Accused was attempting to persuade the court to find Mr. Baker in contempt for failing to appear pursuant to the subpoena.

4.

By failing to personally serve Mr. Baker and by stating to the court that personal service had been effectuated, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation knowingly made a false statement of law, mislead the court and took action to harass or maliciously injure another.

5.

The aforesaid conduct of the Accused violated the following standards of professional conduct established by law and by the Oregon State Bar: DR 1-102(A)(3), DR 7-102(A)(5) and DR 7-102(A)(1) of the Code of Professional Responsibility; and ORS 9.460(2).

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

6.

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

7.

The above-described subpoena originally bore a criminal case number, but was subsequently changed after the original had been served, but not before filing, to reference a domestic relations case described above (Exhibits omitted)

8.

On information and belief, the Bar alleges that the Accused altered the subpoena. By altering the subpoena, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

9.

The aforesaid conduct of the Accused violated the following standard of professional conduct established by law and by the Oregon State Bar: 1. DR 1-102(A)(3) of the Code of Professional Responsibility.

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

10.

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

11.

After a hearing in the dissolution case described above, the Accused approached the petitioner, an adverse party, in the Washington County Courthouse in the absence of counsel and verbally advised her in a threatening or intimidating manner that the Accused intended to get an order forcing her to produce or turn over her son to the Accused's client.

12.

By contacting a represented party in the manner done so by the Accused, in the absence of counsel and without permission of the represented party's attorney, the Accused engaged in a communication with a person represented by counsel and took action to harass or maliciously injure another.

13.

The aforesaid conduct of the accused violated the following standards of professional conduct established by law and by the Oregon State Bar: DR 7-104(A)(1) and DR 7-102(A)(1) 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 10 day of May, 1994.

OREGON STATE BAR
By: S/Ann Bartsch, Acting Executive Director

Exhibit 1

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 91-6; 91-8; 91-96
	)	
THOMAS W. SWINT,	)	
	)	
Accused.	)	

Bar Counsel: Steven L. Wilgers, Esq.

Counsel for the Accused: Dan Clark, Esq.

Disciplinary Board: Melvin E. Smith, Chairperson; Donald Denman, Leslie K. Hall, Public Member

Disposition: Violation of DR 9-101(A) (two counts) and DR 1-103(C) (two counts). Disciplinary Board approval of Stipulation for Discipline. 90 day suspension:

Effective Date of Opinion: April 16, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	SC S41139
	)	
Complaint as to the Conduct of	)	ORDER ACCEPTING STIPULATION
	)	FOR DISCIPLINE
THOMAS W. SWINT,	)	
	)	
Accused.	)	
	)	

The Oregon State Bar and Thomas W. Swint, have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Thomas W. Swint is suspended from the practice of law for a period of 90 days. The period of suspension shall begin April 16, 1994.

DATED this 8th day of April, 1994.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

c: Lia Saroyan
Dan W. Clark

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 91-6; 91-8; 91-96
	)	
THOMAS W. SWINT	)	OPINION
	)	
Accused.	)	

Bar Counsel: Steven L. Wilgers, Esq.

Counsel for the Accused: Dan Clark, Esq.

Disciplinary Board: Melvin E. Smith, Chairperson; Donald Denman, Leslie K. Hall, Public Member

Disposition: First Cuase of Complaint - Guilty. Second Casue of Complaint - Guilty. Third cause of Complaint - Guilty. Fourth cause of Complaint - Not Guilty. Fifth cause of Complaint - Not Guilty of violating DR 2-106(A); Guilty of violating DR 9-101(A). Ninety day suspension.

Effective Date of Opinion: November 29, 1993

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 91-6; 91-8; 91-96
	)	
THOMAS W. SWINT	)	TRIAL PANEL OPINION
	)	
Accused.	)	

This matter was heard by the Trial Panel on May 14, 1993. The Trial Panel accepts as fact all matters admitted by the accused in his Answer and all matters contained in the "STIPULATION OF FACTS" as amended by agreement of the Accused and the Oregon State Bar at the hearing. The corrected "STIPULATION OF FACTS" is attached to this OPINION as "Corrected Exhibit 1".

The Oregon State Bar ("the Bar") in its Formal Complaint alleges in the First, Fourth and Fifth Causes of Complaint that the Accused, ("Swint") in the course of representing three clients, removed client funds from his trust account before the funds were earned in violation of DR 9-101(A). The Bar also alleges in its Fifth Cause of Complaint that Swint violated DR 2-106(A) with respect to one client by charging a clearly excessive fee. The reamining two causes of complaint allege that Swint failed to respond in a full and timely fashion to inquiries from Disciplinary Counsel's office regarding complaints file with the Bar by two clients.

In his Answer, Swint admits the factual allegations of the Second and Third Causes of complaint and alleges facts in an attempt to explain or justify his failure to respond in a timely fashion. His Answer to the First, Fourth and Fifth Causes of Complaint admits all of the factual

allegations excpt that he denies the ultimate facts, i.e., that he removed client funds from his trust account before they were earned, or that he charged an illegal or excessive fee.

FINDINGS

FIRST CAUSE OF COMPLAINT - Freeborn - DR 9-101(A)

The trial Panel unanimously finds by clear and convining evidence that Swint withdrew $50.00 July 15, 1989, and $150.00 on January 15, 19911, of his client's funds fromm his trust account before they were earned and thereby bviolated DR 9-101(A). In re Miller, 303 Or 253, 735 P2d 591 (1987)

SECOND CAUSE OF COMPLAINT - Leitner - DR 1-103(C)

The Trial Panel unanimously finds by clear and convincing evidence that Swint violated DR 1-103(C) by failing to respond to the Bar's request for a written response to the Freeborn and Leitner complaints. The facts of both cases are identical in all material respects concerning Swint's violation of DR 1-103(3). In both cases the bar's requests were received from Swint, the Bar sent another request on January 15, 1991. These letters specifically informed Swint that his failure to respond could subject him to discipline for violation of DR 1-103(C). when the received no timely response, it referred the matters to the LPRC on January 24, 1991.

On January 31, 1991, Swint wrote a letter of response to the Bar for each case. Swint acknowledges receipt of all letters from the Bar. The Bar acknowledges that Swint has cooperated fully with the LPRC investigation.

FOURTH CAUSE OF COMPLAINT - Braun - DR 9-101(A)

The Trial Panel unanimously agrees that Swint is NOT GUILTY of the alleged violation of DR 9-lOl(A) regarding the Braun matter. The Trial Panel concludes that although he kept no

time records regarding additional work done for Braun, there is no dispute that Swint did, in fact, do additional work for Braun resulting in the successful resolution of a show cause proceeding concerning Braun's diversion status. The fee charged by Swint for the work was reasonable and agreed upon by Braun.

FIFTH CAUSE OF COMPLAINT - Burden - DR 9-101(A); DR 2-106(A)

The Trial Panel unanimously concludes that the Fee charged in the Burden matter was not in violation of DR 2-106(A). Burden was charged with one count of Sexual Abuse in the First Degree, a felony, and one count of Sexual Abuse in the Second Degree, a class A misdemeanor. Both are crimes of a heinous nature that could easily have resulted in a penitentiary sentence. A successful defense would require a great deal of skill, dedication, experience and effort. Swint was able to achieve a very favorable result in this case for his client. The fee charged was within the range estimated by Swint at his initial meeting with the client and, according to the testimony of other criminal law practitioners, was reasonable for a case of this type.

A majority of the Trial Panel finds, by clear and convincing evidence, however, that Swint violated DR 9-101(A) by transferring approximately twice the amount of money his time records show that he earned from his trust account to his own personal account throughout his representation of Burden. Swint admitted that the amount transferred from his trust account is approximately twice the amount his time records show that he earned, but testified that after he had sent his first billing to Burden, he decided upon using a multiplier of 2 and applying the same to the amount of time shown from his time records, due to the fact that he spent considerable additional time cultivating a relationship with a person who was employed by the

Josephine County Probation Department and who would play a key role in determining whether Burden would be eligible for Optional Probation under the felony sentencing guidelines applicable to his case, or whether he would be sent to the penitentiary. The individual involved was the Assistant Scout Master in the Boy Scout troop in which Swint's son was a member. Swint knew that such individual processed all sex offender cases. Swint testified that he was cultivating this individual as much as possible and received considerable advice from him as to the procedure to follow in taking Burden favorably through the system. Swint testified that he did not attempt to get Burden's consent to amend the Fee Agreement because he felt that if he told Burden about his efforts in cultivating this relationship with the person, Burden might jeopardize not only Swint's efforts on Burden's behalf by exposing the identity of Swint's source of information, but that Swint might lose his help in future similar criminal cases which he might undertake. The Panel has not been called upon to determine the ethics (or lack thereof) involved in Swint's cultivating a relationship with an individual whom he felt he could exploit to obtain a better result for his client. The Panel finds such a procedure distasteful, although apparently effective.

Swint's written fee agreement with Burden provided that Swint would bill at the rate of $90.00 per hour and would provide the client with a monthly statement of the previous month's activity. Swint's act of withdrawing more money than supported by the time records is in conflict with the written fee agreement. It is the Bar's contention and a majority of the Trail Panels conclusion that by his activities, Swint, in essence, unilaterally modified the fee agreement to provide that he would be paid at the rate of $180.00 rather than $90.00 per hour.

Even though a larger fee may be reasonable, a lawyer may not unilaterally decide to take a greater fee than previously agreed upon. OSB Formal Ethics Opinion Nos. 1991-69; 1991-61.

SANCTIONS

In determining the appropriate sanction, the Trial Panel applies the Oregon case law and the American Bar Association Standards for Imposing Lawyer Sanctions (1986) ("ABA Standards"). Those standards call for the consideration of four factors: (1) the ethical duty violated; (2) the attorney's mental state, (negligence, knowledge or intent); (3) the extent of the injury, whether actual or potential, caused by the attorney's misconduct; and (4) the existence of aggravating or mitigating factors.

Ethical Duty

Under the ABA Standards the most important ethical duties are those obligations a lawyer owes to his clients. In this case, the Trial Panel concludes that Swint violated a duty to Freeborn and Burden to not misuse the client's funds entrusted to him, and a duty to claim fees only *for* work he had performed. The Trial Panel further concludes that Swint violated a duty owed to the profession by failing to respond to inquiries from Disciplinary Counsel. ABA Standards 7.0 at 45.

Mental State

Swint had received three prior letters of admonition from the Bar. Accordingly, the Trial Panel concludes that he is familiar with the disciplinary process and his failure to respond was therefore intentional.

The Trial Panel concludes that Swint acted knowingly in his violation of DR 9-101(A) regarding the Freeborn and Burden matters.

Iniury

The Trial Panel does not find that any of the clients involved suffered any injury.

Aggravating/Mitigating Circumstances

The most obvious aggravating circumstance is Swint's prior discipline. In 1991, during the pendency of the investigation of these matters, Swint was admonished for violating DR 1-103(C) for failing to respond to three letters from Disciplinary Counsel's Office regarding a client complaint.

In October 1982, Swint was admonished for violating former DR 1-102(A)(4) [(current DR 1-102(A)(3)] which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and ORS 9.460(4). The circumstances surrounding the admonition were that Swint, in a fee petition on a court-appointed case, represented to the court that he had worked 54 hours on the case when in fact he had only worked 28 hours. The balance of the work had been performed by a law clerk. That admonition is of particular significance as it too involved issues concerning payment for services rendered.

In 1983, Swint was dmonished for violating DR 1-105(A) which prohibits an attorney from threatening to present criminal charges to gain an advantage in a civil matter.

The trial panel considers these prior admonitions as aggravating factors. In re Hedrick, 312 Or 442, 450, 822 P2d 1187 (1991).

Additional aggravating factors are a dishonest or selfish motive, a pattern of misconduct, multiple offenses involving different clients, and substantial experience in the practice of law. ABA Standards 9.22(b), (c), (d), (g), (i).

In mitigation, Swint and other witnesses testified that during the period when he should have responded to the inquiries from Disciplinary Counsel's office, Swint was suffering from a great deal of stress from a painful and incapacitating knee injury and subsequent surgery, from stress related to his law practice and from stress and anguish over his father's deteriorating health and Swint's inability to provide assistance to his mother and father because of his own physical limitations from his knee injury.

Swint testified that during this time period, he did not seek any professional counseling help and did not make any attempt to telephone anyone at the Bar Office to orally request an extension of time for a response.

After giving due consideration to all of the aggravating and mitigating circumstances, the Trial Panel unanimously concludes that a suspension of ninety days is warranted under the circumstances.

DATED this 29th day of November, 1993.

/s/ Melvin E. Smith
Melvin E. Smith

/s/ Leslie K. Hall
Leslie K. Hall

/s/ Donald Denman
Donald Denman

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 91-6; 91-8; 91-96
	)	
THOMAS W. SWINT,	)	STIPULATION OF FACTS
	)	
Accused.	)	
	)	

Oregon State Bar Association, by and through Bar Counsel Steve Wilgers, of Joelson, Gould, Wilgers, and Dorsey, P.C., and Thomas W. Swint, by and through his counsel Don Clark of Dole, Coalwell, Clark & White, P.C., do stipulate to the following facts, with the intent that the facts so stipulated shall be presented to a hearing panel, if necessary, on December 14, 1992.

THE PARTIES STIPULATE AS FOLLOWS:

REGARDING CLIENT SHERYL FREEBORN:

Findings of Fact - First Cause of Action - Violation of DR 9-101(A) of the Code of Professional Responsibility.

1. On August 9, 1988, Mr. Swint and Sheryl Freeborn entered into a fee agreement for Mr. Swint to represent Ms. Freeborn in a Chapter 7 Bankruptcy case. The fee was to be a fixed sum of $410.00 with a $300.00 non-refundable retainer fee. All of the fee, together with the Bankruptcy Court filing fee was to be paid in full before filing.

2. The total cost to Ms. Freeborn for the Bankruptcy on August 9, 1988, was to have been $410.00 for attorney fees and $90.00 for Court costs for a total of $500.00.

3. From August, 1988 through July, 1990, Ms. Freeborn paid to Mr. Swint $500.00.

4. Sometime prior to July, 1990, the Bankruptcy Court raised its filing fee from $90.00 to $120.00 and Mr. Swint raised his fees from $410.00 to $500.00. The total cost then went from $500.00 to $620.00.

5. In January, 1989, Mr. Swint terminated the contractual arrangements with Ms. Freeborn because she had not contacted him nor paid the balance of the fees.

6. In July of 1990, Ms. Freeborn came back to see Mr. Swint about completing the bankruptcy matter. At that time he advised her he would complete the matter on the new fee basis and he would give her credit for the fees she had paid. She then paid $150.00 to Mr. Swint.

7. The money which was paid to Mr. Swint was paid by Ms. Freeborn and was placed in Mr. Swint's Trust Account and subsequently paid over to Mr. Swint.

8. Mr. Swint's hourly rate for services for Ms. Freeborn's case was $85.00 per hour. He also charged for secretarial time at the rate of $40.00 per hour. Mr. Swint's time records show the following entries regarding the Freeborn case.

Date	Provider	Service Provided	Time
8/22/88	Secretary	Open File	.1
8/23/88	Mr. Swint	Review Client Debts	.5
8/23/88	Secretary	Type Pleading	.2
8/24/88	Mr. Swint	Prepare Petition	.4
8/26/88	Mr. Swint	Confer with Staff	.2
11/15/88	Mr. Swint	Draft Letter	.5
11/16/88	Secretary	Type Letter	.25
2/7/89	Secretary	Type Letter	.25
2/8/89	Mr. Swint	Draft Letter to Client	
		Close File	.5
11/5/90	Secretary	Type Memo	.2
11/8/90	Mr. Swint	Draft File Memo on File	.2
11/8/90	Mr. Swint	Draft Letter to Client	
		Re Appointment	.3

11/8/90	Secretary	Type Letter	.2

Summary of Time/Billing

1.	Mr. Swint	2.9 hours x $85 per hour =	$246.50
2.	Secretary	1.45 hours x $40.00 per hour =	$58.00
	Total		$304.50

9. Under the original fee arrangement Ms. Freeborn should have paid Mr. Swint $500.00 ($410.00 attorney fees and $90.00 Bankruptcy Filing Fees). Under the new fee arrangement she should have paid Mr. Swint $620.00 ($500.00 attorney fees and $120.00 Bankruptcy Filing Fees). She has paid $500.00.

10. Mr. Swint's legal services consisted of conferring with his client, preparing a Chapter 7 Bankruptcy Petition and conferring with creditors. Mr. Swint did not file the Petition nor attend the first meeting of creditors.

11. On November 23, 1991, Sheryl Freeborn filed this Complaint with the Oregon State Bar.

12. In the spring of 1991, Mr. Swint refunded $100.00 to Sheryl Freeborn.

13. Mr. Swint paid to himself from Ms. Freeborn's Trust Account the following sums during the following periods:

DATE:	AMOUNT:
9/15/88	$100.00
2/15/89	$50.00
7/15/89	$150.00
Total	$500.00

Findings of fact - Second Cause of Action - Failure to Respond to the Bar - DR 1-103(C)

1. On November 23, 1990, Sheryl Freeborn filed a complaint with the OSB.

2. On December 14, 1990, the OSB notified Mr. Swint of her complaint and asked for a response. No response was made by Mr. Swint between December 14, 1990 and January 15, 1991. On January 15, 1991, the OSB sent another letter to Mr. Swint asking that he respond by January 22, 1991. No timely response was received so the matter was turned over to the LPRC on January 24, 1991.

3. On January 31, 1991, Mr. Swint wrote a letter of response to the OSB.

4. Both of the OSB letters were received by Mr. Swint.

5. Mr. Swint has cooperated fully with the LPRC investigation.

REGARDING CLIENT RICHARD H. LEITNER:

Findings of Fact - Third Cause of Action - Failure to Respond to the Bar - DR 1-103(C):

1. On November 28, 1990, Richard Leitner filed a complaint with the OSB.

2. On December 12, 1990, the OSB notified Mr. Swint of his complaint and asked for a response. No response was made by Mr. Swint between December 12, 1990 and January 15, 1991. On January 15, 1991, the OSB sent another letter to Mr. Swint asking that he respond by January 22, 1991. No timely response was received so the matter was turned over to the LPRC on January 24, 1991.

3. On January 31, 1991, Mr. Swint wrote a letter of response to the OSB.

4. Both of the OSB letters were received by Mr. Swint.

5. Mr. Swint has cooperated fully with the LPRC investigation.

REGARDING CLIENT ERIC BRAUN:

Findings of Fact- Fourth Cause of Action- Violation of DR 9-101(A) of the Code of Professional Responsibility:

1. Mr. Braun hired Mr. Swint to represent him on a DUII charge.

2. The fee arrangement was based on an hourly rate for services performed. The hourly rate was to be $90.00 per hour with a $500.00 retainer fee. An estimate of the fees involved was to be zero to $1,000.00 for services in negotiating a plea and handling a DMV hearing. The estimate did not include trial services.

3. Mr. Braun posted bail in the DUII case. An assignment of the bail was taken by Mr. Swint to be applied to his fees.

4. Mr. Swint and his staff kept track of their time for services rendered on the Braun case and logged those items on time sheets. The entries on the time sheets were then logged into a computer to generate a trial billing. The billings, each month, show the description of the services provided and the time spent for each service, together with the fee generated. On the last page of each trial billing, the staff would post the amount of money left in the Trust Account. Mr. Swint would then review the trial billing and write how much money was to be applied from the Trust Account toward his monthly billing.

5. With the exception of the 5/15/90 trial billing, the amount of money taken out of the Trust Account each month on the Braun case matches the amount of fees earned each month.

6. On the 5/15/90 billing there was $168.00 in the Trust Account for that month. Mr. Swint had earned $165.00, yet he took $168.00 on 5/15/90.

7. On June 22, 1990, Mr. Swint's office deposited the bail refund to Mr. Braun's Trust Account. On July 15, 1990, after having reviewed the July 15, 1990 trial billing, Mr. Swint wrote on the trial billing, "close and delete and don't send bill". The $425.00 that showed

on the trial billing on July 15, 1990 was then taken from the Trust Account and transferred to Mr. Swint.

8. Mr. Swint was unable to attend the hearing in April to enter the Defendant in the Diversion Program. He made arrangements with another attorney named Steve Rich to cover this appearance. Mr. Rich, in fact, did cover this appearance. Some confusion developed at that hearing with regard to whether the bail money posted would be used to pay the Diversion Fee.

9. Some time in July, Mr. Braun called Mr. Swint's office and complained that his bail money was not used to pay the Diversion Fee. Mr. Swint reminded him that the bail money was assigned to him for his fees. Mr. Swint and Mr. Braun agreed that the bail money would be used to pay the Diversion Fee and the balance would be used to pay Mr. Swint's fee.

10. On July 26, 1990, Mr. Swint sent the Diversion Fee to the Josephine County Trial Court Clerk. This check was written on his attorney account.

11. The balance of the bail money in the sum of $220.00 was kept by Mr. Swint to be used to pay his fee. Mr. Swint has no records to support this. However, Mr. Swint indicates he spent some time dealing with a show cause hearing regarding termination of Mr. Braun's diversion program for failure to pay the Diversion fee. He felt he was obligated to pay Mr. Rich for his services. At the time of the withdrawal of funds, Mr. Swint had not received a bill from Mr. Rich. After the withdrawal a different arrangement was worked out to pay Mr. Rich. Mr. Swint agreed to cover something for Mr. Rich.

REGARDING CLIENT RICHARD BURDEN

Findings of Fact- Fifth Cause of Action - Violation of DR 2-106(A) and DR 1-101(A) of the Code of Professional Responsibility:

1. Mr. Burden hired Mr. Swint to represent him on a sexual abuse charge.

2. The fee arrangement was based on an hourly rate for services performed. The hourly rate was to be ~$90.00 per hour. An estimate of the fees involved was to be $5,000.00.

3. Mr. Swint and his staff kept track of their time for services rendered on the Burden case and logged those items on time sheets. The entries on the time sheets were then logged into a computer to generate a trial billing. The billings, each month, show the description of the services provided and the time spent for each service, together with the fee generated. On the last page of each trial billing, the staff would post the amount of money left in the Trust Account from the previous month's billing. Mr. Swint would then review the trial billing and write how much money was to be applied from the Trust Account toward his monthly billing.

4. Starting with the very first trial billing, the amount of money taken out of the Trust Account each month on the Burden case exceeds the amount of fees earned [based on an hourly charge] each month.

5. Mr. Swint unilaterally changed the fee agreement. He did this because of the nature of his relationship with a particular person in the criminal justice system that allowed him to get a good result for Mr. Burden.

6. Subsequent to the filing of his complaint by the complainants, Mr. Swint has talked with Mr. Burden about the billings received by Mr. Burden in his case.

7. On March 9, 1991, Mr. Burden executed a letter which indicates that he has reviewed the trial billing, that he is satisfied with Mr. Swint's services and that he is satisfied with the billings that he received. Furthermore, Mr. Burden went through each of the trial

billings and wrote on them, "I agree and approve". This was written after the complaints were filed in this case.

8. For the months of January, 1990 through August, 1990, the amount of the fees actually taken from the Trust Account was approximately twice that which would have been earned pursuant to the Fee Agreement. The following is a summary of those billings:

Billing Date	$ Earned Per Fee Agreement	Money Taken/T.A.:
1/5/90	$210.00	$500.00
2/15/90	299.00	598.00
3/15/90	167.00	334.00
4/15/90	564.00	1,128.00
5/15/90	213.00	426.00
6/15/90	89.00	178.00
7/15/90	144.00	288.00
8/15/90	348.00	696.00

THE PARTIES FURTHER STIPULATE:

1. Nothing contained in this stipulation shall preclude Mr. Swint from presenting at the time of hearing any testimony or evidence relating to explanation or mitigation of any of the stipulated facts.

DOLE, COALWELL, CLARK
& WHITE, P.C.

/s/ Dan Clark
Dan Clark, OSB #81187
Of Attorneys for Accused,
Thomas W. Swint

Date: 12/1/93

JOELSON, GOULD, WILGERS
and DORSEY, P.C.

/s/ Steven Wilgers
Steven L. wilgers, OSB #74343
Of Attorneys for Oregon State
Bar Association

Date: 11/30/93

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-123
	)	
KENNETH W. STODD,	)	
	)	
Accused.	)	

Bar Counsel: Richard Baldwin, Esq.

Counsel for the Accused: None

Disciplinary Board: Fred Avera, Chair; Douglas Kaufman; Marion Sahagian, Public Member

Disposition: Violation of DR 6-101(B), DR 1-102(A)(3), DR 7-102(A)(5). Disciplinary Board approval of Stipulation for Discipline. 120 day suspension.

Effective Date of Opinion: May 19, 1994

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	SC S41242
	)	
Complaint as to the Conduct of	)	ORDER ACCEPTING STIPULATION
	)	FOR DISCIPLINE
KENNETH W. STODD,	)	
	)	
Accused.	)	
	)	

The Oregon State Bar and Kenneth W. Stodd have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Kenneth W. Stodd is suspended from the practice of law for a period of 120 days. The Stipulation for Discipline is effective 30 days from the date of this order.

DATED the 19th day of April, 1994.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

c: Jeffrey D. Sapiro
Stephen R. Moore
Richard Baldwin

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-123
	)	
KENNETH W. STODD,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Kenneth W. Stodd, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, Kenneth W. Stodd, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1964, most recently having his office and place of business in Columbia County, Oregon.

3.

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

4.

On June 30, 1993, the Oregon State Bar filed a formal complaint against the Accused alleging violations of DR 6-101(B), DR 1-102(A)(3), and DR 7-102(A)(5). An amended complaint was filed on October 27, 1993, revising somewhat the factual allegations but making no change in the disciplinary rules alleged to have been violated by the Accused. A copy of the amended complaint is attached hereto and incorporated by this reference herein. The parties stipulate to the following facts regarding the allegations in the complaint.

GENERAL FACTS

5.

In May 1991, the Accused undertook to represent Clarice Harkleroad as petitioner in a marital dissolution and as a co-defendant in a collection action filed by Household Finance Corporation ("HFC"). Harkleroad paid the Accused a retainer in the sum of $500.00.

Regarding the dissolution, the Accused drafted and filed a Petition for Dissolution on behalf of his client in June of 1991. The respondent was served and made no appearance. Thereafter, the Accused failed to take a default decree or proceed further with the dissolution.

In October 1991, the Accused received notice from Columbia County Circuit Court that the dissolution would be dismissed unless, within 28 days, the respondent appeared, a default was taken, or a continuance was sought and granted. The Accused took no further action on behalf of his client, nor did he communicate with her regarding the dissolution.

On January 10, 1992, the Accused received written notice from the Circuit Court that the Harkleroad dissolution was dismissed for lack of prosecution. The Accused did not seek to have the dissolution reinstated, nor did he attempt to contact his client to advise her of the

dismissal. Ms. Harkleroad discovered that the dissolution had been dismissed by the court in late February or early March of 1992. She went to another lawyer, paid an additional attorney fee and an additional filing fee for a second dissolution petition, and obtained her dissolution decree in May, 1992.

6.

Regarding the collection matter, HFC sought to collect approximately $6,300.00 from the Harkleroads on a line of credit obtained in 1987. HFC's counsel filed the collection action in Columbia County Circuit Court in May, 1991. On behalf of Mrs. Harkleroad, the Accused filed a general denial in June 1991, so as to avoid a default judgment against her. The Accused recognized, however, that his client had no real defenses to the claim.

In July 1991, HFC moved for Summary Judgment against Ms. Harkleroad. The Accused did not file any memorandum in opposition, opposing affidavits or other responsive pleading. At a hearing on September 9, 1991, the Accused conceded that the motion had merit and agreed to a stipulated judgment. Thereafter, a dispute arose regarding the extent to which the Accused's client would be responsible for attorney fees HFC incurred to date in the collection litigation. The Accused was not responsive to HFC's inquiries regarding settlement and, therefore, HFC renewed its Summary Judgment motion on October 11, 1991.

At a hearing on the Summary Judgment motion on October 24, 1991, it was agreed that the Accused had ten days to confer with his client and present a proposal to resolve the issue of HFC's attorneys' fees incurred in the lawsuit. If no settlement was reached within ten days, HFC was to submit a proposed order to the court granting Summary Judgment and awarding fees and costs. During this ten-day period, the Accused did not communicate with HFC counsel

regarding any settlement proposal and, in fact, the Accused did not contact his client to discuss the matter. Judgment was thereafter entered against Ms. Harkleroad in the amount of $6,313.88 plus interest, $1,768.00 in attorneys' fees, and $256.78 in costs.

Between November 15, 1991, when the judgment was entered, and the end of February, 1992, the Accused did not advise his client that a judgment, including attorneys' fees, had been entered against her. The client learned of the judgment after HFC garnished certain bank accounts that were in her name. Ms. Harkleroad, on her own behalf, was ultimately able to assert successfully a claim that much of the garnished funds were exempt. She thereafter entered into an installment payment plan with HFC for payment of the judgment against her.

DR 6-101(B) NEGLECT OF LEGAL MATTER

7.

The Accused stipulates that his conduct as described above, both in respect to the marital dissolution matter and the collection matter, constituted neglect of legal matters in violation of DR 6-101(B) of the Code of Professional Responsibility.

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

DR 7-102(A)(5) KNOWINGLY MAKING A FALSE STATEMENT OF LAW OR FACT

8.

By failing to advise his client that both the dissolution matter and the collection matter had been concluded adversely to her, the Accused led his client to believe, for a period of time, that the Accused had these matters well in hand. In late February or early March, 1992, the client discovered on her own the actual state of affairs with respect to both matters. Ms. Harkleroad then contacted the Accused. Regarding the dissolution, Ms. Harkleroad requested

a status report. Rather than disclose the dismissal, the Accused responded to his client that he would have to check to see why the dissolution was not final, this at a time when he knew the matter had been dismissed by the court. Regarding the collections matter, the Accused advised his client he would check on the matter, at a time when he knew the HFC claim had been reduced to a judgment.

9.

