

# Disciplinary Board Reporter

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**Volume 10**

*January 1, 1996 to December 31, 1996*

*Report of Attorney Discipline Cases  
Decided by the Disciplinary Board  
and by the  
Supreme Court for 1996*

**Donna J. Richardson**  
*Editor*

**Caroline Stein**  
**Carol Guile**  
*Production Assistants*



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# DISCIPLINARY BOARD REPORTER

## REPORT OF CASES

Adjudicated by  
the Disciplinary Board  
of the Oregon State Bar

and

Supreme Court  
Attorney Discipline Cases  
for 1996

**Donna J. Richardson**  
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## Preface

This Reporter contains final decisions of the Disciplinary Board. The Disciplinary Board Reporter should be cited as 10 DB Rptr 1 (1996).

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. 320 of the 1997 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, 1997 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.

Included in this DB Reporter are stipulations by the Supreme Court which do not appear in the Advance Sheets. Also included you will find a summary of 1996 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. All have been included in the subject matter index, the table of Disciplinary Rules and Statutes, Table of Cases and the Table of Rules of Procedure. Also included this year is a reinstatement denial.

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  
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IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
 Complaint as to the Conduct of ) Case No. 93-122; 93-123  
 )  
 ARTHUR B. LAFRANCE, )  
 )  
 Accused. )  
 )

---

Bar Counsel: Michael P. Opton, Esq.

Counsel for the Accused: Pro Se

Disciplinary Board: Andrew Kerr, Chair; Todd A. Bradley;  
and Wilbert Randle, Jr., Public Member.

Disposition: Violation of DR 1-102(A) (3); DR 1-102(A) (4)  
and DR 7-110(B). Stipulation for Discipline.  
Public Reprimand.

Effective Date of Opinion: February 16, 1996.

Note: Due to space restrictions, exhibits are not included but may  
be obtained by calling the Oregon State Bar.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	Case Nos: 93-122; 93-133
	)	
Complaint as to the Conduct of	)	OPINION OF THE
	)	TRIAL PANEL
ARTHUR B. LAFRANCE,	)	
	)	
Accused.	)	
	)	

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INTRODUCTION

THIS MATTER came before the Trial Panel for hearing on November 16 and 17, 1995. The accused appeared in person and represented himself. The Bar appeared through OSB Disciplinary Counsel Jeff Sapiro and trial-counsel Michael P. Opton.

Testimony was received from Judge Charles A. Sams on November 16, 1995, and from Accused Arthur B. LaFrance on November 17, 1995.

At the commencement of the hearing, it was stipulated by the parties that a transcript of testimony of witnesses from a substantially similar proceeding conducted by the State of Maine Board of Bar Overseers could be considered by the Trial Panel to the same extent as if those witnesses had appeared in person in this proceeding. In addition, it was stipulated that exhibits from the Maine proceeding would be admitted as evidence in this hearing, to be given such weight as the trial panel deemed appropriate. The trial panel was asked to rule independently on any objections preserved by the parties in the Maine proceeding. Bar exhibits numbered 1 through 51 were received, and the Accused's exhibits numbered 1 through 10 were also received. The members of the Trial Panel have read and considered the voluminous evidence received pursuant to these stipulations.

The hearing was conducted on the Bar's Amended Formal Complaint, dated October 25, 1995, which contained three Causes of Complaint alleging violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B). The complaints all arise from a series of events involving a domestic dispute which began in Maine in 1992, which are related in substantial detail below.

BACKGROUND FACTS

The accused began dating Barbara Rowland ('Rowland) in 1989 or 1990. Mrs. Rowland then resided in Yarmouth, Maine, and had custody of the two minor children from her previous marriage. The father of the children, Robert Kingman (Kingman), lived about 50 miles from Yarmouth, and exercised regular visitation with the children, as provided by the divorce decree.

In early 1992, the accused and Rowland decided to marry and move to Oregon, where the accused held a position as a law professor at Lewis and Clark Northwestern School of Law. When

Kingman learned of the plans to move to Oregon with the children, he initiated proceedings in Superior Court, Cumberland County, Maine, for modification of the divorce decree regarding the primary residence of the children. The proceeding was entitled Rowland v. Kingman, No. 89-CV-1047, and both Kingman and Rowland were represented by counsel in that matter.

On June 3, 1992, a Consent Order was signed by Superior Court Judge Cleaves, appointing a Guardian Ad Litem to investigate and report on the issues of custody and primary physical residence, and prohibiting Rowland from permanently removing the children from the State of Maine until the Court ruled on the Kingman motions.

Despite the pendency of the custody/residence matter, the accused and Rowland proceeded with plans to move to Oregon. Rowland closed her medical practice and put her home up for sale. She applied for jobs in Oregon, and looked at schools for the children. Prior to any final ruling, the accused and Rowland purchased airplane tickets for themselves and the children, arranged for movers to pick up the furniture from Rowland's home, and held a going-away party for the children.

A hearing on Kingman's motions was scheduled for August 6, 1992. Judge Beaudoin, to whom the case was assigned that day, was advised that Rowland had already purchased plane tickets for later in August, and that the parties needed to have a decision. He decided to take testimony on the question of whether the children should be allowed to move to Oregon pending a final decision. After hearing testimony from the Guardian Ad Litem, Judge Beaudoin determined that it would not be in the best interests of the children to allow the move to take place if there was a chance that the ultimate decision would require the children to return to Maine. He, therefore, declined to issue an interim order and arranged his docket to allow two more days of testimony on August 13 and 14, 1992, so that a final order could be issued before August 24, 1992, which was the date of the flight reservations.

The accused was present at the August 6, 1992, proceeding, and understood that Judge Beaudoin was expediting the hearing to avoid the potential for exposing the children to two moves.

Further testimony was heard on August 13 and 14, 1992, and on August-17, 1992, Judge Beaudoin issued an order which stated, in relevant part:

"If Mrs. Rowland relocates to the state of Oregon, it is in the best interests of Edwin and Meagan Kingman that they primarily reside with Mr. Kingman in Yarmouth, Maine.

"Therefore, it is ORDERED that the divorce judgment dated May 16, 1991 shall be amended to change the primary physical residence of the children to Mr. Kingman if Mrs. Rowland relocates to Oregon, and on condition that Mr. Kingman reside in Yarmouth, Maine. It is further ORDERED that primary physical residence for the children shall remain with Mrs. Rowland if she does not relocate to Oregon, or if Mr. Kingman does not move to Yarmouth as soon as it is reasonably possible after Mrs. Rowland's relocation."

After this order was issued, Rowland fired the attorney who

had represented her throughout the proceedings "to date. Between August 17th and August 24th, 1992, the accused and Rowland consulted with several other attorneys in Maine regarding the meaning of Judge Beaudoin's order and, specifically, whether it permitted them to move to Oregon pending some further proceeding. The attorneys, none of whom had previously represented Rowland or been involved in the proceedings which preceded issuance of the August 17th order, gave conflicting advice on this issue. At least one of the attorneys expressed the opinion that unless Kingman had established a residence in Yarmouth, Rowland could move to Oregon with the children without violating the terms of the August 17th order. No attempt was made to seek clarification of any perceived ambiguities from Judge Beaudoin or to discuss the matter with Kingman or his attorneys. On August 19, 1992, the accused contacted an attorney in Portland, Oregon, to arrange for an appointment for Rowland to discuss the custody matters. An appointment was made for August 26, 1992, in Portland.

On August 22, 1992, Rowland and the accused picked up the children at Kingman's residence, where they had been visiting. Kingman asked Rowland what her intentions were with respect to the move, but Rowland did not disclose that she intended to leave for Oregon with the children as scheduled on August 24th. Instead, she told Kingman that she would stay in Maine if that is what she had to do to retain custody of the children. The Accused was not a party to this conversation, but was told by Rowland that it had occurred soon afterward.

On August 24th, the Accused, Rowland, and the children flew to Oregon without giving any advance notice to Kingman or the court. On August 25th, the Accused telephoned Kingman and told him that the children were now in Oregon, that they expected to stay in Oregon until the "custody thing is finally resolved," and that "this fight is only just started."

On August 26, 1992, the Accused and Rowland met with an attorney in Portland to discuss legal steps to be taken in Oregon to prevent Mr. Kingman from interfering with the Rowland's custody of the children. On the advice of the attorney, a Temporary Protective Order of Restraint was obtained from the Multnomah County Circuit Court, and a copy of that order was hand-delivered to the Lake Oswego Police Department, on August 27, 1992. The choice of Multnomah County rather than Clackamas County, where Rowland and the Accused resided, was apparently made for the convenience of Rowland's attorney, and not for any other reason.

In the meantime, Kingman returned to the court in Maine on August 27, 1992, and obtained an ex parte order for the return of the children to Maine and an order to show cause why Rowland should not be held in contempt for failure to comply with the August 17, 1992, order. Kingman also retained an Oregon attorney, who that same day obtained a Writ of Assistance from Clackamas County Circuit Court Judge Sams. On the evening of August 27th, pursuant to Judge Sams' order, police officers appeared at the Accused's home in Lake Oswego and removed the children, turning them over to Kingman for transport back to Maine.



## FIRST CAUSE OF COMPLAINT

For its first cause of complaint, the Bar alleges that the Accused engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of DR 1-102(A)(3), in connection with the move to Oregon. Specifically, the Bar complains that the Accused concealed his intent to move Rowland's children from Maine to Oregon after Judge Beaudoin's August 17th order, assisted Rowland in her plan to move with the children to Oregon, and failed to disclose to Rowland's new attorneys all of the relevant facts surrounding the issuance of the August 17th order.

The terms "fraud" and "deceit," as used in DR 1-102(A)(3), refer to conduct that would be actionable under Oregon law. In re Hockett, 303 Or 150, 734 P2d 877 (1987). The Bar's evidence did not establish the elements of tortious fraud, deceit, or misrepresentation, which would have required, among other things, a false representation made with intent that the other act upon it. There is no evidence that the Accused was ever asked about his intentions with regard to leaving Maine with Rowland's children, nor can we identify a particular circumstance at which the accused had a duty to correct a known misapprehension by the court, the Guardian Ad Litem, Kingman, or Kingman's attorneys.

The Bar argues that the Accused concealed from Rowland's new attorneys all relevant information about the court's August 17th order. It is apparent that the Accused and Rowland shopped for an attorney who would support their desired interpretation of the August 17th order. However, to the extent that evidence was presented concerning what information those attorneys possessed, it does not establish that any of the attorneys were misled by a failure of the Accused to provide relevant facts. It is also not established that any of the attorneys relied on the Accused to furnish relevant facts, or that he actively undertook to conceal facts or to prevent the attorneys from learning everything relevant to the matter about which they were being consulted.

The Bar also asserts that by assisting Rowland in moving to Oregon with the children, the Accused engaged in conduct involving dishonesty or misrepresentation. "Dishonesty" and "misrepresentation" are broader concepts than fraud or deceit, and have been held to prohibit a lawyer from assisting a client in conduct which the lawyer knows is fraudulent or illegal. In re Hockett, supra. Nor is it necessary to be acting on behalf of a client in order to violate DR 1-102(A)(3). A lawyer owes a duty to the court and other lawyers to be candid, fair and honest in all of his dealings. In re Hockett, supra; In re Glass, 308 Or 297, 779 P2d 6 12 (1989).

Judge Beaudoin's order of August 17, 1992, while perhaps not a model of clarity when read in isolation, was nevertheless clear enough to anyone who had participated in the proceedings leading up to its issuance. The Accused argues that it was not unreasonable to interpret the August 17th order as requiring Kingman to first move to Yarmouth as a precondition to any change of permanent residence for the children. This interpretation ignores entirely the whole reason for expediting the hearings; namely, to avoid the harm to the children that would result from

being forced to move twice. The Accused acknowledges that the children would have to return to Maine if Kingman moved to Yarmouth, which meant that his proposed construction of the order exposed the children to the exact harm which the hearings had been conducted to prevent.

The most obvious course of action to take if there were genuine doubts about the Judge's intention was to ask the court for clarification. The most probable explanation for the failure to make inquiry of the court is that Rowland and the Accused knew that the order was intended to preclude them from taking the children to Oregon. Furthermore, if the Accused and Rowland believed that their interpretation was reasonable, there would have been no credible reason to conceal their intentions from Kingman, who had not yet moved to Yarmouth except to ensure that Kingman did not thwart their plans by making arrangements to move to Yarmouth.

The Trial Panel finds, by clear and convincing evidence, that the Accused knew that the order was intended to prohibit an interim move to Oregon, and that the Accused's claim to have relied upon the advice of counsel is not made in good faith. This was the finding of the Maine Superior Court in Rowland's subsequent contempt hearing, and the Trial Panel reaches the same conclusion with respect to the Accused's conduct.

This finding does not, by itself, answer the question of whether the conduct violates DR 1-102(A)(3). The Accused was scheduled to return to Oregon in any event, to resume his duties at the law school. The Accused was not a party to the Maine proceedings, and he did not have an attorney-client relationship with Rowland. We have already declined to find a duty on the Accused's part to communicate with the court or Kingman with respect to his intentions. The Trial Panel is cognizant of the difficulty to the Accused which would be created by an independent decision by Rowland to intentionally violate the court order. We would not be inclined to find a violation of the Disciplinary Rule if the Accused had merely acquiesced in his wife's decision by carrying the luggage, accompanying her and the children on the airplane, and opening his Oregon home to them.

In this case, it is not necessary for the Trial Panel to identify the limits of DR 1-102(A)(3). The facts presented demonstrate that the Accused's involvement was not merely passive. Rather, it is apparent that he helped her shop for an attorney who would provide a pretext for the move; he set up an appointment with an Oregon attorney for the purpose of placing obstacles to Kingman's predictable response; he telephoned Kingman from Oregon and taunted him by stating that the fight was just beginning. At no time has the Accused described any effort on his part to persuade his wife to seek clarification from the court or to delay the move to Oregon. His subsequent writings and arguments make clear that the Accused continues to fail to acknowledge the wrongness of the course of action that he and Rowland chose to take. In summary, the Accused actively participated in the intentional violation of a court order. Based on these facts, the Trial Panel finds that the Accused intentionally engaged in conduct involving dishonesty, in

violation of DR 1-102(A)(3).

#### SECOND CAUSE OF COMPLAINT

The Bar's Second Cause of Complaint alleges that the Accused engaged in conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(4). In addition to the conduct described above relating to the Maine proceedings and the move to Oregon, the Bar complains of certain conduct which occurred after the children returned to Maine.

The Bar alleges, and the Accused admits, that the following letters were sent, as described below:

1. On August 28, 1992, the Accused wrote to Judge Beaudoin, to complain of the conduct of Kingman and his attorney in obtaining Judge Cleaves' ex parte order for return of the children to Maine. Copies of the letter were sent to attorneys for Kingman, Rowland, and Judge Cleaves. In the letter, the Accused asks that Kingman's lawyers be removed from the case and investigated for unethical conduct.
2. On August 29, 1992, the Accused again wrote to Judge Beaudoin, before whom the Maine custody matter remained pending, advising him that Kingman did not have a residence in Yarmouth. No copies of this letter were sent to anyone.
3. On August 31, 1992, the Accused sent a letter to Clackamas County Judge Sams, Kingman's Oregon lawyers, and the Lake Oswego Police Department. Copies were sent to Kingman's Maine lawyers, Rowland's lawyers, Judge Cleaves and Judge Beaudoin. In this letter, the Accused asserted that Judge Sams had been without authority or jurisdiction to order the removal of the children, that a hearing should have been held after notice, that the procedure followed was in violation of due process, the Fourth Amendment, professional courtesy and common decency, and asking that a hearing be scheduled and that Kingman be ordered to return the children to Oregon.
4. On November 4, 1992, the Accused wrote to Judge Sams. He stated that he had not yet received a response to the August 31, 1992, letter, or an acknowledgment of its receipt. He asked Judge Sams to place both letters in "the appropriate agency and court files to assure preservation in the eventuality of further court review." No copies of this letter were sent to anyone.
5. On November 9, 1992, the Accused sent letters individually addressed to Judge Sams, Judge Beaudoin, and Judge Cleaves, notifying each of them that the Accused had drafted a complaint alleging civil rights violations and further advising of his intent to file it. The Accused did not identify the potential defendants to be named. The Accused stated that he was delaying filing of the complaint pending the entry of an order in the custody matter, which was still pending before Judge Beaudoin. He asked each recipient to prepare written reconstructions of events in the case, "to assure accurate recall at the time of any deposition."

The "administration of justice" includes both the procedural functioning of the court or proceeding and the substantive interest of parties to a proceeding. Prejudice, or harm, to the administration of justice can occur from repeated conduct or from a single act which causes substantial harm. In re Haws, 310 Or

741, 801 P2d 818 (1991).

With respect to the Accused's behavior in connection with the move to Oregon, his participation in the intentional violation of Judge Beaudoin's order of August 19, 1992, resulted in expensive and protracted proceedings in Maine and Oregon, including contempt proceedings and police action. This placed additional, unnecessary burdens on the administration of justice which are amply documented in the partial transcripts and court records which were introduced in evidence. The Trial Panel concludes that the conduct described under the discussion of the Bar's First Cause of Complaint also constitutes conduct prejudicial to the administration of justice, in violation of DR 1-102(A) (4).