By engaging in the conduct described in paragraph 8 above, the Accused made misrepresentations to his client in violation of DR 1-102(A)(3), and knowingly made false statements of fact in violation of DR 7-102(A)(5).

SANCTION

10.

Pursuant to the terms of this stipulation and BR 3.6(C)(iii) the Accused agrees to accept a 120-day suspension from the practice of law for the violations of the Disciplinary Rules cited herein. The Accused and the Bar agree the effective date of the suspension shall be 30 days after final approval of this stipulation by the Supreme Court.

11.

Ms. Harkleroad suffered actual injury to the extent that she paid the Accused a $500.00 retainer but received no benefit of legal services in the dissolution action. Furthermore, Ms. Harkleroad became a judgment debtor to HFC for a sum significantly greater than she would have been obligated to pay had she made no appearance in the lawsuit at all. She further suffered inconvenience, anxiety and embarrassment over garnishments about which she knew nothing until she discovered it on her own.

12.

Aggravating factors in terms of sanction include: the Accused engaged in repeated misconduct; made misrepresentations; was dealing with a vulnerable victim to the extent that she was in the dark about events; and the Accused had substantial experience in the practice of law. ABA Standards 9.22(b), (c), (d), (h), and (i). In addition, the Accused has a prior disciplinary suspension of two years - In re Stodd 279 Or 565, 568 P.2d 665 (1977). ABA Standard 9.22(a).

13.

Mitigating factors in terms of sanction include: the Accused has cooperated in this disciplinary matter; he is remorseful; and his prior disciplinary offense is remote in time. ABA Standards 9.32(e), (l), and (m).

14.

The Accused has repaid to Ms. Harkleroad the sum of $500.00 in recognition of the financial injury she incurred. This factor neither aggravates nor mitigates sanction. ABA Standards 9.4(a).

15.

This Stipulation for Discipline is subject to review by the Disciplinary Counsel and to approval by the SPRB. The parties agree that if approved by the Bar, the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 1st day of April, 1994.

/s/ Kenneth W. Stodd
Kenneth W. Stodd

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

I, Kenneth W. Stodd, 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/ Kenneth W. Stodd
Kenneth W. Stodd

Subscribed and sworn to before me this 25th day of March, 1994.

/s/ Betty L. Collie
Notary Public for Oregon
My commission expires: _____

I, Jeffrey D. Sapiro, being first duly sworn, say that I am Disciplinary Counsel for the Oregon State Bar and that I attest that I have reviewed the foregoing Stipulation for Discipline and that the sanction was approved by the SPRB for submission to the Supreme Court on the 19th day of March, 1994.

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

Subscribed and sworn to before me this 1st day of April, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: _____

*

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-62
	)	
JON LEE WOODSIDE,	)	
	)	
Accused.	)	
	)	

Bar Counsel: Paul Silver, Esq.

Counsel for the Accused: Peter R. Jarvis, Esq.

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 7-102(A)(7) and ORS 9.527(2) Stipulation for Discipline. Suspension for three years.

Effective Date of Opinion: May 24, 1994

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	SC S39383
	)	
Complaint as to the Conduct of	)	ORDER ACCEPTING STIPULATION
	)	FOR DISCIPLINE
JON LEE WOODSIDE,	)	
	)	
Accused.	)	
	)	

The Oregon State Bar and Jon Lee Woodside have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Jon Lee Woodside is suspended from the practice of law for a period of 3 years. The Stipulation for Discipline is effective the date of this order.

DATED this 24th day of May, 1994.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.

c: Jeffrey D. Sapiro
Peter R. Jarvis

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-62
	)	
JON LEE WOODSIDE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Jon Lee Woodside, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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 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 in good standing of the Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily. This stipulation is made under the restrictions set forth in BR 3.6(h).

4.

On July 25, 1992, the State Professional Responsibility Board ("SPRB") authorized the filing of a formal complaint against the Accused alleging violations of DR 1-102(A)(2), DR 7-102(A)(7) and ORS 9.527(2) of the Code of Professional Responsibility. On September 18, 1993, the SPRB authorized an additional charge under DR 1-102(A)(3). A copy of the Bar's formal complaint is attached hereto and incorporated by this reference herein as Exhibit 1. The parties stipulate to the following facts regarding the allegations in the formal complaint.

FIRST AND SECOND CAUSES OF COMPLAINT

5.

On June 22, 1992, a judgment of conviction was entered against the Accused in the United States District Court, District of Oregon, Case No. Cr. 92-08-MA, for the crime of attempting to produce a false identification document in violation of 18 U.S.C. §1028(a)(1) and (2). A copy of the judgment of conviction is attached hereto as Exhibit 2 and incorporated herein. 18 U.S.C. §1028(a) is a felony and provides in pertinent part:

> "(a) Whoever, in a circumstance described in subsection (c) of this section--
>
> "(1) knowingly and without lawful authority produces an identification document or a false identification document; [or]
>
> "(2) knowingly transfers an identification document or a false identification document knowing that such document was stolen, or produced without lawful authority [is guilty of a felony]."

6.

The above-described conviction arose out of the Accused's representation of Douglas Bruce Crichton in 1991 when Mr. Crichton had lost his driver's license due to driving under the

influence of intoxicants. The Accused had previously represented Mr. Crichton on other matters and had known him for a number of years through the Army Reserve.

7.

In August 1991, the Accused agreed to assist Mr. Crichton in procuring a false driver's license for $ 10,000 paid to one Bruce Hessevick. To this end, the Accused admits that he engaged in the following activities:

1. arranged to and did procure from Bruce Hessevick identification in Hessevick's name;
2. gave the Hessevick identification to Mr. Crichton;
3. went to the Department of Motor Vehicles and observed the procedures for obtaining a driver's license;
4. advised Mr. Crichton how to obtain a driver's license in Mr. Hessevick's name and what to do if he was discovered making application for a false driver's license;
5. advised Mr. Crichton to transfer the title to his automobile to Mr. Hessevick and agreed to hold the title for safekeeping;
6. advised Mr. Crichton and Mr. Hessevick how to insure Mr. Crichton's automobile after it was registered in Hessevick's name;
7. arranged for payment of the $5,000 to Mr. Hessevick; and
8. advised Crichton about how long it might take the Department of Motor Vehicles to discover that the photograph on the false license was Crichton's rather than Hessevick's.

8.

By assisting Mr. Crichton to obtain a driver's license in the name of another, the Accused stipulates that he violated the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 1-102(A)(2);

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

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

4. ORS 9.527(4).

9.

The Accused further stipulates that his conviction under 18 U.S.C. §1028(a)(1) and (2) violated ORS 9.527(2).

THIRD CAUSE OF COMPLAINT

10.

In March, 1990, Mr. Crichton obtained a false driver's license in the name of Charles David Widman without the Accused's assistance. On June 18, 1991, Mr. Crichton was arrested for driving under the influence of intoxicants and presented the Widman driver's license. He was cited in the name of David Widman for disobeying a traffic signal and DUII.

11.

In the course of the ensuing proceedings, Mr. Widman disclosed to the Department of Motor Vehicles that Mr. Crichton had used a driver's license procured in Widman's name.

12.

Mr. Crichton was then charged with DUII, felony driving while suspended, furnishing false information to a police officer and disobeying a traffic signal. The Accused recommended that he retain George Haslett to defend against these charges. The Accused then met with Mr. Haslett to discuss how to approach Mr. Crichton with respect to fees.

13.

Mr. Haslett ultimately set his fee at $20,000 to be paid in cash and divided in part between Mr. Haslett and the Accused. To induce Mr. Crichton to pay a substantial fee, the Accused told him that he expected he would be charged with "major" felonies and that he would receive a prison sentence if he were found guilty. The Accused also told Mr. Crichton that for the right amount of money, Mr. Haslett would take care of the case.

14.

Knowing that Mr. Crichton believed part of the $20,000 was to be used to pay bribes, the Accused did the following things:

1. failed to correct Mr. Crichton's false impression that bribes were to be paid;
2. told Mr. Crichton that he would spend time in the penitentiary if he were convicted of the crimes with which he was charged;
3. told Mr. Crichton that Mr. Haslett had contacts in the district attorney's office and would "go in the back door" with these contacts to reduce or "take care" of the charges;
4. told Mr. Crichton that part of the $20,000 would be used to reduce or "take care of" the charges.

15.

The Accused stipulates that this conduct was a violation of DR 1-102(A)(3).

SANCTION

16.

The Accused received $10,000 of the $20,000 paid by Mr. Crichton to Mr. Haslett.

17.

The Accused has no prior record of reprimand, suspension or disbarment since his admission to practice law in 1966. The Accused has been suspended from the practice of law on an interim basis since July 21, 1992.

18.

The factors supporting mitigation of the sanction in this case are as follows:

1. the Accused has at all times cooperated fully with the Bar;
2. the Accused has served three months in a federal prison as a result of his felony conviction;
3. the Accused has cooperated with government authorities when they have sought information from him about the conduct of others, both informally and when called as a grand jury witness;
4. the Accused has a distinguished record of public service, including 30 years as a member of the Army Reserve, achievement of the rank of Colonel and receipt of the Legion of Merit;
5. the Accused is truly and sincerely sorry for what he has done; and

6. at about the time of the conduct at issue, several of the Accused's close family members died, he was experiencing serious marital difficulties and was **severely** depressed. These extreme personal and psychological pressures adversely affected the Accused at the time of the conduct described herein. The psychological health of the Accused has substantially improved since that time.

7. The Accused has refunded to Crichton all money received on account of the matters complained of herein.

19.

Pursuant to the terms of this stipulation and BR 3.6(c)(iii) the Accused agrees to accept a three year suspension from the practice of law beginning on the effective date of this stipulation.

20.

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

EXECUTED this 4th day of February, 1994.

/s/ Jon Lee Woodside
Jon Lee Woodside

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

I, Jon Lee Woodside, 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/ Jon Lee Woodside
Jon Lee Woodside

Subscribed and sworn to before me this 31st day of January, 1994.

/s/ Elizabeth Wong
Notary Public for Oregon
My commission expires: 11-5-94

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 State Professional Responsibility Board on the 20th day of November, 1993.

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

Subscribed and sworn to before me this 4th day of February, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 92-62
	)	
JON LEE WOODSIDE,	)	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, Jon Lee Woodside, is, and at all times mentioned herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3.

On June 22, 1992, a judgment of conviction was entered against the Accused in the United States District Court, District of Oregon, Case No. Cr. 92-08-MA, for the crime of attempting to produce a false identification document in violation of 18 U.S.C. §1028(a)(1) and

(2). A copy of the judgment of conviction is attached hereto as Exhibit 1 and incorporated herein. 18 U.S.C. §1028(a) is a felony.

4.

The Accused's conviction under 18 U.S.C. §1028(a)(1) and (2) violated the following standard of professional conduct established by law:

1. ORS 9.527(2).

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

5.

Incorporates by reference as fully set forth herein paragraphs 1 through 3 of the First Cause of Complaint.

6.

Beginning in about 1985, the Accused represented Douglas B. Crichton (hereinafter "Crichton") in the defense of several traffic charges, including several charges of driving while under the influence of intoxicants (DUII). In 1990, Crichton's driver's license was suspended as a result of his having pled guilty to a charge of DUII.

7.

In August 1991, the Accused agreed to assist Crichton in procuring a false driver's license for $10,000 paid to one Bruce Hessevick. To this end, the Accused engaged in one or more of the following activities:

1. Arranged to and did procure from Bruce Hessevick identification in Hessevick's name;
2. Gave the Hessevick identification to Crichton;
3. Went to the Department of Motor Vehicles and observed the procedures for obtaining a driver's license;
4. Advised Crichton how to obtain a driver's license in Hessevick's name and what to do if he was discovered making application for a false driver's license;
5. Advised Crichton to transfer the title to his automobile to Hessevick and agreed to hold the title for safekeeping;
6. Advised Crichton and Hessevick how to insure Crichton's automobile after it was registered in Hessevick's name;
7. Arranged for payment of the $10,000 to Hessevick; and
8. Advised Crichton about how long it might take the Department of Motor Vehicles to discover that the photograph on the false license was Crichton's rather than Hessevick's.

8.

The aforesaid conduct of the Accused constituted criminal acts reflecting adversely on his honesty, trustworthiness or fitness to practice law; conduct involving dishonesty, fraud, deceit or misrepresentation; counselling or assisting his client in conduct the Accused knew to be illegal or fraudulent; and wilful deceit or misconduct in the profession in violation of the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 1-102(A)(2);

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

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

4. ORS 9.527(4).

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

9.

Incorporates by reference as if fully set forth herein paragraphs 1 and 2 of the First Cause of Complaint and paragraph 6 of the Second Cause of Complaint.

10.

On March, 1990, Crichton obtained a false driver's license in the name of Charles David Widman (hereinafter "Widman"). On June 18, 1991, Crichton was again arrested for DUII and presented the Widman driver's license. He was cited in the name of David Widman for disobeying a traffic signal and DUII.

11.

Thereafter, Widman disclosed to the Department of Motor Vehicles that Crichton had used a driver's license procured in Widman's name.

12.

Crichton was then charged with DUII, felony driving while suspended, furnishing false information to a police officer and disobeying a traffic signal, and the Accused recommended that he retain George Haslett (hereinafter "Haslett") to defend against these charges. The Accused then met with Haslett to discuss how to approach Crichton to obtain the largest fee possible.

13.

Haslett ultimately set his fee at $20,000 to be paid in cash and divided in part between Haslett and the Accused. In order to induce Crichton to pay Haslett a substantial fee, the Accused told Crichton that he had been charged with "major" felonies and that he would receive a prison sentence if he were found guilty. The Accused also told Crichton that for the right amount of money, Haslett would take care of the matter.

14.

By innuendo, the Accused suggested to Crichton that part of the $ 20,000 fee would be paid to public officials to obtain reduced charges. Thereafter, knowing that Crichton believed that part of the $20,000 was to be used to pay bribes, the Accused did one or more of the following things:

1. Failed to correct Crichton's false impression that bribes were to be paid;
2. Failed to correct Crichton's mistaken impression that he had been charged with "major" felonies;
3. Told Crichton that he would spend time in the penitentiary if he were convicted of the crimes with which he was charged;
4. Allowed Crichton to believe that he would be sexually assaulted in the penitentiary;
5. Told Crichton that Haslett had contacts in the district attorney's office and would "go in the back door" with these contacts to reduce or "take care" of the charges;
6. Told Crichton that part of the $20,000 would be used to reduce or "take care of" the charges;

7. Implied that Haslett had made extraordinary efforts on behalf of Crichton in obtaining a plea agreement that dismissed the driving while suspended and failure to obey a traffic signal charges.

15.

The aforementioned conduct by the Accused was conduct involving dishonesty, fraud, deceit or misrepresentation in violation of the following standard of professional conduct established by law and by the Oregon State Bar:

1. DR 1-102(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 23rd day of September, 1993.

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. 93-152
	)	
STEPHEN TRUKOSITZ,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

Bar Counsel: Russell B. West, Esq.

Counsel for the Accused: None

Disciplinary Board: Samuel E. Tucker, Esq., Chair; Stephen Bloom, Esq.; Dr. Wallace Wolf, Public Member

Disposition: Violation of DR 1-102(A)(3), and DR 6-101(B). Suspension for 90 days.

Effective Date of Opinion: Order dated July 26, 1994. Suspension to commence on August 12, 1994.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	SC S37583
	)	
Complaint as to the Conduct of	)	ORDER ACCEPTING STIPULATION FOR DISCIPLINE
	)	
STEPHEN TRUKOSITZ,	)	
	)	
Accused.	)	
	)	

The Oregon State Bar and Stephen Trukositz have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Stephen Trukositz is suspended from the practice of law for a period of 90 days. The Stipulation is effective August 12, 1994.

DATED this 26th day of July, 1994.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

c: Susan Roedl Cournoyer
Russell B. West
Stephen Trukositz

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-132
	)	
STEPHEN TRUKOSITZ,	)	STIPULATION
	)	
Accused.	)	
	)	

STEPHEN TRUKOSITZ, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters.

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, Stephen Trukositz, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Umatilla County, Oregon.

3.

The Accused enters into this Stipulation freely and voluntarily.

4.

On September 18, 1993, the State Professional Responsibility Board authorized prosecution against Mr. Trukositz alleging that he violated DR 6-101(B) and DR 1-102(A)(3).

5.

Pursuant to the State Professional Responsibility Board's authorization, a Formal Complaint was filed against Mr. Trukositz on November 16, 1993. Mr. Trukositz accepted service of the Formal Complaint on November 30, 1993.

6.

The Formal Complaint, a copy of which is attached hereto as Exhibit A, alleges that Mr. Trukositz engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A)(3) and neglected a legal matter entrusted to him in violation of DR 6-101(B). These allegations arose from Mr. Trukositz' representation of Mr. R.D. Wynn, who sought to have his adoption of his former wife's daughter set aside.

7.

Mr. Trukositz stipulates that he violated DR 1-102(A)(3) and DR 6-101(B) in the course of his representation of Mr. Wynn, as alleged in the Bar's Formal Complaint.

8.

Mr. Trukositz has previously been reprimanded for a former client conflict of interest in violation of DR 5-105(C). In re Trukositz, 312 Or 621, 825 P2d 1369 (1992).

EXECUTED this 3rd day of May, 1994.

/s/ Stephen Truckositz
Stephen Trukositz

/s/ Susan Roedl Cournoyer
Susan Roedl Cournoyer
Assistant Disciplinary Counsel
Oregon State Bar

I, Stephen Trukositz, 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/ Stephen Truckositz
Stephen Trukositz

Subscribed and sworn to before me this 3rd day of May, 1994.

Jennifer L. Turner
Notary Public for Oregon
My commission expires: 4-5-98

I, Susan Roedl Cournoyer, 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/ Susan Roedl Cournoyer
Susan Roedl Cournoyer
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 6th day of May, 1994.

/s/ Jennifer Lillie Cannon
Notary Public for Oregon
My commission expires: 3-22-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-152
	)	
STEPHEN TRUKOSITZ,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

For its FIRST AND ONLY CAUSE OF COMPLAINT against the Accused, the Oregon State Bar alleges 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, Stephen Trukositz, 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 Umatilla, State of Oregon.

3.

On or about May 1, 1990, the Accused undertook representation of Mr. R.D. Wynn. Mr. Wynn sought to have his adoption of his ex-wife's daughter set aside.

4.

Approximately six months thereafter, the Accused advised Mr. Wynn that he had filed an action to set aside the adoption but that Mr. Wynn's ex-wife could not be located for service. At the time he made these representations, the Accused had not filed any action on behalf of Mr. Wynn.

5.

During the next one and one-half years, Mr. Wynn inquired with the Accused as to the status of the matter. The Accused advised him on these occasions that Mr. Wynn's ex-wife could not be located.

6.

When the Accused finally filed an action on behalf of Mr. Wynn, Mr. Wynn's wife was quickly located and served.

7.

By failing to file an action on behalf of Mr. Wynn to set aside Mr. Wynn's adoption of his ex-wife's daughter for over two years, the Accused neglected a legal matter entrusted to him.

8.

By advising Mr. Wynn that he had filed a legal action on his behalf and that his efforts to locate Mr. Wynn's ex-wife for service had not been fruitful, when in fact the Accused had not filed any action on behalf of Mr. Wynn, the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

9.

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

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

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

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

EXECUTED this 16th day of November, 1993.

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. 93-109; 93-141
	)	
KURTIS M. LOMBARD,	)	
	)	
Accused.	)	

Bar Counsel: Mark D. Donahue, Esq.

Counsel for the Accused: None

Disciplinary Board: Howard E. Speer, Esq., Chair; Thomas E. Weertz, Esq.; Nancy Fadeley, Public Member

Disposition: Violation of DR 6-101(A), DR 2-110(A)(2), and DR 6-101(B).

Effective Date of Opinion: Order dated December 20, 1994. Effective date January 19, 1995.

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	SC S41883
	)	
KURTIS M. LOMBARD,	)	ORDER ACCEPTING STIPULATION
	)	FOR DISCIPLINE
Accused.	)	
	)	

The Oregon State Bar and Kurtis M. Lombard have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Kurtis M. Lombard is suspended from the practice of law for a period of seven months. The Stipulation for Discipline is effective 30 days from the date of this order.

DATED this 20th day of December, 1994.

/s/ Wallace P. Carson, Jr.
WALLACE P. CARSON, JR.
Chief Justice

c: Martha M. Hicks
Kurtis M. Lombard
Mark D. Donahue

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-109; 93-141
	)	
KURTIS M. LOMBARD,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

Kurtis M. Lombard, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar hereby stipulate to the following matters pursuant to Oregon State Bar 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 of the State of Oregon to practice of law in this state and a member of the Oregon State Bar, maintaining his office and place of business in Lane 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.

At its January 15, 1994 meeting, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he violated DR 1-103(C), DR 2-110(A)(2), DR 6-101(A) and DR 6-101(B).

5.

The Oregon State Bar filed its formal complaint on May 4, 1994, and the formal complaint was served, together with a notice to answer, upon the Accused on May 6, 1994. A copy of the formal complaint is attached hereto as Exhibit 1 and incorporated herein by this reference. The Accused filed his Answer on June 21, 1994. A copy of the Answer is attached hereto as Exhibit 2 and incorporated by this reference.

6.

The Accused hereby stipulates that his conduct violated DR 6-101(A), DR 6-101(B) and DR 2-110(A)(2) as set forth in the formal complaint. The Oregon State Bar hereby dismisses the charge of violation of DR 1-103(C).

Loree Matter

7.

In 1991, the Accused undertook to represent Ruth and Delbert Loree on two lawsuits pending against them in Lane County. The plaintiffs in one suit, Owen and Delaina Minchey, sought to rescind a land sale contract whereby they purchased a mobile home park from the Lorees. After Mr. Loree's death in the summer of 1991, the Accused continued to represent Mrs. Loree, who resided in Sitka, Alaska.

8.

Trial was scheduled to commence in the Minchey claim on October 22, 1992. One of the Minchey's claims against Mrs. Loree was that her deceased husband had made misrepresentations regarding the condition of the real property they had sold to the plaintiffs. Mrs. Loree was a party to the conversations between her husband and the Mincheys and could testify as to her husband's representations. Mrs. Loree's testimony as to her deceased husband's statements was essential to defeat the plaintiffs' claim.

9.

Mrs. Loree asserts she did not realize that her appearance and testimony at trial were essential to the defense of the Mincheys' case against her. The Accused did not attempt to contact Mrs. Loree the week before trial and did not at any time before trial confirm with Mrs. Loree that her presence was necessary for the trial, nor did he make arrangements to meet with her in person prior to the trial. As a consequence, Mrs. Loree did not appear for trial, judgment in the amount of $61,151.23 was entered against her and her affirmative defenses and counterclaim for foreclosure were dismissed.

10.

Prior to trial, the Accused did not ask for or take the deposition of the plaintiffs. He did not discuss the advisability of expert testimony with Mrs. Loree or arrange for the presence of an expert witness. The Accused did not interview or arrange for the presence of any witnesses to prove the affirmative defenses and counterclaim he had asserted on behalf of Mrs. Loree.

11.

At trial, the Accused did not cross-examine the plaintiff or offer any evidence on behalf of his client. The Accused did not prepare or file a trial memorandum.

12.

At all times prior to trial, the Accused knew how and where to contact Mrs. Loree. Mrs. Loree was in frequent telephone contact with the Accused and states she would have appeared to testify at trial had she known her presence was necessary.

13.

The Accused admits that his conduct described in paragraphs 7 through 12 violated DR 6-101(A) in that he failed to apply the legal knowledge, skill, thoroughness and preparation reasonably necessary to provide competent representation to Mrs. Loree.

Reetz Matter

14.

In May, 1989, the Accused undertook to represent Alvin M. Reetz on a personal injury claim. Mr. Reetz, who was 86 years old, received Medicare assistance for the medical expenses he incurred as a result of his injury.

15.

After November, 1989, the Accused took no substantial action on Mr. Reetz' claim.

16.

After September, 1989, the Accused did not contact Mr. Reetz or his daughter, Viola West, who acted on Mr. Reetz' behalf, nor did he respond to numerous attempts by Ms. West

to contact him on behalf of her father. In April, 1992, the Accused promised to provide a report on the status of Mr. Reetz' claim to Ms. West, but never did so.

17.

In November, 1989, March, 1990, September, 1990 and February, 1991, the Accused received from Blue Cross/Blue Shield of Oregon inquiries and demands for third party reimbursement of Mr. Reetz' Medicare expenses. The Accused did not respond to these inquiries or demands and did not advise Mr. Reetz or Ms. West that he had received them.

18.

In 1991, the Accused closed his file on Mr. Reetz' claim and took no further action on it. He did not advise Mr. Reetz or Ms. West that he had closed the file and did not intend to take further action on the claim. The statute of limitations on Mr. Reetz' claim ran in May, 1991, and the Accused never filed a claim on Mr. Reetz' behalf. At all times during his representation of Mr. Reetz, the Accused was aware of the relevant statute of limitations. He did not advise Mr. Reetz or Ms. West of the statute of limitations prior to its expiration or take any steps to avoid prejudice to Mr. Reetz' claim by virtue of the expiration of the statute.

19.

In June, 1993, the Accused met with Mr. Reetz and Ms. West and agreed to reimburse Mr. Reetz $1,118.36 which represented Mr. Reetz' out-of-pocket expenses resulting from his injury. In return, Mr. Reetz and Ms. West agreed to withdraw the complaint they had filed with the Oregon State Bar.

20.

The Accused admits that in 1991, he withdrew from his representation of Mr. Reetz without taking reasonable steps to avoid foreseeable prejudice to Mr. Reetz' rights and that he neglected Mr. Reetz' legal matter between May, 1989 and June, 1993 in violation of DR 2-110(A)(2) and DR 6-101(B).

SANCTION

21.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Supreme Court should consider the ABA Standards for imposing Lawyer Sanctions and Oregon case law. The ABA Standards require that the Accused's conduct be analyzed considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating circumstances.

a. The Accused violated his duties to his clients. ABA Standards §4.4 and §4.5.

b. With regard to the Accused's state of mind, the Accused's neglect of the Reetz matter was intentional in that he failed to take any action and closed his file despite frequent reminders from Ms. West of his duty to act on Mr. Reetz' behalf. In the Loree matter, the Accused knowingly failed to prepare adequately for trial.

c. The Accused caused actual injury to his clients by his conduct. Judgment in the amount of $63,151.23 was entered against Ruth Loree as a result of her failure to appear for trial. Alvin Reetz' right to assert his claim for personal injury was extinguished by the statute of limitations. The Accused's conduct also caused

potential injury to Mr. Reetz in that his claim, if asserted, could have resulted in compensation for his personal injuries.

d. Aggravating factors (ABA Standards §9.22) to be considered are:

1. In 1993, the Accused was suspended for 60 days for violation of DR 6-101(A), DR 6-101(B) and DR 1-102(A)(3). In re Lombard, 7 DB Rptr 27 (1993). A copy of the stipulation for discipline in that case is attached as Exhibit 3 and incorporated herein by this reference;

2. When considered with the conduct that resulted in the above-described suspension, the Accused's conduct in this case shows a pattern of misconduct and lack of competence extending from 1989 through 1993;

3. This case involves three rule violations arising out of the complaints of two clients;

4. Mr. Reetz and Mrs. Loree were vulnerable in that they were both elderly and Mrs. Loree lived in a distant city;

5. The Accused had substantial experience in the practice of law, having been admitted to practice in 1981.

6. The Accused failed promptly to respond to the Bar's requests for discovery in this proceeding;

7. The Accused attempted to dissuade Mr. Reetz and Ms. West from pursuing their complaint to the Bar.

e. Mitigating factors (ABA Standards §9.32) to be considered:

1. In the summer of 1992, the Accused's mother became ill and in September was diagnosed with cancer. She died December 28, 1992. The Accused spent a considerable amount of time caring for his mother before her death and was emotionally upset by her illness and death;
2. The Accused acted with no dishonest or selfish motive;
3. The Accused acknowledges the wrongfulness of his conduct and is sorry for it;
4. The Accused has received some counselling and plans to continue it as his finances permit;
5. The Accused plans to limit his practice in the future.

22.

The ABA Standards provide that suspension is appropriate where a lawyer knowingly fails to perform services for a client and causes injury or potential injury or engages in a pattern of neglect which causes injury or potential injury. Standards §4.42 (a) and (b). Oregon case law is in accord. In re Rudie, 294 Or 740, 662 P2d 321 (1983), imposed a 7 month suspension where the lawyer violated former DR 6-101(A)(2) [current DR 6-101 (A)], former DR 6-101(A)(3) [current DR 6-101(B)] and DR 7-101(A)(2) after having previously been disciplined for similar rule violations.

23.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree to the Accused's suspension of 7 months commencing 30 days after the Supreme Court approves

this Stipulation for Discipline. The Accused acknowledges that he will be required to file a formal application for reinstatement pursuant to BR 8.1.

24.

The sanction set forth in this Stipulation for Discipline was approved by the State Professional Responsibility Board at its November 19, 1994, meeting and the stipulation is subject to approval by the Oregon Supreme Court pursuant to the terms of BR 3.6.

EXECUTED this 29th day of November, 1994.

/s/ Kurtis M. Lombard
Kurtis M. Lombard

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

I, Kurtis M. Lombard, 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/ Kurtis M. Lombard
Kurtis M. Lombard

Subscribed and sworn to before me this 29th day of November, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

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 the sanction was approved by the SPRB for submission to the Supreme Court on the 19th day of November, 1994.

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

Subscribed and sworn to before me this 29th day of November, 1994.

/s/ Victoria Fichtner
Notary Public for Oregon
My commission expires: 3-26-97

IN THE SUPREME COURT

OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-109; 93-141
	)	
KURTIS M. LOMBARD,	)	FORMAL COMPLAINT
	)	
Accused.	)	
	)	

For its FIRST CAUSE OF COMPLAINT (Case No. 93-109, Complaint of Ruth Loree) 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, KURTIS M. LOMBARD, 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 1991 the Accused undertook to represent Ruth and Delbert Loree on two lawsuits pending against them in Lane County. The plaintiffs in one suit, Owen and Delaina Minchey, sought to rescind a land sales contract whereby they purchased a mobile home park from the

Lorees. After Mr. Loree's death in the summer of 1991, the Accused continued to represent Ms. Loree, who resided in Sitka, Alaska.

4.

Trial was scheduled to commence in the Minchey claim on October 22, 1992. One of the Mincheys' claims against Ms. Loree was that her deceased husband had made misrepresentations regarding the condition of the real property they had sold to the plaintiffs. Because Ms. Loree had been present during the sales negotiations, her testimony as to her deceased husband's statements was essential to defeat the plaintiffs' claim. However, the Accused did not confirm with Ms. Loree that she would need to appear and testify at the trial.

5.

Ms. Loree did not realize that her appearance and testimony at trial were essential to the defense of the Mincheys' case against her. She did not appear and judgment was entered against her in favor of the Mincheys.

6.

The Accused did not prepare any exhibits for trial, did not contact, interview or subpoena witnesses and did not file a trial memorandum.

7.

By failing to confirm with his client that she would appear and testify at trial and by failing to take other steps to prepare for trial, the Accused failed to apply the legal knowledge, skill, thoroughness and preparation reasonably necessary to provide competent representation.

8.

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

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

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

9.

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

10.

The Oregon State Bar State Professional Responsibility Board referred Ms. Loree's complaint regarding the Accused's conduct to the Lane County Local Professional Responsibility Committee ("LPRC") for investigation.

11.

As part of its investigation, the LPRC requested that the Accused provide a record of his preparation for the Loree trial, including a trial notebook, file or other materials. Although he agreed to provide the requested materials within two days, the Accused failed to do so until four weeks later, despite repeated requests from the LPRC reporter.

12.

The Accused failed to comply with the reasonable requests of the Lane County LPRC, which is an authority empowered to investigate the conduct of lawyers.

13.

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

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

AND, for its THIRD AND FINAL CAUSE OF COMPLAINT (Case No. 93-141, complaint of Alvin Reetz) against the Accused, the Oregon State Bar alleges:

14.

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

15.

On or about May 1989, the Accused undertook to represent Alvin M. Reetz on a personal injury claim. Mr. Reetz, who was 86 years old, received Medicare assistance for the medical expenses he incurred as a result of his injury.

16.

Prior to filing a claim on Mr. Reetz' behalf, the Accused agreed with the attorney representing the defendant to schedule depositions for August 30, 1989. However, on the date scheduled for depositions, the Accused contacted his opposing counsel to cancel the appearance. The depositions were rescheduled for November 2, 1989, which the Accused confirmed in a letter to Mr. Reetz dated September 27, 1989. That letter was the last communication the Accused sent to Mr. Reetz.

17.

Mr. Reetz' daughter, Viola West, attempted on numerous occasions between September 27, 1989 and April 1992 to contact the Accused on behalf of her father. Although he promised in April 1992 to provide her a status report on the matter, the Accused never did so. The Accused did not respond to her further attempts to contact him on behalf of her father after April 1992.

18.

In November 1989, March 1990, September 1990 and February 1991, the Accused received from Blue Cross/Blue Shield of Oregon inquiries and demands for third party reimbursement of Mr. Reetz' Medicare expenses. The Accused did not respond to these inquiries or demands and he did not advise Mr. Reetz or Ms. West that he had received them.

19.

In 1991, the Accused closed his file on Mr. Reetz' claim. He did not advise Mr. Reetz or Ms. West that he had closed his file and did not intend to take further action on the claim.

20.

The statute of limitations ran on Mr. Reetz' claim in May 1991. The Accused had never filed a claim on Mr. Reetz' behalf.

21.

The Accused neglected the legal matter entrusted to him by Mr. Reetz.

22.

By closing his file on Mr. Reetz' claim without advising Mr. Reetz that he was doing so, the Accused withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to his client.

23.

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

1. DR 2-110(A)(2) of the Code of Professional Responsibility.

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

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

EXECUTED this 4th day of May, 1994.

OREGON STATE BAR

By: /s/ Ann Bartsch
Ann Bartsch
Acting Executive Director

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-43
	)	
JOHN I. MEHRINGER,	)	
	)	
Accused.	)	

Bar Counsel: Michael H. Long, Esq.

Counsel for the Accused: None

Disciplinary Board: John Trew, Chairperson; Rebecca Orf; Max Kimmell, Public Member

Disposition: Violation of DR 5-101(A), DR 5-104(A). 90 day suspension.

Effective Date of Opinion: Order signed December 30, 1994. Suspension begins January 15, 1995

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	SC S41911
	)	
Complaint as to the Conduct of	)	AMENDED
	)	ORDER ACCEPTING STIPULATION
JOHN I. MEHRINGER,	)	FOR DISCIPLINE
	)	
Accused.	)	
	)	

The Oregon State Bar and John I. Mehringer have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. John I. Mehringer is suspended from the practice of law for a period of 90 days. The Stipulation for Discipline is effective January 15, 1995.

DATED this 30th day of December, 1994.

/s/ Wallace P. Carson, Jr.
WALLACE P. CARSON, JR.
Chief Justice

c: Lia Saroyan
Michael H. Long
John I. Mehringer

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 93-43
	)	
JOHN I. MEHRINGER,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

John I. Mehringer, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar 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, John I. Mehringer, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 1977, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County and Coos County, Oregon.

3.

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

4.

In January 1994, the State Professional Responsibility Board of the Oregon State Bar, authorized formal disciplinary proceedings against the Accused alleging that he violated DR 5-101(A) and DR 5-104(A) during the course of representing a client. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

The Accused began representing Gordon Elliott (hereinafter "Elliott") in 1980 and continued as Elliott's counsel until 1992 when Elliott was declared incompetent. During this period of time, the Accused represented Elliott on 20-25 legal matters.

In February 1986, Elliott gave the Accused $20,000 and requested that he deposit it in the Accused's lawyer trust account. The Accused complied with Elliott's request. The money remained in the Accused's trust account through June of 1988 bearing interest which was credited to Elliott.

In June 1988, the Accused, in a telephone conversation, apprised Elliott that he was in need of funds as he had recently set up a solo practice. Elliott told the Accused to take what he needed from the trust account. The Accused initially said that he would not; the two then agreed that the Accused could borrow the funds on an "as needed" basis. On June 20, 1988, the Accused sent Elliott a promissory note and a letter outlining the terms of their agreement. Pursuant to the terms of the note, the Accused agreed to pay Elliott on demand, any advances taken from the trust account plus 10% interest. The note also represented that all advances and interest were secured by a UCC filing, granting Elliott a security interest in the Accused's

business property. The June 20, 1988 letter advised Elliott to seek the advice of another attorney.

Between July 1988 and December 1989, the Accused borrowed over $22,000 from the money held in trust for Elliott. On June 5, 1989, the Accused apprised Elliott of the amounts advanced to date. At no time did the Accused secure any portion of the advances by way of a UCC filing.

In June 1990, the Accused borrowed an additional $40,000 from Elliott to purchase a home in Bandon, Oregon. The Accused prepared a promissory note which was secured by a mortgage on the Accused's residence in Eugene, Oregon. Pursuant to the terms of the note, the Accused was to make monthly payments of $450 per month effective August 1, 1990.

As of March 1992, no payments had been made by the Accused on either note. The Accused maintains that Elliott made no request for payment and that any offers which the Accused made to Elliott for repayment were refused. Elliott was declared incompetent in 1992 and died in early 1994, rendering it impossible to disprove the Accused's assertions regarding his repayment efforts. In March, 1992, Ruth Marble (hereinafter "Marble"), Elliott's sister, was appointed Elliott's guardian. She retained attorney Wayne Allen to recover the monies loaned by Elliott to the Accused. Litigation ensued, resulting in two judgments against the Accused for over $58,000. The Accused's house went to Marble via foreclosure to satisfy one judgment. The Accused has paid $9,000 towards the second judgment, is working with Allen to pay off the balance, but is currently financially unable to pay it in full.

By borrowing money from Elliott, the Accused entered into business transactions with a client in which they had differing interests. At the time the Accused borrowed these sums,

he knew that Elliott expected the Accused to exercise the Accused's professional judgment therein for Elliott's protection and the Accused neither disclosed to Elliott the conflict between their interests nor did he advise Elliott to seek independent counsel.

In addition, by continuing to represent Elliott despite the fact that he had borrowed money from him, the Accused continued employment when the exercise of his professional judgment on Elliott's behalf had a reasonable likelihood of being affected by the Accused's own financial, business, property or personal interests.

The Accused admits the above referenced conduct violated DR 5-101(A) and DR 5-104(A).

6.

Although not a defense to the charges, mitigating circumstances include: at the time the Accused accepted the loans from Elliott, Elliott was aware of the Accused's financial circumstances given that their personal and professional relationship had spanned for many years and Elliott was apparently comfortable with the terms of both transactions.

7.

The Accused and the Bar agree that in fashioning the appropriate sanction the Supreme Court should consider the ABA Standards and Oregon case law. Those standards require analyzing the Accused's conduct in light of four factors: ethical duty violated, attorney's mental state, actual or potential injury and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duty of loyalty owed to a current client. ABA Standards at 5.

b. The Accused acted with knowledge. ABA Standards at 7.

c. Whether Elliott was injured is unknown. As of 1992, when this matter was brought to the Bar's attention, Elliott had been declared incompetent. As of today, Elliott is deceased. There was, however, a potential for injury and Elliott's estate was injured in that it had to initiate legal proceedings and obtain a judgment against the Accused in order to facilitate repayment.

d. Aggravating factors to be considered are:

1. While the Accused may have not been motivated by dishonesty, his motivation was selfish. Standards 9.22(b).

2. Prior to being declared incompetent, Elliott was a vulnerable client whose eccentricities were known to the Accused. Standards 9.22(h).

3. The Accused has substantial experience in practicing law having been admitted to the Bar in 1977. Standards 9.22(i).

e. Mitigating factors to be considered:

1. The Accused has no prior discipline. Standards 9.32(a).

2. A judgment has been entered against the Accused and he is making payments thereon. Standards 9.32(k).

The Standards provide that a 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. Standards 4.32 at 30.

The Oregon Supreme Court has generally imposed a suspension when a lawyer borrows money from a client without complying with the full disclosure requirements of DR 10-101(B). See, In re Harris, 304 Or 43, 741 P2d 890 (1987); In re Luebke, 301 Or 321, 722 P2d 1221

(1986); In re Germundson, 301 Or 656, 724 P2d 793 (1986); In re Moore, 299 OR 496, 703 P2d 961 (1985); In re O'Byrne, 298 Or 535, 694 P2d 955 (1984), In re Whipple, 296 Or 105, 673 P2d 172 (1983).

8.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a suspension from the practice of law for 90 days.

9.

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

EXECUTED this 18th day of November, 1994.

/s/ John I. Mehringer
John I. Mehringer

EXECUTED this 2nd day of December, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

I, John I. Mehringer, 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 I. Mehringer
John I. Mehringer

Subscribed and sworn to before me this 18th day of November, 1994.

/s/ Naomi A. King
Notary Public for Oregon
My commission expires: 9-12-98

I, Lia Saroyan, 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 the sanction was approved by the SPRB chairperson for submission to the Supreme Court on the 2nd day of December, 1994.

/s/ Lia Saroyan
Lia Saroyan
Assistant Disciplinary Counsel
Oregon State Bar

Subscribed and sworn to before me this 2nd day of December, 1994.

/s/ Susan R. Parks
Notary Public for Oregon
My commission expires: 3-9-96

*

IN THE SUPREME COURT OF THE STATE OF OREGON

In re Complaint as to the Conduct of
JOHN M. BIGGS,
Accused.

(OSB 91-18, 91-19, 91-20, 91-21, 91-22, 91-23, 91-24, 91-25, 91-26, 91-27, 91-28, 91-40, 91-41, 91-42, 91-43, 91-44, 91-45, 91-46, 91-47, 91-48, 91-49, 91-75; SC S40526)

On review from a Trial Panel of the Disciplinary Board.

Submitted on the record and brief December 6, 1993.

Susan Roedl Cournoyer, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, for the Oregon State Bar.

No appearance *contra.*

Before Carson, Chief Justice, Gillette, Van Hoomissen, Fadeley, Unis, and Graber, Justices, and Peterson, Senior Judge, Justice pro tempore.

PER CURIAM

The accused is disbarred.

PER CURIAM

This is a disciplinary proceeding brought by the Oregon State Bar (Bar), charging the accused, in 39 causes of complaint, with engaging in conduct that violated certain standards of professional conduct. We review *de novo* the decision of a trial panel of the Disciplinary Board, which recommended that the accused be suspended from the practice of law for two years.[1] ORS 9.536(3); Rules of Procedure (BR) 10.6.

From our independent review of the evidence, we find that the accused is guilty of numerous violations of DR 1-102 (A)(3)[2] (conduct involving dishonesty, fraud, deceit or misrepresentation), DR 6-101(B)[3] (neglect of a legal matter entrusted to the lawyer), DR 9-101(A)[4] (failure to deposit into and maintain client funds in identifiable trust accounts), and DR 9-101(B)(3)[5]

---

[1] The trial panel recommended that reinstatement be denied unless the accused "can demonstrate that he has consistently received treatment for Bi-Polar Disorder, has not suffered additional manic episodes, has taken all medication prescribed for Bi-Polar Disorder, has abstained from the use of alcohol and undergone alcohol treatment, has repaid the Bar for the compensation it paid clients, and has written letters of apology and explanation to the clients harmed."

[2] DR 1-102(A)(3) provides:

"It is professional misconduct for a lawyer to:

"* * * * *

"(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]"

[3] DR 6-101(B) provides:

"A lawyer shall not neglect a legal matter entrusted to the lawyer."

[4] DR 9-101(A) provides:

"All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

"(1) Funds reasonably sufficient to pay account charges may be deposited therein.

"(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client in which event the disputed portion shall not be withdrawn until the dispute is finally resolved."

[5] DR 9-101(B)(3) provides:

"A lawyer shall:

"* * * * *

"(3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them."

(failure to maintain complete records of client funds and render appropriate accounting to client). We also find the accused guilty of violating DR 2-110(A)(2)[6] (failure to avoid foreseeable prejudice to client on withdrawal of employment) and DR 2-110(B)(3)[7] (failure to withdraw from employment because of mental or emotional condition). We disbar the accused.

The accused practiced law in Eugene from 1969 to 1982. In June 1982, he moved to the east coast to engage in business that did not include the practice of law. After unsuccessful business undertakings on the east coast, in Texas, and in Portland, Oregon, the accused returned to Eugene in 1989. He opened a law office, renting space from another lawyer. The accused represented clients on referral from that lawyer, including participants in a prepaid legal plan and other walk-in clients. Most of his cases involved family law (marital dissolutions, child support, visitation disputes, adoptions, and guardianships).

From January through July 1990, the accused was retained by the 22 clients listed below. He received fees and costs from each client, but he did not enter into a written fee agreement with any of them. With respect to those 22 clients, the accused admits the following facts:

1. *Benoit*

a. Benoit retained the accused to represent him in a dissolution of marriage.

b. Benoit paid the accused $500.

---

[6] DR 2-110(A)(2) provides:

"In any event, a lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client, including giving due notice to the lawyer's client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules."

[7] DR 2-110(B)(3) provides:

"A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

"* * * * *

"(3) The lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively."

c. The accused did no work.

d. The accused did not deposit the $500 into his trust account.

e. The accused did not return the $500 to Benoit.

f. The accused did not maintain a complete record of the $500.

2. *Jefferson*

a. Jefferson retained the accused to represent her in a dissolution of marriage.

b. Jefferson paid the accused $408.

c. The accused did some work for Jefferson but did not prepare a judgment of dissolution.

d. The accused deposited the money into his trust account.

e. The accused withdrew $210 from his trust account.

f. The accused did not return the $210 to Jefferson.

3. *Peck*

a. Peck retained the accused to represent her in a dissolution of marriage.

b. Peck paid the accused $432 for attorney fees and costs and later paid an additional $89 for filing fees.

c. The accused deposited the $432 in trust, but he did not deposit the $89 in trust.

d. The accused did not maintain complete records of the $89.

e. The accused did some work, but he did not prepare and file a judgment.

f. The accused withdrew $343 from trust.

g. The accused did not return the $343 to Peck.

4. *Faile*

a. Faile retained the accused to represent her in a dissolution of marriage.

b. Faile paid the accused $460.

c. The accused deposited the $460 in trust.

d. The accused did some work, but he did not prepare or file a judgment.

e. The accused withdrew $460 from trust.

f. The accused did not return the $460 to Faile.

5. *Masada Corporation*

a. Masada retained the accused for representation in a real property transaction and to form a corporation.

b. Masada paid the accused $400 for attorney fees and costs.

c. The accused did not deposit the $400 in trust.

d. The accused did not maintain a complete record of the $400.

e. The accused did some work but did not do all the work for which he was retained.

f. The accused used the $400.

g. The accused did not return the $400.

6. *Suppes*

a. Suppes retained the accused to represent her in a child support and custody matter.

b. Suppes paid the accused the sum of $500 for attorney fees and costs.

c. The accused did not deposit $400 of Suppes' money in the trust account.

d. The accused withdrew $100 from trust.

e. The accused did not return the $500.

f. The accused did some work but never filed any documents with the court.

7. *Carter*

a. Carter retained the accused for representation in a guardianship proceeding.

b. Carter paid the accused $300 for attorney fees and costs.

c. The accused performed no legal services.

d. The accused did not deposit the $300 to his trust account.

e. The accused used the $300.

f. The accused did not maintain a complete record of the $300.

g. The accused did not return the $300 to Carter.

8. *Brohmer*

a. Brohmer retained the accused for representation in a dissolution of marriage.

b. Brohmer paid the accused $400 for attorney fees and costs.

c. The accused deposited the $400 in trust.

d. The accused performed no legal services for Brohmer.

e. The accused withdrew $400 from trust.

f. The accused did not maintain a complete record of the $400.

g. The accused did not return the $400 to Brohmer.

9. *Poland*

a. Poland retained the accused to represent her in an adoption.

b. Poland paid the accused $247 for attorney fees and costs.

c. The accused deposited the $247 in trust.

d. The accused performed no legal services for Poland.

e. The accused withdrew $247 from trust.

f. The accused did not return the $247 to Poland.

10. *White*

a. White retained the accused to represent him on a claim relating to a franchise.

b. White paid the accused $1,000 for legal fees for services up to and including filing suit.

c. The accused deposited the $1,000 in trust.

d. The accused did not maintain a complete record of the $1,000.

e. The accused did some work but failed to prepare and file a complaint.

f. The accused withdrew $835 from trust.

g. The accused did not return the $1,000.

11. *To*

a. To retained the accused to represent him in a matter relating to an employment contract.

b. To paid the accused $300 for attorney fees.

c. The accused did not deposit the $300 in trust.

d. The accused performed no substantial legal work for To.

e. The accused did not return the $300 to To.

12. *Brown*

a. Brown retained the accused to represent him in a dissolution of marriage.

b. Brown paid the accused $500 for attorney fees and costs.

c. The accused deposited the $500 in trust.

d. The accused did some work but did not prepare or file the judgment.

e. The accused withdrew the $500 from trust.

f. The accused has not returned the $500 to Brown.

13. *Abell*

a. Abell retained the accused for representation in a landlord-tenant matter.

b. Abell paid the accused $50 for attorney fees and costs.

c. The accused did not maintain a complete record of the $50.

14. *Lockhart*

a. Lockhart retained the accused to represent him in a proceeding to modify a judgment.

b. Lockhart paid the accused $400 for attorney fees and costs.

c. The accused did not maintain a complete record of the $400.

15. *Alicea*

a. Alicea retained the accused to represent him in a proceeding to modify a judgment.

b. Alicea paid the accused the sum of $525.

c. The accused did not maintain a complete record of the $525.

16. *Duncan*

a. Duncan retained the accused to represent her in recovering payments for property.

b. Duncan paid the accused $200 for attorney fees.

c. The accused did not maintain a complete record of the $200.

17. *Null*

a. Null retained the accused to represent him in a proceeding to modify a judgment.

b. Null paid the accused $180.50 for attorney fees and costs.

c. The accused did some work but did not obtain a modification.

d. The accused did not maintain a complete record of the $180.50.

18. *Collier*

a. Collier retained the accused to represent her in a dissolution of marriage.

b. Collier paid the accused $275 for attorney fees and costs.

c. The accused did not maintain a complete record of the $275 and did not render an account.

19. *Williams*

a. Williams retained the accused to represent him in a dissolution of marriage.

b. Williams paid the accused $486 for attorney fees and costs.

c. The accused deposited the $486 in trust.

d. The accused did some legal work but failed to obtain a judgment.

e. The accused withdrew $288 from trust.

f. The accused did not return the $288.

20. *Constante*

a. Constante retained the accused to represent her in an action for ejectment.

b. Constante paid the accused $340 for attorney fees and $200 for a title report.

c. The accused did not deposit the $340 in trust.

d. The accused did some work, but he failed to file pleadings.

e. The accused used the $340.

f. The accused did not maintain a complete record of the $340.

g. The accused did not return the $340.

21. *Shafer*

a. Shafer retained the accused to represent him in a securities matter.

b. Shafer paid the accused $500 for attorney fees and costs.

c. The accused did not deposit the $500 in trust.

d. The accused did not maintain a complete record of the $500.

e. The accused performed no substantial legal services for Shafer.

f. The accused did not return the $500 to Shafer.

22. *Baker*

a. Baker retained the accused for representation in an adoption.

b. Baker paid the accused $157 for attorney fees and costs.

c. The accused did some work, but he did not obtain a judgment of adoption.

During the seven-month period in which the accused accepted the above cases, he spent increasing amounts of time at a tavern near his law office. The accused cashed several checks from his client trust account at that establishment.

On July 31, 1990, the accused abruptly left Eugene. He did so without notifying his clients or finding other lawyers for his clients. The Bar's Professional Liability Fund retained lawyers to review the accused's abandoned files, to notify the accused's clients that they should seek new counsel, and to perform emergency legal work. On September 27, 1990, the Lane County Circuit Court appointed a member of the Bar as custodian to take possession and control of the accused's law practice. *See* ORS 9.725 (appointment of custodian of law practice). The Bar's Client Security Fund paid over $6,300 on claims made by the accused's clients, many of whom had never seen the accused after paying him a retainer at their initial meeting.

Although the accused admitted the truth of the above facts, he asserted that he could not form the intent to commit those acts because he suffered at the time from a bipolar disorder, combined with excessive use of alcohol.

At the hearing before the trial panel, the accused testified that he was diagnosed in 1987 as having a bipolar disorder. Two doctors testified in those proceedings, and the depositions of three other doctors were received in evidence. A bipolar disorder is an episodic depressive disorder in which the individual experiences depression and which subsequently evokes a manic "compensation" for that depression. The compensatory manic episode can be either acutely manic or hypomanic. The judgment of a patient experiencing a hypomanic state is not significantly impaired, and he or she can function adequately. While such a patient may appear to be somewhat agitated, he or she is not prone to extreme behavior. The patient's energy and activity levels increase, but not to the point of depriving the patient of judgment or reason. During an acute manic state, however, the person's judgment, reasoning, and ability to conform one's conduct to that which is right is almost always impaired. Symptoms of

an acute manic episode include inflated self-esteem or grandiosity, a decreased need for sleep, pressured or rapid speech, flights of ideas, and irritability. In an acute manic state, these mood disturbances are sufficiently severe to cause marked impairment of occupational functioning and frequently require hospitalization or result in incarceration in order to prevent harm to the patient or others.

In the opinions of the doctors who testified (both of whom had examined the accused), the accused was not experiencing an acute manic episode during the period of January through July 1990. The receptionist in the law firm where the accused rented office space, and other witnesses who had observed the accused quite regularly during that seven-month period, testified that they noticed nothing unusual in his behavior, speech, or demeanor. The only testimony in support of the accused's assertion that he was suffering from an acute manic state came from the accused himself. He testified that he was in that state, as demonstrated by his recollections that he sang cowboy songs, required little sleep, drank standing up at a local tavern, and wore dark glasses and western apparel to his office during the period of January through July 1990.

We are not satisfied from the evidence in the record that during the period of January through July 1990 the accused's mental condition was impaired by an acute manic state of a bipolar disorder. We agree with the trial panel's finding that the accused "did in fact suffer from a bipolar disorder and was suffering from a hypomanic or *mildly manic phase* of the disorder in January through July, 1990" and that the accused "was a problem drinker, who used alcohol to excess during the time in question." (Emphasis added.) We also agree with the trial panel's conclusion that neither the bipolar disorder from which the accused suffered nor his excessive use of alcohol rendered him unable to comprehend the wrongfulness of his conduct. Therefore, we review the evidence *de novo* to determine whether the Bar has proven by clear and convincing evidence that the accused violated the various disciplinary rules as charged.

1. *DR 9-101(A): Failure to Deposit Into And Maintain Client Funds In Identifiable Trust Accounts*

It is undisputed that the accused failed to deposit the funds of six of his clients into his trust account on receipt. On

receiving retainers and costs from clients Benoit, Masada, Carter, To, Constante, and Shafer, the accused put the money into his general account. The accused claims that he considered the funds to be his on receipt because the fees were minimum or non-refundable fees. He admitted, however, that there were no written fee agreements and that he did not tell his clients that the retainers were non-refundable. Without a clear written agreement between a lawyer and a client that fees paid in advance constitute a non-refundable retainer earned on receipt, such funds must be considered client property and are, therefore, afforded the protections imposed by DR 9-101(A). *See In re Hedges*, 313 Or 618, 623-24, 836 P2d 119 (1992) (in the absence of a specific written agreement, funds considered "client funds" for purposes of DR 9-101(B)). We find that the accused violated DR 9-101(A) with respect to the six clients named above.

The accused also violated DR 9-101(A) with respect to clients Jefferson, Peck, Faile, Suppes, Brown, White, and Williams. The accused withdrew funds belonging to those clients from a trust account before they were earned (or, in the case of Suppes, by failing to deposit *all* of the funds paid to the accused by Suppes into a trust account on receipt).

2. *DR 9-101(B)(3): Failure To Maintain Complete Records Of Client's Funds And Render Appropriate Accounts To Client*

The accused admitted that he did not maintain complete records of the funds paid to him by 14 clients and that he did not render appropriate accounts regarding their property in his possession. The accused, therefore, violated DR 9-101(B)(3) in 14 separate client matters. Moreover, facts stipulated to by the accused support a finding of two additional violations of DR 9-101(B)(3). The accused was retained by Duncan to recover payments for property owed to her by her former husband. The accused did not maintain a complete record of the $200 retainer that Duncan paid to him for fees. The accused further failed to deposit $400 of the $500 retainer that he received from Suppes into his trust account, and he converted the $400 to his own use. We find, therefore, that the accused is guilty of 16 violations of DR 9-101(B)(3).

3. *DR 1-102(A)(3): Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation*

The accused admitted that he received retainers and costs from four clients (Benoit, Carter, Brohmer, and Poland), but he performed no legal services whatsoever for those clients. The accused also admitted that he deposited advanced funds from seven clients (Peck, Faile, Suppes, White, Brown, Williams, and Jefferson), but he removed all or most of their money from his trust account before he had performed legal work to have earned the fees. The accused also received retainers from four other clients (To, Constante, Masada, and Shafer) and never deposited them into his trust account. The accused did not perform the professional services that he had agreed to perform in exchange for the fees paid by each of those four clients, thereby converting clients' funds when he had not earned them. DR 1-102(A)(3) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. A lawyer is guilty of conversion, a violation of *former* DR 1-102(A)(4) (current DR 1-102(A)(3)), if he pays himself unearned fees from client funds. *In re Thomas*, 294 Or 505, 525, 659 P2d 960 (1983). *See also In re Benjamin*, 312 Or 515, 521, 823 P2d 413 (1991) (a lawyer who holds money in trust for another and converts it has engaged in dishonest conduct prohibited by DR 1-102(A)(3)). We find by clear and convincing evidence that the accused engaged in dishonest conduct in violation of DR 1-102(A)(3) when he converted the funds from the above-named clients.

4. *DR 6-101(B): Neglect Of Legal Matter Entrusted To Lawyer*

A lawyer's failure to take action after being retained by a client for legal services constitutes neglect, in violation of DR 6-101(B). *In re Purvis*, 306 Or 522, 524-25, 760 P2d 254 (1988); *In re Thies*, 305 Or 104, 108-09, 111, 750 P2d 490 (1988). The Bar must prove only a course of negligent conduct to establish a violation of DR 6-101(B). *In re Collier*, 295 Or 320, 329-30, 667 P2d 481 (1983). The Bar provided clear and convincing evidence that the accused neglected the cases he undertook for 17 different clients during the period of January through July 1990, including the accused's admissions that he did not perform the services for which he was

retained. We, therefore, find that the accused violated DR 6-101(B) as to those 17 cases.

5. *DR 2-110(B)(3): Failure To Withdraw From Employment Because Of Mental Or Emotional Condition DR 2-110 (A)(2): Failure To Avoid Foreseeable Prejudice To Client On Withdrawal From Employment*

DR 2-110(B)(3) requires a lawyer to withdraw from employment when the lawyer's physical or mental condition renders it unreasonably difficult for the lawyer to carry out employment effectively. *In re Loew*, 296 Or 328, 334, 676 P2d 294 (1984). DR 2-110(A)(2) requires a lawyer to take reasonable steps to avoid the foreseeable prejudice to the rights of the lawyer's client when the lawyer withdraws from representation. The accused admitted that his mental condition and excessive usage of alcohol rendered it unreasonably difficult for him to effectively carry out his employment by the 22 clients identified *supra*. The accused further admitted that he ceased practicing law on July 31, 1990, but he took no steps to avoid foreseeable prejudice to the rights of those clients. With respect to his separate employment by each of the 22 clients, therefore, the accused violated DR 2-110(B)(3) and DR 2-110 (A)(3).