In regard to the letters described above, the Bar alleges that the Accused violated DR 1-102(A) (4) by "corresponding with various judges in a threatening manner for the purposes of influencing judicial action." At the time of sending the letters to Judge Sams, there was no action pending in Clackamas County, and we have heard no evidence to suggest that further proceedings were likely or contemplated in that court. Judge Sams testified that he interpreted the letters as containing a veiled threat, and that he felt the matter should have been raised through appropriate pleadings, appeals, requests for reconsideration, or other open court procedure.

The Trial Panel agrees that the proper means to raise issues with a court's ruling is to file an appropriate pleading. However, because there was no matter pending before Judge Sams, the Trial Panel is unable to conclude that the letters to Judge Sams were intended to influence judicial action or that they interfered with the administration of justice to the degree required to find a violation of DR 1-102(A) (4). For this reason, the Trial Panel is also not prepared to find that sending a letter to a potential defendant, advising that person of the likelihood of a lawsuit, violates the Disciplinary Rules under the facts of this case.

The letters to Judge Beaudoin and Judge Cleaves are another matter. The Accused knew that those Judges continued to exercise jurisdiction in the pending domestic relations case involving Rowland and Kingman and that specific matters remained under advisement. The Accused's letters, particularly the one dated November 9, 1992, state that judicial actions, including those yet to be taken, in the pending case will be the subject of inquiry in a federal civil rights action. Although the letter does not identify the defendants, it is not surprising that Judges Cleaves and Beaudoin, as the individuals responsible for the actions about which the Accused complained, would be the intended targets of the suit.

In sending the letters to the Maine judges, the Accused could not have failed to recognize that his letters would be viewed as attempts to intimidate the court. Judge Cleaves testified that the correspondence from the Accused created a threat to the integrity of the pending proceedings. He also stated that, while he not infrequently receives letters from disgruntled spouses in domestic relations matters, he considered

such contact from a lawyer to be more disruptive because of the greater ability of a lawyer to carry out the threat to bring a lawsuit.

Judge Beaudoin also testified that he had matters under advisement in the custody proceeding when the letters were received, and that he viewed the November 9, 1992, as a threat to file a federal lawsuit. He stated that he was not intimidated, however, and that he did not believe there was any legal basis for suit against him.

The Accused argues that the letters were not intended to influence judicial action, that the letters of November 9, 1992, were merely requests to preserve evidence for a possible suit against someone other than the judges, and that the correspondence should not have been interpreted by the judges as threatening. He also observes that he was not a party or attorney for any party, and contends that he had a constitutional right to express his views on the propriety of the judges' conduct. The Trial Panel finds that the Accused is not credible on this issue.

It is clear that the Accused was in a highly emotional state after the events of August 27th, and that he was actively involved at all times with the conduct of the custody matter after that date. The August 28, 1992, letter to Judge Beaudoin was an open disparagement of Kingman and his attorneys and a challenge to the legality of the previous court order, the only possible purpose of which was to influence the outcome of the proceeding to be held upon Rowland's return, to Maine. Likewise, the August 29th letter to Judge Beaudoin, copies of which were not sent to anyone, was intended to discredit Kingman. As noted above, the Accused could not have been surprised at the reaction of the judges to the November 9th letters.

The question is: does the sending of the letters constitute conduct prejudicial to the administration of justice? In considering this question, the Trial Panel has taken into consideration the fact that a non-lawyer may well be excused for conduct which would result in discipline when committed by a lawyer. A layperson writing to a judge to complain about a ruling does not evoke the same consternation for the administration of justice as an ex parte or threatening missive from an attorney connected with a pending proceeding. It is not unreasonable to expect a lawyer to be aware of the various methods and procedures available for obtaining a hearing, for the proper introduction of evidence, and for seeking reconsideration or appeal. It is also reasonable to expect a lawyer to be aware of the effect that divergence from usual practice and procedure will have on judges and other lawyers.

The Oregon Supreme Court has held that writing letters to potential witnesses improperly threatening litigation is conduct prejudicial to the administration of justice. In re Smith, 316 Or 55, 848 P2d 612 (1993). The fact that the judges in this case were ultimately not influenced by the letters is not relevant, because the potential for substantial prejudice was created by the conduct. In re Boothe, 303 Or 643, 740 P2d 785 (1987) (unsuccessful attempt to persuade a witness not to testify). Prejudice resulted from the distraction and alarm caused by the

letters, and the potential existed for further substantial prejudice to the integrity of the pending matters due to improper out-of-court communications with the judge before whom the matter was pending. The Trial Panel notes as well that the prejudice resulted from repeated conduct, as the Accused sent at least three letters to Judges Cleaves and Beaudoin.

Based on this analysis, the Trial Panel finds that the Accused violated DR 1-102(A)(4) by writing to Judge Cleaves and Judge Beaudoin.

#### THIRD CAUSE OF COMPLAINT

The Bar's Third Cause of Complaint is that one or more of the letters described above constituted improper ex parte communications with a judge, in violation of DR 7-110(B).

DR 7-110(B) states:

\* \* \*

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending except:

- (1) In the course of official proceedings in the cause.
- (2) In writing if the lawyer promptly delivers a copy of the writing to the opposing counsel or to the adverse party if the party is not represented by a lawyer.
- (3) Orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by counsel.
- (4) As otherwise authorized by law or Section A(4) of Canon 3 of the Code of Judicial Conduct.

The Trial Panel has already observed that there were no proceedings pending before Judge Sams' at the time of the communications in question. Therefore, by the plain language of the rule, no violation of DR 7-110(B) was involved with respect to the letters to Judge Sams.

A copy of the August 28, 1992, letter to Judge Beaudoin was sent to Kingman's lawyers, as well as Rowland's lawyers. Accordingly, DR 7-110(B) was not violated by that communication.

On August 29, 1992, the Accused wrote to Judge Beaudoin without sending copies to anyone. This letter, which referred to Kingman's residence in Yarmouth, plainly concerned the merits the matter which was pending before Judge Beaudoin.

The November 9, 1992, letters to Judge Beaudoin and Judge Cleaves were identical to those sent to Kingman's lawyers. However, each letter was individually addressed to the recipient, so Kingman's lawyers had no way of knowing that the letter had been sent to the court. That letter referred specifically to the matter under advisement, and may also have influenced the outcome of matters yet to be addressed, and therefore is considered by the Trial Panel to be a communication on the merits. See In re Burrows, 291 Or 135, 629 P2d 820 (1981) and In re Smith, 295 Or 755, 670 P2d 1018 (1983).

To violate DR 7-110(B), it is not necessary for an attorney to be representing a party to an adversary proceeding. See Legal Ethics Opinion 1991-84. On its face, the rule says nothing about the relationship of the attorney making an ex parte contact to

any other party to the proceeding. The purpose of DR 7-110(B) is "to prevent the effect or appearance of granting undue advantage to one party," In re Smith, supra at p. 755. This purpose is not served if officers of the court are allowed to attempt to influence the outcome of a pending proceeding. Based on the above, the Trial Panel finds that the Accused violated DR 7-110(B), by communicating with Judge Beaudoin on August 29, 1992, and with Judges Cleaves and Beaudoin on November 9, 1992

#### SANCTIONS

In determining the appropriate sanction to be imposed, the Trial Panel has considered a number of factors. Perhaps primary among them was the fact that the Accused was obviously personally and emotionally involved with the domestic relations matters. His conduct, while not excusable, must be understood in the context of the underlying custody dispute and the profound effect that dispute was bound to have on the Accused's personal life. The disappointment that the Accused and Rowland must have felt after the August 17, 1992, ruling is easily understood.

Concerning his conduct after the move to Oregon, the Accused now recognizes that the letters he wrote after the police carried out the Writ of Assistance at the Accused's home on August 27, 1992, were intemperate and a mistake.

The Trial Panel notes that the Accused did not act in his professional capacity as a lawyer on behalf of a client during this matter. No complaints of unethical conduct in regard to the Accused's professional life have been brought to our attention. The Accused is employed full time as a professor, and is not actively engaged in the practice of law at this time, except for occasional pro bono or public interest work. Due to the limited practice and the personal nature of the conduct at issue, the Trial Panel does not believe that the Accused presents any danger to the public, nor is he likely to repeat the conduct.

Based on these factors, and the applicable ABA standards, the Trial Panel concludes that the appropriate sanction to be imposed in this matter is a public reprimand.

Dated this 26th day of January, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Andrew Kerr, Trial Panel Chair

\_\_\_\_\_/s/\_\_\_\_\_  
Wilbert Randle, Jr.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley





IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 93-128
Complaint as to the Conduct of	)	
	)	
DAVID C. HEMMELGARN,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 2-110(B)(2), DR 3-101(B) and DR 7-101(A)(3).  
Supreme Court Stipulation for Discipline. Two-year suspension.

Effective Date of Opinion: March 6, 1996.

**Note: Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 93-128
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
DAVID C. HEMMELGARN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
<hr/>		

The Oregon State Bar and David C. Hemmelgarn have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. David C. Hemmelgarn is suspended from the practice of law for a period of two years. The Stipulation for Discipline is effective the date of this order.

DATED this 6th day of March, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
WALLACE P. CARSON, JR.  
Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 93-128
Complaint as to the Conduct of	)	
DAVID C. HEMMELGARN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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David C. Hemmelgarn, 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 herein mentioned was, an attorney at law duly admitted by the Oregon Supreme Court to the practice of law in this state. On July 11, 1992, the Accused was suspended from the practice of law in Oregon for nonpayment of dues. The Accused maintains his office and place of business in the County of Pierce, State of Washington.

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 November 19, 1994, the State Professional Responsibility Board (SPRB) authorized the filing of a formal complaint against the Accused alleging violations of DR 1-102(A)(3), DR 2-110(B)(2), DR 3-101(B), DR 2-106(A), DR 1-102(A)(4) and DR 7-101(A)(3) of the Code of Professional Responsibility. A copy of the Bar's Amended Formal Complaint is attached hereto and incorporated by this reference herein as Exhibit A.

5.

The Accused stipulates to the facts and violations described in the Amended Formal Complaint.

6.

The Accused has no prior record of reprimand, suspension or disbarment since his admission to practice law in Oregon in 1977. The Accused was suspended on July 11, 1992 for nonpayment of dues and has never applied for reinstatement.

7.

The Accused and the Bar agree that in fashioning the appropriate sanction, the court 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 deal honestly with his clients. He also violated his duty to the legal system to refrain from conduct prejudicial to the administration of justice, and violated a duty owed to the profession by engaging in the unlawful practice of law. The Accused's mental state was intentional with respect to this conduct. Although the clients did not pay the illegal or excessive fees claimed by the Accused and therefore suffered no direct financial injury, they were nevertheless injured insofar as they were forced to settle a case on what they perceived as disadvantageous terms due to their lack of representation. Also, the ability of the court to manage its docket was potentially affected by the Accused's acts and omissions. Aggravating factors include: a pattern of misconduct, multiple offenses, failure to cooperate with the disciplinary process, vulnerability of victims, substantial experience in the practice of law, and indifference to making restitution. A mitigating factor in this case is the Accused's absence of a prior disciplinary record.

8.

The Standards provide that suspension is appropriate: when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; when a lawyer knowingly deceives a client and causes injury or potential injury to a client; when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse affect on the legal proceeding; and when the lawyer knowingly engages in conduct that is a violation owed to the profession and causes injury or potential injury to the client, the public or the legal system.

9.

Under the ABA Standards, a suspension is appropriate.

10.

The following Oregon case law is on point: In re Coe, 302 Or 553, 731 P2d 1028 (1987) [accused lawyer disbarred for abandoning a case and improperly taking money for fees]; In re Thies, 305 Or 104, 750 P2d 490 (1988) [lawyer disbarred after abandoning his practice and then failing to cooperate with the Bar]; In re Butler, Or S. Ct. S40533 [accused suspended for 90 days after filing pleadings in Nebraska court without being licensed in Nebraska, ignoring notice of a hearing on a motion for summary judgment, failing to inform his clients that court proceedings had been resolved against them, and then falsely assuring them the case was proceeding satisfactorily]; In re Fuller, 284 Or 273, 587 P2d 1111 (1978) [lawyer suspended for 60 days after he failed to disclose he was suspended, settled the case without his client's consent and allowed the client to appear at trial without him]; In re Morin, 319 Or 547, 878 P2d 393 (1994) [accused lawyer disbarred after he knowingly prepared invalid wills for clients and the collected money for such services].

11.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused should be suspended for a period of two years.

12.

This Stipulation for Discipline has been approved by the State Professional Responsibility Board and the Disciplinary Counsel's Office. Parties agree that the stipulation is hereafter to be submitted to the Oregon Supreme Court for consideration pursuant to the terms of BR 3.6(e).

EXECUTED this 2nd day of February, 1996.

                  /s/                    
David C. Hemmelgarn

EXECUTED this 2nd day of February, 1996.

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



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-150
	)	
C. DAVID HALL,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

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

Effective Date of Opinion: March 18, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-150
	)	
C. DAVID HALL,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
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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 for Discipline entered into between the Oregon State Bar and the Accused on March 12, 1996 is hereby approved upon the terms set forth therein. The Accused shall be publicly reprimanded for violation of DR 6-101(A) and DR 6-101(B).

DATED this 18th day of March, 1996.

\_\_\_\_\_  
/s/  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_  
/s/  
Ann L. Fisher, Region 5  
Disciplinary Board Chairperson



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-150
	)	
C. DAVID HALL,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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C. David Hall (hereinafter, "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 the practice of law in this state and a member of the Oregon State Bar, maintaining 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 of Rule of Procedure 3.6(h).

4.

At its January 13, 1996 meeting, the State Professional Responsibility Board (hereinafter, "SPRB") authorized formal disciplinary proceedings against the Accused, alleging violation of DR 6-101(A) and DR 6-101(B).

5.

The Bar filed its Formal Complaint, which was served, together with a Notice to Answer upon the Accused. The Accused admits the allegations of the Formal Complaint and that his conduct constitutes violations of DR 6-101(A) and DR 6-101(B).

6.

In or about January 1990, the Accused was retained by Rosemary Leighton to represent her in proceedings to dissolve her marriage. On or about March 6, 1990, the Accused filed a Petition for Dissolution of Marriage. Ms. Leighton's husband accepted service of the Summons and the Petition on or about March 14, 1990.

7.

The Accused prepared and filed a Motion for Order of Default. On June 20, 1990, the court entered a Decree of Dissolution of Marriage. Pursuant to the Decree:

Petitioner is awarded a 25% interest in Respondent's pension and retirement benefit available through KATU Television. The parties agree that the Court shall execute as an appendix to this Judgment a Qualified Domestic Relations Order as that term is defined by the Retirement Equity Act of 1984, directing the distribution of Respondent's work related retirement plan in the amount set forth above to the Petitioner.

8.

Thereafter, the Accused failed to prepare or have prepared by someone qualified to prepare a Qualified Domestic Relations Order (hereinafter "QDRO").

9.

In or about April 1993, Fisher Broadcasting contacted the Accused by telephone and requested a copy of the QDRO, following up the request with a letter dated April 6, 1993. The Accused advised Fisher Broadcasting that he would make inquiry and report back to Fisher Broadcasting. The Accused does not recall such contacts, but acknowledges that he did not initiate communication with Fisher Broadcasting nor did he take other action concerning Leighton's case.

10.

Rosemary Leighton's husband retired in October 1994 and received distribution of his pension and other retirement benefits. On or about May 3, 1995, Leighton called Fisher Broadcasting and requested information as to why she had not received her distributive share as provided by the Decree of Dissolution. Leighton was informed that the Accused had not responded to Fisher Broadcasting's requests for a copy of the QDRO and other information.

11.

On or about May 3, 1995, Leighton contacted the Accused and requested information concerning the status of the QDRO. The Accused advised that he would check into the matter. The Accused did not have further communication with Leighton. Leighton discovered about this time that a QDRO had never been prepared by the Accused and as a result, no portion of her ex-husband's pension funds were distributed to her as contemplated by the Decree of Dissolution.

12.

Although the Accused had some experience in family law matters, he was not experienced in preparing QDRO's. He did not attempt to prepare a QDRO for Leighton even though such was referenced in the Decree of Dissolution. The Accused also failed to refer the matter out to an experienced practitioner to prepare a QDRO for Leighton.

13.

The Accused failed to provide competent representation to Leighton in that he did not possess nor did he, in the course of representing Leighton, obtain the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

14.

The Accused neglected a legal matter entrusted to him in the following particulars:

- 1) Failing to prepare a QDRO;
- 2) Failing to refer Leighton's case, or associate other counsel for preparation of a QDRO;
- 3) Failing to follow up and/or respond to Fisher Broadcasting's request for information concerning distribution of the pension or retirement benefits; and
- 4) Failing to follow up and respond to the client's inquiries concerning the QDRO.

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions should be considered (hereinafter "Standards"). The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 6-101(A) and (B), the Accused violated duties to his client. Standards, §§ 4.5, 4.4.

B. State of Mind. The Accused's conduct demonstrates a failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards, p. 7.

C. Injury. The Accused's conduct resulted in actual injury to his client. The Accused failed to prepare or refer to other counsel to prepare a Qualified Domestic Relations Order for his client, which ultimately resulted in his client not receiving any portion of her ex-husband's retirement benefits on distribution by his employer. The Accused's client was then required to pursue her ex-husband for that which she should have received at the time of his retirement and also malpractice claims against the Accused.

D. Aggravating factors. Aggravating factors to be considered include (Standards, § 9.22):

1. The Accused was admitted to practice in 1974 and has substantial experience in the practice of law. Standards, § 9.22(i).
2. The Accused has a prior record of discipline consisting of an admonition for violation of DR 1-102(A)(3) in 1988.