SANCTION

In determining the appropriate sanction for a lawyer who has violated the disciplinary rules, this court looks to the American Bar Association Standards for Imposing Lawyer Sanctions (1991) (ABA Standards). *In re Spies*, 316 Or 530, 541, 852 P2d 831 (1993). The ABA Standards consider four factors: (1) the ethical duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. ABA Standard 3.0. We discuss each in turn.

1. *Ethical Duties Violated*

In all of the matters in which we have found the accused guilty, the accused violated his duties to his clients. Those obligations include the duty to preserve client property and the duty to act with reasonable diligence. By abruptly and improperly withdrawing from representation of 22 clients

when he abandoned his law practice, the accused also violated a duty to his profession.

2. *Mental State*

As previously stated, the accused's assertion that a bipolar disorder, alone or in concert with excessive use of alcohol, negated any culpable mental state is unsupported by the evidence. In converting his clients' funds, the accused acted intentionally or with the conscious, objective purpose to accomplish a particular result. When he neglected his clients' interests and abruptly abandoned their cases, the accused acted knowingly, which is defined in ABA Standards at 7 as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result."

3. *Injury*

The accused's misconduct resulted in serious injuries to his clients, to the Professional Liability Fund, and to the Client Security Fund. As noted, many of the accused's clients received no professional services for the fees and costs that they advanced. Many of the accused's clients were required to retain new counsel to complete the legal work for which they had retained the accused. The Client Security Fund paid $6,291 to resolve 24 claims made by the accused's clients. The Professional Liability Fund paid other lawyers over $26,000 in legal fees and costs to determine the status of the cases abandoned by the accused and to perform interim legal services before the cases were transferred to a custodian.

4. *Aggravating and Mitigating Factors*

Mitigating factors present here include the absence of a prior disciplinary record and letters from six lawyers who stated that before 1982 the accused had a good reputation. *See* ABA Standard 9.32(a) (absence of disciplinary record); 9.32(g) (character or reputation).

The record is replete with evidence of aggravating factors. The accused acted with a dishonest or selfish motive when he converted the funds of his clients. ABA Standard 9.22(b). The record reveals a pattern of multiple offenses. ABA Standard 9.22(c) and 9.22(d). The accused has demonstrated indifference to making restitution, citing financial

inability, but expressing no sense of responsibility to repay his victims. ABA Standard 9.22(j).

Although the accused relied on an acute manic episode and alcoholism as the reasons for his misconduct, he has not sought professional treatment for either condition. After July 31, 1990, the day that he abandoned his law practice, he sought medical advice only for forensic purposes, *i.e.*, in an attempt to establish that he was incapable of comprehending the wrongfulness of his conduct. He does not take the medication that previously had been prescribed for him.

In *In re Benjamin, supra*, 312 Or at 515, this court disbarred a lawyer who used client money to pay personal expenses. On other occasions, this court has disbarred lawyers for misappropriating client funds. *See, e.g., In re Phelps*, 306 Or 508, 760 P2d 1331 (1988); *In re Eads*, 303 Or 111, 734 P2d 340 (1987); *In re Jordan*, 300 Or 430, 712 P2d 97 (1985).

ABA Standard 4.11 suggests that in the absence of mitigating circumstances a lawyer who knowingly converts client property and causes injury to a client should be disbarred. Disbarment also is warranted when a lawyer abandons his or her practice and causes serious or potentially serious injury to a client. ABA Standard 4.41(a). The aggregate misconduct described herein clearly warrants disbarment.

The accused is disbarred.

IN THE SUPREME COURT OF THE STATE OF OREGON

In re Complaint as to the Conduct of
VOLNEY F. MORIN, JR.,
Accused.
(OSB 92-72; SC S40995)

In Banc

On review from a Trial Panel of the Disciplinary Board.

Argued and submitted May 11, 1994; resubmitted May 27, 1994.

Michael Jewett, Medford, argued the cause and filed the brief for the accused.

Mary A. Cooper, Assistant Disciplinary Counsel, argued the cause and filed the response for the Oregon State Bar.

PER CURIAM

The accused is disbarred.

PER CURIAM

This is a disciplinary proceeding brought by the Oregon State Bar, alleging violations of the Code of Professional Responsibility and a statutory violation. The accused was charged with violating: DR 1-102(A)(3) (misconduct involving dishonesty, fraud, deceit, or misrepresentation); *former* DR 7-102(A)(5) (1989) (knowingly making a false statement in the representation of a client); *former* DR 7-102(A)(6) (1989) (participating in the creation or preservation of false evidence in the representation of a client); *former* DR 7-102(A)(8) (1989) (knowingly engaging in illegal conduct or conduct contrary to a disciplinary rule in the representation of a client); ORS 9.527(4) (willful deceit or misconduct in the legal profession); DR 1-103(C) (failing to respond fully and truthfully to the Bar); DR 1-102(A)(2) (committing a criminal act that reflects adversely upon the lawyer's honesty, trustworthiness, or fitness to practice law); DR 2-106(A) (charging or collecting an illegal or clearly excessive fee); DR 1-102(A)(2) (committing a criminal act that reflects adversely upon the lawyer's honesty, trustworthiness, or fitness to practice); and DR 3-101(A) (aiding a nonlawyer in the unlawful practice of law).

The trial panel found that the accused violated all the charged provisions and recommended disbarment. We review *de novo*. ORS 9.536(3). We find that the accused committed seven of the 10 charged violations and order that he be disbarred.

The facts relating to this case are undisputed. The accused was licensed to practice law in California in 1974 and was admitted to practice law in Oregon in 1984. During the spring of 1988, the accused began conducting "living trust" seminars and selling "living trust packages," which included pour-over wills and directives to physicians.

The accused and two of his employees, who were paralegals, travelled throughout Oregon and northern California, conducting seminars and preparing the living trust packages. If a person at a seminar indicated that he or she was interested in discussing a living trust package, the accused or one of the paralegals would make an appointment and return to meet with the client. The accused or the paralegal would

gather information from the client and then prepare the documents for the living trust package in the accused's Medford office.

At trial, Monnett, a paralegal employed by the accused, testified that he usually travelled alone, conducted seminars before groups, collected information from prospective clients, and assisted clients in executing the documents contained in the trust packages. He testified that the questions that he answered at the seminars were general and did not apply to individual clients' problems.

Monnett also testified that, during meetings with individual clients, he read their wills and explained to them the operative parts of the will. He also testified that he inquired into the clients' assets and advised them whether or not they needed a trust.[1] He reviewed the trusts and other legal documents with the clients. Some of the clients never met the accused and dealt only with Monnett throughout the process. Both Monnett and the other paralegal employed by the accused, Pesterfield, testified that the accused instructed them to call him if they had legal questions. Both also testified that they believed that the accused reviewed all the documents that were prepared because he signed all of them and because occasionally he discussed the contents of the documents with Monnett.

Ordinarily, after the documents were prepared, the accused or one of the paralegals scheduled an additional appointment with the client to execute the documents. Two of the documents required the signatures of two witnesses to be valid — the pour-over will[2] and the directive to physicians.[3]

---

[1] Monnett testified that he also advised clients that some other pre-prepared trusts were not very useful because the other trusts "didn't do much."

[2] ORS 112.235 provides, in part:

"(1) The testator, in the presence of each of the witnesses, shall:

"(a) Sign the will; or

"(b) Direct one of the witnesses or some other person to sign thereon the name of the testator; or

"(c) Acknowledge the signature previously made on the will by the testator or at the testator's direction.

"* * * * *

"(3) At least two witnesses shall each:

On the pour-over will, the language immediately preceding the witnesses' signatures provided:

> "The foregoing instrument was, on the date above written, signed and declared by the Testatrix[or] to be her [or his] Last Will and Testament in the presence of us, who at her [or his] request and in her [or his] presence and in the presence of each other, have hereunto subscribed our names as witnesses and we hereby certify that we believe the Testatrix[or] to be of sound mind and memory and under no undue influence."

Just below the signatures of the witnesses, the following jurat appeared:

> "STATE OF OREGON)
> "County of [county name])
>
> "Subscribed, sworn to and acknowledged before me by [name of testatrix or testator], Testatrix[or], and subscribed and sworn to before me by [names of witnesses], witnesses, this [date].
>
> "Signature
> Notary Public for Oregon
> My Commission Expires:"

On the directives to physicians, the language immediately preceding the place for witness signatures on the directive to physicians provided:

> "(1) I personally know the Declarant and believe the Declarant to be of sound mind.
>
> "* * * * *
>
> "(3) I understand that if I have not witnessed this Directive in good faith I may be responsible for any damages that arise out of giving this Directive its intended effect."

The accused testified that clients in the Medford and Ashland area ordinarily executed the documents in the living trust packages in the accused's office, where the accused's office staff members served as witnesses. When the accused or

---

"(a) See the testator sign the will; or

"(b) Hear the testator acknowledge the signature on the will; and

"(c) Attest the will by signing the witness' name to it."

[3] *Former* ORS 127.610 (2) (1989) provided that a directive to physicians "is only valid if signed by the declarant in the presence of two attesting witnesses."

the paralegals executed documents at seminar sites, however, it was difficult for them to have the wills and directives to physicians witnessed.

The accused and the paralegals began a practice of taking the wills and directives to physicians back to the accused's office in Medford after they were signed by the clients at the seminar sites and directing the office staff to sign the documents as witnesses. The signatures of the "witnesses" on the wills were notarized either by the accused or by one of his employees. The signatures on the directives to physicians were not notarized. The accused then mailed the signature pages back to the clients.

In July 1990, the accused received a letter from a lawyer questioning whether the will of one of the accused's clients, Shumway, had been witnessed properly. In response, the accused did not change the practice of "witnessing" outside the presence of the client but changed the form letter that was sent to clients to delete the reference to how his office staff had witnessed the will outside the client's presence. In January 1992, the accused received another letter about the Shumway will from the same lawyer. In response, the accused admitted that he had caused Shumway to sign her will and later to have it witnessed by people who were not present at the time the documents were executed.

The accused sent a copy of the lawyer's letter and a copy of his response to the Oregon State Bar. The Bar wrote to the accused, asking him to respond to the allegations made by the other lawyer. The accused responded, stating, among other things: "I refute categorically, [the lawyer's] contention that the practice followed in the case of the Shumways is a 'common occurrence' in [the accused's] practice. I made an exception in the case of the Shumways which I admit was a mistake."

The Bar assigned the matter to the Local Professional Responsibility Committee (LPRC) for investigation. Both the accused and his secretary denied to the LPRC investigator that the accused's conduct with regard to the Shumway will was part of a larger pattern. They both stated that the improper witnessing of the Shumway will had been a one-time occurrence. Following the investigation, the State

Professional Responsibility Board (SPRB) authorized formal charges regarding the Shumway matter. In his answer, the accused stated that "[t]his mistake was an isolated incident and I have made a full disclosure of all relevant facts to the representatives of the Oregon State Bar Association [sic]."

Just before the originally scheduled disciplinary trial, the accused's secretary, who was no longer employed by the accused, admitted that she had lied to the LPRC investigator and that she had "witnessed" many wills and directives to physicians in the same manner as the Shumway will. The trial was continued, and the Bar filed an Amended Complaint, alleging several new disciplinary violations. In the accused's second amended answer, the accused admitted that he had caused the wills and directives to physicians of approximately 300 clients to be executed outside the presence of the witnesses, who later signed the wills and directives to physicians.

The accused stated before the trial panel that he knew that a will is invalid unless it is either executed or affirmed by the testator in the presence of two witnesses. He also testified that part of the fee he charged his clients was for a valid will and that he understood that his clients believed that they were receiving valid wills as part of the living trust packages.

In December 1993, the trial panel found that the accused had violated all the charges alleged in the Bar's amended formal complaint. We consider each cause of complaint in turn.

FIRST AND SECOND CAUSES OF COMPLAINT

In its first and second causes of complaint,[4] the Bar alleges that the accused committed four disciplinary rule violations and a statutory violation.

1. *Dishonesty, Fraud, Deceit, or Misrepresentation*

DR 1-102(A)(3) provides:

[4] The first and second causes of complaint charge violations of the same disciplinary rules. The first cause of complaint alleges the improper witnessing of the Shumway will. The second cause of complaint alleges improper witnessing of "approximately 300 living trusts." Because those allegations refer to identical conduct on behalf of different clients, the trial panel addressed the first two causes of complaint together, and so shall we.

"(A) It is professional misconduct for a lawyer to:

"* * * * *

"(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

The accused admits that he knew that the Shumway will and approximately 290 others were invalid at the time that the clients executed them because they were improperly witnessed. He also admits that he knew that his clients thought that the wills were valid. The accused failed to correct that misapprehension of material fact. Failure to disclose a material fact may be misrepresentation for the purposes of DR 1-102(A)(3). *See In re Hedrick*, 312 Or 442, 446, 822 P2d 1187 (1991) (violation of DR 1-102(A)(3) when accused failed to disclose that the will he offered for probate had been revoked by a subsequent will).

Moreover, the accused solicited members of his staff to sign wills that falsely stated that the clients had signed the wills in staff members' presence. In addition, the accused notarized wills, each of which contained a jurat that provided that the will was subscribed and sworn before him by both the testator and the witness on a particular date. That statement also was false. *See In re Benson*, 311 Or 473, 478, 814 P2d 507 (1991) (recording a forged and falsely notarized deed violated *former* DR 1-102(A)(4) (current DR 1-102(A)(3))); *In re Kraus*, 289 Or 661, 667-71, 616 P2d 1173 (1980) (court suspended lawyer who notarized document signed outside his presence).

The accused engaged in a pattern of conduct designed to deceive both his clients and subsequent readers of the wills and directives to physicians. Accordingly, we find that the accused engaged in "conduct involving dishonesty, fraud, deceit or misrepresentation." The accused violated DR 1-102(A)(3). *See In re Purvis*, 308 Or 451, 457-58, 781 P2d 850 (1989) (accused violated *former* DR 1-102(A)(4) (current DR 1-103(A)(3)) when he misrepresented to a client the progress of his case).

2. *False Statement; False Evidence; Illegal Conduct*

In 1989, when the accused prepared and executed the Shumway will, DR 7-102(A) (1989) provided, in part:

"In the lawyer's representation of a client, a lawyer shall not:

"* * * * *

"(5) Knowingly make a false statement of law or fact.

"* * * * *

"(6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.

"* * * * *

"(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule."

The trial panel concluded that the accused had violated DR 7-102(A)(5), (6), and (8).

DR 7-102(A) was amended, effective January 1991, to include conduct occurring "in representing the lawyer's own interests" as well as conduct occurring "[i]n the lawyer's representation of a client." The Shumway will was improperly witnessed in 1989, and the Bar does not offer evidence that any of the other improperly witnessed documents were executed after January 1991. Thus, the pre-1991 version of DR 7-102(A) applies in this proceeding.

Before the 1991 amendment, DR 7-102(A) was prefaced with the phrase "[i]n the lawyer's representation of a client." There are conflicting precedents on the meaning of that phrase. This court has held that the pre-1991 version of DR 7-102(A) "concerns conduct a lawyer might use to advance the interests of a client." *In re Willer*, 303 Or 241, 244, 735 P2d 594 (1987). In *Willer*, the accused submitted litigation reports to a client that were misleading as to the status of legal matters that the accused had worked on for the client. *Id.* at 243. The court held that DR 7-102(A)(5) did not apply to that case because "the conduct of the accused was not taken to advance the interests of the client." *Id.* at 244. *See also In re Coe*, 302 Or 553, 567-68, 731 P2d 1028 (1987) (accused did not violate DR 7-102(A)(8) because dishonest conduct was to advance his own interests to the detriment of the client); *but see In re Dixson*, 305 Or 83, 89, 750 P2d 157 (1988) (accused violated DR 7-102(A)(5) when he made false statements about the status of his client's case to the court, the Bar, and his client; no mention of the issue raised in *Coe*

and *Willer*); *In re Kissling*, 303 Or 638, 640-41, 740 P2d 179 (1987) (accused violated DR 7-102(A)(5) when he told his client that action was pending when it was not; no mention of the issue raised in *Coe* and *Willer*).

We do not decide whether the misconduct in which the accused engaged violated the provisions of DR 7-102(A). The accused's acts of misconduct in misleading his clients, in causing his staff to falsely witness documents, and in improperly notarizing wills constituted violations of DR 1-102(A)(2), DR 1-102(A)(3), DR 2-106(A), and ORS 9.527(4). Due to the sanction imposed, the fact that the same conduct also may have violated DR 7-102(A) is of no moment.[5] *See In re Recker*, 309 Or 633, 638 & n 4, 789 P2d 663 (1990) (recognized conflict in precedent and declined to decide whether DR 7-102(A) applied to case where the accused misled court to advance her own interests because the misconduct was a violation of DR 1-102(A)(3) and the sanction would not be enhanced if it also was a violation of DR 7-102(A)(5)).

3. *Willful Deceit or Misconduct*

ORS 9.527 provides, in part:

> "The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:
>
> "* * * * *
>
> "(4) The member is guilty of willful deceit or misconduct in the legal profession."

As discussed above, the accused led his clients to believe that he had prepared valid wills and directives to physicians as part of the living trust packages. He knew that those documents were not valid if they were not properly witnessed, and he caused them to be improperly witnessed. The accused willfully deceived nearly 300 clients; he violated ORS 9.527(4). *See, e.g., In re Fuller*, 284 Or 273, 278, 586 P2d 1111 (1978) (accused violated *former* ORS 9.480(4) (earlier version of ORS 9.527(4)) when he represented to clients that he filed an action when he had not done so, made false

[5] Moreover, because the disciplinary rule was amended in 1991 to deal with this issue, it would be of little benefit to bench or Bar to decide this issue here.

representations to opposing lawyer, and failed to inform clients that he had settled case).

THIRD CAUSE OF COMPLAINT

DR 1-103(C) provides:

> "A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege."

The accused does not dispute that he failed to respond fully and truthfully to the Bar inquiry, in violation of DR 1-103(C). The accused informed the Bar at the outset of the investigation that he had caused the Shumway will to be improperly witnessed. On three occasions, however, the accused stated to representatives of the Bar that the improper witnessing of the Shumway will was a mistake and "an isolated incident." It was not until after the accused's former secretary told the Bar that she had lied to the LPRC investigator and that in fact she had improperly witnessed many wills, that the accused admitted to the Bar that he had caused approximately 300 other wills and directives to physicians to be improperly witnessed. We conclude that the accused violated DR 1-103(C).

FOURTH CAUSE OF COMPLAINT

1. *Criminal Conduct*

DR 1-102(A)(2) provides:

> "(A) It is professional misconduct for a lawyer to:
>
> "* * * * *
>
> "(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law."

The trial panel concluded that the accused violated DR 1-102(A)(2) because he committed theft by deception, as defined in ORS 164.085.[6] The accused offers two reasons why

---

[6] ORS 164.085 provides, in part:

"(1) A person, who obtains property of another thereby, commits theft by deception when, with intent to defraud, the person:

he did not commit the crime of theft by deception. He first argues that the "true value of the overall package was virtually unaffected by invalidity of the will" because, "if properly funded and updated, the trust would eliminate the need to probate the will at all." Presumably, the accused is arguing that his misrepresentations had "no pecuniary significance" and that, therefore, there was no deception under ORS 164.085. That argument is not persuasive. The accused ordinarily charged his clients between $900 and $1500 for a living trust package. That package included both the pour-over will and the directive to physicians. The accused stated before the trial panel that the fee for the package included a fee for a valid will. As part of the total package, therefore, the will and the directive to physicians had some pecuniary value attached to them, regardless of whether or not the will ever was admitted to probate. The accused intentionally did not provide 290 clients with the full services for which they paid. Thus, the accused committed "deception" for the purposes of ORS 164.085.

Second, the accused argues that he did not have the necessary intent to have committed the crime of theft by deception. The statute provides the following definition:

> " 'Intentionally' or 'with intent,' when used with respect to a result or to conduct described by a statute defining an offense, means that a person acts with a conscious objective to cause the result or to engage in the conduct so described." ORS 161.085(7).

The accused argues that he did not intend "to enrich himself by cold-bloodedly deceiving clients," but that his mental state was one of "egregious inattentiveness." We are not persuaded. The accused did not just "let things slip"

"(a) Creates or confirms another's false impression of law, value, intention or other state of mind which the actor does not believe to be true; or

"(b) Fails to correct a false impression which the person previously created or confirmed; or

"* * * * *

"(e) Promises performance which the person does not intend to perform or knows will not be performed.

"(2) 'Deception' does not include falsity as to matters having no pecuniary significance, or representations unlikely to deceive ordinary persons in the group addressed."

while he was going through a period of crisis in his life. The accused affirmatively directed members of his office staff to falsely witness documents after the documents were executed. He consciously led his clients to believe that the wills and directives to physicians that had been executed as part of the package would have legal significance. The accused knew that the wills were invalid and, therefore, worthless, at best, and he continued charging the full price for the package without either notifying his clients of the invalidity of the wills and directives to physicians or discounting the package for the invalid parts. The Bar met its burden to show by clear and convincing evidence that the accused committed the crime of theft by deception, and thus, that the accused violated DR 1-102(A)(2). *See In re Anson*, 302 Or 446, 453-54, 730 P2d 1229 (1986) (under *former* DR 1-102(A)(3), it is not necessary for the accused to be convicted of a crime; clear and convincing evidence meets Bar's burden).

2. *Excessive Fee*

DR 2-106(A) provides: "A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee."

The trial panel found that the accused violated DR 2-106(A) because "there can be no question but that a fee is excessive when it includes charges for documents which are known to be invalid." We agree with the trial panel's determination. In *In re Gastineau*, 317 Or 545, 551, 857 P2d 136 (1993), this court held that "a lawyer violates DR 2-106(A) when he or she collects a nonrefundable fee, does not perform or complete the professional representation for which the fee was paid, but fails promptly to remit the unearned portion of the fee."

Here, the accused charged his clients a fee for the performance of certain services, including the preparation and execution of a *valid* will and a *valid* directive to physicians. The accused intentionally failed to provide his clients with the valid documents for which they had paid. The accused intentionally charged clients for services that he knew he would not provide.[7] Accordingly, the fee was excessive and the accused violated DR 2-106(A). *See also In re*

[7] The accused refunded the fee to Shumway but not to each of the other 290 clients whom the accused charged for an invalid will and directive to physicians.

Thomas, 294 Or 505, 526, 659 P2d 960 (1983) ("It would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount.").

FIFTH CAUSE OF COMPLAINT

The trial panel found that the accused also violated DR 1-102(A)(2) (committing a criminal act that reflects adversely upon the lawyer's honesty, trustworthiness, or fitness to practice law) (set forth *supra*) because he committed the crimes of solicitation, ORS 161.435,[8] and false swearing, ORS 162.075.[9] ORS 161.155[10] makes a person criminally liable for the acts of another person if he or she solicits or commands the other person to commit the crime. The Bar argues that the accused directed his staff members to commit the crime of false swearing and that, therefore, the accused committed the crimes of false swearing and solicitation.

The accused argues that his employees and, therefore, that he, did not commit the crime of false swearing because they did not make any "sworn statements." ORS 162.055(4) defines sworn statement to mean "any statement knowingly given under any form of oath or affirmation attesting to the truth of what is stated." Although the accused's employees may not have raised their hands in a formal oath, they signed a statement on the wills that said: "we hereby certify that we believe the Testatrix[or] to be of sound mind and memory and under no undue influence."

---

[8] ORS 161.435(1) provides:

"A person commits the crime of solicitation if with the intent of causing another to engage in specific conduct constituting a crime punishable as a felony or as a Class A misdemeanor * * * the person commands or solicits such other person to engage in that conduct."

[9] ORS 162.075 provides:

"(1) A person commits the crime of false swearing if the person makes a false sworn statement, knowing it to be false.

"(2) False swearing is a Class A misdemeanor."

[10] ORS 161.155 provides, in part:

"A person is criminally liable for the conduct of another person constituting a crime if:

"* * * * *

"(2) With the intent to promote or facilitate the commission of the crime the person:

"(a) Solicits or commands such other person to commit the crime[.]"

Just below the signatures of the witnesses on the wills, the following jurat appeared: "Subscribed, sworn to and acknowledged before me by [name of testatrix or testator], Testatrix[or], and subscribed and sworn to before me by [names of witnesses], witnesses, this [date]."[11] The accused's employees signed wills that certified the truth of the statement and were notarized by the accused or some other notary. The witnesses' statement said that they "certified" that the testator was of sound mind and memory and under no undue influence. Moreover, the jurat and notary seal and signature were intended to ensure that the witnesses (and testator) signed the will in good faith. The purpose of those precautions is to attest to the truth of the information that is stated in the will and in the witness statement. That is an oath or affirmation for the purposes of ORS 162.055(4) and 162.075(1). *See State v. Carr*, 319 Or 408, 413, ___ P2d ___ (1994) (for the purposes of the perjury statute, a statement was sworn when "the statement was a vow of the person making the statement and * * * the vow was made in the presence of the notary").

On nearly 300 documents, the accused's employees made an oath or affirmation that attested to the truth of a document that stated that the testator had signed in their presence. The employees were not present when the clients signed the documents. Therefore, the accused's employees committed the crime of false swearing. The accused admits that his staff members' attestations were made at his behest. Accordingly, we find by clear and convincing evidence that the accused violated DR 1-102(A)(2) when he committed the crime of solicitation, ORS 161.435, and false swearing, ORS 162.075(1), through operation of ORS 161.155.

SIXTH CAUSE OF COMPLAINT

DR 3-101(A) provides: "A lawyer shall not aid a nonlawyer in the unlawful practice of law."

The trial panel concluded that the accused assisted nonlawyers in the unlawful practice of law in violation of DR 3-101(A) when he employed paralegals to assist him in preparing living trust packages.

---

[11] The accused himself notarized the Shumway will and some of the others.

There is insufficient evidence for us to conclude that the paralegals engaged in the unlawful practice of law by giving the seminars on living trusts and by answering general questions about the living trust packages. Disseminating information that is "directed to the general public and not to a specific individual" is not the practice of law. *Oregon State Bar v. Gilchrist*, 272 Or 552, 558, 538 P2d 913 (1975). Apparently, the seminars and questions answered by the paralegals in the seminars went to general information about the advantages of living trusts and about the contents of the packages. The dissemination of that information did not involve the practice of law.

It appears, however, that at least Monnett went beyond the mere dissemination of general information to the public. The Bar alleges that it was Monnett's interactions with individuals that constituted the practice of law. In *Gilchrist*, this court held that advertising and selling do-it-yourself divorce kits did not constitute the practice of law. 272 Or at 557-60. This court also held, however:

> "[A]ll personal contact between defendants and their customers in the nature of consultation, explanation, recommendation or advice or other assistance in selecting particular forms, in filling out any part of the forms, or suggesting or advising how the forms should be used in solving the particular customer's marital problems does constitute the practice of law * * *." *Id.* at 563-64.

This court set forth the test for ascertaining what conduct constitutes the practice of law in *State Bar v. Security Escrows, Inc.*, 233 Or 80, 89, 377 P2d 334 (1962): "[T]he practice of law includes the drafting or selection of documents and the giving of advice in regard thereto any time an informed or trained discretion must be exercised in the selection or drafting of a document to meet the needs of the persons being served."

In *State Bar v. Miller & Co.*, 235 Or 341, 347, 385 P2d 181 (1963), this court held that an insurance salesperson that assisted people in preparing estate plans could

> "explain to his prospective customer alternative methods of disposing of assets * * * which are available to taxpayers *generally*. * * * He cannot properly advise a prospective purchaser with respect to his *specific* need for life insurance

> as against some other form of disposition of his estate, unless the advice can be given without drawing upon the law to explain the basis for making the choice of alternatives." (Emphasis in original.)

In this case, Monnett examined wills and interpreted them for clients of the accused. Moreover, Monnett discussed clients' individual assets with them to determine whether a living trust would be an appropriate device for the particular client to use. Monnett also told the accused's clients his opinion of the usefulness of another trust format, telling them that it "didn't do much." In short, Monnett advised clients and potential clients of the accused on legal decisions specific to them, and he used discretion in selecting between using a trust and a will and among trust forms. Accordingly, Monnett, a nonlawyer, practiced law.

The accused argues that, even if Monnett practiced law, he did not assist Monnett. He argues that he "took pains to tell these paralegals not to practice law at the seminars." He also told them to call him at the office or at home "[i]f any legal questions arose." Furthermore, the accused argues that he did not know of Monnett's conduct nor did he aid in that conduct; therefore, he did not violate the rule.

This court's decision in *In re Jones*, 308 Or 306, 779 P2d 1016 (1989), is instructive. In that case, the accused allowed a nonlawyer to use pleading paper and a letterhead stamp with the lawyer's name on it in the nonlawyer's dissolution-processing business. 308 Or at 308. The accused knew that the nonlawyer had been warned by the Bar not to practice law. *Id.* at 309. The accused instructed her to bring any legal questions that she had to him. *Id.* This court held that the accused aided a nonlawyer in the practice of law because he "took no steps to enforce his instruction or to test her ability to determine when legal help was needed." *Id.* This court also found it to be important that the clients were never required to speak with the accused. *Id.*

Here, as in *Jones*, although the accused told his paralegals not to practice law, he did not tell them the precise contours of what constituted the practice of law. Moreover, the accused created the situation in which at least one of his paralegals had the opportunity to practice law. The accused sent the paralegals to meet with clients alone, and he failed to

supervise them properly. Thus, even if the accused did not intend for the paralegals to practice law, he assisted in that unlawful practice by allowing them too much freedom in dealing with clients, thereby allowing at least Monnett to provide legal advice to those clients. Accordingly, we conclude that the accused assisted in the unlawful practice of law in violation of DR 3-101(A).

SANCTIONS

We now turn to the appropriate sanction for the accused's proven misconduct. We look for guidance to the American Bar Association Standards for Imposing Lawyer Sanctions (1991) [ABA Standards] and to prior decisions of this court. *See In re Cohen*, 316 Or 657, 663, 853 P2d 286 (1993) (referring to ABA Standards for guidance). Under the ABA Standards, we consider: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. ABA Standard 3.0.

First, the accused violated his duty to his clients to be candid. ABA Standard 4.6. He also violated his duty to the public to maintain personal integrity. ABA Standard 5.1. The accused also violated his duty to the Bar by lying to representatives of the Bar on three occasions. ABA Standard 7.0.

Second, in respect of most of the misconduct, the accused acted intentionally. "An act is 'intentional' if it is done with conscious objective or purpose to accomplish a particular result." *In re Williams*, 314 Or 530, 546, 840 P2d 1280 (1992). The accused intentionally deceived nearly 300 clients into believing that they were receiving valid wills and directives to physicians when he knew that the documents were invalid. The accused also intentionally lied to the Bar by telling its investigators on three separate occasions that the Shumway will was an isolated incident, when in fact he had caused nearly 300 other wills to be improperly witnessed.

In respect of the aiding in the unlawful practice of law violation, however, the accused acted only negligently in failing to properly supervise and instruct the paralegals.

Third, as a result of the accused's misconduct, nearly 300 clients were left with invalid wills and directives to

physicians that they incorrectly believed to be valid. The potential for harm was great. Although it is unknown whether any court or physician has been misled by the invalid documents prepared by the accused or whether any of the accused's clients died intestate, the accused's conduct created the potential for a great deal of harm.[12] Moreover, the accused seriously impeded the Bar investigation by lying to the investigators on three different occasions.

Fourth, in mitigation, the accused has had no other disciplinary complaints against him. ABA Standard 9.32(a). In addition, his remorse for his violations seems genuine now.[13] ABA Standard 9.32(l). The accused also argues that he had serious family problems that influenced his actions. ABA Standard 9.32(c). Even if we were to accept that the accused did suffer such problems, it does not matter here because the accused did not act negligently; he engaged in a pattern of intentional deception and misconduct.

There also are several factors in aggravation. The accused was acting out of a selfish and dishonest motive — cutting corners to increase profit and deceiving his clients into believing that they were receiving, among other things, a valid will and directive to physicians. ABA Standard 9.22(b). The accused's conduct involved a pattern of misconduct and many disciplinary offenses, consisting of nearly 300 separate acts of deception. ABA Standard 9.22(c) and (d). In addition, the accused on three occasions was untruthful during the Bar's investigation. ABA Standard 9.22(f).

The ABA Standards indicate that the accused should be disbarred. *See* ABA Standard 4.61 (disbarment generally appropriate when lawyer knowingly deceives client to benefit himself and causes serious injury or potentially serious injury to a client); ABA Standard 5.11 (disbarment generally appropriate when lawyer engages in conduct involving false swearing,

---

[12] At trial, the accused testified that he had "cured" approximately 140 of the wills and directives to physicians by re-witnessing them. Although those wills cured by the accused mitigate some of the actual harm caused by his misconduct, the potential harm caused by improperly witnessing the wills and directives to physicians was and remains great.

[13] Nonetheless, the mitigating value of that remorse is limited by the fact that the accused intentionally misled the Bar until after his secretary divulged the scope of his misconduct.

misrepresentation, dishonesty, fraud, or deceit); ABA Standard 7.1 (disbarment generally appropriate when lawyer knowingly engages in conduct in violation of a duty to the profession with intent to benefit the lawyer and causes serious or potentially serious harm).

Moreover, prior decisions by this court indicate that disbarment is the appropriate sanction. Conduct by a lawyer that deceives clients for the purposes of gaining money has been treated as warranting disbarment. *See, e.g., In re Miller*, 303 Or 253, 260, 735 P2d 591 (1987) (accused disbarred for overdrawing client account, misrepresenting his hours, and overbilling his clients). In addition, the accused repeatedly made misrepresentations to the Bar that obstructed its investigation. The aggregate conduct of the accused, misleading both his clients and the Bar, warrants disbarment. *See In re Spies*, 316 Or 530, 541-42, 852 P2d 831 (1993) (accused disbarred for, among other things, misleading clients, failing to provide competent representation, and not cooperating with the Bar); *see also In re Purvis, supra*, 308 Or at 459 (accused disbarred for misrepresenting to clients status of their cases, accepting payment without working on case, and failing to respond to investigative inquiries made by the Bar).

Accordingly, considering the ABA Standards and the prior decisions of this court, we conclude that the trial panel's decision of disbarment is correct.

The accused is disbarred.

IN THE SUPREME COURT OF THE
STATE OF OREGON

In re Complaint as to the Conduct of
R. SCOTT TAYLOR,
Accused.
(OSB 92-12; SC S40452)

In Banc

On review of a decision of a Trial Panel of the Disciplinary Board.

Argued and submitted March 11, 1994.

John Joseph Kolego, Eugene, argued the cause for the accused. R. Scott Taylor, St. Michaels, Maryland, filed the brief *pro se*.

Susan Roedl Cournoyer, Assistant Disciplinary Counsel, Lake Oswego, argued the cause for the Oregon State Bar. With her on the brief was F. William Honsowetz, Jr., Eugene.

PER CURIAM

Accused found not guilty.

PER CURIAM

The issue in this disciplinary proceeding is whether the Oregon State Bar (Bar) established by clear and convincing evidence that the accused violated DR 1-102(A)(3) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 7-102(A)(7) (lawyer shall not assist client in conduct known to be illegal or fraudulent); and ORS 9.527(4) (authorizing discipline for willful deceit or misconduct in the legal profession), by assisting his client in selling and encumbering the client's assets to defraud the plaintiff in an impending wrongful death action. On *de novo* review[1] of a decision of a trial panel of the Disciplinary Board, we conclude that there was not clear and convincing evidence of a violation of the rules cited above. Accordingly, we find the accused not guilty of the ethical misconduct charged.

On April 15, 1991, Radonski retained the accused to defend him against potential criminal charges and civil claims arising from an automobile accident on April 12, 1991, that killed Schmidt. After an investigation, the accused determined that there was evidence that Radonski had been drinking when he caused the accident, and that he probably was criminally and civilly liable for Schmidt's death. Radonski was a chronic alcoholic who was actively drinking. After the accident, Radonski made repeated threats to kill himself to evade imprisonment for his role in the accident.

On April 17, 1991, the accused and Radonski entered into a fee agreement. It provided that the accused would receive a flat fee of $15,000 for representation if the state filed criminal charges against Radonski for his role in the accident. If the state filed no criminal charges, or if the accused performed work on any civil matter arising from the accident, the accused would bill Radonski at an hourly fee of $125. To secure the fee, Radonski gave the accused a promissory note, secured by a trust deed on Radonski's home, in the amount of $25,000. Radonski owned the home free and clear of other encumbrances.

In May 1991, the accused assisted Radonski in selling three contracts under which Radonski was collecting

[1] ORS 9.536(3); BR 10.6.

money. He sold two of the contracts to a mortgage banker and the third contract to a private party. He sold the contracts for their market value, which was about $123,000, and gave the proceeds to Radonski. On or about May 20, 1991, Radonski told the accused that he had traveled to Mexico, drank heavily, and lost about $12,000.[2] The accused became angry with Radonski.

The accused and Radonski met on about June 11, 1991, to discuss a plea bargain. Radonski had just returned from Reno, Nevada, and told the accused that he had lost an undisclosed amount of money while gambling. The accused learned on about August 15, 1991, from a pre-sentence investigation report, that Radonski had gambled away $95,000 in Reno.

On June 12, 1991, Radonski pleaded guilty to charges of manslaughter in the second degree and driving under the influence of intoxicants (DUII) for his role in the accident.[3] ORS 163.125; ORS 813.010. The accused negotiated a settlement of a civil claim arising from Schmidt's death and obtained a complete release for his client.[4]

The Bar charged the accused with violating DR 1-102(A)(3), DR 7-102(A)(7), and ORS 9.527(4). DR 1-102 provides, in part:

> "(A) It is professional misconduct for a lawyer to:
>
> "* * * * *
>
> "(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

DR 7-102(A)(7) provides:

> "(A) In the lawyer's representation of a client or in representing the lawyer's own interests, a lawyer shall not:
>
> "* * * * *
>
> "(7) Counsel or assist the lawyer's client in conduct that the lawyer knows to be illegal or fraudulent."

---

[2] Radonski claimed at one time that he was robbed by a prostitute.

[3] The court imposed maximum consecutive sentences of 18 months on th manslaughter conviction and one year on the DUII conviction, and a $100,0(victim's restitution judgment against Radonski.

[4] The settlement was paid from the proceeds of Radonski's automobile insu ance policy.

The Bar also contends that the accused violated ORS 9.527(4) by violating ORS 95.230(1)(a). ORS 9.527(4) provides:

> "The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:
>
> "* * * * *
>
> "(4) The member is guilty of willful deceit or misconduct in the legal profession."

ORS 95.230 provides, in part:

> "(1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
>
> "(a) With actual intent to hinder, delay, or defraud any creditor of the debtor."

The trial panel concluded that two acts by the accused violated those provisions. First, the trial panel concluded that the accused assisted Radonski in converting his assets to cash, with the intention of hiding the assets in anticipation of a wrongful death action, and failed to prevent Radonski from squandering those assets. Second, the trial panel concluded that the accused caused Radonski to execute a note secured by a $25,000 trust deed on Radonski's home in the accused's favor for the sole purpose of deterring creditors from executing on the home.

We first consider the mental element necessary to establish a violation of DR 1-102(A)(4), DR 7-102(A)(7), and ORS 95.230. Assisting a client to cheat creditors is dishonest conduct under DR 1-102(A)(4). *In re Hockett*, 303 Or 150, 159, 734 P2d 877 (1987). However, the accused must act with the intent to cheat creditors to violate that rule. *Id.* at 159. DR 7-102(A)(7) forbids a lawyer from engaging in conduct that the lawyer *knows* to be illegal or fraudulent in representing a client. *In re Hockett, supra*, 303 Or at 160.[5] Further, a

[5] The trial panel incorrectly stated that DR 7-102(A)(7) applies to "conduct that the lawyer knew, *or should have known*, was fraudulent." (Emphasis supplied.) The emphasized phrase is not a part of the rule. In the disciplinary rules, "fraud" refers to conduct that would be actionable fraud in Oregon in the tort sense. *In re*

transfer of assets is fraudulent under ORS 95.230(1)(a) if it is made "with an actual intent to hinder, delay or defraud any creditor of the debtor."

We next determine whether the accused had the requisite mental state when he sold or encumbered Radonski's property. The Bar must prove a disciplinary violation by clear and convincing evidence. " 'Clear and convincing evidence means that the truth of the facts asserted is highly probable.' " *In re Johnson*, 300 Or 52, 55, 707 P2d 573 (1985); *In re Monaco*, 317 Or 366, 370 n 4, 856 P2d 311 (1993).

It is undisputed that the accused assisted Radonski in selling three contracts and that he delivered the proceeds to Radonski. If the accused sold the contracts and delivered the proceeds to Radonski with the intent to defraud Radonski's potential creditors, that conduct would violate DR 1-102(A)(3), DR 7-102(A)(7), and ORS 9.527(4).

The accused testified that he sold Radonski's contracts for cash for three reasons. First, he wanted to enable Radonski to offer a structured annuity as part of a potential settlement proposal to Schmidt's estate, in addition to the available insurance coverage. The accused testified that he spoke with Radonski's insurance adjuster "about whether we could put a structured settlement together." The accused also testified that he began to draft a trust agreement for Radonski's property, but the trust agreement was never executed because Radonski "wouldn't follow through." Second, he sold the contracts so that Radonski would receive market value for them. He feared that, if a judgment creditor executed on the contracts after a civil judgment, Radonski would suffer a loss of their value. Third, he hoped to settle quickly with Schmidt's estate so that Radonski would be in a more favorable position when Radonski was sentenced in the criminal matter. The accused denied that he had any fraudulent intent in dealing with Radonski's contracts.

The Bar concedes that those asserted reasons for selling the contracts are plausible, but contends that the accused failed to take any actions that would support his contention that he sold the contracts for those valid reasons.

Dinerman, 314 Or 308, 317, 840 P2d 50 (1992). *See also Rice v. McAlister*, 268 Or 125, 128, 519 P2d 1263 (1974) (listing elements of fraud).

The Bar argues, first, that the accused's failure to communicate his idea for a structured settlement, using Radonski's money, to the insurer or to opposing counsel demonstrates that there was no plan for a structured settlement. The Bar also argues that the accused took no steps to preserve the proceeds from the sale of the contracts by depositing the funds in his trust account, setting up a separate trust account, or establishing a trust. The Bar contends that the accused increased the chance of a loss of Radonski's assets by delivering cash to his alcoholic client, who had threatened suicide, and by failing to instruct his client to preserve the funds for a structured settlement.

We turn to the evidence concerning the Bar's charges. As noted above, the accused testified that he spoke with Radonski's insurance adjuster about creating a structured settlement with Schmidt's estate. Neither party called the insurance adjuster as a witness to discuss the accused's testimony concerning that communication.

The accused did not disclose to the lawyer for Schmidt's estate the fact that Radonski had substantial liquid assets and that he desired to use his money to structure a settlement beyond his available insurance coverage. According to the accused, such a disclosure would have undermined the goal of preserving Radonski's assets to the greatest extent possible in any settlement. The Bar does not present any convincing argument or point to particular evidence that demonstrates why that explanation is unsound. Within ethical guidelines, the accused's obligation was to settle, if possible, the claim of Schmidt's estate on terms that were favorable to Radonski. In light of that objective, it would make little sense for the accused to tell the lawyer for Schmidt's estate that Radonski had a large amount of cash and that he desired to use the money to structure a settlement for a sum greater than the limits of Radonski's insurance policy.

The accused's time records show that, within a few days of his initial meeting with Radonski, the accused began to prepare a trust for him. The Bar offered no evidence to rebut the accused's testimony that Radonski refused to "follow through" with the accused's proposal for a trust to hold Radonski's cash. The Bar called Radonski as a witness, but

elicited no testimony from him to support the Bar's contention on that point. Radonski's sons may have witnessed the conversations about the trust and the accused's plan, but neither party called them as witnesses.

The Bar elicited testimony from Durnford to prove that the accused intended to aid his client in hiding or squandering the proceeds of the contract sales in order to defraud potential creditors. Durnford met Radonski in 1991 when she and her husband purchased a boat from him. Durnford testified that Radonski told her, "a minimum of three separate times" in April and May 1991, that the accused was "[structuring contracts] so that the funds would be put some place where they could not be found" and that "Mr. Taylor was advising him on how to transfer assets or hide assets where they couldn't be found by the injured party and their attorney." Durnford testified that Radonski had told her that the accused had sent him to Mexico to "get out of town for a while," because the accused wanted to "take care of the financial arrangements on several notes" and wanted him "out of town so he couldn't be questioned or anyone ask anything until it was done." Durnford testified that Radonski told her that, on his return from Mexico, the accused told him that "he came back too soon," and Radonski left to go to Reno. Durnford also testified that Radonski said that the accused assured him that he would not go to prison.[6]

In addition, the Bar offered the testimony given by Radonski at his homestead exemption hearing. Radonski testified:

> "Q Did you ask Miss Durnford to move into [your residence] and be caretaker?
>
> "A Yes, I did.

---

[6] Hearsay evidence is admissible in Bar proceedings if it satisfies the standards in OSB Rule of Procedure 5.1, which provides:

> "Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules."

Cf. Reguero v. Teacher Standards and Practices, 312 Or 402, 417, 822 P2d 1171 (1991) (discussing admissibility of hearsay evidence under ORS 183.450(1) in administrative proceeding). Over objections by the accused, Durnford's hearsay testimony was admitted by the trial panel. On appeal, defendant challenges the probative value of Durnford's testimony but does not challenge its admissibility.

"Q Why did you do that?

"A [The accused] was worried about – well, I had had this accident. And my attorney was wanting me to kind of be out of the way because he – he wanted us to appear in court, you know, and surrender to the Court, but he didn't want to have Mr. Mortimore [the district attorney] serve papers on me, so he talked me into going to Mexico to hide out for a while until he could get, you know, the papers and stuff ready for us to come up and surrender to the Court, which I did. So I –

"[interruption]

"A [cont'd] Yeah. I was just going to say I didn't want to leave it set idle, so I asked the Durnfords to take care of the place at that time.

"* * * * *

"Q Okay. And then did you surrender yourself to the Court?

"A After – after I went to Mexico I come back and I was really in drinking pretty heavy at that time, and I went into a bunch of hallucinations down there, and I just – well, I don't know what the heck happened, but I lost all the money I had when I went back down there, and so the people brought me back, and [the accused], you know, he was really infuriated because I got back too early. So then he sent me to Reno. And so I was supposed to stay in Reno. And after I come back from there I – we surrendered to the Court and I was released on the stipulation that I go to Roseburg for treatment, alcohol treatment program."

We first examine Durnford's testimony about what Radonski told her about the accused's effort to structure the contracts so that the proceeds of the sale could be hidden, presumably from creditors. Such conduct, if proven, would violate DR 1-102(A)(3), DR 7-102(A)(7), and ORS 9.527(4). We do not doubt that Durnford accurately testified concerning what Radonski told her.

The record establishes that the accused sold the contracts to disinterested parties at market value. The sales transactions did not purport to control the disposition of the sale proceeds, beyond entitling Radonski to the proceeds. The "structure" of the sales does not indicate that the accused's intention in selling the contracts was fraudulent. The accused testified that he delivered the proceeds to Radonski and that

Radonski declined to place the money in a trust for the accused's use in settling the potential claim of Schmidt's estate. The Bar introduced no evidence that the accused continued to exercise control over the proceeds of the sale after he gave them to Radonski or that he knew the whereabouts of the money that Radonski claims he lost or gambled away. The Bar did not demonstrate that Radonski's statement about losing the money was false or that, in reality, either the accused or Radonski placed the money in a secret location and planned to recover it at a later date. The Bar elicited no testimony from Radonski to corroborate Durnford's testimony that the accused participated in a scheme to hide the contract proceeds. Given Radonski's demonstrably impaired ability to recall and testify about the events around the critical period of time, we do not find his statement to be sufficiently reliable to support a finding in accordance with it.

The Bar argues that the accused's delivery of the proceeds of the contract sales to Radonski demonstrates that the accused had no plan to collect Radonski's assets in order to facilitate a settlement of potential claims against him. However, in the absence of a fraudulent intent, the delivery of the money to the client was not an unethical act, because the money belonged to Radonski. The accused was required to deliver the money to his client, in the absence of other instructions from the client. Once the money was in Radonski's possession, there was nothing that the accused could do to control what the client did with it.

The record would permit us to construe the objective facts about the accused's actions concerning the contract sales to sustain either of the parties' competing arguments. The issues are whether the accused engaged in those actions with the requisite fraudulent intent and whether the evidence establishes that intent by clear and convincing evidence.

The Bar's strongest evidence of a guilty intent is Durnford's testimony about what Radonski told her about the accused's involvement in his plan to help Radonski hide his money from creditors. For several reasons, we decline to credit those statements by Radonski to Durnford. At the time he spoke to Durnford in April and May 1991, Radonski was a

chronic alcoholic, who recently had committed a criminal homicide as a result of his drinking. After Radonski spoke to the accused about his legal exposure, he became distraught at the prospect of going to jail, to the point that he cried, shook, and repeatedly threatened to commit suicide. When questioned about his fee arrangement in the hearing in the present proceeding, Radonski said that "everything was such a mixed up blur at that time" because of his "really heavy" drinking. Durnford testified that, during one of her meetings with Radonski, he was drinking shots of whiskey at 8:30 a.m. She described his emotional state during April and May 1991 as "very nervous, very upset, very distressed, very scared." Before the trial panel, Radonski displayed an obvious lack of memory of important conversations and events related to this case.

At the same time that he told Durnford that the accused was structuring his contract sales to hide his assets, Radonski also told her that the accused had told him that he would not be imprisoned for his role in Schmidt's death. From the record, we conclude that, in all probability, that statement is untrue. The nature of Radonski's offense was so serious that it seems very improbable that the accused would have told his client that he would not go to jail.

Radonski made an untrue statement to Durnford about part of the accused's advice to him. His story that he lost the money conflicts with his statement to Durnford that the plan was to hide the money from creditors. At the time of his contacts with Durnford, he was experiencing great stress due to his legal predicament and the effects of his chronic alcoholism and, as a result, did not remember accurately, or at all, important details of the accused's advice. For those reasons, we are not convinced that the balance of Radonski's statements to Durnford about the accused is credible.

The Bar also argues that the accused's directives to Radonski to leave town, as testified to by Durnford and in Radonski's homestead exemption hearing testimony, show that the accused had a fraudulent intent to hide Radonski's assets. That evidence does not aid the Bar. The Bar charged the accused with participating in a fraudulent scheme to hide Radonski's assets. The evidence on which the Bar relies does

not refer to Radonski's assets or support an inference that the accused intended to hide Radonski's assets from his creditors.

On this record, we conclude that the Bar has not proven that it is highly probable that the accused had the requisite fraudulent intent when he sold Radonski's contracts and gave him the proceeds. The Bar has not established its charge concerning the accused's role in the disposition of the client's contracts by clear and convincing evidence.

We next examine the charge surrounding the trust deed on Radonski's home. As discussed above, Radonski gave the accused a promissory note in the sum of $25,000, secured by a trust deed on Radonski's home. The accused asserted that the purpose of the transaction was to ensure payment of the accused's attorney fees. The Bar alleged that the accused knew that Radonski participated in that transaction with the intention of encumbering his assets to defraud creditors. If the accused participated in the trust deed transaction for the purpose of assisting Radonski to defraud his creditors, that conduct would violate DR 1-102(A)(3), DR 7-102(A)(7), and ORS 9.527(4).

We turn to the evidence regarding that charge. The accused said that the note and trust deed were security for the payment of fees and expenses for the criminal and civil cases. The accused explained that the $15,000 retainer that he received in several payments for representation on the criminal case could be applied to the anticipated fee for the civil case only in the unlikely event that the state filed no criminal charge. The accused says that he properly credited Radonski when he paid fees and reduced the note over time to the sum of approximately $6,000. The accused also testified that he eventually discounted and sold the note for $4,500 on about November 10, 1992, because he needed money to move to Maryland. He denies that he made any arrangement with Radonski to create or dispose of the note as part of a plan by Radonski to cheat his creditors.

The Bar elicited testimony from Durnford, who testified that, in approximately May or June 1991, she discussed with Radonski the prospect of purchasing Radonski's home. According to Durnford, Radonski said that the title to the house was encumbered by a trust deed to secure a note to the

accused, but that the purpose of the note was to deter any creditor from executing on the property. According to Durnford, Radonski said that the accused's note and Radonski's homestead exemption equalled most of the home's value. Durnford testified that Radonski stated to her that, after his legal difficulties were over, the accused would cancel the note, and then Radonski could sell the house to Durnford. Again, we assume that Durnford accurately testified as to what Radonski told her.

DR 5-103(A)(1) provides:

> "(A) A lawyer shall not acquire a proprietary interest in the cause of action or the subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:
>
> "(1) Acquire a lien to secure payment of fees or expenses due or to become due."

That rule permitted the accused to acquire a lien against Radonski's property to secure payment for actual or anticipated fees or expenses. The rule authorizes the accused's conduct here, unless the accused acquired the lien with the intention of assisting Radonski to defraud his creditors.

The evidence is unclear regarding the value of Radonski's home in April 1991, when the note and trust deed were signed. The assessed value, according to the Coos County tax assessor, was $47,000. Other evidence indicates that the property had a fair market value of between $55,000 and $65,000. Durnford testified that she was an experienced realtor, that she was familiar with the value of property in the same area, that she agreed in May 1991 to pay Radonski $60,000 for the property whenever he was able to sell it, and that it was a "good buy" at that price. The Bar contends that the accused's lien and Radonski's homestead exemption totaled $40,000. The record does not establish the value of the property that was subject to execution in April 1991, in excess of the accused's lien and Radonski's homestead exemption. None of the estimates of property value in the record is sufficiently close to the $40,000 total encumbrance to permit us to infer that the accused's lien rendered the property an unattractive asset to a potential judgment creditor.

The accused claimed that, during his relationship with Radonski, he administered the note and trust deed in a

bona fide manner by reducing the amount of the debt when Radonski made payments on his bill. Even if we were to entirely disbelieve the accused's testimony, that disbelief would not be evidence to establish any contrary proposition. The Bar did not introduce evidence to show that the accused created or manipulated the note and trust deed transaction in a way that demonstrated a fraudulent intent. The accused did not destroy the note when Radonski's legal cases were over, as Radonski had represented to Durnford. He held it for approximately 14 months after he finished representing Radonski. He then sold the note for a market price and canceled the balance of Radonski's bill. That evidence indicates that the sale was an arm's-length transaction for fair value. The $25,000 lien was approximately $4,000 greater than the total fees and costs that the accused's firm charged for legal work on Radonski's cases. We cannot infer from that difference that the lien was created to defraud Radonski's creditors.

We have examined the objective facts regarding the note and trust deed and conclude that the evidence does not show that it is highly probable that the accused participated in that transaction with the intention of helping Radonski defraud his creditors. The accused's explanation is consistent with the evidence in the record regarding the creation and ultimate sale of the security. Because of our concerns regarding Radonski's reliability, as noted above, we are not convinced that his statements to Durnford, that the accused took the note and trust deed to help him defraud creditors, are credible. The Bar has not established its charge regarding the lien by clear and convincing evidence.

The Bar has not carried the required burden of proof on its charges against the accused. Accordingly, we find the accused not guilty of ethical misconduct. Pursuant to ORS 9.536(4), we award the accused his actual and necessary costs and disbursements incurred.

Accused found not guilty.

IN THE SUPREME COURT OF THE STATE OF OREGON

In re Complaint as to the Conduct of
ROBERT W. McMENAMIN,
Accused.
(OSB 90-86; SC S40621)

In Banc

On review of the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted March 7, 1994; reassigned August 22, 1994.

Mary A. Cooper, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, argued the cause and filed the briefs.

Marvin S. Nepom, Portland, argued the cause and filed a response for the accused.

PER CURIAM

The complaint of the Oregon State Bar is dismissed.

Fadeley, J., concurred and filed an opinion.

Graber, J., filed a dissenting opinion in which Carson, C. J., and Gillette, J., joined.

PER CURIAM

This is a lawyer disciplinary proceeding. The Oregon State Bar (Bar) charges that the accused had a conflict of interest in violation of DR 5-105(C) (1989).[1] A trial panel of the Disciplinary Board found the accused not guilty. The Bar sought review by this court pursuant to BR 10.1, BR 10.3, and ORS 9.536(1). We review the record *de novo*. ORS 9.536(3). The Bar has the burden of establishing ethical misconduct by clear and convincing evidence. BR 5.2. Because we conclude that the Bar has not established ethical misconduct by clear and convincing evidence, we adopt the decision of the trial panel. BR 10.6.[2] The Bar's complaint is dismissed. Costs and disbursements to the accused. ORS 9.536(4).

FADELEY, J., concurring.

On *de novo* review, I find, as did the trial panel, that the accused lawyer has not been proved guilty of a conflict-of-interest violation by evidence that is both clear and convincing. That level is not achieved here, in my opinion, for the following three reasons.

I. ADVICE OF EXPERT COUNSEL

When a new client sought the accused's services to sue a former client, the accused recognized that a potential conflict question was present. He contacted the Bar's experts on the disciplinary rules and ethical practices and asked them about taking the new client's case. They gave him the green light, that no prohibited conflict was present. That position of the Bar is entitled to some weight in the scales of justice used

---

[1] DR 5-105(C) (1989) provided:

"[A] lawyer who has represented a client in a matter shall not subsequently represent another client in the same or a significantly related matter when the interests of the current and former clients are in actual or likely conflict."

That version of the rule did not define the term "significantly related."

[2] BR 10.6 provides:

"The court shall consider each matter do novo upon the record and may adopt, modify or reject the decision of the trial panel or the [Board of Bar Examiners] in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel or the [Board of Bar Examiners] without opinion, the opinion of the trial panel or the [Board of Bar Examiners] shall stand as a statement of the decision of the court in the matter but not as the opinion of the court."

to determine whether the evidence of the Bar to the contrary of its former position is convincing.

II. CONTRADICTIONS IN THE PROOF

The Bar's case for an information-specific conflict rests on an inference to be drawn from certain testimony of the accused before the trial panel that, taken by itself, seems an admission against the accused's interest. But it does not stand by itself in the accused's testimony. Other, and more frequent, answers given on the same point do not support drawing the inference. Unless I am to believe that the accused was credible in only one of his answers on the point, I cannot disregard the totality of his answers to draw an inference that they do not warrant. At best, taken in context rather than in isolation, the answer is ambiguous. Accepting the accused as credible, as did the trial panel, the inference fails for lack of a sufficiently clear or convincing foundation.

III. FAILURE TO PRODUCE MORE SATISFACTORY EVIDENCE

A statute embodying a long-held belief about the reliability of weaker evidence where stronger evidence is available applies in this case. ORS 10.095(7) and (8) tell me, as a fact-finder, to view with "distrust" that weaker evidence.

The Bar produced the weaker evidence of the accused's answer that was clearly against his interest only if taken in isolation from the rest of his testimony. That answer involved the contents of an earlier conversation with the executive head of his former client. Stronger and more satisfactory evidence perhaps could have been produced, if the contents of that conversation was as the Bar contends, by producing that executive as a witness to recount the conversation and display any notes that he might have made about it. But the Bar, which bears the burden to persuade convincingly, failed to produce or explain the absence of that witness. The ambiguous evidence must be viewed in the light of the statute and the absent, potentially stronger, evidence. In that light, the Bar's evidence fails to convince. The accused has not been proved guilty of the disciplinary charge and is, therefore, not guilty.

I concur in that finding.

GRABER, J., dissenting.

In a bland and conclusory manner, the majority papers over an obvious conflict of interest, the most conspicuous feature of which will be detailed in the discussion below. The majority's result undermines the faith that clients can have in the protection of confidences entrusted to their lawyers. I therefore dissent.