E. Mitigating factors. Mitigating factors to be considered include Standards, § 9.32:

1. The Accused did not act with dishonest or selfish motives. Standards, § 9.32(b).
2. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. Standards, § 9.32(e).
3. The Accused acknowledges the wrongfulness of his conduct and is sorry for it. Standards, §

9.32(l).

4. The Accused's prior disciplinary record is limited and is remote in time to the conduct which is the subject of this Stipulation. Standards, § 9.32(m).

16.

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standards, § 4.43. Reprimand is also appropriate when a lawyer demonstrates a failure to understand relevant legal doctrines or procedures or is negligent in determining whether he is competent to handle a legal matter and causes injury or potential injury to a client. Standards, § 4.53. Oregon case law is in accord. In re Schmechel, 7 DB Rptr 95 (1993), public reprimand for violation of DR 6-101(A); In re Murray, 2 DB Rptr 63 (1988) public reprimand for violation of DR 6-101(A) and DR 5-105(A); In re Hannam, 8 DB Rptr 9 (1994), public reprimand for violation of DR 6-101(B); In re Rhodes, 8 DB Rptr 45 (1994), public reprimand for violation of DR 6-101(B) and DR 2-110(B)(3); In re Stasack, 6 DB Rptr 7 (1992), public reprimand for violation of DR 6-101(B); In re O'Connell, 6 DB Rptr 25 (1992), public reprimand for violation of DR 6-101(B) and DR 2-110(B)(4).

17.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

18.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar and approved by the SPRB. This Stipulation shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6 and shall not be effective until approved.

EXECUTED this 12th day of March, 1996.

\_\_\_\_\_/s/  
C. David Hall

OREGON STATE BAR

\_\_\_\_\_/s/  
By: Jane E. Angus  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 94-97  
STEVEN W. BLACK, )  
Accused. )

---

Bar Counsel: John M. Junkin, Esq.

Counsel for the Accused: None

Disciplinary Board: Joseph St. Martin, Chair; Robert Johnstone;  
and Phillip Eden, Public Member

Disposition: Violations of 1-102(A)(3) and DR 3-101(B).  
Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: March 29, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-97
	)	
STEVEN W. BLACK,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 March 28, 1996 is hereby approved upon the terms set forth therein. The Accused shall be publicly reprimanded for violation of DR 1-102(A)(3) and DR 3-101(B) of the Code of Professional Responsibility.

DATED this 29th day of March, 1996.

\_\_\_\_\_  
/s/  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_  
/s/  
Douglas E. Kaufman, Region 4  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-97
	)	
STEVEN W. BLACK,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Steven W. Black (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 Oregon Supreme Court of the State of Oregon to the practice of law in this state and a member of the Oregon State Bar, maintaining his office and place of business in the county of Benton, 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.

At its April 20, 1995 meeting, the State Professional Responsibility Board (hereinafter, "SPRB") authorized formal disciplinary proceedings against the Accused, alleging violation of DR 1-102(A) (3) and DR 3-101(B).

5.

The Bar filed its Formal Complaint, which was served, together with a Notice to Answer on the Accused.

6.

ORS 9.080(2)(a) and §15.1 and §15.2 of the Bylaws of the Oregon State Bar require active members of the Oregon State Bar who are engaged in the private practice of law to carry professional liability insurance through the Professional Liability Fund (hereinafter, "PLF").

7.

At all relevant times, pursuant to PLF Policy §3.150(B)(4), a member of the Bar was eligible to claim an exemption from the above-described professional liability insurance requirement if he or she was employed by a private law firm exclusively providing

public defender services and obtaining professional liability coverage through the National Legal Aid and Defender Association (hereinafter, "NLADA").

8.

At all relevant times, the Accused's NLADA professional liability insurance policy excluded from coverage any matter for which a fee was charged to or received from a client except those matters disclosed in his application for NLADA insurance and for which he obtained a special policy endorsement. At no relevant time did the Accused apply for or obtain an endorsement on his NLADA professional liability insurance policy to cover clients to whom he charged or from whom he collected fees.

9.

Prior to and after 1991, the Accused disputed the PLF's interpretation and application of the PLF's eligibility requirements for exemption from PLF insurance coverage. In correspondence with the PLF, the Accused asserted his belief that he could represent clients to whom he charged or collected a fee for his legal services or who were referred to him outside his contracts with governmental agencies or the courts for indigent defense work, and still be exempt from PLF coverage requirements. He believed this type of representation for non-indigent persons was close enough in kind to fall within the public defender exemption. In November 1991, the PLF notified the Accused that his representation in such cases did not fit within the PLF's original intent for exemptions, that any ambiguity on this point in the PLF coverage and exemption terms would likely be revised effective in 1993 and thereafter, he would probably not be permitted to claim an exemption from the requirement that he obtain professional liability insurance from the PLF if he represented such clients.

10.

During the years 1993 and 1994, the Accused's practice consisted primarily of the defense of indigent persons against criminal charges. The Accused received most of his compensation for legal services under contracts with governmental agencies, which included the courts and other governmental bodies responsible for assuring that indigent defendants are represented by counsel in criminal matters. However, the Accused also represented some clients for a fee and others referred to him outside his indigent defense work.

11.

In 1993 and 1994, the Accused applied for an exemption from the PLF insurance requirement and represented that he was "employed by a private law firm exclusively providing public defender services and obtaining professional liability coverage through the National Legal Aid and Defender Association". The Accused was aware of, but continued to disagree with the PLF's interpretation of the exemption language to preclude representing clients for a fee or referred to him outside his governmental contracts for indigent defense work. With knowledge of the PLF's position, the Accused did not disclose to the PLF that he planned to perform and did perform legal services for clients consistent with his own interpretation of the exemption language, nor correct



any PLF mis-impression that he was complying with the PLF's interpretation.

12.

The PLF relied on the Accused's representations of eligibility for exemption from the PLF insurance coverage requirement for the years 1993 and 1994, and granted the Accused an exemption. Beginning in 1995, the Accused has applied for and maintained PLF insurance coverage.

13.

The Accused admits that his conduct constituted violation of DR 1-102(A)(3) and DR 3-101(B) of the Code of Professional Responsibility.

14.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions should be considered (hereinafter, "Standards"). The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 1-102(A)(3) and DR 3-101(B), the Accused violated duties to his clients, the public and the profession. Standards §§ 4.6, 5.0 and 7.0.

B. State of Mind. The Accused's conduct demonstrates a failure to heed a substantial risk that circumstances exist, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation, and in part a conscious awareness of the nature of the attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Standards p. 7. In 1991, the PLF acknowledged to the Accused that the description of the exemptions may not be entirely clear, but in 1993 he would probably not be permitted to claim the exemption in 1993. The description of the exemption was later clarified, thus clearly notifying members of the Bar of the exemption requirements. Nevertheless, the Accused was guided by a stubborn insistence that the PLF's interpretation was too narrow and did not accommodate what the Accused believed was appropriate for exemption eligibility.

C. Injury. The Accused's conduct did not result in actual injury but only potential injury to clients, the public and the legal profession to the extent the Accused charged a fee for his legal services or accepted clients outside his contracts with governmental agencies or the courts for indigent defense work and did not have professional malpractice insurance for such work.

D. Aggravating factors. Aggravating factors to be considered include:

1. The Accused was admitted to practice in 1978 and has substantial experience in the practice of law. Standards § 9.22(i).

2. The Accused has a prior record of discipline consisting of a public reprimand in 1992 for violation of DR 1-103(C), DR 2-110(A)(1) and DR 2-110(B)(4). In re Black, 6 DB Rptr

95 (1992).

E. Mitigating Factors. Mitigating factors to be considered include:

1. The Accused cooperated with the Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. Standards, § 9.32(e).

2. The Accused acknowledges the wrongfulness of his conduct and is sorry for it. Beginning in 1995, the Accused has maintained malpractice insurance coverage through the PLF, which malpractice insurance is intended to provide coverage for clients excluded from coverage through the NLADA, including those to whom the Accused charges a fee for legal services or who are referred to the Accused outside his contracts with governmental agencies of the courts for indigent defense work. Standards, § 9.32(1).

15.

The Standards provide that a public reprimand is generally appropriate when a lawyer knowingly engages in conduct which is generally not criminal but is directly related to his professional role and involves dishonesty, fraud, deceit or misrepresentation that adversely reflects on the lawyer's fitness to practice law. Standards, § 5.13. Reprimand is also appropriate when a lawyer negligently engages in conduct that is a violation of the duty owed to the profession, and causes injury or potential injury to a client or the public. Standards, § 7.3. Commentary to the Standards states that a public reprimand is in most cases an appropriate sanction where there is little or no injury because it serves to educate the lawyer and deter future violations, thus fulfilling one of the purposes of lawyer discipline. A public sanction also informs both the public and other members of the profession that the behavior is improper. Standards, § 7.3 commentary, p. 46. In this case the Accused has now complied and intends in the future to comply with PLF malpractice insurance requirements.

16.

Consistent with the Standards, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept the public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

17.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar and must be approved by the SPRB. The Stipulation shall thereafter be submitted to the Disciplinary Board for consideration pursuant to BR 3.6 and shall not be effective until approved.

EXECUTED this 28th day of March, 1996.

\_\_\_\_\_  
/s/  
Steven W. Black

\_\_\_\_\_  
/s/  
Jane E. Angus  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 94-148
Complaint as to the Conduct of	)	
	)	
WILLIS E. GRESHAM,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of ORS 9.080, DR 1-102(A)(3) and DR 3-101(B).  
Supreme Court Stipulation for Discipline. One year  
suspension.

Effective Date of Order: April 2, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 94-148
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
WILLIS E. GRESHAM,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
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The Oregon State Bar and Willis E. Gresham, Jr., have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Willis E. Gresham, Jr., is suspended from the practice of law for a period of one year. The Stipulation for Discipline is effective the date of this order.

DATED this 2nd day of April, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
WALLACE P. CARSON, JR.  
Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 94-148
Complaint as to the Conduct of	)	
	)	STIPULATION FOR
WILLIS E. GRESHAM,	)	DISCIPLINE
	)	
Accused.	)	
	)	

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Willis E. Gresham, 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, Willis E. Gresham, was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 5, 1977, and, with the exception of a period of time in which he was suspended (See, In re Gresham, 318 Or 162, 864 P2d 360 (1993)) has been a member of the Oregon State Bar, having his office and place of business in Washington County, Oregon.

3.

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

4.

On December 15, 1994, the State Professional Responsibility Board (hereinafter "SPRB") of the Oregon State Bar, authorized formal disciplinary proceedings against the Accused alleging that he violated DR 1-102(A)(3), DR 1-102(A)(4) and DR 3-101(B) in connection with his representation of a client while suspended from the practice of law. On September 16, 1995, the SPRB authorized two additional allegations of DR 3-101(B). The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

Fisher Matter

In April 1993, the Accused commenced representing Brad Fisher (hereinafter "Fisher") in the modification of a dissolution decree between Fisher and his ex-wife Cindy Zielke (hereinafter "Zielke").

In May 1993, the Accused forwarded a proposed Stipulated Modification of Decree of Dissolution of Marriage (hereinafter "stipulated modification") to Zielke's counsel in Colorado. In August 1993, the Accused relocated his office to his home and commenced winding down his practice. On December 28, 1993, the Accused filed a request for exemption from the 1994 assessment for the Professional Liability Fund (hereinafter "PLF") claiming that he was not in private practice in the State of Oregon. Based on the Accused's

request, no coverage was provided by the PLF for any of the Accused's activities in 1994.

Between January 1, 1994 and February 1, 1994, the Accused completed negotiations regarding the stipulated modification, obtained the opposing party's signature and on February 1, 1994, on Fisher's behalf, he filed the same in Washington County Circuit Court with a request that it be approved by the court.

The Accused admits that the finalizing and filing of the stipulated modification constituted the practice of law and that by practicing law without professional liability insurance, he violated ORS 9.080 and DR 3-101(B).

6.

Effective February 2, 1994, the Accused was suspended for 91 days by the Oregon Supreme Court. In re Gresham, 318 Or 162, 864 P2d 360 (1993). On February 24, 1994, Washington Circuit Court Judge Gayle Nachtigal returned the stipulated modification to the Accused and advised that before she could sign the stipulated modification she needed: an SED work sheet pursuant to UTCR 8.010(7)(f); an explanation, pursuant to ORS 25.280, as to the reason that the child support deviated from the support guidelines; and, pursuant to ORS 25.311, a provision requiring the payment of support by income withholding and an explanation as to whether ORS 25.311 was applicable in this case.

Upon receipt of Judge Nachtigal's letter, the Accused, without notifying Fisher or Zielke, prepared the statutorily required documents, attached them to the back of the stipulated modification which had been previously signed by Fisher and Zielke and resubmitted the same to Judge Nachtigal for signature. The additional documents neither prejudiced nor altered the duties or obligations of either Fisher or Zielke. Judge Nachtigal signed the stipulated modification on March 13, 1994.

The Accused did not inform Judge Nachtigal, Fisher or Zielke that, subsequent to the submission of the original stipulation to the court, he had been suspended from the practice of law.

In mid-March 1994, the Accused was contacted by both Fisher and Zielke as to an irregularity with respect to the State of Oregon Support Enforcement Division's handling of Fisher's February 1994 child support payment. On March 31, 1994, the Accused communicated with state personnel both orally and in writing as to the correct amount of child support to be collected pursuant to the stipulated modification.

The Accused admits that the refiling of the stipulated modification and communicating with SED on behalf of his client constituted the practice of law and that for engaging in the practice of law subsequent to his suspension, the Accused violated DR 3-101(B).

The Accused also admits that by failing to advise the court and his client that he was suspended from practice, and by adding provisions to the stipulated document without the knowledge or consent of the parties, he failed to disclose material facts to the court, his client and the opposing party. The failure to disclose these material facts constituted misrepresentations in violation of DR 1-102(A)(3).

7.

For purposes of this stipulation, the Bar agrees to dismiss the DR 1-102(A)(4) charge previously authorized by the SPRB.

8.

#### Sanction

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. Ethical Duty.

1. With respect to the DR 3-101(B) violations, the Accused violated his duty to the legal profession. Standards at 5-6.
2. With respect to the DR 1-102(A)(3) violation, the Accused violated a duty of candor to both the court and his client. Standards at 5.

##### b. Mental State.

1. When, in January 1994, the Accused continued to work on Fisher's behalf and then filed the original stipulated modification, he knew that he did not have liability insurance and knew that it is required of all lawyers engaged in the private practice of law.
2. When the Accused made the changes requested by Judge Nachtigal and resubmitted the stipulated modification for her signature, the Accused knew that he was suspended from the practice of law but was negligent in determining whether the conduct in which he was engaging constituted the practice of law.
3. When the Accused engaged in the conduct referenced in paragraph 6 herein, the Accused knew he was suspended, knew that he failed to advise Fisher, Zielke and Judge Nachtigal of his suspension and knew that he did not advise Fisher or Zielke of the court's request.

##### c. Potential or Actual Injury.

No actual injury occurred as a result of the DR 3-101(B) or DR 1-102(A)(3) violations.

##### d. Aggravating/mitigating factors.

1. Aggravating factor:
  - a. The Accused has a prior disciplinary history. In re Gresham, 318 Or 162, 864 P2d 360 (1993). Standards 9.22(a).
2. Mitigating factors:
  - a. The Accused had no dishonest or selfish motive. Standards 9.32(b).
  - b. The Accused's sole motivation was to assist Fisher in the completion of his legal matter.
  - c. The Accused made full and free disclosure and had a cooperative attitude towards the proceedings. Standards 9.32(e).

The Standards provide that a public reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and suspension is generally appropriate when a lawyer knows that material

information is being withheld from the court or a client. Standards at 40, 46. In addition, the Standards provide that a suspension is appropriate when a lawyer engages in the same or similar misconduct for which the lawyer was previously disciplined when that misconduct causes potential injury to a client, the public, the legal system or the profession. Standards at 47. An aggravating factor in In re Gresham, 318 Or 162, 864 P2d 360 (1993) was the Accused's lack of candor. The Accused's failure to disclose facts to both his client and the court are at issue here as well. Oregon case law supports the imposition of a suspension. In re Jones, 308 Or 306, 779 P2d 1016 (1989); In re Schmidt, 2DB Rptr. 97 (1988), reprimand for single violation; In re Hiller and Janssen, 298 Or 526, 694 P2d 540 (1985); In re Greene, 290 Or 291, 620 P2d 1379 (1980). See, also In re Kraus, 295 Or 743, 670 P2d 1012 (1983) (lawyer who practiced law during period of suspension was denied reinstatement).

10.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that for violating the above-referenced disciplinary rules, the Accused will be suspended for a period of one year commencing immediately upon the Supreme Court's approval of this Stipulation for Discipline. The Accused acknowledges that he will be required to file a formal application for reinstatement pursuant to BR 8.1 when his term of suspension is over.

11.

The sanctions set forth in this Stipulation for Discipline were approved by the State Professional Responsibility Board at its February 15, 1996 meeting and the stipulation is subject to approval by the Oregon Supreme Court pursuant to the terms of BR 3.6.

EXECUTED this 27th day of February, 1996.

\_\_\_\_\_/s/  
Willis E. Gresham

EXECUTED this 4th day of March, 1996.

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



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-46; 94-47
	)	
JON R. MUIR,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: Cynthia Barrett, Esq.

Counsel for the Accused: Matthew Kehoe, Esq.

Disciplinary Board: Chair: None

Disposition: Violation of DR 3-101(A) (two counts), DR 5-101(A)  
(two counts), DR 5-105(E) (two counts).  
Stipulation for Discipline. Sixty-day suspension.

Effective Date of Opinion: April 9, 1996.

**Note: Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-46; 94-47
	)	
JON R. MUIR,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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The Oregon State Bar and Jon R. Muir have entered into a Stipulation for Discipline. We find the Stipulation for Discipline acceptable; therefore:

IT IS HEREBY ORDERED that the Stipulation for Discipline entered into between the Oregon State Bar and Accused on March 25, 1996 is hereby approved upon the terms set forth therein.

DATED this 9th day of April, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
 Todd A. Bradley,  
 State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
 Ann L. Fisher, Region 5,  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-46; 94-47
	)	
JON R. MUIR,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Jon R. Muir, 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, Jon R. Muir, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 26, 1990, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah, Washington and Marion Counties, 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 January 26, 1995, the State Professional Responsibility Board (hereinafter "the Board") authorized formal disciplinary proceedings against the Accused for alleged violation of DR 3-101(A), DR 5-101(A), and DR 5-105(E) in Case No. 94-46 and DR 3-101(A), DR 5-101(A), and DR 5-105(E) in Case No. 94-47. A formal complaint was filed by the Bar on May 3, 1995, a copy of which is attached hereto and by reference incorporated herein.

Case No. 94-46

5.

For a period of approximately eighteen months ending in the spring of 1993, the Accused had an attorney/client relationship with Franklin & Associates (hereinafter referred to as "Franklin"), a company engaged in the business of drafting and selling revocable living trusts to members of the public as estate planning devices. None of the agents or employees of Franklin were at any relevant time active members of the Oregon State Bar.

6.

Franklin's agents and employees obtained financial and estate planning information from members of the public, answered their questions about revocable living trusts and probate matters,

recommended revocable living trusts as appropriate for their estate planning needs and drafted, prepared and assisted in the execution of living trusts and related legal documents for them. The Accused admits that these activities by the agents and employees of Franklin constituted the practice of law by nonlawyers, that he knew or should have known the agents and employees of Franklin were engaged in such activities, that he did not properly supervise the Franklin agents and employees and thereby aided nonlawyers to engage in the unlawful practice of law.

7.

During the time he represented Franklin, the Accused entered into attorney/client relationships with Franklin's customers (hereinafter referred to as "individual clients"). In the course of his representation of Franklin's customers, the Accused reviewed the legal documents prepared by Franklin's agents and employees and accepted payment from Franklin's customers for his services. The Accused relied on Franklin to establish and collect his fees from its customers. The Accused also relied entirely upon Franklin's agents and employees to select and draft the appropriate documents and did not exercise his professional judgment on behalf of his individual clients.

8.

Franklin delivered the Accused's fees when its customers executed the trusts and other documents it had prepared. The amount of fees collected by the Accused each month was dependent upon the number of living trusts sold by Franklin and reviewed by the Accused. The Accused's relationship with Franklin gave him incentive to approve the documents and estate plans for his individual clients, while his duty to the individual clients required the Accused to render independent advice including, where appropriate, the advice not to use a living trust as an estate planning device.

9.

The Accused reviewed virtually all of the living trusts sold by Franklin (between four and sixteen per month) and did not obtain the consent after full disclosure of either Franklin or his individual clients to his representation of both. The Accused, moreover, did not disclose to his individual clients his ongoing financial and business relationship with Franklin or obtain their consent to his representation of them despite this relationship.

10.

The Accused admits that his conduct described above constituted aiding nonlawyers in the practice of law in violation of DR 3-101(A). The Accused also admits that the conduct described above constituted accepting or continuing employment from the individual clients when his own financial and business interests in receiving client referrals from Franklin affected or reasonably could have affected the exercise of his professional judgment on behalf of his individual clients. His representation of these clients without their consent after full disclosure violated DR 5-101(A).

11.

The Accused admits that in simultaneously representing both

the seller of revocable living trust documents and the buyers of those documents, he had conflicts of interest between current clients and, to the extent disclosure and consent may have been available to cure the conflict, he failed to make full disclosure before obtaining client consent to the dual representations in violation of DR 5-105(E).

Case No. 94-47

12.

For approximately six months ending in November, 1993, the Accused entered into a retainer agreement with and accepted a retainer of \$46,000.00 per year from Universal Living Trusts, Ltd. (hereinafter referred to as "ULT"). ULT was a corporation engaged in the business of preparing and selling revocable living trusts as estate planning devices to members of the general public. No agent or employee of ULT was an active member of the Oregon State Bar during the time the Accused was retained by it.

13.

During the time the Accused was retained by ULT, ULT obtained financial and estate planning information from members of the public, answered their questions about revocable living trusts and probate matters, recommended revocable living trusts as appropriate for their estate planning needs and drafted, prepared and assisted in the execution of living trusts and related legal documents for them. The Accused knew or should have known ULT was engaged in these activities and admits that those activities constituted the unlawful practice of law by nonlawyers. The Accused did not take effective action to prevent the unlawful practice of law by ULT.

14.

During the time he was retained by ULT, the Accused entered into attorney/client relationships with the customers of ULT and, on their behalf, reviewed the revocable living trust documents and other related legal documents prepared by ULT for them. When he undertook to represent the customers of ULT, the Accused provided a written disclosure to these clients, a copy of which is attached hereto as Exhibit 1 and by this reference incorporated herein.

15.

The Accused's continued retainer by ULT was dependent upon the income generated by ULT's sale of living trusts. ULT's sales of living trusts was, in turn, dependent upon the Accused's approval of these trusts as appropriate estate planning devices for its customers.

16.

The Accused admits that because of his retained relationship with ULT he had financial, business and personal interests in encouraging ULT's customers to buy living trusts and that Exhibit 1 was insufficient for the purposes of full disclosure under DR 10-101(B) in that it did not adequately apprise his individual clients of these interests. The Accused's financial, business and personal interests affected or reasonably could have affected the exercise of his professional judgment on behalf of his individual clients and his representation of these clients without their consent after full disclosure violated DR 5-101(A).

17.

The Accused admits that in permitting ULT to engage in the activities described in paragraph 14, he aided nonlawyers in the unlawful practice of law in violation of DR 3-101(A).

18.

The Accused admits that in simultaneously representing the buyers and seller of the living trusts and related documents, he had conflicts of interest between current clients and, to the extent disclosure and consent may have been available to cure the conflict, he failed to make full disclosure before obtaining client consent to the dual representations in violation of DR 5-105(E).

19.

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 or 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, he knew or should have known he had numerous current client conflicts of interest and knew or should have known he had a business or financial interest in recommending that his individual clients purchase living trusts from his trust company clients. The Accused knew or should have known his clients were engaging in the unlawful practice of law and failed to prevent it.
- c. There is no evidence that the Accused's conduct caused actual damage to anyone, but it had great potential for injury to his individual clients' interests in that he could have approved the sale of living trusts to clients for whom they were not appropriate estate planning devices. The documents prepared by nonlawyers could, moreover, have been inadequate to accomplish the individual clients' wishes.
- d. Aggravating factors to be considered are:
  1. The Accused acted with a self-interested motive;
  2. The Accused engaged in a pattern of misconduct over an extended period of time in his representation of two living trust companies;
  3. The Accused committed multiple disciplinary offenses in his representation of the two living trust companies and their customers;
  4. The Accused's individual clients were vulnerable because of their age and lack of legal sophistication;
  5. Accused was slow to acknowledge the wrongful nature of his conduct and continued to enable the living trust companies to practice law unlawfully even after he was advised of his potential

- violation of DR 3-101(A). Standards §9.22.
- e. Mitigating factors to be considered are:
1. The Accused has no prior record of reprimand, suspension or disbarment;
  2. The Accused was inexperienced in the practice of law.
  3. The Accused attempted to make disclosure of possible conflicts of interest to his individual clients both orally and in writing. Standards §9.32.

20.

The ABA 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. 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. Standards §7.2. Oregon case law is in accord. See, In re Jones, 308 Or 306, 779 P2d 1016 (1989) (six month suspension for violation of DR 1-102(A) (1) and(4) and DR 3-101(A)); In re Baer, 298 Or 29, 688 P2d 1324 (1984) (60-day suspension for violation of DR 5-101(A), DR 5-104(A) and former DR 5-105(C) [current DR 5-105(E)]); In re Toner, 8 DB Rptr 63 (1994) (30-day suspension for violation of DR 3-101(A), DR 5-101(A), DR 5-105(E) and DR 5-108(A)).

21.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a 60 day suspension to commence 10 days after approval of this Stipulation by the Disciplinary Board.

22.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and the proposed sanction agreed to by the parties has been authorized by the State Professional Responsibility Board. The parties agree that this Stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 28th day of March, 1996.

\_\_\_\_\_/s/  
Jon R. Muir

EXECUTED this 2nd day of April, 1996.

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





IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-145
	)	
DONALD C. REID,	)	
	)	
	)	
Accused.	)	
	)	

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Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

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

Effective Date of Opinion: April 9, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-145
	)	
DONALD C. REID,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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The Oregon State Bar and Donald C. Reid have entered into a Stipulation for Discipline. We find the Stipulation for Discipline acceptable; therefore:

IT IS HEREBY ORDERED that the Stipulation for Discipline entered into between the Oregon State Bar and the Accused on March 25, 1996 is hereby approved upon the terms set forth therein. The Accused shall be publicly reprimanded for violation of DR 6-101(A) and DR 6-101(B).

DATED the 9th day of April, 1996.

\_\_\_\_\_/s/  
Todd A. Bradley,  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/  
Ann L. Fisher, Region 5  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-145
	)	
DONALD C. REID,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Donald C. Reid, 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 C. Reid, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1982 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 December 14, 1995, the State Professional Responsibility Board (hereinafter the "SPRB") authorized the filing of a formal disciplinary complaint against the Accused, charging violations of DR 6-101(A) and DR 6-101(B).

5.

The facts upon which the formal disciplinary charges were based are the following: In June, 1991, the Accused was retained to represent Harold N. Stinnette in a personal injury action arising out of an automobile accident which occurred on May 30, 1991. The Accused wrote a demand letter to Safeco on December 20, 1991. Over the next two years, the only records reflecting work done by the Accused on Stinnette's behalf was a letter written to Safeco on October 14, 1992. At one point, the Accused withdrew from Mr. Stinnette's representation because he was unable to verify the client's claimed wage loss and accident-related termination from a vocational rehabilitation program. The Accused later agreed to resume Stinnette's representation, and on May 21, 1993, filed a complaint against the owner of the other vehicle. He obtained out-of-state service on the owner of the vehicle (rather than the defendant driver) on June 25, 1993. The Accused failed to file an amended complaint adding the driver until after the statute of limitations had expired. The driver's attorney

filed a motion to dismiss on September 3, 1993, and oral argument on the motion was scheduled for November 15, 1993. A motion for summary judgment on behalf of the owner was filed on September 8, 1993 and oral argument on the motion was scheduled for September 27, 1993. The Accused made no written response to either motion, nor did he appear at oral argument. The Accused conceded both motions via correspondence because he felt he had no legal basis to oppose them. Both motions were granted.

6.

The Accused undertook Stinnette's representation of Stinnette only a couple of weeks following the accident. The Accused thus had almost two years in which to timely file a complaint against the proper defendants. He failed to do so, however, and the Accused stipulates that the conduct described in this paragraph and paragraph 5 above violated DR 6-101(A) and DR 6-101(B).

7.

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

8.

The Accused and the Bar agree that in fashioning the appropriate sanctions 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, accused's mental state, actual or potential injury, and the existence of aggravating or mitigating factors. In this case, the Accused violated his duties to his clients to act diligently and competently. The Accused's mental state with respect to these violations was negligent. The client suffered some injury in that he lost the ability to press his personal injury claim. Aggravating and mitigating factors which may apply in this case are the following: in aggravation, the Accused has a prior disciplinary record in that he was admonished in October, 1990 for failing to maintain complete trust account records in violation of former DR 9-101(B)(3). The Accused also had substantial experience in the practice of law. In mitigation, the Accused had no dishonest or selfish motives, made full and free disclosure in the disciplinary process and demonstrated a cooperative attitude towards these proceedings. Additionally, there was some delay in the disciplinary proceeding.

9.

The Standards provide that a reprimand is generally appropriate when the lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

10.

The following Oregon case law appears to be on point: In re Geurts, 290 Or 241, 620 P2d 1373 (1980) [30-day suspension imposed for neglecting personal injury matter for two years and failing to respond to Bar inquiry]; In re Kent, 9 DB Rptr, 175 (1995) [public reprimand imposed for neglect of two matters]; In re Brownlee, 9 DB Rptr, 85 (1995) [public reprimand imposed for neglecting a legal matter and failing to return client files promptly].

11.

This Stipulation for Discipline has been approved by the Disciplinary Counsel of the Oregon State Bar and by the State Professional Responsibility Board (SPRB). The stipulation is also subject to review by the Disciplinary Board of the Oregon State Bar pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of March, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Donald C. Reid

EXECUTED this 25th day of March, 1996.

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



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
Complaint as to the Conduct of ) Case No. 94-113  
 )  
PHILIP G. HENDERSON, )  
 )  
 )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: James R. Uerlings, Esq.

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 5-101(A), DR 5-105(E),  
DR 7-104(A)(1). Stipulation for Discipline.  
Public Reprimand.

Effective Date of Opinion: April 16, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-113
	)	
PHILIP G. HENDERSON,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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The Oregon State Bar and Philip G. Henderson have entered into a Stipulation for Discipline, We find the Stipulation for Discipline acceptable; therefore:

IT IS HEREBY ORDERED that the Stipulation for Discipline entered into between the Oregon State Bar and Accused on May 20, 1996 is hereby approved by the Disciplinary Board upon the terms set forth therein.

DATED this 16th day of April, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley,  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
W. Eugene Hallman, Region 1  
Disciplinary Board Chairperson



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-113
	)	
PHILIP G. HENDERSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Philip G. Henderson, 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, Philip G. Henderson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 14, 1989, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily after consultation with counsel.

4.

On November 19, 1994, the State Professional Responsibility Board (hereinafter "the Board") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A), DR 5-105(C) and (E) and DR 7-104(A)(1). A formal complaint against the Accused was filed on February 22, 1995.

5.

On May 20, 1995, the Board dismissed the charge of violation of DR 5-105(C) and an amended formal complaint was filed on May 23, 1995 alleging violations of DR 5-101(A), DR 5-105(E) and DR 7-104(A)(1).

6.

The Accused's wife, Sharon Scarratt, and Brenda Grigsby each owned half of the stock in Scarratt/Grigsby, Inc., an interior design business in which both participated. Until August, 1993, the Accused represented the corporation in matters related to the operation of the business.

7.

Beginning in about May, 1993, disputes arose between Scarratt and Grigsby about the management and direction of corporate business and they began to discuss dissolving the corporation or changing the manner in which they owned the interior design business. The Accused rendered legal advice to Scarratt/Grigsby,

Inc. concerning this matter on one occasion. By virtue of his marital relationship with Scarratt, the exercise of the Accused's professional judgment on behalf of the corporation in this matter was or reasonably may have been affected by the Accused's financial, business, property or personal interests. The Accused did not make full disclosure to the corporation or the shareholders of this self-interest or obtain their consent to his representation of the corporation and Scarratt in the discussions between Scarratt and Grigsby about corporate dissolution and ownership.

8.

By June, 1993, Grigsby retained legal counsel to represent her in the possible dissolution of Scarratt/Grigsby, Inc. The Accused represented Scarratt individually and Scarratt/Grigsby, Inc. in the ensuing negotiations with Grigsby and her counsel that related to corporate dissolution or a change in the ownership of the corporation. Because Scarratt/Grigsby, Inc., as a separate legal entity, had an interest in continuing its existence and Scarratt was involved in discussions that contemplated the dissolution of Scarratt/Grigsby, Inc., there was a likely conflict of interest between them. The Accused, however, continued his representation of both without first having made the full disclosures as defined by DR 10-101(B) to each client or obtaining the consent of each to the dual representation.

#### Violations

9.

The Accused admits that his conduct alleged in Paragraphs 4 through 6 herein constituted accepting or continuing employment when the exercise of his professional judgment on behalf of a client was or reasonably may have been affected by his own financial, business, property, or personal interests without full disclosure to or consent from the client and a current client conflict of interest in violation of the following standards of professional conduct established by law and by the Oregon State Bar:

1. DR 5-101(A) of the Code of Professional Responsibility;
- and
2. DR 5-105(E) of the Code of Professional Responsibility.

10.

In the course of the negotiations described in Paragraph 6 herein, Grigsby retained counsel, Arthur Altstatt, to represent her. Prior to July 19, 1993, the Accused knew that Mr. Altstatt represented Grigsby. Nonetheless, on July 19, 1993, the Accused communicated by letter directly with Grigsby on the subject of Mr. Altstatt's representation and other corporate matters without Mr. Altstatt's prior consent and without legal authority to do so.

11.

The Accused admits that the conduct described in Paragraph 10 herein constituted communication with a represented party without the prior consent of that party's lawyer or legal authority to do so in violation of the following standard of professional conduct established by law and by the Oregon State Bar:

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

Sanction

12.