PROCEDURAL BACKGROUND

In this lawyer disciplinary proceeding, the Oregon State Bar (Bar) charges that the accused had a conflict of interest in violation of DR 5-105(C) (1989). In part, that disciplinary rule provided:

> "[A] lawyer who has represented a client in a matter shall not subsequently represent another client in * * * a significantly related matter when the interests of the current and former clients are in actual or likely conflict."[1]

A trial panel of the Disciplinary Board found the accused not guilty. The Bar sought review by this court pursuant to BR 10.1, BR 10.3, and ORS 9.536(1). This court reviews the record *de novo*. ORS 9.536(3). The Bar has the burden of establishing ethical misconduct by clear and convincing evidence. BR 5.2.

FACTS

In stating the facts below, I rely almost entirely on uncontradicted testimony of the accused and on other admissions by him, including the pleadings and stipulations of fact. It is hard to understand how the majority can fail to find facts by clear and convincing evidence when they are based on what the accused himself said.

---

[1] DR 5-105(C)(2) now provides:

"[A] lawyer who has represented a client in a matter shall not subsequently represent another client in * * * * a significantly related matter when the interests of the current and former clients are in actual or likely conflict. Matters are significantly related if * * * *:

"* * * * *

"(2) Representation of the former client provided the lawyer with confidences or secrets, as defined in DR 4-101(A), the use of which would, or would likely, inflict injury or damage upon the former client in the course of the subsequent matter."

The accused represented the Archdiocese of Portland for several years, including the period 1983 through 1988. During the early years of that representation, Archbishop Power was Archbishop of the Archdiocese; in September 1986, Archbishop Levada succeeded Archbishop Power. The representation by the accused covered many legal matters, including clergy sexual abuse, employment relations, and other issues pertaining to the operation of the Archdiocese. In his own words, the accused "was acting as corporate counsel for the Archdiocese" during the period 1983 through 1988.

During his representation of the Archdiocese, including the years 1983 through 1988, the accused advised the Archdiocese regarding responses to allegations of clergy sexual abuse. For example, on October 3, 1985, he advised a representative of the Archdiocese on how to handle rumors or claims of sexual misconduct by clergy.

In 1983, at the request of and on behalf of the Archdiocese, the accused undertook an investigation of actual and potential claims against the Archdiocese of Portland arising from the conduct of Father Laughlin, who was convicted of numerous counts of sexual abuse involving children. A partner of the accused represented Father Laughlin in the criminal matter. The accused assisted the Archdiocese in reaching confidential settlements in several civil claims involving Father Laughlin and in negotiating with the Archdiocese's insurance carriers regarding coverage of those claims.

After the Laughlin matter had been concluded, the accused again advised the Archbishop and other representatives of the Archdiocese on how to respond to claims involving clergy sexual abuse. In doing so, the accused became familiar with the attitude of each of the two Archbishops toward matters involving clergy sexual abuse. For example, the accused knew that the Archdiocese had failed to follow his legal advice in at least one respect; when the accused advised Archbishop Levada to hold "a seminar regarding clergy sexual misconduct," the Archbishop declined on the ground that "he had other things or more important things to talk to his priests about."

The accused testified as follows:

"Q. Did you advise the Archbishop Levada to put on a seminar regarding clergy sexual misconduct?

"A. Yes.

"Q. Did he take your advice?

"A. No.

"Q. Do you know why he didn't take your advice?

"A. He indicated to me in a conversation that he had other things or more important things to talk to his priests about."

Further, when questioned about a letter containing a list of items discussed with Archbishop Levada, the accused testified:

"Q. Did you recommend a seminar to Archbishop Levada on clergy sexual abuse?

"A. I believe that I did. It's not in this letter.

"Q. Do you recall if you recommended such a seminar a number of times to Archbishop Levada?

"A. I can specifically recall the meeting in November of – I think it was November of '88. But there was this one time I know that I made some notes from his direct conversation when he said he had more important things for his priests to do. That's one time I recall when I suggested it."[2]

After June 8, 1988, the accused received no new legal matters to handle on behalf of the Archdiocese. All of the accused's work for the Archdiocese was completed by January 1989.

In late April 1989, the accused met for the first time with an individual named Brown. Brown contacted the accused after reading an article about the accused's work with the Archdiocese in investigating sexual abuse by priests. Brown told the accused that he had been sexually abused by Father Goodrich, a priest in the Archdiocese of Portland, from 1974 to approximately August of 1988. Father Laughlin and Father Goodrich had the same supervisors, including the Archbishop of Portland.

---

[2] The accused also gave additional, more general advice. He did not, however, retract the testimony, quoted above, as to his specific recollection of what Archbishop Levada told him in response to his advice to hold a seminar regarding clergy sexual misconduct.

Shortly after meeting with Brown, the accused made a demand on the Archdiocese for damages allegedly suffered by Brown. The Archdiocese, through its new counsel, took the position that the accused had a conflict of interest, and it refused to negotiate with him. The accused filed a complaint against the Archdiocese on Brown's behalf, in Multnomah County Circuit Court, on September 12, 1989. The complaint alleged, among other things, that Father Goodrich had sexually abused Brown from 1974 to approximately August of 1988 and that the Archdiocese knew or should have known of Father Goodrich's inappropriate conduct but failed to supervise him adequately. In addition to seeking compensatory damages, the Brown complaint sought punitive damages against the Archdiocese; among other grounds, the complaint alleged that the Archdiocese knowingly failed to supervise Father Goodrich, knowingly failed to report abuse to Children's Services Division as required by ORS 418.750, and obstructed the investigation of Brown's claim.

The Archdiocese moved to disqualify the accused from representing Brown, on the ground that he had a conflict of interest relating to clergy sexual abuse claims against the Archdiocese covering the period 1983 through 1988. The circuit court held a lengthy hearing on the matter, during which it took testimony of nine witnesses. The court then granted the motion and disqualified the accused and his law firm from further involvement in the Brown case, based on equitable grounds rather than on the ground of a violation of a disciplinary rule. The Bar then initiated the present proceeding.

CONFLICT OF INTEREST

A. *Applicable Standard for Information-Specific, Closed-File Conflict.*

In *In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985), this court considered the then-existing version of DR 5-105 and its application to conflicts generated by a lawyer's representation of a present client against a former client. This court held:

> "A 'closed file' conflict arises when a lawyer represents a client who is in a position adverse to a former client in a matter that is significantly related to a matter in which the

lawyer represented the former client. Thus, a three-factor test can be used to determine if a conflict exists. When the following factors co-exist, a conflict results:

> "1. The adverse party is one with whom the accused had a lawyer-client relationship;
>
> "2. The representation of the present client puts the accused in a position adverse to the former client; and
>
> "3. The present matter is significantly related to a matter in which the accused represented the former client." 299 Or at 426-27 (footnote omitted).

The text of DR 5-105(C) (1989), quoted at the beginning of this opinion, contained those same three criteria. *See In re McKee*, 316 Or 114, 129, 849 P2d 509 (1993) (court analyzed whether the accused had violated an earlier version of DR 5-105(C) and stated that "[t]he new rules codified this court's holding in *In re Brandsness*"); *Kidney Association of Oregon v. Ferguson*, 315 Or 135, 140, 145-47, 843 P2d 442 (1992) (court tracked methodology used in discipline cases under DR 5-105; although applying the version of that rule in effect in 1981-83, court observed that DR 5-105 "since has been amended, but its effect essentially is the same," *id.* at 140 n 7, and that "changes in DR 5-105 reflect an evolution of terminology rather than substance," *id.* at 145 n 13). I therefore examine each of the three criteria listed in *In re Brandsness*.

B. *Application of Standard to This Case.*

It is not disputed that the first two *Brandsness* criteria were satisfied here. The accused formerly represented the Archdiocese, and he later represented Brown in a matter adverse to the Archdiocese.

What is disputed in this case is the third criterion: whether the two matters were "significantly related" within the meaning of DR 5-105(C) (1989), so as to create an information-specific conflict. For matters to be "significantly related" within the meaning of that rule, two requirements must be met. First, representation of the former client provided the lawyer with confidences. *See In re Brandsness*, 299 Or at 432 (determining that the then-existing version of DR 5-105 incorporated that requirement). Second, as pertinent

here, those confidences "would likely[] inflict injury or damage" on the former client in the course of the later matter. *See id.* at 434 (same). I consider each of those two requirements in turn.

As noted, the first requirement of DR 5-105(C) (1989) for "significantly related" matters is that representation of the former client provided the lawyer with confidences. "Confidences" are defined for the purposes of the disciplinary rules; DR 4-101(A) provides that a " '[c]onfidence' refers to information protected by the attorney-client privilege under applicable law." OEC 503(1)(b) is the "applicable law" that contains the attorney-client privilege and that is incorporated by reference in DR 4-101(A). OEC 503(1)(b) defines a confidential communication as one "not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication."

In this case, representation of the Archdiocese provided the accused with at least one kind of confidence within the meaning of that definition. The accused acquired information about the manner in which the Archdiocese responded to allegations of clergy sexual abuse from 1983 through 1988. As one specific example, the accused testified that he knew that Archbishop Levada had failed to follow his legal advice to hold "a seminar regarding clergy sexual misconduct," because the Archbishop felt that he had "more important things" to discuss with priests.

The accused does not contest that that information was confidential, and he does not contest that it was acquired by him as a result of his representation of the Archdiocese.[3] The first requirement of DR 5-105(C) (1989) for "significantly related" matters is satisfied.

The accused notes that the advice that he gave to the Archdiocese was the same type of advice that he had discussed publicly in many seminars and writings. The accused also

[3] The accused acknowledged that Archbishop Levada's attitude toward the advice that the accused gave concerning a seminar on clergy sexual misconduct was relayed to him in the capacity of lawyer to client.

states that the procedures of the Archdiocese concerning how to respond to various allegations of clergy sexual abuse were not confidential and that the Archdiocese had a policy of responding openly to such allegations. Those observations are beside the point.

The specific advice that a lawyer gives to an individual client is given in confidence even if it is consistent with the lawyer's public statements. More to the point in this case, *the individual client's privately revealed response to the lawyer's advice is a confidence* given from the client to the lawyer. In addition, the discussions between lawyer and client are confidential even if the client adopts a policy of openness regarding the subject matter of a claim or its claim-handling procedures, as distinct from revealing the content of the lawyer-client discussion itself.

The second requirement of DR 5-105(C) (1989) for "significantly related" matters, in the context of this case, is that the confidences provided to the lawyer by the former client "would likely[] inflict injury or damage" on the former client in the course of the later matter. The accused argues that the Bar has failed to prove that confidential information received through his representation of the Archdiocese would likely have injured the Archdiocese in the course of the Brown litigation. For the following reasons, I disagree.

As previously stated, the accused had confidential information about how the Archdiocese handled allegations of clergy sexual abuse from 1983 through 1988. Issues in the Brown litigation included what the Archdiocese knew or should have known about sexual abuse by its priests from 1974 through 1988, and what the Archdiocese did or should have done to prevent or curtail such conduct. Brown sought punitive damages, making the attitude of the defendant toward claims of clergy sexual abuse relevant. *See Honeywell v. Sterling Furniture Co.*, 310 Or 206, 210-11, 797 P2d 1019 (1990) (punitive damages are allowed to punish a willful, wanton, or malicious wrongdoer and to deter that wrongdoer and others from like conduct in the future; "the attitude" of the wrongdoer toward the hazard involved is a relevant factor). The confidential information possessed by the accused, such as his knowledge of Archbishop Levada's rejection of his legal advice to train priests on this topic, easily

could have led the accused to find evidence of the Archbishop's attitude, including testimony of others who knew of that attitude. Such evidence would have bolstered the case for punitive damages in the Brown litigation. The confidential information thus was likely to be relevant in the Brown case and was likely to injure the Archdiocese.

I conclude, therefore, that the second requirement of DR 5-105(C) (1989) for "significantly related" matters also is met in this case.

The accused argues that the Bar could not sustain its burden of proving that the matters were "significantly related" without presenting the testimony of the former client. Although testimony of the former client may be helpful in a case involving an information-specific, closed-file conflict, there is no requirement for any particular category of persons to testify in any particular case. This court's task, as discussed at the outset of this opinion, is only to review the whole record that was made and to make findings based on clear and convincing evidence. In the present case, the accused's own testimony, pleadings, and stipulations supplied clear and convincing evidence to support a finding of an information-specific conflict. And, the accused's recollection of a conversation with his former client is not "less satisfactory" than the former client's recollection of the same conversation would be.

In summary, the representation of the Archdiocese provided the accused with confidences, the use of which would likely inflict injury or damage on the former client in the course of the later matter. That being so, the former representation of the Archdiocese and the later representation of Brown were "significantly related" within the meaning of DR 5-105(C) (1989). The accused violated DR 5-105(C) (1989).

SANCTION

In deciding on the appropriate sanction, this court refers for guidance to the American Bar Association Standards for Imposing Lawyer Sanctions (ABA Standards). *In re Smith*, 316 Or 55, 61, 848 P2d 612 (1993). ABA Standard 3.0 sets out the factors to consider in imposing sanctions: the

duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.

When he undertook to represent Brown despite having a conflict of interest, the accused violated duties owed to his former client (the Archdiocese) and to his later client (Brown).[4] *See* ABA Standard 4.3 (failure to avoid conflicts of interest).

The accused acted knowingly.[5] The accused acted with conscious awareness of the nature or attendant circumstances of his conduct, but without the conscious objective or purpose to accomplish a particular result. *See* ABA Standards at 7 (June 17, 1992) (a lawyer acts knowingly when he or she acts with that state of mind). In particular, the accused was consciously aware that he formerly represented the Archdiocese; that he later represented Brown in a matter adverse to the Archdiocese; that, in his capacity as lawyer for the Archdiocese, the accused received information about Archbishop Levada's attitude toward his advice concerning claims of clergy sexual misconduct; and that the issues in the Brown litigation made that attitude likely to be relevant in the Brown case. The accused did not, however, have the conscious objective or purpose to create a conflict of interest.

The conduct of the accused caused injury to both the former client and the later client. The accused caused delay and disruption to both clients. The potential for injury to the public and the profession also exists; when lawyers have conflicts of interest, they jeopardize the willingness of clients to disclose fully their confidences and thereby jeopardize the ability of clients to obtain the most effective legal representation possible. In addition, Brown became emotionally distraught as a result of the conflict and of the accused's disqualification from his case.

---

[4] The duty of the accused toward Brown, in the face of a conflict of interest, was to decline the representation.

[5] The terms of DR 5-105(C) (1989) did not include any particular state of mind. That is, a lawyer was held to a specified duty, which could be violated regardless of the lawyer's good faith. The lawyer's state of mind is relevant, however, in deciding on a sanction for violating DR 5-105(C) (1989).

The ABA Standards suggest that the appropriate sanction when a lawyer acts knowingly in these circumstances is suspension. *See* ABA Standard 4.32 (as pertinent here, suspension is generally appropriate when a lawyer knows of a conflict of interest and causes injury or potential injury to a client).

I next consider pertinent aggravating and mitigating factors.

As an aggravating factor, the accused had substantial experience in the practice of law. ABA Standard 9.22(i). Also, the later client, Brown, was vulnerable in view of the sensitive nature of his claims. *See* ABA Standard 9.22(h) (vulnerability of victim is an aggravating factor).

In mitigation, the accused enjoys an excellent reputation, ABA Standard 9.32(g), and has contributed to the profession. There was some delay in the disciplinary proceedings, ABA Standard 9.32(j). Significantly, the record shows that the accused undertook various inquiries, including consultation with the Bar, to determine whether his representation of Brown constituted a conflict of interest.[6] Finally, the Bar seeks only a reprimand.

In all the circumstances, I would conclude that suspension is not warranted, but that a reprimand is the appropriate sanction. Accordingly, I dissent.

Carson, C. J., and Gillette, J., join in this dissenting opinion.

---

[6] Before the Brown complaint was filed, a then-associate of the accused called a member of the Bar's staff who handled ethics matters, to discuss the situation. That associate testified:

> "I very clearly remember having a conversation with her, and basically, you know, her saying as we always said, you know, it sounds like you're okay to me, depending on if that's what the facts really are and I have to rely on what you tell me. So relying on what I told her she said it sounded okay.
>
> "* * * * *
>
> "She gave me an opinion based on what I was telling her that it was okay. That I was right, that I had the right framework and on my facts it was okay."

That associate also testified that, to his knowledge, the accused had not acquired confidential information regarding Archbishop Levada's "internal policies" about how to handle claims of clergy sexual abuse. My finding, stated above in the text, is to the contrary.

IN THE SUPREME COURT OF THE STATE OF OREGON

In re Complaint as to the Conduct of
RONALD D. SCHENCK,
Accused.
(OSB 90-113, 93-5; SC S40157)

On review of the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted November 3, 1993.

Ronald D. Schenck, accused, argued the cause and filed the briefs *in propria persona.*

Robert L. Cowling, Bar Counsel, Medford, argued the cause for the Oregon State Bar. Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, filed the response for the Oregon State Bar.

Before Gillette, Presiding Justice, Van Hoomissen, Fadeley, and Unis, Justices, and Richardson,* Justice pro tempore.

PER CURIAM

The accused is reprimanded.

Unis, J., concurred in part and dissented in part and filed an opinion.

---

*The Hon. William L. Richardson, Chief Judge, Court of Appeals, sitting by appointment pursuant to ORS 1.600.

PER CURIAM

In this disciplinary proceeding, the Oregon State Bar (Bar) charged the accused with one violation of DR 7-104(A)(1) (communicating with a person represented by counsel)[1] and two violations of DR 7-110(B) (improper communication with a judge as to the merits of a cause)[2] of the Code of Professional Responsibility (Code). A trial panel of the Disciplinary Board found the accused guilty of violating DR 7-104(A)(1) and also found the accused guilty of one count of violating DR 7-110(B). The trial panel found the accused not guilty of violating DR 7-110(B) on the second count. The accused petitions for review, asking this court to reverse the trial panel's findings of guilt. The Bar asks this court to find the accused guilty of all three violations charged in its complaint.

The issue on review is whether the Bar has proved ethical misconduct by clear and convincing evidence. BR 5.2. This court reviews *de novo*. ORS 9.536(3); BR 10.6. We find the accused guilty of violating DR 7-104(A)(1) and guilty on one count of violating of DR 7-110(B). As did the trial panel, we find the accused not guilty of the second count of violating DR 7-110(B).

FACTS

The Bar first alleges: In 1987, while the accused was engaged in the private practice of law, he represented the

---

[1] DR 7-104(A) provides in part:

"During the course of the lawyer's representation of a client, a lawyer shall not:

"(1) Communicate or cause another to communicate on the subject of the representation, or on directly related subjects, with a person the lawyer knows to be represented by a lawyer on that subject, or on directly related subjects, unless:

"(a) the lawyer has the prior consent of a lawyer representing such other person; [or]

"(b) the lawyer is authorized by law to do so[.]"

[2] DR 7-110(B) provides in part:

"In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending except:

"* * * * *

"(2) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel[.]"

conservators of an estate regarding a dispute between the conservators and Lewis. On the conservators' behalf, he filed a civil complaint against Lewis and his wife in circuit court. Lewis was served with the complaint. Thereafter, the accused mailed directly to Lewis a document entitled "Notice to Produce,"[3] in which request was made of Lewis to provide to the accused various documents, records, and property relating to the dispute between the conservators and Lewis. The Bar's complaint further alleges that, at that time, Lewis was represented by counsel regarding the dispute with the conservators, that the accused knew when he mailed the Notice to Produce to Lewis that Lewis was represented by counsel regarding the dispute with the conservators, and that the accused did not have the prior consent of Lewis' counsel to send the Notice to Produce directly to Lewis. The Bar charges that the accused's conduct was an improper communication with a person represented by counsel in violation of DR 7-104(A)(1).

The Bar next alleges: In the same matter, on Lewis' motion, the accused was disqualified from representing the conservators, who obtained new counsel. The accused, however, was not disqualified to represent the conservators in a separate contempt proceeding that had arisen earlier in the course of the litigation between the conservators and Lewis (after the trial judge had found the conservators in contempt for violating a court order). On behalf of the conservators, the accused appealed the contempt finding. The Bar's complaint alleges that, in September 1989, the accused sent a communication on the merits of the litigation to the conservators' new counsel and a copy of that letter to two trial judges before whom the ongoing litigation had been and would continue to be conducted, but that the accused did not send or deliver a copy of that letter to Lewis' counsel. The Bar charges that the accused's conduct was an improper communication with a judge as to the merits of a cause in violation of DR 7-110(B).

After the foregoing events, the accused was elected a circuit judge in 1990. He assumed office in January 1991.

The Bar's third cause of complaint alleges: Before July 1992, the Oregon Supreme Court had under advisement

[3] *See* ORCP 43 (production of documents, etc.).

a mandamus proceeding in which the accused was a party by virtue of rulings that he had made as a trial judge. After this court rendered its opinion in that mandamus proceeding, the accused sent a letter concerning the mandamus proceeding directly to the justice who had authored that opinion for this court. The accused did not send a copy of his letter to the adverse party or her counsel in the mandamus proceeding. At the time that the accused sent his letter, the mandamus proceeding was still "pending" before this court. The Bar charges that the conduct by the accused was an improper *ex parte* communication with a judge as to the merits of a cause in violation of DR 7-110(B).

THE BAR'S AUTHORITY TO PROSECUTE A JUDGE

The accused asserts two procedural defenses to the Bar's prosecution. He first questions the Bar's authority to prosecute a circuit judge for alleged violations of the Code. He argues that Article VII (Amended), section 1, of the Oregon Constitution, requires that judges be elected and restrains interference with their elected term of six years. He further argues that any prosecution of a circuit judge by the Bar, rather than by the Commission on Judicial Fitness, would be in derogation of the people's power to elect or a governor's power to appoint a judge to fill a vacancy.

ORS 9.490 provides:

> "The board of governors, with the approval of the state bar given at any regular or special meeting, shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, shall have power to enforce the same. Such rules shall be *binding upon all members of the bar*." (Emphasis added.)

Further, ORS 9.527(7) provides:

> "The Supreme Court may disbar, suspend or reprimand *a member of the bar* whenever, *upon proper proceedings for that purpose*, it appears to the court that:
>
> "* * * * *
>
> "(7) The member has violated any of the provisions of the rules of professional conduct adopted pursuant to ORS 9.490." (Emphasis added.)

ORS 3.050 provides that "[n]o person is eligible to the office of judge of the circuit court unless the person is a member of the Oregon State Bar."

In *Jenkins v. Oregon State Bar*, 241 Or 283, 289-291, 405 P2d 525 (1965), a proceeding to determine whether this court had jurisdiction to discipline a judge for alleged violations of the Canons of Judicial Ethics, this court stated:

> "We hold that rules of professional conduct, including judicial conduct, are binding upon judges.
>
> "* * * * *
>
> "The Canons of Judicial Ethics are just as binding upon lawyers and judges as the Rules of Professional Conduct are binding upon lawyers and judges in cases falling within the purview of those rules.
>
> "* * * * *
>
> "The Rules of Professional Conduct for practicing lawyers obviously were drawn with the relationship of lawyer and client foremost in the minds of the draftsmen. The Canons of Judicial Ethics obviously were drawn to cover problems likely to arise in connection with the performance of judicial duties. Neither set of rules, however, is intended to be mutually exclusive. Both may apply, in proper cases, alike to practicing lawyers and to judges."

In *In re Edwin L. Jenkins*, 244 Or 554, 419 P2d 618 (1966), a proceeding under the Canons of Judicial Ethics, this court ordered that the judge be suspended as a member of the Oregon State Bar for a period of two years for conduct financially benefiting the judge and his wife through the use of the judicial office.[4]

In *In re Piper*, 271 Or 726, 534 P2d 159 (1975), a circuit judge was prosecuted by the Commission on Judicial Fitness under the provisions of Article VII, section 8, of the Oregon Constitution, adopted in 1968, and at the same time was also prosecuted by the Oregon State Bar for violation of ORS 1.220, which forbids a judge to practice law. Both

---

[4] In prosecuting Judge Jenkins, the Oregon State Bar did not seek, by means of disciplinary proceedings, his removal from office. *Jenkins v. Oregon State Bar*, 241 Or 283, 286-87, 405 P2d 525 (1965).

proceedings arose out of the same facts. This court reprimanded the accused for his misconduct both as a judge and as a lawyer. 271 Or at 742.

In *In re Sisemore*, 271 Or 743, 534 P2d 167 (1975), this court publicly reprimanded a judge who signed probate orders for another judge who was unlawfully practicing law after he became a judge. This court explained:

> "As stated in *In re Donald W. Piper, supra*, the Oregon State Bar may properly institute disciplinary proceedings against attorneys who are judges for violations of the Rules of Professional Conduct of the Oregon State Bar." 271 Or at 746.

In this case, the conduct resulting in the first two charges of ethical misconduct against the accused occurred while he was engaged in the private practice of law and before he became a circuit judge in 1991. The accused cites no authority for the proposition that the Bar is restrained from bringing disciplinary proceedings against a lawyer for alleged ethical misconduct before the lawyer became a circuit judge, and we are aware of none. Indeed, as indicated, our precedents are to the contrary. On the other hand, there is no precedent directly on point concerning the authority of the Bar or this court to discipline a sitting judge under the Code for unethical acts that occurred after the judge assumed the bench. As we shall explain, however, we conclude that because of the disposition that we make in this case it is not necessary to resolve that issue.

EQUAL PROTECTION

The accused next argues that Article I, section 20, of the Oregon Constitution, prevents his prosecution by the Bar. He argues that he has filed charges against other members of the Bar for conduct related to the same events that precipitated the charges against him in this proceeding, but that his charges of professional misconduct against other lawyers and judges have not been pressed by the Bar. The accused argues that this disparity in treatment means that the Bar has failed to provide him equal protection of the law. We find that argument unpersuasive.

We proceed in chronological order to consider the Bar's three charges against the accused on their merits.

I. DR 7-104(A)(1)

The Bar charges that in 1987, the accused, while acting as a lawyer commencing litigation, mailed a Notice to Produce under ORCP 43 directly to the adverse party rather than to the lawyer with whom he had been negotiating before commencing the litigation. The accused argues that he understood that the other lawyer had not received a retainer for the litigation, but represented the other party only for pre-filing settlement negotiations, and that the other lawyer had not yet accepted the obligations of representation beyond settlement negotiations. Thus, the accused reasons, he was entitled to believe that the other lawyer was not a lawyer for the adverse party in the litigation. It follows, the accused reasons, that he is not guilty of this charge because the Bar has failed to prove that the accused knew that he was communicating with a "represented" party.

In fact, the evidence establishes – and we find – that the other lawyer represented the adverse party at the time of the communication. Moreover, the accused's acts indicate that the accused knew of that representation. The accused mailed a copy of the Notice to Produce to the other lawyer with whom he had been negotiating. That act indicates the understanding by the accused of the other lawyer's position with regard to the adverse party. The accused treated the lawyer as involved. That is sufficient indication that, in the accused's mind, the lawyer represented the adverse party whether or not a fee arrangement had been concluded between the adverse party and the other lawyer. Moreover, the accused had been writing the other lawyer about the case frequently in the weeks just before the accused mailed the Notice to Produce to the adverse party. We are satisfied from the foregoing that the knowledge element of DR 7-104(A)(1) has been met.

The accused argues that the Notice to Produce could have been served by the process server along with the summons and complaint at the direction of the accused. He argues that if the Notice to Produce had been so served no violation for "communicating with a represented party" would have occurred, just as no violation occurs when a lawyer directs that a summons and complaint be served personally on a

represented party rather than on that opposing party's lawyer.[5]

We shall assume, for purposes of this case, that the accused is correct that the Notice to Produce could have been served by a process server under ORCP 43 B. That is, we shall assume that the authorization for Notices to Produce in litigation, combined with the requirement that the notice be received by the party, would have shielded the accused from a charge of violating the rule against communicating with a represented party because that act of communication would have been authorized by law. DR 7-104(A)(1)(b). The accused, however, did not choose to proceed in that fashion. The mailing by the accused communicated with a represented party on the subject of the representation and could have had the incidental effect of emphasizing the accused's *persona* as the lawyer for the plaintiff. It was the accused who communicated in this case. The accused's argument is unpersuasive.

Given that the accused's testimony and actions indicate that he understood the adverse party was represented by the other lawyer on the general subject of the litigation at the time, the accused's act of mailing the Notice to Produce directly to the represented party violated DR 7-104(A)(1) as charged in the Bar's first cause of complaint.

II. DR 7-110(B)

The accused is also charged with violating DR 7-110(B) by communicating with a circuit judge before whom an adversary proceeding of the accused's was pending. The accused sent a copy of a letter to a circuit judge who was or had been involved in, and who potentially would be involved in, the proceeding to which the contents of that letter related.[6]

The accused argues that although the judge was awaiting the resolution of an ancillary matter arising out of the litigation, the judge was not directly involved in the

---

[5] The Notice to Produce, authorized by ORCP 43, could have been served by the process server under ORCP 43 B, which states: "The request may be served * * * upon any other party with or after service of the summons on that party." The accused posits that all he did was communicate in a different fashion what might have been communicated with the represented party under ORCP 43 B.

[6] The letter was addressed to a lawyer for the plaintiffs in a case already in litigation. No copy was mailed to the defendant's lawyer.

litigation and, thus, was not the judge in the matter because the matter was not pending before him. We reject that argument. The letter was to the judge before whom the adversary proceeding was pending.

The accused also argues that the communication was not "on the merits of the cause." The accused's letter stated that further delay in disposing of the main case, to await the outcome of the ancillary proceeding, was not necessary under the law and was just an effort to force a settlement. That is a communication on the merits of the cause. A communication may concern procedure as well as substantive law and still be on the merits of the cause. The communication indicated disagreement with a judge's decision to delay the case and argued that that decision was not well founded in law. That is a comment on the merits. That the letter serves some secondary purpose, even a supposedly salutary one, does not prevent it from being a communication about the case directed to the judge before whom the proceeding was pending. We conclude that the accused is guilty of violating DR 7-110(B) as charged in the Bar's second cause of complaint.

III. DR 7-110(B)

The *ex parte* communication charged in the Bar's third cause of complaint arises from a case in which the accused himself was party to a mandamus proceeding in this court concerning whether, after he became a circuit judge, the accused impermissibly refused to disqualify himself on the request of a lawyer in a case pending before him.