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 or mitigating circumstances.

a. The Accused violated his duty to his clients to avoid conflicts of interest and his duty to the legal system to refrain from improper communication with a represented party. Standards §4.3 and §6.3.

b. With regard to the Accused's state of mind, he was negligent in failing to make the proper disclosures and obtain his clients' consent to the dual representation in light of the existence of a current client conflict of interest and his personal interest in the Scarratt/Grigsby, Inc. negotiations. The Accused was also negligent in failing to obtain Mr. Altstatt's permission to communicate with Grigsby or to determine that his July 19, 1993 letter was not authorized by law to be sent directly to Grigsby.

c. The Accused caused no actual injury by his conduct, but the potential for injury existed. ABA Standards at 7.

d. There are no aggravating factors to be considered.

e. Mitigating factors to be considered:

1. The Accused has no record of prior disciplinary offenses;

2. The Accused had no dishonest or selfish motive;

3. The Accused's conduct does not display a pattern of misconduct;

4. The Accused has displayed a cooperative attitude toward these proceedings; and

5. The Accused was relatively inexperienced in the practice of law. Standards §9.32.

13.

The ABA 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 lawyer's own interests, whether the representation of a client will adversely affect another client, or whether it is proper to engage in communication with an individual, and causes injury or potential injury to a client or party. Standards §4.33 and §6.33. Oregon case law is in accord. See, In re Carey, 307 Or 315, 767 P2d 438 (1989), where the lawyer received a public reprimand for violation of DR 5-101(A) and former DR 5-105(B) [current DR 5-105(E)] when he loaned money to his secretary from an estate for which he acted as attorney and conservator and simultaneously represented an estate and a creditor of the estate on unrelated matters without first obtaining consent to the dual representation after full disclosure. See also, In re McCaffrey, 275 Or 23, 549 P2d 666 (1976), where the lawyer was publicly

reprimanded for carelessly making direct communication with a represented party in violation of DR 7-104(A)(1).

14.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a public reprimand for violation of DR 5-101(A), DR 5-105(E) and DR 7-104(A)(1).

15.

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 4th day of April, 1996.

\_\_\_\_\_/s/  
PHILIP G. HENDERSON

EXECUTED this 8th day of April , 1996.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-225
	)	
JEREMIAH SCANNELL,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: Richard Adams, Esq.

Counsel for the Accused: William Deatherage, Esq.

Disciplinary Board: None

Disposition: Violation of DR 7-104(A)(1) and DR 7-106(A).  
Stipulation for Discipline. Thirty-day  
suspension.

Effective Date of Opinion: May 9, 1996.

**Note: Due to space restrictions, exhibits are not included but  
may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-225
	)	
JEREMIAH SCANNELL,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

---

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 Jeremiah J. Scannell on May 3, 1996 is hereby approved upon the terms set forth therein. The Accused shall be suspended from the practice of law for thirty (30) days for violation of DR 7-104(A)(1) and DR 7-106(A) commencing on the date of this order.

DATED this 9th day of May, 1996.

\_\_\_\_\_/s/  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/  
Arminda J. Brown, Esq., Region 3  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-225
	)	
JEREMIAH J. SCANNELL,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Jeremiah J. Scannell, 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 except as noted 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, maintaining his office and place of business in the County of Josephine, State of Oregon.

3.

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

4.

At its March 18, 1995, meeting, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused alleging violation of DR 7-104(A)(1) and DR 7-106(A) of the Code of Professional Responsibility.

5.

The Bar filed its Formal Complaint which was served, together with a Notice to Answer upon the Accused. The Accused admits that his conduct violated DR 7-104(A)(1) and DR 7-106(A) of the Code of Professional Responsibility.

6.

The Accused represented the seller of certain real property. The purchaser failed to make payments and the Accused initiated foreclosure proceedings. Thereafter, the purchaser (hereinafter "purchaser" or "debtor"), filed a Chapter 13 Petition for Relief in the United States Bankruptcy Court. The debtor subsequently converted the case from a Chapter 13 to a Chapter 7 case. Because it appeared that there could be a debtor's exempt equity from the sale of the real property, the Bankruptcy Court modified the automatic stay to grant limited relief to permit the debtor to sell the property within six months, with distribution to the

seller to be later determined. The amount of the seller's secured status and amount of claim was disputed. The seller appealed the court's denial of a motion to dismiss and order modifying the automatic stay to the U.S. District Court.

On August 10, 1993, the Accused, on behalf of the seller, obtained in the state court an amended judgment of foreclosure which included provisions for money judgment, surrender of the property and deficiency judgment by execution. The Accused also arranged to schedule a sheriff's sale of the property.

On September 20, 1993, the debtor filed an adversary proceeding against the seller in the Bankruptcy Court seeking injunctive relief, reimposition of the automatic stay, determination of the seller's secured status and value of lien, among other relief. The debtor also sought a temporary restraining order (hereinafter "TRO"), to prevent a sheriff's sale of the property scheduled for September 23, 1993. The Bankruptcy Court granted the motion and entered a TRO with the debtor's attorney, and the Accused participating in the hearing, and ordered further hearing on September 28, 1993. After further hearing, the Bankruptcy Court determined that the TRO should be dissolved, but also ordered that further proceedings between the parties stayed until resolution of the appeal pending in the U.S. District Court. Copies of the October 4, 1993, orders are attached hereto as Exhibit "1", and by this reference made a part hereof. The intention and effect of the Bankruptcy Court's orders was to stay further action in the foreclosure case. The Bankruptcy Court deemed determination of the appeal to be crucial to the issues remaining in both the main case and the adversary proceeding.

In spite of the stay imposed by the Bankruptcy Court's October 4, 1993 orders, the real property was sold at sheriff's sale on October 14, 1993, and on October 28, 1993, the Accused submitted a motion for order confirming sale in the state court. The debtor's attorney filed objections based on the Bankruptcy Court's October 4, 1993 orders which had stayed the foreclosure proceedings. The state court held a hearing on the Accused's motion and the debtor's objections on December 7, 1993. Because of the Accused's interpretation of the Bankruptcy Court's October 4, 1993 orders and although the state court was of the view that the Bankruptcy Court intended all proceedings between the parties to be stayed, the state court delayed decision on the Accused's motion to confirm sale intending to maintain the status quo for 30 days to allow inquiry with the Bankruptcy Court. On December 7, 1993, the state court judge and the Accused wrote letters to the Bankruptcy Court requesting advice concerning the intent of the October 4, 1993 orders. On December 15, 1993, before receiving response from the Bankruptcy Court, the Accused served the debtor through the sheriff's office with a letter demanding possession of the property and giving three days notice to vacate. A copy of the letter is attached hereto as Exhibit "2," and by this reference made a part hereof. The Accused did not obtain the permission of the state or bankruptcy courts to proceed in the foreclosure case or against the debtor. The Accused did not obtain the permission of the debtor's attorney to communicate with



the debtor, nor did he send a copy of the letter to the debtor's attorney.

As a result of these actions, the Accused communicated or caused another to communicate on the subject of the representation, or on directly related subjects without the consent of the debtor's attorney in violation of DR 7-104(A)(1). The Accused also disregarded the state and Bankruptcy Court's orders made in the course of proceedings in violation of DR 7-106(A).

#### SANCTION

##### 7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards from Imposing Lawyer's Sanctions (hereinafter, "Standards"), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 7-104(A)(1) and DR 7-106(A), the Accused violated duties owed to the legal system. Standards, §§ 6.2, 6.3.

B. State of Mind. The Accused failed to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in a situation. Standards, p. 7.

C. Injury. The Accused caused injury or potential injury to a party and potential interference with legal proceedings by disregarding the bankruptcy and trial courts' orders and communicating directly with the party whom he knew to be represented by an attorney, without the attorney's permission or knowledge to make such contact. The Accused's conduct placed an additional and unnecessary burden on the state and bankruptcy courts as well as the opposing party.

D. Aggravating Factors. Aggravating factors to be considered include:

1. The Accused has a prior disciplinary record consisting of a 60-day suspension in 1980 for violation of DR 5-104, and a public reprimand for violation of DR 4-101(B) and DR 5-105(C) in 1994. See, In re Scannell, 289 Or 699, 617 P2d 256 (1980); In re Scannell, 8 DB Rptr 99 (1994). Standards, § 9.22(a).
2. The Accused has violated multiple disciplinary rules. Standards, § 9.22(d).
3. The Accused has substantial experience in the practice of law, having been admitted to practice in 1957. Standards, § 9.22(i).

E. Mitigating Factors. Mitigating factors to be considered include:

1. The Accused did not act with dishonest or selfish motive. Standards, § 9.32(b).
2. The Accused acknowledges the wrongfulness of his

- conduct and is sorry for it. Standards § 9.32(1).
3. The Accused has discontinued the active practice of law and prior to the filing of this formal proceeding, the Accused retired and transferred to an inactive status, effective January 31, 1995. The Accused does not have any present intention to again become an active member of the Bar. Standards, § 9.32(h).

8.

The Standards provide that suspension is appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. Standards, § 6.32. Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. Standards, § 6.22. Oregon case law is in accord. In re Starr, O S Ct No S41967 (1995); In re Weidner, 320 Or 336, 883 P2d 1293 (1994); In re Williams, 314 Or 530, 852 P2d 1280 (1992); In re Burrows, 291 Or 135, 629 P2d 1229 (1984).

9.

The Accused agrees to accept a 30-day suspension from the practice of law which shall commence upon entry of an Order Approving Stipulation for Discipline.

10.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and is subject to approval of the Disciplinary Board pursuant to BR 3.6.

EXECUTED this 3rd day of May, 1996.

\_\_\_\_\_/s/  
Jeremiah J. Scannell, Esq.

EXECUTED this 8th day of May, 1996.

\_\_\_\_\_/s/  
Jane E. Angus  
Assistant Disciplinary Counsel  
Oregon State Bar

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-126
	)	
DAVID W. JAMES,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

Disposition: Violation of DR 2-106(A), DR 6-101(B),  
DR 9-101(A). Stipulation for Discipline.  
Public Reprimand.

Effective Date of Opinion: May 22, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-126
	)	
DAVID W. JAMES,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall be publicly reprimanded for violation of DR 2-106(A), DR 6-101(B) and DR 9-101(A).

DATED this 22nd day of May, 1996.

\_\_\_\_\_  
/s/  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_  
/s/  
Ann L. Fisher, Region 5  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-126
	)	
DAVID W. JAMES,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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David W. James, 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 W. James, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 17, 1971, 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.

In January 1996, the State Professional Responsibility Board of the Oregon State Bar, authorized formal disciplinary proceedings against the Accused alleging that he violated DR 2-106(A), DR 6-101(B) and DR 9-101(A) during the course of representing a client in the preparation and filing of a joint custody agreement. The Accused and the Bar agree to the following facts and disciplinary rule violations.

FACTS

5.

In April 1993, Mellennesse Mountain, (hereinafter "Mountain"), retained the Accused to prepare a custody agreement. In April 1993, Mountain paid the Accused \$325.00. While the Accused maintained no records regarding the receipt of the \$325.00, it is undisputed that James received it and deposited it upon receipt into his general account.

The Accused prepared the custody agreement and returned it to Mountain for signature. In November 1993, Mountain forwarded the signed custody agreement to the Accused and requested that he file the same with the court. The Accused, forgetting that he had received \$325.00 in April 1993, requested an additional \$100.00 from Mountain to cover the filing costs. Mountain, believing that

the \$325.00 paid in April 1993 included the filing fee, paid the additional \$100.00 nonetheless. James deposited the \$100.00 into his general account.

Between November 1993 and October 1994, having not received confirmation that the Accused had filed the agreement as promised, Mountain called the Accused several times for an update. As of October 14, 1994, James had not filed the custody agreement nor responded to Mountain's calls. On or about October 14, 1994, Mountain terminated the Accused's services and requested a refund.

In November 1994, not receiving a refund, Mountain contacted the Bar. Subsequent to the filing of the Bar complaint, the Accused refunded Mountain \$325.00.

6.

The Accused admits that for failing to file the custody agreement he neglected Mountain's legal matter in violation of DR 6-101(B). The Accused also admits that in collecting \$425.00 for drafting a custody agreement that was never filed, he violated DR 2-106(A). Finally, the Accused admits that portions of the \$425.00 received from Mountain constituted client funds and should have been maintained in his lawyer trust account until earned and, because it was not, he violated DR 9-101(A).

#### SANCTION

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 existence of aggravating and mitigating factors.

#### A. Ethical duty violated.

1. The Accused violated two duties owed to a client: a duty to preserve client property and a duty to diligently handle a client's matter. ABA Standards 4.1 and 4.4.

2. The Accused violated his duty to the profession when he collected fees which he did not earn. ABA Standards 7.0

#### B. Mental state.

1. The Accused was negligent in failing to maintain accurate records reflecting payments received and such negligence contributed to his collection of additional fees, some of which had already been collected. ABA Standards at 7.

2. The Accused acted with knowledge when he failed to file the custody agreement. ABA Standards at 7.

#### C. Injury.

1. Mountain's custody agreement was not timely filed. While no actual injury resulted, the potential for injury existed. While Mountain was refunded \$325, the refund was subsequent to the filing of the Bar complaint.

#### D. Aggravating and Mitigating Factors.

##### 1. Aggravating Factor:

a. The Accused has substantial experience in the

practice of law, having been admitted to the Bar in 1977. ABA Standards 9.22(i).

2. Mitigating Factors:

a. The Accused has no prior disciplinary record. ABA Standards 9.32(a).

b. Commencing October 1993, the Accused and his wife separated, distracting him from attending to Mountain's legal matter. ABA Standards 9.32(c).

c. The Accused displayed a cooperative attitude and fully cooperated with Disciplinary Counsel's Office. ABA Standards 9.32(e).

8.

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Standards 4.13 at 27. Similarly, a reprimand is generally appropriate when a lawyer does not act with reasonable diligence in representing a client. Standards 4.43 at 33. Finally, a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client or the legal system. Standards 7.3 at 46.

Oregon case law is in accord. See, In re Viewling, 9 DB Rptr 59 (1995), In re Berentson, 8 DB Rptr 167 (1994), and In re Ledwidge, 5 DB Rptr 39 (1991).

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. The State Professional Responsibility Board ("SPRB") approved the sanction contained herein on January 13, 1996. Pursuant to BR 3.6, the parties agree the Stipulation is to be submitted to the Disciplinary Board for consideration.

EXECUTED this 9th day of May, 1996.

\_\_\_\_\_/s/  
David W. James

EXECUTED this 15th day of May, 1996.

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





IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-161
	)	
BRIAN MICHAELS,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: H. Thomas Evans, Esq.

Counsel for the Accused: Win Calkins, Esq.

Disciplinary Board: None

Disposition: Violation of DR 6-101(A), DR 9-101(A)  
and DR 9-101(C) (3). No Contest Plea.  
Thirty-day suspension.

Effective Date of Opinion: June 20, 1996

**Note: Due to space restrictions, exhibits are not included but  
may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-161
	)	
BRIAN MICHAELS,	)	ORDER APPROVING NO
	)	CONTEST PLEA
Accused.	)	
	)	

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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 a 30-day suspension, and good cause appearing,

IT IS HEREBY ORDERED that the No Contest Plea executed by Brian Michaels and the Oregon State Bar on May 8, 1996 shall be and, hereby is, approved upon the terms set forth therein.

DATED this 5th day of June, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
Howard E. Speer, Region 2,  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 94-161
	)	
BRIAN MICHAELS,	)	NO CONTEST PLEA
	)	
Accused.	)	
	)	

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BRIAN MICHAELS, attorney at law (hereinafter "the Accused") hereby enters a no contest plea to the Formal Complaint attached hereto as Exhibit 1 and incorporated by reference herein.

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 on March 18, 1995, the Bar's State Professional Responsibility Board ("SPRB") authorized formal disciplinary proceedings against the Accused in Case No. 94-161, alleging that the Accused violated DR 6-101(A), DR 9-101(A) and DR 9-101(C) (3) in connection with his representation of Kathryn Ross (hereinafter "Ross").

By this Plea of No Contest, the Accused does not desire to defend against the Formal Complaint alleging lack of competence in representation of Ross in a medical malpractice action in violation of DR 6-101(A), DR 9-101 for failure to maintain Ross' funds in a lawyer trust account and DR 9-101(C) (3) for failure to properly account to Ross for her funds.

The Accused agrees to accept a 30-day suspension 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 on substantive approval by the SPRB. The SPRB approved this suspension at its meeting held on April 18, 1996. 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), and, if approved, shall be effective June 20, 1996.

EXECUTED this 8th day of May, 1996.

\_\_\_\_\_  
/s/  
Brian Michaels

EXECUTED this 20th day of May, 1996.

\_\_\_\_\_  
/s/  
Chris L. Mullmann  
Assistant Disciplinary Counsel  
Oregon State Bar



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	SC S43365
Complaint as to the Conduct of	)	
	)	
LORNA GENE DALE,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 3-101(B). Supreme Court Stipulation  
for Discipline. 180-day suspension, 120 days  
stayed pending one year probation.

Effective Date of Order: June 18, 1996.

**Note: Due to space restrictions, exhibits are not included but may be  
obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	SC S43365
	)	
LORNA GENE DALE,	)	
	)	
Accused.	)	
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The Oregon State Bar and Lorna Gene Dale have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Lorna Gene Dale is suspended from the practice of law for a period of 180 days. 120 days of this suspension shall be stayed pending the accused's completion of one year of probation commencing the effective date of this stipulation. The Stipulation for Discipline is effective the date of this order.

DATED this 18th day of June, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
WALLACE P. CARSON, JR.  
Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 ) SC S43365  
 Complaint as to the Conduct of )  
 )  
 LORNA GENE DALE, )  
 )  
 Accused. )  
 \_\_\_\_\_ )

LORNA GENE DALE (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 except as noted herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to the practice of law in this state and a member of the Oregon State Bar, maintaining her office and place of business in the County of Deschutes, 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.

At its January 13, 1996, meeting, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused, alleging violation of DR 3-101(B) of the Code of Professional Responsibility.

5.

The Oregon State Bar filed its Formal Complaint which was served, together with a Notice to Answer, upon the Accused. The Accused admits the allegations of the Formal Complaint, a copy of which is attached hereto as Exhibit 1, and that her conduct violated DR 3-101(B) of the Code of Professional Responsibility.

6.

On February 23, 1995, the Disciplinary Board filed an Order Approving Stipulation for Discipline suspending the Accused from the practice of law for a period of 60 days, commencing March 25, 1995, for violation of DR 6-101(B), DR 7-101(A) (2), DR 1-102(A) (3) and DR 1-103(C) of the Code of Professional Responsibility. In re Dale, 9 DB Rptr 29 (1995). The Accused was eligible to apply for reinstatement as an active member of the Bar, effective May 24, 1995.

7.

The Accused did not apply for reinstatement until August 4, 1995. Nevertheless, after May 24, 1995, and until about July 1, 1995, the

Accused engaged in the practice of law, providing legal advice, signing and filing pleadings with the court, and appearing in court on behalf of several clients. In doing so, the Accused violated the regulations of the Bar.

8.

The Accused admits that she received, but did not carefully read the Bar's February 1995 notification concerning the effective date of her suspension, duties during the suspension, and the need to apply [for] reinstatement when her suspension expired. She assumed reinstatement as an active member of the Bar was automatic, although, in light of the Bar's notice to her and her access to applicable rules, she now admits that her assumption was not reasonable. Prior to and during the period of suspension, the Accused experienced symptoms of depression and anxiety, and as a result, she did not properly focus on matters which concerned her legal practice, including the requirements necessary to be reinstated to active membership status.

9.

Following discovery that she was not reinstated, the Accused immediately ceased activities deemed the practice of law, and on August 4, 1995, submitted a Compliance Affidavit and fees for reinstatement as an active member of the Bar as required by BR 8.3. The Accused was reinstated on August 7, 1995.

#### SANCTION

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards"), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 3-101(B), the Accused violated duties owed to the profession. Standards, § 7.2.

B. State of Mind. The Accused failed to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards, p. 7. The Accused should have known that she was required to apply for and be reinstated as an active member of the Bar before she recommenced the practice of law.

C. Injury. The Accused caused potential injury to the profession and to her clients by her conduct. During the period of suspension and until reinstated, the Accused was not authorized to practice law and not covered by malpractice insurance. The Accused placed at risk all clients for whom she performed legal services in the event of malpractice claims against her.

D. Aggravating Factors. Aggravating factors to be considered include:

1. The Accused has substantial experience in the practice of law, having been admitted to practice in 1982. Standards, § 9.22(i).
2. The Accused has a prior disciplinary record consisting of an admonition imposed in February 1990 for violation of DR 1-103(C); and a 60 day suspension imposed in February



1995 for violation of DR 6-101(B), DR 7-101(A)(2), DR 1-1-3(A)(3) and DR 1-103(C). In re Dale, 9 DB Rptr 29 (1995). Standards, § 9.22(a).

E. Mitigating Factors. Mitigating factors to be considered include:

1. The Accused did not act with dishonest or selfish motive. Standards, § 9.32 (b).
2. The Accused acknowledges the wrongfulness of her conduct and is sorry for it. Standards, § 9.32 (1).
3. Since 1994, the Accused has periodically received counseling for depression and anxiety from Dr. Susan Dragovich, PhD. She was initially seen weekly, then every other week until late December 1994 when, due to limited income and lack of health insurance, the Accused ceased counseling. According to Dr. Dragovich, the Accused has long term habits, born of early childhood experiences, which cause her to become overwhelmed by the demands of the legal practice. Dr. Dragovich reports that the Accused is motivated and has made positive changes during 1995, with support of other lawyers in the Bend community, to aid her in performing the duties of an attorney. Since August 1995, the Accused recommended and continues counseling with Dr. Dragovich. The Accused shall be required to continue counseling throughout the probationary period imposed in this case. Standards, § 9.32(c), (j).

11.

The Standards provide that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty to the profession, and causes injury or potential injury to a client, the public or the legal system. Standards, § 7.2. Oregon case law is in accord. In re Jones, 312 OR 611, 825 P2d 1365 (1992); In re Van Leuven, 8 DB Rptr 203 (1994); In re Schmidt, 2 DB Rptr 97 (1988). In Schmidt, the lawyer was reprimanded for violation of DR 3-101 (B) when he participated in negotiations on behalf of a client while suspended for nonpayment of a malpractice insurance assessment. Unlike the Accused, Schmidt's conduct involved only one client matter.

12.

The Accused agrees to accept a suspension of 180 days, 120 days of which shall be stayed subject to a one-year period of probation commencing June 1, 1996. During the period of probation, the Accused shall be subject to the following conditions:

- A. Comply with all provisions of this Stipulation, Oregon's Code of Professional Responsibility and ORS Chapter 9.
- B. James Slothower, Esq. and Terry O'Sullivan, Esq., or such other person acceptable to the Bar, shall supervise the Accused's probation (hereinafter "Supervising Attorneys"). The Accused agrees to cooperate and shall comply with all reasonable requests of the Supervising Attorneys and Disciplinary Counsel's Office as are designed to achieve the purpose of the probation and the protection of the Accused's clients and the profession.
- C. The Accused shall continue mental health counseling and treatment with Susan Dragovich, PhD, or such other mental health professional acceptable to the Bar. The mental health professional shall determine the frequency and scope of

treatment, except throughout the period of probation, the Accused shall meet with the mental health professional at least once a month for the purpose of evaluating the Accused's psychological condition and to address counseling/treatment needs. The Accused shall comply with all reasonable recommendations of the mental health professional, including, without limitation, more frequent counseling and treatment sessions. The Accused shall obtain from the mental health professional a written report to the Supervising Attorneys and the Disciplinary Counsel's Office, on a quarterly basis or more frequently as may be reasonably requested, which identifies the mental health professional's diagnosis, frequency and length of sessions and the Accused's compliance with treatment recommendations.

D. Dr. Dragovich is now of the opinion that the Accused is fit to practice law. Nevertheless, upon the expiration of the 60 days of imposed suspension, the Accused shall not be eligible for reinstatement until such time as Dr. Dragovich, or such other mental health professional acceptable to the Bar, provides a current written opinion that the Accused is able to adequately perform the duties of an attorney.

E. Not later than May 15, 1996 (hereinafter, "Initial Meeting"), the Accused shall meet with the Supervising Attorneys to review her existing case load and shall take all appropriate measures to conclude or to refer all cases to other counsel prior to June 1, 1996.

1. The Accused shall notify in writing each client and all attorneys representing opposing parties, or the opposing party if not represented by counsel, of her suspension and the name of the attorney handling the case during the period of her suspension.
2. In advance of the Initial Meeting, the Accused shall prepare and deliver a written report to the Supervising Attorneys. The Accused shall identify in the report all pending cases, a brief description of the nature of each case, the identity of opposing counsel, current case status, activities to be performed or completed, and to whom the case will be referred either permanently or during the period of suspension.

F. After the Initial Meeting, and not less than every thirty (30) days during the term of probation, the Accused shall review all pending cases with the Supervising Attorneys.

1. In advance of each meeting, the Accused shall prepare and deliver a written report to the Supervising Attorneys which identifies all pending cases, a description of the nature of the case, current case status, case activity since the last report, and activities to be performed or completed. The Accused shall immediately undertake action on pending cases as may be required, and as may be recommended by the Supervising Attorneys.
2. Within 14 days, after each review, the Accused shall prepare and deliver a report, approved by the Supervising Attorneys, to Disciplinary Counsel's Office. The Accused shall certify the following:
  - a. The Accused has conducted a complete review of

- pending cases with the Supervising Attorneys, including the date of any such review. If not, the Accused shall explain the reasons for her failure to do so.
- b. The Accused has brought all cases to a current status or referred them to other counsel. If not, the Accused shall explain the reasons for her failure to do so.
- c. The Accused continues mental health counseling, including the identity of the mental health professional, the frequency and purpose of contacts since the last report, any recommendations made to the Accused by the mental health professional and her compliance therewith.
- d. The Accused has complied with all terms of the probation since the last report. In the event the Accused has not complied, she shall describe in detail the nature of and reasons for such non-compliance.
- e. After at least six (6) months, and subject to the approval of the Disciplinary Counsel's Office, the frequency of the Accused's reports to the Disciplinary Counsel's Office may be reduced.
- G. The Accused hereby waives any privileges and expressly authorizes the release and disclosure of all information by Dr. Susan Dragovich and any other medical and/or mental health provider, to the Disciplinary Counsel's Office and any Supervising Attorneys, including, without limitation, information concerning scheduling and appointments, diagnosis, recommendations, treatment, and compliance with recommendations of the mental health professional.
- H. The Accused shall bear the financial responsibility for the cost of all professional services required under the terms of this Stipulation for Discipline.
- I. All notices and approvals required under the terms of this Stipulation for Discipline shall be in writing, signed by the party required to give the notice or whose approval is required.
- J. In the event the Accused fails to comply with the conditions of her probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the remaining 120-day period of suspension.
- K. The Accused acknowledges that she is required to apply for reinstatement pursuant to BR 8.3.

13.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, approved by the State Professional Responsibility Board and shall be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 2nd day of May, 1996.

                                  /s/                                    
LORNA GENE DALE

                                  /s/                                    
JANE E. ANGUS  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-8
	)	
WILLIAM S. DAMES,	)	
	)	
Accused.	)	
	)	

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Bar Counsel: Richard A. Cremer, Esq.

Counsel for the Accused: Douglas J. Richmond, Esq.

Disciplinary Board: None

Disposition: Violation of DR 1-102(A) (3) and (4), DR 6-101(B)  
and DR 5-105(C). Stipulation for Discipline.  
Four-month suspension.

Effective Date of Opinion: July 15, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	SC S43437
	)	
WILLIAM S. DAMES,	)	ORDER ACCEPTING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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The Oregon State Bar and William S. Dames have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. William S. Dames is suspended from the practice of law for a period of four months. The Stipulation for Discipline is effective August 15, 1996.

DATED this 16th day of July, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
WALLACE P. CARSON, JR.  
Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-8
	)	
WILLIAM S. DAMES,	)	STIPULATION FOR
	)	
Accused.	)	
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William S. Dames, 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 S. Dames, was admitted by the Oregon Supreme Court to the practice of law in Oregon on June 18, 1974, 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 August 24, 1995, a Formal Complaint was filed against the Accused in this proceeding pursuant to the authorization of the State Professional Responsibility Board alleging violations of DR 1-102(A)(4), DR 6-101(B), DR 1-102(A)(3), DR 7-102(A)(5), and DR 5-105(C). This Stipulation for Discipline is intended by the parties to resolve all charges in this matter.

FACTS AND VIOLATIONS

5.

On June 14, 1991, the Accused filed a petition to have his client, Ernie Setzer (hereinafter "Ernie"), appointed conservator for his infirm mother's estate. Ernie was appointed by order of the court on July 18, 1991. On July 26, 1991, State Farm Fire and Casualty issued a \$10,000 bond for the conservator.

6.

ORS 126.277 requires that within 90 days of appointment, unless a longer time is granted by the court, the conservator shall file an inventory of all property of the estate of the protected person. ORS 126.283 requires that within 30 days after each anniversary of appointment, unless the court by order provides otherwise, a conservator shall account to the court for

the administration of the protected estate. The Accused requested that Ernie provide records for the accounting and inventory. When provided, they were incomplete and confusing, resulting in further delay in completing the inventory and accounting. The Accused failed and neglected to timely file the inventory and accounting as required by statute.

7.

On July 7, 1992, the court sent a notice to the Accused setting a hearing for September 15, 1992 to discuss the failure to file the required inventory and accounting. On September 17, 1992, the Accused wrote the court advising that he would be submitting the inventory and accounting soon. The September 15, 1992 hearing was postponed at the Accused's request and reset to March 15, 1993. That hearing did not take place, and the court issued an order to show cause why the conservator should not be removed. That hearing did not take place, and the Accused filed the inventory and accounting on June 11, 1993. At the time of filing, the Accused told the probate clerk that the accounting and inventory might have problems.

8.

The Accused admits that by his conduct, as described in paragraphs 5-7, he neglected a legal matter, and his conduct was prejudicial to the administration of justice in violation of DR 6-101(B) and DR 1-102(A) (4).

9.

The above-described accounting was for the period July 18, 1991 to December 31, 1992. As of December 31, 1992, there were direct disbursements from estate funds by the conservator to himself in the amount of \$13,406. In addition, there were other questionable disbursements made by the conservator in the amount of \$3,868.51. The accounting identified a promissory note in the amount of \$8,539.52 as an asset of the estate, intended by the Accused to represent the obligation of the conservator to the estate. The note was not identified as to maker or date. Although the note had been prepared, it had not been signed. The Accused knew prior to preparing and submitting the accounting that the direct disbursements to Ernie were improper and that there was no signed promissory note evidencing the debt owed by the conservator to the estate. The Accused knew, however, that Ernie acknowledged the debt to the estate.

10.

The Accused admits that by filing the inventory and accounting knowing that an executed promissory did not exist and representing to the court that such a note was an asset of the estate, he engaged in conduct involving a misrepresentation of fact and engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A) (3), DR 1-102(A) (4), and DR 7-102(A) (5).

11.

After the court reviewed the accounting and inventory, the Accused met with the court and discussed the improper disbursements. The court subsequently notified the Accused and the bonding company of a claim against the bond. On July 16, 1993, Ernie's brother, Harold Setzer (hereinafter "Harold"), was



appointed conservator. The Accused then represented Harold as conservator in negotiations with the attorney representing the bond company. The result of that meeting was an agreement as to the amount Ernie owed to the estate, less the \$10,000 to be paid by the bond company.

## 12.

The Accused admits that at the time the Accused undertook the representation of Harold, the Accused knew the estate had a claim against his former client, Ernie. This representation created a conflict of interest, and the Accused failed to obtain their consent to the representation after full disclosure as required by DR 10-101(B) (1) and (2), in violation of DR 5-105(C).

## SANCTION

## 13.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards") are to be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating or mitigating circumstances.

A. Duty Violated.

In violating DR 5-105(C) and DR 6-101(B), the Accused violated his duty to his client by failing to avoid conflicts of interest and neglecting a legal matter. In violating DR 1-102(A) (3), the accused violated his duty to his client, the court, and the public by engaging in conduct involving misrepresentation. In violating DR 1-102(A) (4), the Accused violated his duty to the public by engaging in conduct prejudicial to the administration of justice. In violating DR 7-102(A) (5), he violated his duty to the legal system by making a false statement of fact. Standards §§ 4.3, 4.5, 4.6, 5.1 and 6.1.

B. Mental State.

The Accused asserts that in filing the inventory listing the promissory note as an asset of the estate, he did not intend to mislead the court, as a note had been prepared but not executed by Ernie. The Accused also asserts that notwithstanding that the note had not been signed, Ernie acknowledged the debt and the Accused anticipated Ernie would sign the note. However, the Accused admits that a lawyer engages in misrepresentation if a lawyer has an undisclosed material fact in mind and knowingly fails to disclose it. In re Hiller and Janssen, 298 Or 526, 694 P2d 540 (1985). Therefore, the Accused acted with "knowledge", that is, with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

In neglecting a legal matter and failing to provide full disclosure as required by DR 10-101(B) (1) and (2) to Ernie and Harold of the possible conflict of interest, the Accused acted with "Negligence", that is, a failure to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards, page 7.

### C. Injury

Under case law, injury may be actual or potential. In re Williams, 314 Or 530, 840 P2d 1280 (1992). The level of injury can range from "serious" injury to "little or no" injury. Standards, page 7. In this case the injury ranged from serious to little, if any. Serious injury resulted when the court made a claim on the bond and the insurance company was required to reimburse the estate \$10,000 for the improper expenditures and retain an attorney to negotiate repayment terms by a promissory note signed by Ernie. The Accused's delay in filing the inventory and accounting caused injury to the judicial system causing unwarranted delay and judicial intervention to remove the conservator and make demand on the bond company.

The Accused asserts that he orally informed Ernie and Harold of the possible conflict of interest. However, the Accused acknowledges he did not comply with the requirements of DR 5-105(C). The failure to do so caused little or no actual injury.

### D. Aggravating Factors.

The following aggravating factors are present in this matter: 1) a prior admonition in 1989 for violation of DR 1-102(A)(3) and DR 9-101(A); (2) a pattern of misconduct and multiple offenses in this conservatorship case; and (3) substantial experience in the law. Standards §9.22(a), (c), (d), and (i).

### E. Mitigating Factors.

The following mitigating factors are present in this matter: (1) absence of dishonest or selfish motive; (2) full and free disclosure; (3) good character or reputation in the bar and the community; and (4) remoteness of prior offense. Standards, §9.32(b), (e), (g), and (m).

14.

The Standards provide that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, 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. Standards, §6.12. The Standards further provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client. Suspension is also generally appropriate when a lawyer has been admonished for similar disciplinary violations and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. Standards, §8.1(b).