In *In re Schenck*, 318 Or 402, 423-24, 870 P2d 185 (1994), this court considered the same facts that are alleged in the Bar's third cause of complaint against the accused here. In that proceeding under the Code of Judicial Conduct, this court stated:

> "B. *The Hopkins mandamus case.*
>
> "After this court issued its decision in *State ex rel Hopkins v. Schenck,* [313 Or 529, 836 P2d 721 (1992)], in which the court directed that a peremptory writ issue, the Judge sent a letter to the justice who was the author of the court's opinion. The letter was received at the court on July 24, 1992. Copies of the letter were not sent to the other party or

counsel. The letter was signed by the Judge as 'R.D. Schenck Circuit Judge.'

"The letter stated that the Judge's 'only gripe' concerning this court's opinion was with what the Judge labeled a 'gratuitous' quotation of a statement by [a lawyer in the underlying proceeding]. The letter asserted that [the lawyer's] statement was untrue and that the Judge had never had an opportunity to challenge it in the mandamus case. At the time the Judge's letter was received, the time for a petition for reconsideration of this court's mandamus decision had not yet expired.

"The Judge's letter thus was an *ex parte* communication concerning a pending proceeding. It was initiated by the Judge in his capacity as a defendant in a mandamus action. We conclude that sending the letter during the formal pendency of the mandamus case violated Canon 3A(4). In this instance, however, we do not conclude that the Judge committed a 'wilful violation' of Canon 3A(4).

"There is not clear and convincing evidence that the Judge was aware of circumstances that made the *ex parte* rule apply on these facts, as is required for a 'wilful violation' under *In re Gustafson,* [305 Or 655, 660, 756 P2d 21 (1988)]. Specifically, the record does not establish by clear and convincing evidence that the Judge was aware that the *mandamus* case was still 'pending' for purposes of the *ex parte* rule, after this court had issued its decision and had ordered a peremptory writ to issue, but before the period for a petition for reconsideration had expired."

Accepting everything asserted in the letter to be true, there still would have been no reason to reconsider any conclusion that we had reached in applying the Code of Judicial Conduct. The trial panel concluded and, on *de novo* review we agree, that the accused's letter was not a communication "as to the merits of the cause" within the meaning of DR 7-110(B). We find the accused not guilty of this charge.

SANCTION

In deciding on an appropriate sanction, this court looks to the ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"). *In re Smith*, 316 Or 55, 61, 848 P2d 612 (1993). ABA Standards Part III(C) sets out the factors to be considered in imposing sanctions:

1. *The duty violated.*

In this case, the accused violated his duties owed to the legal system to refrain from improper communications with individuals within the legal system. ABA Standard 6.3.

2. *The lawyer's mental state.*

The most culpable mental state is intent. Certainly, the accused as a lawyer intended to communicate with a party he had every reason to believe was represented. As a lawyer, he also intended to communicate with a trial judge about litigation before that judge.

The accused now suggests that his conduct was merely negligent based on his interpretation of the disciplinary rules. Upon examination of the evidence, including the accused's animosity toward key players in each of the charges as to which he has been found guilty and his apparent willingness to act under a notion of what he believes the disciplinary rules *should* allow rather than what they do allow, we conclude that the accused was acting with intent or, at a minimum, with knowledge of "the nature or attendant circumstances of the conduct." ABA Standards, Part III, Definitions (defining "knowledge").

3. *The actual or potential injury caused by the misconduct.*

Injury can be either actual or potential under the ABA Standards. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). No actual injury was suffered in this case, but potential for injury was significant.

4. *The existence of aggravating or mitigating factors.*

By way of aggravation, this case involves two offenses. The accused has received one prior disciplinary sanction – a reprimand. Furthermore, the accused has had substantial experience in the practice of law. Finally, the accused refuses to recognize even the possibility that either of his acts were wrongful. See ABA Standards 9.22(a), (c), (d), (g), and (i). Mitigating factors include the fact that the accused's misconduct does not bear on the accused's trustworthiness; the accused has cooperated with the Bar; and the

offenses are remote in time. ABA Standards 9.32(b), (e), and (m).

The Bar argues that some period of suspension is appropriate. As a general proposition, we agree. *See, e.g., In re Williams, supra*, (lawyer suspended for 63 days for, *inter alia*, making direct contact with a represented party); *In re Lewelling*, 296 Or 702, 678 P2d 1229 (1984) (similar charge; 60-day suspension); *but see In re Burrows*, 291 Or 135, 629 P2d 820 (1981) (violations of two DRs; reprimand only). However, an additional consideration leads us to conclude that a reprimand is appropriate in this instance.

This case was argued and submitted at the same time as the judicial fitness proceeding, *In re Schenck, supra*. In that case, this court suspended the accused from his judicial office for a period of 45 days. 318 Or at 443. Had we been able to decide the cases simultaneously, we do not believe that we would have imposed a greater period of suspension than the one that we there imposed. It would be unfair, we think, to add a second period of suspension now. We therefore reprimand the accused.

Accused reprimanded.

UNIS, J., concurring in part and dissenting in part.

I join in the court's opinion in all respects, except the finding that the accused violated DR 7-104(A)(1). To find a violation of DR 7-104(A)(1), the court must find by clear and convincing evidence that the accused (1) communicated or caused to communicate (2) with a person represented by counsel (3) whom the accused knows to be represented by counsel (4) on the subject of the representation or directly related subjects. In my view, the Bar has failed to establish by clear and convincing evidence that the accused violated DR 7-104(A)(1).

IN THE SUPREME COURT OF THE STATE OF OREGON

In re Complaint as to the Conduct of
LEWIS M. KING, JR.
Accused.
(OSB 92-172, 93-126; SC S40719)

In Banc

On review of the decision of a Trial Panel of the Disciplinary Board.

Submitted on the record October 14, 1994.

Lia Saroyan, Assistant Disciplinary Counsel, Lake Oswego, waived appearance for the Oregon State Bar.

No appearance *contra*.

PER CURIAM

The accused is disbarred.

PER CURIAM

This is a lawyer disciplinary proceeding. The Oregon State Bar (Bar) charges that the accused misappropriated funds that were entrusted to him, thereby committing the crime of aggravated theft in the first degree, a Class B felony,[1] and violating DR 1-102(A)(2) and (3).[2] The Bar also charges that the accused knowingly neglected a client's case, in violation of DR 6-101(B).[3] A trial panel of the Disciplinary Board found the accused guilty of the charges and disbarred him. Review is automatic under BR 9.536(2). We review the record *de novo*. ORS 9.536(3). The Bar has the burden of establishing ethical misconduct by clear and convincing evidence. BR 5.2. We find the accused guilty as charged and disbar him.

FINDINGS OF FACT

We note at the outset that the accused has made no appearance in this proceeding. On August 23, 1993, the Bar received a communication from the accused, in the form of a letter and tape recording, indicating that he had abandoned his law practice and his residence and had departed from the area. He left no forwarding address with anyone and made it

---

[1] ORS 164.057 provides:

"(1) A person commits the crime of aggravated theft in the first degree, if:

"(a) The person violates ORS 164.055 [theft in the first degree] * * *; and

"(b) The value of the property in a single or aggregate transaction is $10,000 or more.

"(2) Aggravated theft in the first degree is a Class B felony."

ORS 164.055 provides in part:

"(1) A person commits the crime of theft in the first degree if, by other than extortion, the person commits theft as defined in ORS 164.015 and:

"(a) The total value of the property in a single or aggregate transaction is $200 or more in a case of theft by receiving, and $750 or more in any other case[.]"

[2] DR 1-102(A)(2) and (3) provide:

"It is professional misconduct for a lawyer to:

"* * * * *

"(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

"(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]"

[3] DR 6-101(B) provides:

"A lawyer shall not neglect a legal matter entrusted to the lawyer."

clear, in the tape to the Bar, that he did not want his whereabouts discovered. On the tape, the accused admits the wrongdoing detailed below. He states, for example:

> "I have taken money from a number of clients, approximately 5 or 6 that is still owed to them. I've taken money from a couple clients that I have paid back. * * *
>
> "* * * * *
>
> "There are many other clients that need help that I've neglected. * * *
>
> "* * * * *
>
> "* * * I've been very neglectful and the word dysfunctional or paralyzed I guess is what's used often * * *. But anyway I ignore[d] the files * * *."

In the letter, the accused also asserted that he had taken client funds for personal use while trying to rebuild his practice after having worked for a failed business.

We find that the Bar has proved the following facts by clear and convincing evidence: In 1993, the accused represented co-petitioners in the matter of a conservatorship involving one Ward. A court order allowed closure of the sale of real property belonging to Ward. The court ordered that the proceeds of the sale be frozen until the court decided whether to grant or deny a co-petition of co-conservators. The court further ordered that, during the intervening time, the proceeds of the sale be held by the accused in the form of a check or an interest-bearing bank account. On May 5, 1993, the accused came into possession of $11,691.68 in proceeds resulting from the sale of Ward's property. He appropriated that money for his own use, with the intent to deprive the owner thereof.

Also in 1993, the accused represented a client named Kehdi. He sold about $33,000 in stock belonging to that client. The accused appropriated the proceeds from the sale of the stock, with the intent to deprive the owner thereof.

During that same year, the accused represented a client named Hatch in a dissolution matter. During the course of that representation, $25,614.39 was tendered to the

accused for safekeeping, pending the outcome of the dissolution case. The accused appropriated that money, with the intent to deprive the owner thereof.

In 1989, the accused represented a client named Loupal with respect to the purchase of a home. Loupal had entered into a lease-option agreement. A term of the agreement was that the seller would obtain an FHA loan, which Loupal would assume. When the FHA loan was not obtained, Loupal retained the accused to assist her in the transaction.

The accused filed an action on Loupal's behalf, in Clackamas County Circuit Court, in September 1989. On January 11, 1990, the case was dismissed for want of prosecution. The accused failed to reinstate the action, and a Notice of Judgment of Dismissal was entered on May 22, 1990. In October 1990 and May 1991, the accused made unsuccessful efforts to have the action reinstated.

In August 1991, the accused filed a second action on Loupal's behalf. The complaint in the second action named the same defendants and made the same allegations as did the complaint in the first action. The defendants sought, and were granted, summary judgment in the second action. Loupal's second action was dismissed on March 30, 1992. She discharged the accused as her lawyer in May 1992.

From September 1989 through May 1992, the accused failed to prosecute Loupal's claim in a timely manner, failed to return telephone calls from Loupal and from opposing counsel in a timely manner, failed to maintain contact with the court so as to avoid dismissal, and failed to ensure that Loupal's claim was properly reinstated or refiled within the applicable statute of limitations.

DISCUSSION

In connection with the Ward, Kehdi, and Hatch matters, the Bar presented clear and convincing evidence that the accused committed Class B felonies. ORS 164.057 and 164.055 (quoted *ante* at note 1). His conduct also plainly violated DR 1-102(A)(2) and (3), quoted *ante* at notes 2 and 3.

The accused neglected a client's case in the Loupal matter. His conduct plainly violated DR 6-101(B), which is quoted above.

SANCTION

The usual methodology of this court at this point in cases of this kind is to review pertinent portions of the American Bar Association Standards for Imposing Lawyer Sanctions (1991). *See, e.g., In re Smith*, 316 Or 55, 61, 848 P2d 612 (1993) (illustrating methodology). However, the facts of this case are so compelling, the mitigating circumstances so minimal, and the appropriate sanction so obvious that we believe that it would serve no useful purpose to prolong our discussion. A lawyer who steals from the lawyer's clients usually will be disbarred.[4] In that regard, there is nothing unusual about this case.

The accused is disbarred.

[4] *See, e.g., In re Biggs*, 318 Or 281, 297, 864 P2d 1310 (1994) (where an accused misappropriated client monies and abandoned law practice without notifying clients, causing serious injury to clients, disbarment is proper sanction, despite claim of emotional difficulty); *In re Benjamin*, 312 Or 515, 521-24, 823 P2d 413 (1991) (where an accused neglected legal matters, failed to pay money to clients promptly, personally used some of that money, and failed to respond to initial inquiry from Bar, disbarment is proper sanction); *In re Phelps*, 306 Or 508, 520, 760 P2d 1331 (1988) (where an accused "steals funds from a client, the sanction is disbarment," despite mitigating circumstances).

IN THE SUPREME COURT OF THE
STATE OF OREGON

In re Complaint as to the Conduct of
ROGER G. WEIDNER,
Accused.
(OSB 91-124; SC S36671)

On review of the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted September 12, 1994.

Roger G. Weidner, accused, argued the cause and filed the briefs *pro se*.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause for the Oregon State Bar. Susan Roedl Cournoyer, Assistant Disciplinary Counsel, Lake Oswego, filed the response for the Oregon State Bar.

PER CURIAM

Before Carson, Chief Justice, and Gillette, Fadeley, Graber, and Durham, Justices.

The accused is disbarred.

PER CURIAM

In this Bar disciplinary case, a trial panel found the accused guilty of numerous violations of criminal statutes and of 19 violations of disciplinary rules. The trial panel's decision was disbarment.[1] Under ORS 9.536(2), review by this court is automatic. Review is conducted *de novo* under ORS 9.536(3).

The accused has raised various defenses to the Bar's charges of disciplinary misconduct contained in its amended complaint against the accused. The accused relies on a general defense of "necessity." He does not, however, apply that defense to the Gannon Estate charges. Therefore, before considering the general defense of necessity, we will determine whether the Bar has proven its charges related to that estate.

GANNON ESTATE

The accused drafted a will that left Mr. Gannon's estate to a minor political party in California but that expressly disinherited Gannon's children. After Mr. Gannon's death, the accused was appointed personal representative and also served as lawyer for the personal representative of that estate. As lawyer, the accused paid himself $950 for estate attorney fees from the estate without applying to the probate court or obtaining an order from that court, as required by ORS 116.183.

The accused also withdrew $14,000 of the Gannon Estate's funds to pay himself for various services that he had performed prior to Mr. Gannon's death. The accused did not file a claim in the estate and did not observe the procedures applicable to a claim before paying himself.[2] Although the

---

[1] In January of 1987, the accused transferred voluntarily to inactive status as a member of the Oregon State Bar after 17 years of active membership. That summer, 1987, he was suspended for failure to pay Bar dues. He has not been reinstated nor has he resigned from membership. Thus, after early 1987, he has not been and is not now eligible to practice law. He remains, however, a member of the Bar, albeit one whose status is suspended and inactive.

[2] ORS 115.105 provides:

"A claim of a personal representative shall be filed with the clerk of the court within the time required by law for presentment of claims. Upon application by the personal representative or by any interested person the claim may be considered by the court on the hearing of the final account of the personal

accused purported to pay himself for legal services at hourly rates appropriate for legal work, many of the services that the accused has enumerated to justify the $14,000 payment are not legal services but instead are in the nature of companionship, *e.g.*, spending time with the decedent and taking him various places. After the accused paid himself, Gannon's adult children successfully contested the will in probate court. In 1990, that court required repayment to the estate of a portion of the improper $14,000 payment that the accused made to himself.

The accused does not dispute the foregoing facts. He contends, however, that the defense of laches prevents the Bar from bringing a complaint against him for this conduct in 1986 and 1987. He claims that the defense applies to this disciplinary proceeding, and that the time delay between the events and the filing of the complaint in 1993 is by itself sufficient to establish the defense.

In *Ellis v. Roberts*, 302 Or 6, 10, 725 P2d 886 (1986), this court stated three elements that must be present before laches will apply:

> "The elements of laches are [1] delay by a party, [2] with knowledge of relevant facts under which it could have acted earlier, [3] to the substantial prejudice of an opposing party."

In *Stephan v. Equitable S & L Assn.*, 268 Or 544, 569, 522 P2d 478 (1974), this court held:

> "In order to constitute laches there must have been full knowledge of all of the facts, concurring with a delay for an unreasonable length of time, and laches does not start to run until such knowledge is shown to exist. *Wills v. Nehalem Coal Co.*, 52 Or 70, 89, 96 P 528 (1908); *Kelly v. Tracy*, 209 Or 153, 172, 305 P2d 411 (1956). In addition, the delay must result in substantial prejudice to the defendant to the extent that it would be inequitable to afford the relief sought against the party asserting laches as a defense. *Dahlhammer and Roelfs v. Schneider Exec.*, 197 Or 478, 498, 252 P2d 807 (1953); *Hanns v. Hanns*, 246 Or 282, 305, 423 P2d 499 (1967)."

---

representative or prior to the hearing of the final account upon notice to interested persons."

See also In re Morrow, 303 Or 102, 106, 734 P2d 867 (1987) (In a Bar disciplinary case, "lengthy delay from the accused's conduct to the filing of charges [without prejudice] is not a defense but bears on the proper sanction.").

No prejudice to accused is alleged here, nor is proof of any prejudice found in the record. We, therefore, do not need to decide whether laches can ever be a defense to a disciplinary case. The defense of laches is not available to the accused in this case even if we assume, without deciding, that it might be available in some other disciplinary case where all three required elements are present.[3]

The accused also seeks to excuse his conduct of taking money from the estate's assets without first making and presenting a claim, indicating that he was not familiar with probate procedure. He pleads ignorance of the requirement that a claim had to be made or that, as to estate lawyer fees, prior approval by the court was statutorily required before payment.

The Bar alleges that the foregoing conduct violates DR 1-102(A)(3) and (4) and DR 2-106(A). DR 1-102(A)(2), (3), and (4) provide:

> "(A) It is professional misconduct for a lawyer to:
>
> "* * * * *
>
> "(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;[4]
>
> "(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> "(4) Engage in conduct that is prejudicial to the administration of justice[.]"

DR 2-106(A) provides in part:

> "A lawyer shall not * * * charge or collect an illegal or clearly excessive fee."

---

[3] The delay is not as extreme as it appears. The amount of overpayment that the accused made to himself was not decided, on objections to the accused's final account, until 1990.

[4] We quote subsection (2) because it will be relevant to charges that will be discussed later in this opinion, not because it is alleged to be violated in the Gannon Estate matter.

We conclude that clear and convincing evidence proves that the accused violated DR 1-102(A)(3) and (4) and DR 2-106(A). At the time of violation of the statutory requirements, the accused had practiced law for almost two decades. We do not credit his claim of ignorance. The pertinent statutes are plain and easy to find. The accused must have known that he was by-passing the statutes and thereby violating them at the time that he took $14,000 from the estate for his own benefit. Moreover, when he billed the estate at legal service rates for services that turned out not to be professional services, the accused engaged in misrepresentation and collected an excessive fee.

NECESSITY DEFENSE

The accused attempts to avoid the legal effect of his conduct by interposing in this Bar disciplinary proceeding the defense of "necessity," sometimes known as the "choice of evils." That defense is set forth in the criminal statutes.[5]

The accused alleges, as to all causes of complaint except the Gannon Estate matter, that his conduct is justified under the defense of "necessity." The accused states his defense as follows:

> "Excluding the Gannon estate matter, every action taken by the accused has been absolutely necessary to recover for the accused['s] client[s'] property shamelessly stolen from those clients by the attorneys, judges and sheriff deputies named in the Third Party Complaint on file."

He also alleges:

> "Each and every act of the accused, complained of by the Bar since December of 1987 has been necessary to thwart and

---

[5] ORS 161.200 provides:

"(1) Unless inconsistent with other provisions * * *, conduct which would otherwise constitute an offense is justifiable and not criminal when:

"(a) That conduct is necessary as an emergency measure to avoid an imminent public or private injury; and

"(b) The threatened injury is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding the injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue.

"(2) The necessity and justifiability of conduct under subsection (1) of this section shall not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder."

> expose the massive amount of criminal conduct on the part of the third-party defendants in aiding and abetting lawyers Brown and [another lawyer]."[6]

The accused alleges that the necessity defense (and his claim for damages from "third-party defendants") arises out of his efforts to recover property converted by another lawyer from an estate in Multnomah County and property converted by a different lawyer from New Wine Ministry in Clackamas County. The accused alleges conspiracy to aid and abet those conversions and that the conspirators include 13 trial judges in the Portland metropolitan area, a former justice of this court,[7] a federal trial judge,[8] district attorneys in Multnomah and Clackamas counties, a few sheriff's deputies, several members of the Bar disciplinary staff, and a number of practicing lawyers, including the two lawyers alleged to have converted the separate properties. Those persons are referred to by accused as the "third party defendants."

The accused alleges that the conversions occurred in the following ways:

> "4. In May of 1985, third party defendant Milton Brown murdered his business partner Donald Kettleberg by writing 'do not resuscitate' on Kettleberg's medical records. Brown forged fourteen corporate documents, and has since Kettleberg's death converted $35,000,000 in Kettleberg estate assets.
>
> "5. In July of 1990, third party defendant Ken Schmidt wrongfully recorded a quitclaim deed and converted $1.5 million in property belonging to New Wine Ministry."

The accused, who at the relevant times remained in inactive status as detailed in note 1 above, alleges that he was

---

[6] The accused also alleged in his answer to the Bar's charges, as a "third-party" complaint, that he was entitled in the disciplinary proceeding to $50 million general damages.

[7] That former member of this court joined in acquitting the accused of all the different disciplinary charges alleged by the Bar in the prior case of *In re Weidner*, 310 Or 757, 801 P2d 828 (1990).

[8] The accused added the federal judge to his list of alleged conspirators only after that judge ruled adversely to the accused's claim in federal court. After the trial panel decided for disbarment in the disciplinary case, the accused states in his brief that: "The trial panel, by their decision, have themselves become part of the on-going conspiracy."

"retained by Ms. Kent, sole beneficiary of the Kettleberg estate, to recover the property converted by attorney Brown" and that he was "hired by Pastors Helen Jones and Chet Jones to recover the property converted by attorney Schmidt."

The accused claims that the defense of "necessity" is borne out by the truth of his charges of conspiracy and corruption. The truth of his charges is conclusively proved, he states, because he makes accusations of wrongdoing, corruption, and conspiracy in court to the various judges and lawyers and in their presence but they do not respond by denying his charges, thereby indicating conclusively, as the accused sees it, the accuracy of those charges. The accused fails to see that there are other possible explanations, not consistent with conspiracy and corruption, why the persons that he accused did not orally deny or respond to his accusations against them.

The accused also advises us that he has complained about the conspiracy to United States Attorneys General Thornberg and Reno as well as the Governor of Oregon, the President of the United States, and various other officials. He has maintained contact with the Federal Bureau of Investigation over an extended period of time concerning his claim of corruption and conspiracy. His brief includes a letter to him from the FBI, in which that agency, after consideration of the accused's corruption and conspiracy charges, declines to participate on the basis that the rulings about which the accused complains are discretionary rulings permitted by law, not ones establishing a conspiracy. The FBI letter of June 15, 1993, to the accused also provides in part:

> "In the matter concerning your allegations of widespread corruption within the judicial system, this too is being declined further investigation as there does not appear to be adequate evidence indicating corruption."

By its terms, the defense of necessity applies to a criminal case. ORS 161.200. That is not the nature of this disciplinary proceeding, even though the accused admits, in this case, that he has been found guilty of crimes in other proceedings. Even assuming the availability of that defense,

it would not be supportable on the present record.[9] We turn to the Bar's other charges of misconduct.

KATHY MASON PROPERTY TRESPASS

Because he had heard of the accused's efforts to help some people involved with the court system, Chet Jones contacted the accused in 1990 and asked for his assistance regarding a dispute about the ownership of certain real property.[10] The accused attempted to help the Joneses in their dispute with the record owner, Kathy Mason. As a result, Mr. Jones, his wife, and the accused were all named defendants in a legal action brought by Mason concerning the real property. Thereafter, a judgment quieting title was entered in Clackamas County Circuit Court, deciding that the accused had no interest in the real property. The court specifically enjoined the accused from making any claim of ownership concerning the property in the future.

Notwithstanding the judgment that he held no interest and the court's injunction against claiming such an interest or interfering with the ownership of Mason, the accused thereafter went on the land and claimed to be its owner. As a result, the accused was convicted of criminal trespass by a Clackamas County jury.

The accused contends in a "Third Party Complaint," filed as a part of his answer to the disciplinary charges in this case, that all Clackamas County judges involved in the Mason quiet title action and the criminal trespass conviction are part of a conspiracy against the accused.[11]

With regard to the Mason real property, the accused is charged with violating DR 1-102(A)(2), (3), and (4), quoted above, and DR 7-102(A)(2) and DR 7-106(A). DR 7-102(A)(2) provides:

---

[9] For example, the record before us is insufficient to examine, let alone pass upon, the propriety of Brown or his lawyers in his business dealings with Kettleberg, the Kettleberg estate, or other business associates. The same is true of lawyer Schmidt and the Mason property, discussed later in this opinion.

[10] This property is referred to in the accused's pleading, quoted herein, as "belonging to New Wine Ministry."

[11] The judge who presided over the criminal trespass trial was added by the accused to his list of conspirators after the jury returned its guilty verdict.

> "In the lawyer's representation of a client or in representing the lawyer's own interests, a lawyer shall not:
>
> "* * * * *
>
> "(2) Knowingly advance a claim or defense that is unwarranted under existing law except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law."

DR 7-106(A) provides:

> "A lawyer shall not disregard * * * a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling."

The accused's conduct was criminal as found by the jury. The accused knew that by law he was not the real owner of the land. His claim was knowingly unwarranted at the point in time that he went upon the land and claimed ownership. He indicates that the trespass was in furtherance of the Jones' claim to the land. His conduct violated Mason's rights and the court's judgment and the injunction contained therein. In the setting in which it occurred, by attempting to continue the claim of the Jones to Mason's land after he had lost the Jones' case in court, the accused "willfully disobeyed an order of a court requiring the member [of the Bar] to do or forbear an act connected with the legal profession," thereby violating ORS 9.527(3). In addition to being a criminal act, the accused's trespass interfered with and was prejudicial to the administration of justice in the courts. The accused, by clear and convincing evidence, is guilty as charged in the disciplinary complaint.

MISSION WORLD PEACE FUND-RAISING LETTER

During the mid 1980's, the accused started assisting Janette Kent regarding her claim to the Estate of Donald E. Kettleberg, who died in 1985. Using various lawyers other than the accused, Kent won a legal action by establishing a contract to make a will in her favor. That action resulted in a constructive trust being imposed on the assets of the Kettleberg estate.

Mr. Kettleberg had been in business with lawyer Milton Brown involving a number of entities and transactions. Kent, assisted by the accused in various ways, has been, and is, involved in protracted litigation with Brown over assets and income from the various business entities involved. That litigation has been prosecuted in the probate of Kettleberg's estate in Multnomah County probate court. It also has been prosecuted in other courts, including the United States District Court for the District of Oregon.[12] That litigation – in which Kent was represented in court by lawyers other than the accused, who was at all relevant times in inactive status and suspended – has been costly. As a result, Kent has sought financial assistance relating to this protracted litigation from various sources.

One such effort to obtain financial assistance was made through a solicitation letter signed by the accused and sent to potential contributors or lenders. The letter solicited loans to an entity, established and controlled by Kent, called Mission World Peace. That letter represented that Kent had assigned to Mission World Peace all her interest in the estate, *i.e.*, in the "constructive trust" regarding her beneficial interest in the estate. That representation was not true when made by the accused to persuade others to loan their money for the purposes stated.

In his sworn deposition in this disciplinary matter, the accused testified repeatedly that no assignment had been made at the time that he signed the letter and caused it to be mailed and delivered representing that such an assignment was in place. The accused's testimony under oath included the following questions and answers:

> "Q At the time the first page [of the letter] was sent out did you believe that Ms. Kent had transferred any rights she had in the matters that are set out here in Mission World Peace?
>
> "A No. She has transferred an interest in it to raise the funds. She was transferring interest. * * *
>
> "* * * * *

[12] The accused, Ms. Kent, and Robert Wright participated as named plaintiffs in the federal court action. After a ruling by the United States District Judge, adverse to plaintiff, the judge was included by the accused as being among those he considers conspirators.

"Q Second sentence says, 'She has assigned all her beneficial interest in her claims against Brown to a non-profit organization she founded, Mission World Peace.' Was that statement true?

"A Her beneficial interests? She had not in fact – there was no assignment. * * *

"Q * * * Did you believe when you signed this letter that she had assigned all of her beneficial interest in her claims to Mission World Peace?

"A If she hadn't, she would. The beneficial interest was to be transferred as a means of repaying these loans. That's my recollection.

"* * * * *

"* * * There had not been, as I recall, a written assignment made at the time this letter was sent. The intent was it was going to be – it was an executory kind of thing that was going to be done. That was the plan.

"Q Did it get done?

"A No. * * *.

"Q How many people were sent the letter that is the first page of Exhibit 1?

"A Maybe 500 to a thousand."

Concerning the solicitation letter and its representations, the Bar has charged the accused with violation of DR 1-102(A)(3), quoted above. The foregoing record provides clear and convincing evidence of his guilt as charged.

INACCURATE NOTARIZATIONS

In the course of assisting Kent, the accused located witnesses having information about the business transactions between Kettleberg and Brown. The witnesses also had information about Brown's business activities after Kettleberg's death. The statements of those witnesses were typed in affidavit form for the purpose of submission to the courts.

The accused notarized three such affidavits well after his notarial commission had expired. In one instance, he also notarized the signature of a former business associate of Brown, who was complaining about Brown's business practices, before that business associate had in fact signed the typed "affidavit." The accused admits that he notarized that

affidavit before it had been signed, indicating that it had been subscribed and sworn to in his presence, when it had not. He admits that he stated a specific date for the expiration of his notarial commission on all of the affidavits involved in the Bar's charges but that the date stated was not accurate. He insists that he did not know that his commission had expired many months earlier. He offers no reason why he wrote on the affidavits the specific date shown by them as the time his commission would expire other than to say that he simply had that date in his head and used it. The date shown by the accused on all of the affidavits was some two years later than the actual expiration of his notarial commission.

In Oregon, the practice of providing notarial services is regulated by statute. ORS 194.014 provides in part:

> "Every individual person, before entering upon the duties of a notary public, shall file with the Secretary of State a completed application for appointment and commission as a notary public."