Oregon case law is in accord. See, In re Melmon, 322 Or 380, 908 P2d 822, (1995) (attorney suspended for 90 days for a violation of DR 1-102(A)(3) and for a number of conflicts of interest); In re Hiller and Janssen, 310 Or 731, 801 P2d 814 (1985) (both lawyers suspended for four months for failure to disclose true consideration in an affidavit for summary judgment); and In re Hawes, SC S39882 (1992) (Lawyer pled no contest to alleged violations of DR 5-105(E); DR 5-101(A), DR 1-102(A)(3), DR 1-102(A)(4) and DR 7-102(A)(3) and was suspended from the practice of law for one year).

15.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused be suspended for a period of four (4) months. Should this Stipulation for Discipline be approved by the Oregon Supreme Court, the parties agree that the suspension shall become effective 30 days following the court's order accepting the stipulation.

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction has been approved by the State Professional Responsibility Board (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 22nd day of May, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
William S. Dames

EXECUTED this 10th day of June, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Chris L. Mullmann  
Assistant Disciplinary Counsel  
Oregon State Bar



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No: 95-61, 95-62,
	)	95-139, 95-140
MARK W. BROWNLEE,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A) (4), DR 6-101(B) [three counts], and DR 1-103(C) [two counts]. Supreme Court Stipulation for Discipline. One year suspension with nine months stayed pending a two year period of probation.

Effective Date of Opinion: September 5, 1996.

**Note: Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
Complaint as to the Conduct of	)	Case No: 95-61, 95-62,
MARK W. BROWNLEE,	)	95-139, 95-140
	)	
Accused.	)	ORDER ACCEPTING
	)	STIPULATION FOR
	)	DISCIPLINE

The Oregon State Bar and Mark W. Brownlee have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Mark W. Brownlee is suspended from the practice of law for a period of one year. Nine months of this suspension shall be stayed pending the accused's completion of two years of probation commencing the effective date of the stipulation and subject to the conditions of probation set forth in the stipulation. The Stipulation for Discipline is effective September 5, 1996.

DATED this 6th day of August, 1996.

                    /s/                      
WALLACE P. CARSON, JR.  
Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No: 95-61, 95-62,
Complaint as to the Conduct of	)	95-139, 95-140
	)	
MARK W. BROWNLEE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
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Mark W. Brownlee (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 admitted by the Supreme Court of the State of Oregon to the practice of law in this state and a member of the Oregon State Bar, maintaining his office and place of business in the County of Marion, 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.

At its November 5, 1995 meeting, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused, alleging violation of DR 6-101(B) and DR 1-102(A)(4), (Case No. 95-61) and DR 6-101(B) (Case No. 95-62). The Oregon State Bar filed its Formal Complaint, which was served, together with a Notice to Answer upon the Accused.

5.

At its January 13, 1996 meeting, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for violation of DR 6-101(B) and DR 1-103(C) (Case No. 95-139) and DR 1-103(C) (Case No. 95-140).

6.

The Oregon State Bar filed its Amended Formal Complaint (Case No's. 95-61, 95-62, 95-139 and 95-140) which was served, together with a Notice to Answer upon the Accused. A copy of the Amended Formal Complaint is attached hereto as Exhibit 1 and by this reference made a part hereof. The Accused admits the allegations of the Amended Formal Complaint and that his conduct constitutes violations of DR 1-102(A)(4), DR 6-101(B) [three counts] and DR 1-103(C) [two counts].

## SANCTION

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions, (hereinafter, "Standards"), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. Standards, § 3.0.

A. Duty. In violating DR 6-101(B), the Accused violated duties owed to his clients. Standards § 4.4. In violating DR 1-102(A)(4), and DR-103(C), the Accused violated duties owed to the legal system and the profession. Standards § 7.0 and 6.0.

B. State of Mind. The Accused acted with knowledge or the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. Standards p. 7.

C. Injury. The Accused's conduct resulted in potential injury to some of his clients and actual injury to others. The Accused failed to keep LaLonde and Lopez apprised of the status of their post-conviction cases and failed to pursue the cases to obtain the court's decision. In failing to actively pursue Young's post-conviction claim, Young was incarcerated for a greater term than that which should have been imposed. In failing to respond to the Bar's inquiries in the Neal and LaLonde complaints, the Bar was required to refer them to the Local Professional Responsibility Committee for investigation, which action may otherwise not have been required.

D. Aggravating Factors. Aggravating factors to be considered include:

1. The Accused has a prior record of discipline. On June 20, 1995, the Disciplinary Board approved a Stipulation for Discipline which imposed a public reprimand for violation of DR 6-101(B). In re Brownlee, 9 DB Rptr 85 (1995). Standards, §9.22(a), 8.0.

2. This stipulation involves six (6) rule violations arising out of four (4) separate complaints. The complaints demonstrate that the Accused has engaged in a pattern of misconduct. Standards, § 9.22(d), (c).

3. The Accused's clients, Young, LaLonde and Lopez, were vulnerable in that they relied on the Accused to protect their interests by pursuing their claims during a period in which they were incarcerated. Standards, § 9.22(h).

4. The Accused was admitted to practice in 1988 and has focused his practice in the criminal law. Standards, § 9.22(i).

E. Mitigating Factors. Mitigating factors to be considered include:

1. The Accused did not act with dishonest or selfish motives. Standards, § 9.32(b).

2. Although the Accused did not initially respond to the Disciplinary Counsel's Office in the Neal and LaLonde cases,



he did respond in other matters, cooperated with the LPRC in all matters, and has cooperated with the Disciplinary Counsel's Office in resolving these formal disciplinary proceedings. Standards, § 9.32(e).

3. The Accused acknowledges the wrongfulness of his conduct and is sorry for it. Standards, § 9.32(1).

4. During relevant times, the Accused experienced symptoms of depression which affected his ability to effectively deal with marital problems and to perform his responsibilities as an attorney. He continues to experience some of these problems. The Accused sought psychological counseling and intends to continue as may be recommended. Standards, § 9.32(c). The Accused also lacked adequate secretarial support and has had difficulty organizing his practice. He has contacted the Professional Liability Fund, Loss Prevention and Lawyer Assistance Programs for help. The Accused has hired a secretary, on a limited basis, to assist him in organizing his practice and has implemented other recommendations of the PLF. The Accused has also removed his name from the list of attorneys available for appointment to handle post conviction cases, reduced the number of other criminal cases which he will accept by court appointment, and plans to continue to limit his practice in the future. In addition, the Accused is actively involved with the Oregon Attorney Assistance Program. Standards, § 9.32(j).

5. The Accused's reputation and character in his community are regarded as good. Standards, § 9.32(g).

8.

The Standards provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury, or engages in a pattern of neglect and causes injury or potential injury to a client. Standards, § 4.42(a), (b). The Standards also provide that suspension is 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. Standards, § 7.2. Finally, suspension is appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. Standards, § 8.2. The Standards also recognize probation as a sanction in appropriate cases, thus allowing the lawyer to practice under specified conditions. Standards, §§ 2.7, 2.8.

9.

Oregon case law is in accord. The Supreme Court approved a stipulation for discipline which imposed a 180 day suspension, 150 days stayed subject to two year probation with conditions for violation of DR 6-101(B), DR 1-103(C), DR 1-102(A)(3) and DR 7-101(A)(2) in In re Hilke, Or S Ct 40610 (1993). In In re Berg, 276 Or 383, 554 P2d 509 (1976), the court suspended a lawyer for one (1) year and placed him on three (3) years probation for conduct involving neglect and falsely representing the status of a case to coverup his neglect. See also, In re Cohen, 9 DB Rptr 229 (1995), court suspended the lawyer for 180 days, 120 days stayed, subject to supervised

probation with conditions for violation of DR 6-101(B), where there existed a prior record of discipline for violation of DR 6-101(B) (two charges) and DR 5-105(E).

10.

Consistent with the Standards and Oregon case law, the Accused agrees to accept a one (1) year suspension from the practice of law, all but 90 days of which shall be stayed subject to a two (2) year period of probation. During the period of probation, the Accused shall comply with the following conditions:

A. Comply with all provisions of this Stipulation, the Code of Professional Responsibility and ORS Chapter 9.

B. Walter J. Todd, Esq., or such other person acceptable to the Bar, shall supervise the Accused's probation, (hereinafter, "Supervising Attorney"). The Accused agrees to cooperate and shall comply with all reasonable requests of the Supervising Attorney and Disciplinary Counsel's Office as are designed to achieve the purpose of the probation and the protection of the Accused's clients, the profession, the legal system and the public. The Accused acknowledges that the Supervising Attorney is required to report to the Disciplinary Counsel's Office.

C. The Accused has contacted and is developing a plan with the Professional Liability Fund to establish and maintain an organized practice. The Accused is also participating in the Oregon Attorney Assistance Program (hereinafter, "OAAP"). The Accused shall cooperate and comply with reasonable requests and recommendations of the PLF Loss Prevention Program and the OAAP.

D. The Accused shall continue mental health counseling and treatment with William W. Davis, PsyD, or such other mental health professional acceptable to the Bar. The mental health professional shall determine the frequency and scope of treatment, except throughout the period of probation, the Accused shall meet with the mental health professional at least once a month for the purpose of evaluating the Accused's psychological condition and to address counseling/treatment needs. The Accused shall comply with all reasonable recommendations of the mental health professional, including, without limitation, more frequent counseling and treatment sessions. The Accused shall obtain from the mental health professional a written report to the Supervising Attorney and the Disciplinary Counsel's Office, on a quarterly basis or more frequently as may be reasonably requested, which identifies the mental health professional's diagnosis, frequency and length of sessions and the Accused's compliance with treatment recommendations.

E. Dr. Davis is of the opinion that the Accused is emotionally fit to practice law. Nevertheless, upon the expiration of the 90 days of imposed suspension, the Accused shall not be eligible for reinstatement until such time as Dr. Davis, or such other mental health professional acceptable to the Bar, provides a current written opinion that the Accused is able to adequately perform the duties of an attorney.

F. At least fourteen (14) days prior to the effective date of suspension, the Accused shall meet with the Supervising Attorney to review his existing case load and shall take all appropriate measures to conclude or to refer all cases to other counsel

during the period of suspension (hereinafter, "Initial Meeting").

1. In all active cases, the Accused shall notify in writing each client and all attorneys representing opposing parties, or the opposing party if not represented by counsel, of his suspension and the name of the attorney handling the case during the period of his suspension. The Accused shall also take such action as may be required to allow for substitution of counsel in cases pending before the court.

2. In advance of the Initial Meeting, the Accused shall prepare and deliver a written report to the Supervising Attorney. The Accused shall identify in the report all pending cases, a brief description of the nature of each case, the identity of opposing counsel, current case status, activities to be performed or completed, and to whom the case will be referred either permanently or during the period of suspension.

G. After the Initial Meeting, and not less than every ninety (90) days during the term of probation, the Accused shall review all pending cases with the Supervising Attorney.

1. In advance of each meeting, the Accused shall prepare and deliver a written report to the Supervising Attorney which identifies all pending cases, a description of the nature of the case, current case status, case activity since the last report, and activities to be performed or completed. The Accused shall immediately undertake action on pending cases as may be required, and as may be recommended by the Supervising Attorney.

2. Within 14 days after each review, the Accused shall prepare and deliver a report, approved by the Supervising Attorney, to Disciplinary Counsel's Office. The Accused shall certify the following:

a. The Accused has conducted a complete review of pending cases with the Supervising Attorney, including the date of any such review. If not, the Accused shall explain the reasons for his failure to do so.

b. The Accused has brought all cases to a current status or referred them to other counsel. If not, the Accused shall explain the reasons for his failure to do so.

c. The Accused continues mental health counseling, including the identity of the mental health professional, the frequency and purpose of contacts since the last report, any recommendations made to the Accused by the mental health professional and his compliance therewith.

d. The Accused's participation with the OAAP and PLF Loss Prevention programs and compliance with recommendations made to the Accused. In the event the Accused has not complied with recommendations, he shall describe in detail the nature of and reasons for such non-compliance.

e. The Accused has complied with all terms of the probation since the last report. In the event the Accused has not complied, he shall describe in

detail the nature of and reasons for such non-compliance.

H. The Accused hereby waives any privileges and expressly consents and authorizes the release and disclosure of all information by the Oregon Attorneys Assistance Program, the Professional Liability Fund, Dr. Davis and any other medical and/or mental health provider, to the Disciplinary Counsel's Office and any Supervising Attorney, including, without limitation, information concerning scheduling and appointments, diagnosis, recommendations, treatment, program participation and compliance with recommendations.

I. The Accused shall bear the financial responsibility for the cost of all professional services required under the terms of this Stipulation for Discipline.

J. All notices and approvals required under the terms of this Stipulation for Discipline shall be in writing, signed by the party required to give the notice or whose approval is required.

K. In the event the Accused fails to comply with the conditions of his probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the stayed period of suspension.

L. The Accused acknowledges that this Stipulation and sanction are limited to the matters described herein, and that he is required to apply for reinstatement pursuant to BR 8.3 when the 90 days of imposed suspension expires.

11.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, approved by the State Professional Responsibility Board and shall be submitted to the Oregon Supreme Court pursuant to the terms of BR 3.6. The sanction which is described in this Stipulation shall commence 30 days after this Stipulation for Discipline is approved by the Oregon Supreme Court.

EXECUTED this 22nd day of July, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Mark W. Brownlee, OSB No. 88164

OREGON STATE BAR

\_\_\_\_\_/s/\_\_\_\_\_  
Jane E. Angus, OSB No. 73014  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-73
	)	
G. JEFFERSON CAMPBELL,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of 9-101(A) and 9-101(C) (3).  
Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: August 15, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 95-73
	)	
G. JEFFERSON CAMPBELL,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall be publicly reprimanded for violation of DR 9-101(A) and DR 9-101(C) (3).

DATED this 15th day of August, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
 Todd A. Bradley  
 State Disciplinary Board  
 Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
 Arminda J. Brown, Region 3,  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-73
	)	
G. JEFFERSON CAMPBELL,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

G. Jefferson Campbell, 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, G. Jefferson Campbell, 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 Jackson County, Oregon.

3.

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

4.

On February 15, 1996, the State Professional Responsibility Board (SPRB) authorized a formal disciplinary proceeding against the Accused alleging violations of DR 9-101(A) and DR 9-101(C) (3) of the Code of Professional Responsibility. It is the intent of the parties to resolve all charges in the proceeding with this stipulation.

FACTS

5.

At all times relevant to these proceedings, the Accused was in private practice in Medford and maintained a lawyer trust account for client funds. Day-to-day responsibility for deposits to, withdrawals from and accountings for the trust account was delegated by the Accused to his support staff. Between 1992 through 1994, the Accused's office staff used various methods of trust accounting, first a manual or hand-written method and later one or more computer software programs.

6.

Between 1992 and 1994, errors were made by the Accused's office in the handling of client funds and in record-keeping concerning the lawyer trust account including:

- A. Deposits were made to the trust account that were not internally credited to particular clients;
- B. Checks were drawn on the trust account that were not debited to particular clients on whose behalf the expenditures were made;
- C. Duplicate checks were issued for the same expenditure;
- D. Withdrawals were made on behalf of clients for more than those clients had on deposit, creating deficiencies in the trust account and drawing on the funds of other clients on deposit in the account; and
- E. Periodic reconciliations of office accounting records with trust account bank statements were discontinued, thereby allowing any accounting errors to go undetected.

## 7.

Errors made in handling client funds were inadvertent, not the result of intentional conduct by the Accused or his staff. The Accused relied on his staff to manage the trust account and trust accounting in a proper manner, and the office as a whole operated on the mistaken belief that the computer software programs were sufficient to keep the trust account in balance. When problems with the trust account were brought to the Accused's attention from time to time, the Accused directed his staff to determine the cause of the problems and to correct them. When it appeared necessary, the Accused deposited funds back into the trust account with the belief that the deposits would bring the account back into balance. The Accused believed these corrective measures successfully addressed any accounting deficiencies, but they did not.

## 8.

In November 1994, the Accused and the Bar received notice from the Accused's bank of a series of overdrafts on the Accused's trust account. The Accused undertook an audit of the account and discovered the extent of the errors referred to in paragraph 6 and that prior corrective measures had not been adequate. The Accused then remedied all account deficiencies and established a new accounting system within the office to avoid recurrence of similar errors in the future.

## 9.

The Accused is responsible for the acts of his office and office staff and, accordingly, admits his violation of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

## SANCTION

## 10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, Standards), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) ethical duty violated; (2) attorney's mental state; (3) actual or potential injury; (3) existence of aggravating and mitigating circumstances.

A. Duty

The Accused violated his duty to his clients to preserve



client property. Standards 4.0.

B. State of Mind

The Accused acted with a negligent state of mind, defined in the ABA Standards as "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 care that a reasonable lawyer would exercise in this situation."

C. Injury

There was no actual injury to the clients in that any deficiencies in or excessive disbursements from the trust account were corrected by the Accused upon his discovery of them. There was potential injury to the extent that some client funds were drawn upon when they shouldn't have been, were therefore not maintained in trust as required by DR 9-101(A) for periods of time and, accordingly, were not afforded during these periods the protections that a trust account provides.

D. Aggravating Factors

There were multiple errors made in the trust account and the Accused has substantial experience in the practice of law. Standards 9.22(d) and (i).

E. Mitigating Factors

The Accused has no prior disciplinary record, he did not act with any dishonest or selfish motive, he has made timely good faith efforts to rectify the consequences of the accounting errors and he has made a full and free disclosure to the Bar with a cooperative attitude toward these proceedings. Standards 9.32(a), (b), (d), (e).

11.