When application is granted, the appointment is for four years only, and notarial acts may only be performed during that term of appointment. ORS 194.012 in part provides:

> "The term of office of a notary public is four years commencing with the effective date specified in the notarial commission. A notary public may perform notarial acts during the term of the commission, or until the commission is suspended."

ORS 194.515 requires appearance before the notary prior to notarization. ORS 194.990(1) sets out criminal penalties for certain notarial violations, as follows:

> "(a) A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated respectively by ORS 194.005 to 194.200 or 194.505 to 194.595, or rules adopted thereunder, is guilty of a Class B misdemeanor.
>
> "(b) Any person not a notary public who knowingly acts as or otherwise impersonates a notary public is guilty of a Class B misdemeanor."

In Oregon, repeatedly notarizing documents without a commission and indicating that a document was sworn and signed before a notary although it was not yet signed may be a

crime. *See* ORS 194.990(1) (acting as a notary knowing you are not violates criminal law); ORS 194.515 (notary must ascertain that person known and stated to have signed is the person signing). Exercising the authority of a notary and purporting to assure the reader of the document that the document was signed under oath when one is not authorized to give oaths or to act as a Notary Public is also, separately, contrary to law. ORS 194.990(1)(b). In this case, the documents were intended to be relied on, as sworn statements, by the courts and judicial system as well as by potential supporters of Ms. Kent. In other words, by affixing his name as notary, the accused represented to those who might read the affidavits, including the courts, that they were sworn before him personally and that he was a notary authorized to take such a sworn statement. Those representations were false.

The Bar's complaint charges the accused with violating criminal laws in this instance. By his own admission, the accused is guilty. He also has engaged in conduct prejudicial to the administration of justice concerning these notarized affidavits. We conclude that, by clear and convincing evidence, the accused's conduct violated DR 1-102(A)(2) and (3), quoted above, and that, if the misconduct occurred "in the legal profession," it also violated ORS 9.527(4).[13] Ms. Kent had other counsel in all of her state court proceedings. The accused refers to his role only by the verb "investigate." The accused may have been acting as an investigator when he notarized the documents. Therefore, proof that the accused's notarial misconduct was in the legal profession is not clear and convincing and, therefore, no violation of ORS 9.527(4) is made out in relation to the incorrect notarization. *See In re Benson*, 311 Or 473, 814 P2d 507 (1991) (holding that lawyer acting in his own self-interest concerning family property ownership by notarizing a known bogus deed violated ORS 9.527(4)).

---

[13] ORS 9.527(4) provides:

"The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

"* * * * *

"(4) The member is guilty of willful deceit or misconduct in the legal profession[.]"

CONTEMPT OF COURT

The accused admits that he has been convicted of contempt on several occasions, but discounts the meaning of those convictions by asserting that the convictions resulted from the claimed conspiracy previously outlined. Based on the accused's admission, we take the fact of convictions for contempt as established as charged in the Bar's complaint.

SANCTION

This court generally follows the procedures set out in the American Bar Association Standards for Imposing Lawyer Sanctions (1991) (ABA Standards). The nature of the mental state that accompanies the accused's conduct – whether intentional, knowing, or otherwise – is of significance. The duties breached by the conduct found to violate the disciplinary rules are also important, as is the harm or potential harm caused by that conduct. Mitigating and aggravating circumstances also are factors considered.

As to mental state, the accused advises that he has acted intentionally in all respects. We previously dealt with his claim of ignorance about the probate law or the actual date of the expiration of his notary commission. In any event, those claims do not affect the admittedly intentional nature of his actions in violation of disciplinary rules.

The duties violated include those duties owed to the profession concerning public respect for its practitioners and to the courts concerning the administration of justice. In the matter of the notarial law violations, he violated the duty of diligence and loyalty to those he purported to assist. As we have noted previously, many of the acts of misconduct interfered with the administration of justice.

Harm in the form of public expense created by the interruptions and delays occasioned thereby is evident. Harm to the beneficiaries of the Gannon Estate is evident, although restitution of a portion of the funds unlawfully taken has been ordered by the probate court. Concerning the accused's notarial violations, it is clear that the accused's conduct created the potential for harm to Kent's interest by undermining the credibility of "affidavits" that were favorable to her position.

No remorse or reformation is shown.[14] Instead, explanations are offered to shift the blame to others. In this respect, the court notes that the accused's conduct regarding the Gannon Estate, although substantially lesser in degree, is somewhat similar in character to that which he accuses Milton Brown and his associates of committing. The accused took money from an estate without authority and for selfish reasons, just as he says Brown is doing. The accused's acts in the remaining matters are also accompanied by self-interest.

It also appears that the accused, in briefs filed in this court, contradicts his sworn testimony and does so to provide himself with an arguable defense to the Bar's charges. In his printed brief submitted to this court, the accused varies from his previous contention concerning whether there was in place an assignment by Ms. Kent to Mission World Peace at the time that he signed the fund-raising solicitation letter. Although he previously testified that there never was an assignment, he states in his brief:

> "Ms Kent did in fact initially assign her beneficial interest in the Kent v. Brown case to Mission World Peace. The assignment was intended to facilitate loans to Mission World Peace to enable that organization to finance the litigation against Milton Brown.
>
> "At the time of the assignment it was anticipated that the accused would place himself on active status and try the case as counsel for Mission World Peace. No funds were in fact borrowed and Ms Kent as Board Chairman of Mission World Peace reassigned the claim to herself. Ms Kent then made the assignment [to the accused personally] marked petitioner's exhibit 16 p. 204 so the accused could appear pro se and prosecute the claim against Milton Brown. The accused subsequently re-assigned to Ms Kent all property originally assigned by Ms Kent except Ms Kent's interest in Prindle Mountain Inc., which interest the accused still retains."

Efforts to mislead must be viewed seriously. The statements in the brief, when compared with the unequivocal denial in his sworn testimony that any assignment was in fact made to Mission World Peace, are of that character.

---

[14] Indeed, the accused directly advises us in his briefs that, even after the trial panel's decision of disbarment, he has continued to appear in court to accuse the presiding judge of corruption and to interrupt judicial proceedings thereby.

In mitigation, we note that there are no prior disciplinary violations.[15] Also, the accused has been punished for some of the same conduct, because he has been incarcerated on some of the criminal charges. Disbarment is, nonetheless, appropriate in this case both under the ABA Standards and under standards set forth in Oregon statutes. The ABA Standards state:

> "5.11 Disbarment is generally appropriate when:
>
> "(a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation * * *; or
>
> "(b) a lawyer engages in any other intentional conduct involving dishonesty, * * * or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."
>
> "6.11 Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes * * * potentially serious injury to a party, or causes a * * * potentially significant adverse effect on the legal proceeding."

An Oregon statute, ORS 9.527, in part provides:

> "The Supreme Court may disbar, suspend or reprimand a member of the bar whenever * * *:
>
> "(1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;
>
> "* * * * *
>
> "(3) The member has willfully disobeyed an order of a court requiring the member to do or forbear an act connected with the legal profession;
>
> "(4) The member is guilty of willful deceit or misconduct in the legal profession[.]"

It is clear that, applying subsection (1), the accused would not be admitted to practice law with the knowledge that, unreformed, he had committed the crimes and violations of which we have herein found him proved by clear and convincing

---

[15] Any delay in bringing the present charges in this case provides no mitigation. No claim of prejudice, or reformation in the interim, is present.

evidence to be guilty. He also qualifies for disbarment under subsection (3) of ORS 9.527. His misconduct also fits the kind of misconduct described in the ABA Standards, quoted above, providing that disbarment is an appropriate sanction. Even if the contemptuous conduct in court is not placed on the scales, the accused's other crimes and violations call for his disbarment.

The accused is disbarred.

IN THE SUPREME COURT OF THE
STATE OF OREGON

In re Complaint as to the Conduct of
JAY W. WHIPPLE,
Accused.

(OSB 91-174, 91-175, 92-23, 92-24, 93-55, 93-57; SC 29728)

In Banc

On review of the decision of a Trial Panel of the Disciplinary Board.

Submitted on record and briefs October 14, 1994.

Martha M. Hicks, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, and Mark P. Bronstein, Bar Counsel, Portland, for the Oregon State Bar.

No appearance *contra*.

PER CURIAM

The accused is disbarred.

PER CURIAM

In this disciplinary case, the Oregon State Bar received complaints concerning the accused's handling of legal matters involving several different clients. The Bar thereafter brought the present proceeding against the accused, charging 23 violations of the Code of Professional Responsibility. The most serious charges are that the accused violated Disciplinary Rule (DR) 1-102(A)(3)[1] in several instances. A trial panel of the Disciplinary Board found the accused guilty of 16 violations of the disciplinary rules, including three violations of DR 1-102(A)(3) by dishonestly and intentionally appropriating clients' funds to his own use before the fees had been earned. The trial panel's decision was that the accused be disbarred.

Because the trial panel imposed a sanction of disbarment, this review is automatic. Rule of Procedure (BR) 10.4. The Bar must prove a disciplinary violation by clear and convincing evidence. " 'Clear and convincing evidence means that the truth of the facts asserted is highly probable.' " *In re Johnson*, 300 Or 52, 55, 707 P2d 573 (1985). We review *de novo*, ORS 9.536(2), (3); BR 10.6.[2]

After *de novo* review, we find that the accused is guilty of three violations of DR 1-102(A)(3) (dishonesty or misrepresentation). We also find that the accused is guilty of six violations of DR 1-103(C) (duty to cooperate);[3] two violations of DR 9-101(A) (trust account);[4] and one violation each

---

[1] DR 1-102(A)(3) provides:

"It is professional misconduct for a lawyer to:

"* * * * *

"Engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]"

[2] The trial panel found the accused not guilty of seven violations of the disciplinary rules alleged in the Bar's complaint. The Bar does not seek review of those findings. Although we consider the matter *de novo* and may adopt, modify, or reject the decision of the trial panel in whole or in part, in the circumstances of this case and in the light of the other serious charges of which we find the accused guilty, we choose not to review the charges of which trial panel found the accused not guilty.

[3] DR 1-103(C) provides:

"A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege."

The Bar charged the accused with six violations of DR 1-103(C) (duty to cooperate).

of DR 3-101(B) (unlawful practice of law)[5] and *former* DR 9-101(B)(4) (prompt delivery of property which client is entitled to receive).[6] We disbar the accused.

FINDINGS AND CONCLUSIONS

A. Bonnell

In April 1991, Bonnell retained the accused to represent her in an adoption proceeding. There was no written fee agreement.[7] Bonnell paid the accused $250 on May 17 and $250 on May 21. The accused did not deposit any of the money in his trust account but, instead, put it in his general account.[8] The accused researched the adoption issues

---

Before the trial panel, the accused admitted those violations. The trial panel found the accused guilty of six violations of DR 1-103(C). We agree.

[4] DR 9-101(A) provides:

"All funds of clients paid to a lawyer or law firm, including advances for costs and expenses and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated. Trust accounts shall be specifically identified by use of the phrase 'Lawyer Trust Account.' No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

"(1) Funds reasonably sufficient to pay account charges may be deposited therein.

"(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client in which event the disputed portion shall not be withdrawn until the dispute is finally resolved."

[5] DR 3-101(B) provides:

"A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction."

[6] *Former* DR 9-101(B)(4) provided:

"A lawyer shall:

"Promptly pay or deliver to a client as requested by the client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive. * * *."

Former DR 9-101(B)(4) has since been replaced by current DR 9-101(C)(4).

[7] Although this court never has said that a fee agreement must always be in writing, we believe that it is beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. *See In re Potts/Trammel/Hannon*, 301 Or 57, 74-75 n 8, 718 P2d 1363 (1986) (so indicating).

[8] *See* DR 9-101(A) (trust account); *In re Phelps*, 306 Or 508, 513, 760 P2d 1331 (1988) (failing properly to deposit or maintain funds in a trust fund is a "strict

involved and drafted a petition. He did not send the draft to Bonnell for review and did not file the petition. After Bonnell was unsuccessful in her attempts to locate the accused, she filed a complaint with the Bar.

The Bar charged the accused with violations of DR 1-102(A)(3) (dishonesty); and DR 9-101(A) (trust account).

The accused argued before the trial panel that the money paid by Bonnell was a nonrefundable fee, which was earned when paid, and that, in any event, he had done sufficient work according to his time records to have earned $500 when the second payment was received on May 21. Thus, he argued, his keeping the money did not violate either DR 1-102(A)(3) or DR 9-101(A). The accused testified that he had advised Bonnell that his rate was $90 an hour. Bonnell testified that she and the accused did not discuss whether the money was a nonrefundable fee and that hourly rates were never discussed.

In finding the accused guilty of violating DR 1-102(A)(3) and DR 9-101(A), the trial panel found:

> "The accused's defense that he was not required to deposit the funds into his trust account since they were nonrefundable fees is not supported by the evidence. The accused had no written agreement to that effect, and Bonnell denies that she was ever told it was a nonrefundable fee. The Trial Panel finds that it was not a nonrefundable fee and therefore should have been deposited into the trust account and removed from the account as earned.
>
> "The accused further states that he earned the funds and therefore [that he] is not guilty of converting the trust funds before they were earned. The monies were received on May 17 and May 21, and according to the accused's time records, on May 21 he had not earned $500, but in fact to that date had only earned $216, and even on June 24, he had only earned $322."

In *In re Phelps*, 306 Or 508, 512-13, 760 P2d 1331 (1988), this court explained:

> "[I]t is important to distinguish between a charge of dishonesty by misappropriation under DR 1-102(A)(3) and a charge of failing to maintain funds in a trust account under DR

---

liability" offense), citing *In re Mannis*, 295 Or 594, 596-97, 668 P2d 1224 (1983).

> 9-101(A). Though conduct leading to the latter charge often precedes conduct leading to the former charge, the two are not the same. A lawyer may remove money from a trust account (a violation of DR 9-101(A)) before intentionally appropriating that money for the lawyer's own purposes (a violation of DR 1-102(A)(3)), but removal of money from a trust account does not necessarily constitute an intentional misappropriation. The difference between the two is reflected in the sanctions. If the Bar can prove a lawyer is guilty of dishonesty by intentionally appropriating clients' funds to the lawyer's own use, the sanction is disbarment." (Footnote omitted.)

Considering that there was no written fee agreement providing that Bonnell's money was nonrefundable, and in the light of Bonnell's testimony, we agree with the trial panel that the accused's defense, *viz.*, that he was not required to deposit the funds in his trust account, because they were nonrefundable, is not supported by the evidence in the record. We find that the accused had not earned the fees at the time that the funds were received. The accused did not argue that he lacked the requisite intent to convert the money to his own use. *See Id.* at 514 (discussing concept of "innocent conversion" of client money where, due to bad recordkeeping, *etc.*, lawyer does not know that the money has not been earned); *In re Holman*, 297 Or 36, 57-58, 682 P2d 243 (1984) (discussing intent element of *former* DR 1-102(A)(4)). We find that the Bar has established by clear and convincing evidence that the accused violated DR 1-102(A)(3) (dishonesty) by intentionally appropriating Bonnell's funds to his own use when he knew that he had not yet earned the funds. *See id.* at 57-58 (holding that a lawyer who holds money in trust for another and converts that money to his own use has engaged in conduct "involving dishonesty" within the meaning of *former* DR 1-102(A)(4)). Likewise, we also find that the same conduct violated DR 9-101(A)(2) (trust account).

B. Giberson

Giberson was on vacation in Oregon trying to settle his mother's estate and to resolve a problem that he had with his sister, who was living in his deceased mother's home. He consulted with the accused in July 1991, and was quoted a rate of $90 per hour, but no agreement concerning fees was reached. There was no written fee agreement, and Giberson

paid no money to the accused at that time. On October 1, 1991, Giberson sent $500 to the accused, which the accused deposited into his trust account and withdrew within a week. The accused's time records indicate that, before October 1, 1991, he spent 8.1 hours working on Giberson's legal matters. Much of that time was involved with the question of Giberson's sister, who was living in the home of Giberson's deceased mother, and how to remove the sister from the home. Other time was spent in drafting a petition for the probate. By October 1, 1991, at his quoted rate of $90/hour, the accused would have been entitled to receive $729 from Giberson. There was a sharp conflict in testimony concerning the communication between Giberson and the accused. The accused testified that Giberson agreed to send him $1,000, of which he received only $500. Giberson testified that he sent the accused $500 unsolicited in order to encourage him to process the probate. Giberson also indicated that he expected his sister to pay the accused's fees. No work was done on the estate between October and December. When Giberson could not contact the accused, he hired another lawyer.

In December 1991, Giberson, through his new lawyer, requested that the accused return his $500 and Giberson's documents, which included his mother's will. The accused failed to return the money and the documents promptly. The Bar received a complaint from Giberson's new lawyer concerning the accused's conduct, which it forwarded to the accused for a response. The accused made no response.

The Bar charged the accused with a violation of *former* DR 9-101(B)(4) (prompt delivery of property which client is entitled to receive). The accused admitted the violation. We agree with the trial panel that the accused violated *former* DR 9-101(B)(4) in the Giberson matter.

The Bar also charged the accused with violations of DR 6-101(B) (neglecting a legal matter) and DR 7-101(A)(2) (failing to carry out a contract of employment). The trial panel found that the accused violated DR 6-101(B) and DR 7-101(A)(2) by failing to take any action in the Giberson case between October and December 1991 and by failing to contact Giberson or to provide a method by which Giberson could contact him during that period. For the reasons that follow, we disagree.

In *In re Recker*, 309 Or 633, 636, 789 P2d 663 (1990), a lawyer was retained to draft a will, never did so, never had any contact with the client after the initial meeting, and never returned the client's telephone calls despite assurances to the client by the person answering the lawyer's telephone that the lawyer was receiving the messages. That conduct continued for four months, until the client retained another lawyer to handle the matter. *Ibid.* In *Recker*, this court stated:

> "The accused's failure to respond to [the client's] efforts to contact her, her unexplained failure to take action on an apparently simple legal matter, and her ignoring [the client's] request for return of documents are violations of [DR 6-101(B) and DR 7-101(A)(2)]." *Ibid.*

Here, the accused had one telephone contact with Giberson after the initial consultation, took certain actions on Giberson's behalf, and prepared a probate petition. The accused explained that the two-month period during which he took no action on the Giberson matter included the time during which he was suspended from the practice of law for nonpayment of his Professional Liability Fund assessment, and that he was waiting to hear from Giberson and to receive additional fees. Apparently there was some confusion as to who was to pay those additional fees. Giberson testified that he had arranged for his sister to do so and, on discovering that she had not, he attempted to contact the accused. Although Giberson testified that he was unable to contact the accused by telephone, he did not provide any specific information about the number of times or the dates on which he attempted to contact the accused. Unlike in *Recker*, the period of the accused's inaction was relatively brief and his failure to take action during that period was partially explained. We conclude that the Bar has failed to establish by clear and convincing evidence that the accused violated DR 6-101(B) or DR 7-101(A)(2) in the Giberson matter.

C. Reisinger

In July 1991, Reisinger retained the accused to advise him about creditor problems and a possible bankruptcy. There was no written fee agreement. In early August, Reisinger gave the accused $570, which the accused did not deposit in his trust account. Reisinger later complained to the Bar about the accused's conduct.

The Bar charged the accused with violations of DR 1-102(A)(3) (dishonesty); and DR 9-101(A)(2) (trust account).

As in the Bonnell case, the accused argued before the trial panel that the money paid by Reisinger was a nonrefundable fee, which was earned when paid. Thus, he argues, his keeping the money did not violate either DR 1-102(A)(3) or DR 9-101(A).

The trial panel found:

> "[T]he accused has violated [DR 1-102(A)(3) and DR 9-101(A)(2)]. His only defense appears to be that these were in fact nonrefundable fees. Even though the Bar is required to prove its case by clear and convincing evidence, the accused has no written agreement indicating nonrefundable fees, and where the only evidence in the case of their being nonrefundable is his statement, the trial panel cannot find they were nonrefundable. They were required to be deposited in the client's trust account unless all of the funds were owed to the accused at the time they were paid. The accused [*sic*] time records * * * show that on the date the check was received from the client, the accused had only done at most about 1.6 hours of work for the client, which at most would have translated into $145 fees owing at that time."

For the reasons that follow, we are not persuaded that the Bar has established by clear and convincing evidence that the accused violated DR 1-102(A)(3) or DR 9-101(A) in the Reisinger matter.

Reisinger did not testify before the trial panel, and his complaint to the Bar is not part of the record here. Other than the testimony of the accused, the record before us is devoid of any evidence pertaining to the nature of the fee agreement in the Reisinger matter. As noted, there was no written fee agreement. The accused testified that he told Reisinger that he would charge "at least $450 and the filing fee, which is $120," which needed to be paid "up front," and that, if he had to spend additional time on the case, he would bill Reisinger $90 per hour for that time.

To establish the alleged violations of DR 1-102(A)(3) (dishonesty) and DR 9-101(A)(2) (trust account), the Bar must demonstrate by clear and convincing evidence that the

accused dishonestly and intentionally appropriated Reisinger's money to his own use before he had earned it and that he was required to deposit Reisinger's money in his trust account but failed to do so. *In re Phelps, supra*, 306 Or at 513. From the evidence in the record, we are unable to find that the accused agreed to charge $90 per hour for *all* his work for Reisinger, as the trial panel concluded. Also, we do not have sufficient information to determine when the fee was earned. Thus, the trial panel's conclusion that Reisinger's $570 was unearned at the time the accused received it is not supported by clear and convincing evidence in the record.

D. Owens

In September 1991, Owens retained the accused to probate the estate of her father. Owens was the personal representative of the estate. There was no written fee agreement. On October 1, Owens gave the accused a $500 check, which he deposited in his trust account. The accused immediately withdrew $370 to pay his rent. At the time that he withdrew those funds, the accused knew that he had not earned them. Owens' check was dishonored, due to insufficient funds. About a week later, Owens gave the accused a second $500 check, which he cashed. In November, the accused deposited $63 in his trust account on Owens' account.

On October 11, 1991, the accused was suspended from the practice of law for failure to pay his Professional Liability Fund premium. Between October 11 and November 5, 1991, the date when he was reinstated, the accused had four contacts with Owens or her husband about the probate. Although those contacts were recorded on the accused's time sheets that were submitted later to the probate court, the accused did not bill Owens for any time spent on the probate matter during the period of his suspension. After he was reinstated, the accused continued working on the Owens probate, which he eventually completed. Owens later complained to the Bar about the accused's conduct.

The Bar charged the accused with two violations of DR 1-102(A)(3) (dishonesty and misrepresentation); and with violations of DR 9-101(A) (trust account) and DR 3-101(B) (unlawful practice of law).

The accused argued that he could not have misappropriated Owens' money, because Owens' first check was dishonored due to insufficient funds and, in any event, that he had earned $500 when he cashed Owens' second check.

The trial panel found that, after the accused deposited Owens's first $500 check in his trust account, he immediately withdrew $370 to pay his rent and that, at the time that he withdrew the $370, he knew or should have known that he had not earned that amount of fees. The trial panel explained:

> "[T]he fact that the check was returned for insufficient funds has nothing to do with the finding that the accused violated the disciplinary rules. At the time he took those funds from the trust account, he knew or should have known that he had not earned them and had no way of knowing that the funds were not on deposit."

The trial panel then stated:

> "There is a direct conflict in testimony between the witnesses and the accused as to what took place in communication during the suspension. A review of the time records shows that during the suspension period, the accused had four contacts involving this case. On October 22, 1991, he met with the personal representative at his office and held a conference for half an hour. On October 23, 1991, he talked to the personal representative's husband, which is designated 'follow-up,' for almost two hours. On October 24, 1991, there was a telephone conference with the personal representative for approximately 20 minutes and another telephone call to the personal representative on November 1, 1991 for approximately 6 minutes.
>
> "It is clear those contacts took place during the period in which the accused was suspended for failure to pay his professional liability premiums. It is further reflected in the fact that he indicated the records on his statement filed on the estate for probate, indicating no charge. If the accused rendered no legal services to the Owens, then there would have been no reason to include that time on the time sheets submitted to the Probate Court. Whether it was being charged for or not, it is difficult for the Trial Panel to see how the accused could have spent almost two hours talking to Jim Owens without something to do with the estate significant enough to include on the time records and not to have been practicing law."

The trial panel found that the Bar sustained its burden of proof as to DR 3-101(B) and that the accused violated the rule. The trial panel also found the accused guilty of violating DR 1-102(A)(3) (dishonesty) and DR 9-101(A) (trust account).

We choose not decide whether the accused violated DR 1-102(A)(3) (dishonesty) in his handling of the first Owens check, which was dishonored, because we conclude that he violated DR 1-102(A)(3) (dishonesty) when he cashed the second Owens check and appropriated the unearned portion of that money to his own use knowing that he had not yet earned it. We agree with the trial panel that the accused violated DR 1-102(A)(3) and DR 9-101(A)(2) in the Owens matter.

The Bar also charged that the accused violated DR 1-102(A)(3) (misrepresentation) by failing to tell the Owens that he was suspended from the practice of law when he met with them on October 22, 1991. Although the trial panel's opinion did not address that charge, the Bar requests that we do so.

When he communicated with Owens and her husband about the probate matter, the accused knew that he was suspended from the practice law. He did not inform the Owens of that fact. We conclude that the accused's intentional failure to disclose his status to Owens was a misrepresentation of a material fact that violated DR 1-102(A)(3). *See In re Boardman*, 312 Or 452, 456-57, 822 P2d 709 (1991) (misrepresenting material fact); *In re Hiller and Janssen*, 298 Or 526, 533-34, 694 P2d 540 (1985) (misrepresentation can include nondisclosure of material fact).

The Bar charged the accused with a violation of DR 3-101(B) (unlawful practice of law) because of his communications with Owens about the estate during the period when he was suspended from the practice of law. The accused argued that the communications with the Owens did not constitute practice of law, notwithstanding that they were recorded on his time records that later were submitted to the probate court indicating that he had worked on the case. Owens and her husband each testified that the probate and her duties as personal representative of the estate were

discussed during the communications. We agree with the trial panel that the accused violated DR 3-101(B) in the Owens matter.

SANCTION

In determining the appropriate sanction for the multiple violations of the disciplinary rules in this case, this court looks to the American Bar Association's Standards for Imposing Lawyer Sanctions (1991) and Oregon case law. This court considers the ethical duty violated, the lawyer's mental state, the actual or potential injury, and the existence of aggravating and mitigating circumstances. *In re Spies*, 316 Or 530, 541, 852 P2d 831 (1993).

In this proceeding, we have found the accused guilty of dishonesty by intentionally appropriating clients' funds to his own use in the Bonnell and Owens matters. Although we recognize that the facts in this case differ from the following cited cases, at least in degree, generally, a single act of intentional and dishonest appropriation of a client's trust funds in violation of DR 1-102(A)(3) warrants disbarment. *In re Phelps, supra*, 306 Or at 512-13; *In re Holman, supra*, 297 Or at 56; *In re Thomas*, 294 Or 505, 527, 659 P2d 960 (1983); *In re Pierson*, 280 Or 513, 518, 571 P2d 907 (1977). ABA Standard 4.11 states: "Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." We also have found the accused guilty of a violation of DR 1-102(A)(3) (misrepresentation) in the Owens matter.

We have found the accused guilty of two violations of DR 9-101(A) (trust account). ABA Standard 4.12 indicates that suspension may be an appropriate sanction where a lawyer knew or should have known that he or she was dealing improperly with client property, and there is injury or potential injury to the client.

We have found the accused guilty of unauthorized practice of law, DR 3-101(B). ABA Standard 7.2 indicates that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. Unauthorized practice of law always has the potential to cause injury to the legal system.

We have found the accused guilty of failing to deliver promptly property that the client is entitled to receive, DR 9-101(B).

We have found the accused guilty of six counts of failure to cooperate with the Bar's investigation of the complaints involved in this proceeding, DR 1-103(C). *See In re Hereford*, 306 Or 69, 74, 756 P2d 30 (1988) ("[the] responsibility of a lawyer [under DR 1-103(C)] to 'respond fully and truthfully to inquiries from * * * other authority empowered to investigate [claims of ethical violations]' is not less important than a lawyer's other responsibilities under the disciplinary rules."); *see also In re Haws*, 310 Or 741, 755-56, 801 P2d 818 (1990) (Gillette, J., concurring) (suspension is appropriate sanction for repeated unexcused violations of DR 1-103(C)).

The trial panel found:

> "The accused appears to be a decent person who over the many years of his practice had a difficult time with the business aspects of the practice of law. * * *. He has had financial difficulties to the extent that his business phones have been shut off, as well as his personal phone, and he has been unable on a number of occasions to meet his rent obligations when due. * * *. It is evident from the testimony that the accused made use of the funds from the trust account. He had severe financial problems, *i.e.* his rent was due and there were other financial difficulties. * * *"

The fact that the accused was in need of money for his office and personal expenses and that the amount of client trust funds that he appropriated to his own use was not relatively large does not alter our conclusion that the accused's wilful violations of DR 1-102(A)(3) (dishonesty) by dishonestly and intentionally appropriating his clients' funds to his own use warrant disbarment. Nor do the accused's other personal difficulties mitigate his numerous other violations of the disciplinary rules set forth above.

We note that the accused has a history of prior discipline;[9] that in addition to two violations of DR

[9] The accused's history of prior discipline includes a 1982 letter of admonition, a 1983 suspension for 90 days, and a 1986 suspension for 60 days with two years probation.

1-102(A)(3) (dishonesty) and another violation of DR 1-102(A)(3) (misrepresentation), there are multiple other violations of the Code; that the accused has obstructed the investigation of these six complaints by ignoring his duty to cooperate with the Bar's investigations; and that the accused has substantial experience in the practice of law. *See* ABA Standards 9.22(a), (c), (d), (e), and (i) (listing those factors as aggravating factors). The accused's cumulative misconduct dictates that he be disbarred.

The accused is disbarred.

SUBJECT MATTER INDEX

References are to Opinions

WITHDRAWAL FROM EMPLOYMENT