The Standards provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property resulting in injury or potential injury to a client. Standards 4.13. Reprimand is also appropriate when a lawyer is negligent in training or supervising office staff concerning proper procedures in handling client funds. Commentary, Standards 4.13. Oregon case law is in accord. In re Mannis, 295 Or 594, 668 P2d 1224 (1983).

12.

Consistent with the ABA Standards and Oregon case law, the Accused agrees to accept a public reprimand for violations of DR 9-101(A) and DR 9-101(C)(3), and the Bar agrees that such a sanction is appropriate given the facts and circumstances of this case.

13.

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 July, 1996.

                    /s/                      
G. Jefferson Campbell

EXECUTED this 23rd day of July, 1996.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-123
	)	
AMY ELLIOTT,	)	
	)	
Accused.	)	
	)	

---

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

Disposition: Violation of DR 6-101(B), DR 7-101(A) (2).  
Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: August 15, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 95-123
	)	
AMY ELLIOTT,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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This matter having come on to be heard upon the Stipulation for Discipline of Amy Elliott and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED the Stipulation entered into between the Oregon State Bar and Amy Elliott on May 18, 1996 is hereby approved upon the terms set forth therein.

DATED this 15th day of August, 1996.

\_\_\_\_\_/s/  
Todd A. Bradley  
State Disciplinary Board  
Chairperson

\_\_\_\_\_/s/  
Ann L. Fisher, Region 5,  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-123
	)	
AMY ELLIOTT,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
<hr/>		

Amy Elliott (hereinafter, "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 the practice of law in this state and a member of the Oregon State Bar, maintaining her 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 of Rule of Procedure 3.6(h).

4.

At its May 18, 1996 meeting, the State Professional Responsibility Board (hereinafter, "SPRB") authorized formal disciplinary proceedings against the Accused, alleging violation of DR 6-101(B) and DR 7-101(A) (2) of the Code of Professional Responsibility.

5.

Prior to January 1994, the Accused was retained by Donna McMullin (hereinafter "Client") to represent her in proceedings to dissolve her marriage. After a petition for dissolution of marriage was filed, the parties agreed to resolve the matter by stipulated decree.

6.

On February 17, 1994, the court entered a Judgment/Decree of Dissolution, pursuant to which the Accused's client was awarded a portion of her husband's 401K retirement benefit plan. The decree also provided that the plan administrator distribute the Client's portion of the funds at the earliest possible date according to the requirements of the plan.

7.

Thereafter, the Accused delivered copies of the decree and Qualified Domestic Relations Order (hereinafter, "QDRO") to the

plan administrator. In July 1994, the plan administrator informed the Accused that the funds could not be withdrawn unless the Client's ex-husband retired or terminated his employment, but that a separate account in the Client's name could be established with the plan. The plan administrator also provided the Accused with an enrollment form and information concerning investment options. The Accused advised the Client that she had received the information, but was not going to forward it to her. Instead, the Accused would again ask the plan administrator for a lump sum distribution to the Client.

8.

In August 1994, the Accused again sent copies of the decree and QDRO to the plan administrator and requested a lump sum distribution to the Client. The Accused did not provide the Client with a copy of her letter. The general counsel for the Client's husband's employer again advised the Accused of the restrictions for distribution of funds under the plan and that the QDRO was deficient. The Accused did not inform the Client, did not redraft the QDRO and took no other action.

9.

Between about August and October 1994, the Client called and left messages for the Accused. The Accused did not return the Client's calls. On or about October 26, 1994, the Client sent the Accused a letter requesting the information which the plan administrator had provided to the Accused in July 1994 and asking for an opportunity to discuss the case with her. The Accused did not respond.

10.

In November 1994, the general counsel of the Client's husband's employer sent the Accused a letter requesting response to his August 1994 letter. He also advised that the plan administrator would be resigning effective December 22, 1994, and that such action may result in additional delay in processing a revised QDRO and other requests. The Accused did not respond nor did she provide a copy of the letter to the Client or otherwise inform her of the communication. About December 6, 1994, the Client spoke with the employer's general counsel directly and again sent the Accused a letter asking the Accused to explain her intentions with regard to the matter. The Accused did not respond. In January 1995, the Client contacted another attorney with regard to the matter, but did not hire the other attorney to handle the matter. The Accused spoke with the attorney with whom the Client consulted and was left with the impression that he would be handling the matter in the future. The Accused was not informed that the Client decided not to hire the attorney with whom she consulted. In March 1995, the Client filed a complaint with the Disciplinary Counsel's Office. As of that time, the Accused had not prepared a revised form of QDRO or communicated with the Client concerning the matter.

11.

The Accused neglected a legal matter entrusted to her and intentionally failed to carry out a contract of employment in the following particulars by:

A. Failing to prepare a revised form of QDRO;

- B. Failing to refer the Client to other counsel for preparation of a revised form of QDRO;
- C. Failing to communicate with the Client;
- D. Failing to follow up and respond to the plan administrator's inquiries concerning the QDRO and the disposition of the Client's portion of the retirement funds; and
- E. Failing to confirm with the Client that her services were no longer required.

14.

The Accused admits that her conduct violated DR 6-101(B) and DR 7-101(A) (2) of the Code of Professional Responsibility.

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions should be considered (hereinafter, "Standards"). The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- A. Duty. In violating DR 6-101(B) and DR 7-101(A) (2), the Accused violated duties to her client. Standards, § 4.4.
- B. State of Mind. In part, the Accused's conduct demonstrates a conscious objective or purpose to accomplish a particular result. The Accused believed she was acting in furtherance of the interests of her client in her dealings with the retirement plan administrator. Standards, p. 7.
- C. Injury. There is no evidence that the Accused's conduct resulted in actual injury to her client, but there existed the potential for injury. The Accused failed to prepare a revised form of Qualified Domestic Relations Order for her client and failed to take other action to allow the client's portion of her ex-husband's retirement fund to be placed in a separate account.
- D. Aggravating factors. Aggravating factors to be considered include:
  - 1. The Accused was admitted to practice in 1978 and has substantial experience in the practice of law. Standards, § 9.22(i).
  - 2. The Accused has a prior record of discipline consisting of a letter of admonition for violation of DR 5-105 in 1983. Standards, § 9.32(a).
- E. Mitigating factors. Mitigating factors to be considered include:
  - 1. The Accused did not act with dishonest or selfish motives. Standards, § 9.32(b).
  - 2. The Accused cooperated with Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this disciplinary

proceeding. Standards, § 9.32(e).

3. The Accused acknowledges the wrongfulness of her conduct and is sorry for it. Standards, § 9.32(l).

4. The Accused's prior disciplinary record is limited and is remote in time to the conduct which is the subject of this Stipulation. Standards, § 9.32(m).

5. At the time of the complaint to the Bar, the Accused was willing to assist the client to conclude the matter.

16.

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standards, § 4.43. Suspension is generally appropriate when the a lawyer knowingly fails to perform serves for a client and causes injury or potential injury to a client. Oregon case law is in accord. In re Bennett, 1 DB Rptr 54 (1985), public reprimand for violation of DR 6-101(B) and DR 7-101(A)(2); In re Hall, 10 DB Rptr 19 (1996), public reprimand for violation of DR 6-101(A) and (B); In re Loew, 292 Or 806, 642 P2d 1191 (1982), 30 days suspension for violation of DR 6-101(B), DR 7-101(A)(2) and DR 1-102(A)(3).

17.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

18.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar and approved by the State Professional Responsibility Board (SPRB). This Stipulation shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6 and shall not be effective until approved.

DATED this 17th day of June, 1996.

\_\_\_\_\_  
/s/  
Amy Elliott

\_\_\_\_\_  
/s/  
Jane E. Angus  
Assistant Disciplinary Counsel



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 95-172  
CELIA A. HAVRANEK, )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

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

Effective Date of Opinion: May 22, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-172
	)	
CELIA A. HAVRANEK,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 by and between Celia A. Havranek and the Oregon State Bar on May 21, 1996 be and, hereby is, approved.

DATED this 22nd day of May, 1995.

\_\_\_\_\_/s/\_\_\_\_\_  
 Todd A. Bradley  
 State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
 Ann L. Fisher, Region 5  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-172
	)	
CELIA A. HAVRANEK,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Celia A. Havranek, 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, Celia A. Havranek, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1991, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On March 16, 1996, the State Professional Responsibility Board (hereinafter referred to as the "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violation of DR 5-105(E) of the Code of Professional Responsibility. A formal complaint has not yet been filed, but the Accused admits the following facts and violation of the Code of Professional Responsibility.

5.

Beginning in May, 1994, the Accused represented James L. Wilson (hereinafter referred to as "Dr. Wilson") and, on his behalf, drafted a codicil to his will and an inter vivos irrevocable trust which Dr. Wilson executed on June 15, 1994 outside the Accused's presence. The trust named Gerry E. Taylor (hereinafter referred to as "Mr. Taylor") as trustee and Dr. Wilson's daughter, Heather Teshome (hereinafter referred to as "Ms. Teshome"), as beneficiary.

6.

Dr. Wilson died on June 19, 1994. Thereafter, the Accused advised Mr. Taylor of his duties as trustee, assisted him in transferring real property into the trust, offered to advise him in his capacity as trustee and advised him of the necessity to

obtain a tax identification number for the trust and to render accountings. The Accused did not participate in or advise Mr. Taylor as to specific investments or use of trust assets.

7.

Beginning in November, 1994, the Accused received information that Mr. Taylor was dissipating the assets of the trust. In December, 1994, she undertook to represent Ms. Teshome in litigation to recover the dissipated assets from Mr. Taylor, to enjoin him from disposing of further trust assets or from entering the real property owned by the trust, and to remove him as trustee.

8.

Mr. Taylor obtained counsel to represent him in the above-described litigation. The Accused thereupon withdrew from representing Ms. Teshome.

9.

The Accused admits that at the time she undertook to represent Ms. Teshome in an action against Mr. Taylor to preserve the assets of the trust against his alleged defalcations, she also represented Mr. Taylor in his capacity as trustee and that this dual representation constituted an actual conflict of interest between current clients in violation of DR 5-105(E).

10.

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 or mitigating circumstances.

a. The Accused violated her duty to her client to avoid conflicts of interest. ABA Standards §4.3.

b. With regard to the Accused's state of mind, she believed that she was acting in furtherance of the wishes of her former client, Dr. Wilson, in protecting the interest of the beneficiary of the trust in the trust assets, but was negligent in determining that Mr. Taylor was her current client and that she owed him a duty of loyalty.

c. There is no evidence that the Accused's conduct caused actual damage to either Mr. Taylor or to Ms. Teshome, but it had the potential for injury to Mr. Taylor in that Mr. Taylor's interests were, under the circumstances, adverse to those of Ms. Teshome.

d. There are no aggravating factors to be considered. ABA Standards §9.22

e. Mitigating factors to be considered are:

1. The Accused has no prior record of reprimand, suspension or disbarment;
2. The Accused had no dishonest or selfish motive and was in good faith attempting to carry out the wishes of her former client, Dr. Wilson, against what she believed was breach of fiduciary duty by Mr. Taylor;

3. The Accused made full and free disclosure to the Bar and displayed a cooperative attitude towards the Bar's investigation of her conduct;
4. The Accused was inexperienced in the practice of law, having been admitted to the Bar in 1991;
5. The Accused withdrew from representing Ms. Teshome immediately upon being made aware of the conflict of interest;
6. The Accused acknowledges that her conduct violated the Code of Professional Responsibility, displays remorse for it and has acquired an awareness of the potential for conflicts of interest in an estate planning practice. ABA Standards §9.32

11.

The ABA Standards provide that a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may adversely affect another client and causes injury or potential injury. ABA Standards §4.33. Oregon case law is in accord. See, In re Cohen, 316 Or 657, 853 P2d 286 (1993) (public reprimand for violation of DR 5-105(E)).

12.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a public reprimand for violation of DR 5-105(E).

13.

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. 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 20th day of May, 1996.

\_\_\_\_\_/s/  
Celia A. Havranek

EXECUTED this 21st day of May, 1996.

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



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-241
	)	
DAVID J. EDSTROM,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: Randall Duncan, Esq.

Counsel for the Accused: Richard Weil, Esq.

Disciplinary Panel: Stephen L. Brischetto, Chair; Roger K. Stroup; and Jean B. Wilde, Public Member

Disposition: Violation of DR 3-101(A). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: August 16, 1996

**Note: Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No. 94-241
Complaint as to the Conduct of	)	
	)	ORDER APPROVING
DAVID J. EDSTROM,	)	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 for Discipline entered into between the Oregon State Bar and the Accused is hereby approved upon the terms set forth therein. The Accused shall be publicly reprimanded for violation of DR 3-101(A).

DATED this 16th day of August, 1996.

\_\_\_\_\_  
/s/  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_  
/s/  
Ann L. Fisher, Region 5  
Disciplinary Board Chairperson



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-241
	)	
DAVID J. EDSTROM,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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David J. Edstrom, 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. Edstrom, 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. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

At its July 26, 1995 meeting, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused, alleging violations of DR 1-102(A)(3), DR 2-101(A), DR 3-101(A) and DR 9-101(A).

5.

The Oregon State Bar filed its Formal Complaint, which was served, together with a Notice to Answer, upon the Accused on November 17, 1995. A copy of the Formal Complaint is attached hereto as Exhibit 1 and incorporated herein by reference.

6.

After formal discovery was conducted, the parties agreed that, for the purposes of this Stipulation, the First and Third Causes of Complaint (alleging violations of DR 1-102(A)(3), DR 2-101(A) and DR 9-101(A)) should be dismissed. The Bar hereby agrees to dismiss those charges as part of this Stipulation.

7.

The Accused admits that Thang Huynh was his client; admits paragraphs 9 through 12 of the Second Cause of Complaint; and admits his conduct violated DR 3-101(A).

8.

The Accused and the Bar agree that in fashioning an

appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions and Oregon case law should be considered. The ABA Standards require that the Accused's conduct be analyzed considering the following four factors: 1) the ethical duty violated; 2) the attorney's mental state; 3) the actual or potential injury; and 4) the existence of aggravating or mitigating circumstances.

A. Duty. In violating DR 3-101(A), the Accused violated a duty to the profession to refrain from assisting in the unlawful practice of law. Standards 7.0.

B. State of Mind. The Accused's conduct demonstrated a failure to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards p. 7.

C. Injury. The Accused's conduct was potentially injurious to clients who might have been misled into believing that he was actively supervising immigration work performed by his legal assistant, Vinh Huynh, when in fact that was not the case. By relying entirely upon his legal assistant, the Accused failed to exercise any independent legal judgment in the case involving Thang Huynh. A dispute arose between Thang Huynh and the Accused over the Accused's legal services and the cost of those services. Thang Huynh was required to retain other counsel. The dispute was ultimately settled.

D. Aggravating Factors. Aggravating Factors to be considered include Standards 9.22(h), vulnerability of victim, and Standards 9.22(i), substantial experience in the practice of law.

E. Mitigating Factors. Mitigating Factors to be considered include Standards 9.32:

- (a). Absence of a prior disciplinary record.
- (b). Absence of a dishonest or selfish motive.
- (e). Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

9.

The Standards provide that a public reprimand is generally appropriate when a lawyer negligently 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. Standards at 7.3. Oregon case law is in accord. See In re Toner, No. 93-72, 8 DB Rptr. 63 (1994), [30-day suspension for violation of DR 3-101(A), together with several conflicts violations].

10.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that a public reprimand is the appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for

Discipline.

11.

The Accused has no prior record of reprimand, suspension or disbarment since he was admitted to the Bar in 1973.

12.

This Stipulation for Discipline is entered after review by Disciplinary Counsel of the Oregon State Bar and approval by the State Professional Responsibility Board (SPRB). The parties understand and agree that after execution, the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 18th day of June, 1996.

\_\_\_\_\_  
/s/  
David J. Edstrom

Approved as to form:

\_\_\_\_\_  
/s/  
Richard L. Weil, Attorney for Accused

EXECUTED this 24th day of June, 1996.

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



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	SC S43362
Complaint as to the Conduct of:	)	
	)	
LYLE O. ROBERTSON,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition:	Reciprocal Discipline.	Supreme Court Order Imposing
	Reciprocal Discipline.	Disbarred.

Effective Date: August 27, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	SC S43362
Complaint as to the Conduct of:	)	
	)	
LYLE O. ROBERTSON,	)	
	)	
Accused.	)	
<hr/>		

Upon consideration by the court.\*

This matter comes before the court on notice from the State Professional Responsibility Board pursuant to Oregon State Bar Rule of Procedure 3.5 that the Supreme Court of the State of Colorado has disbarred the accused, a person now admitted to the practice of law in Oregon, for ethical misconduct. The SPRB has recommended that the court also disbar the accused as a result of his misconduct in Colorado. The court has reviewed the matter and accepts the SPRB's recommendation.

IT IS ORDERED that Lyle O. Robertson is disbarred effective the date of this order.

DATED this 27th day of August, 1996.

\_\_\_\_\_/s/  
WALLACE P. CARSON, JR.  
Chief Justice

\* Unis, J., retired June 30, 1996 and did not participate in this decision.

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SUPREME COURT, STATE OF COLORADO  
Nos. 94SA197, 95SA128 & 95SA236

December 4, 1995

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THE PEOPLE OF THE STATE OF COLORADO,

Complainant,

v.

LYLE OTIS ROBERTSON,

Attorney-Respondent.

---

Original Proceeding in Discipline

EN BANC

ATTORNEY DISBARRED

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Linda Donnelly, Disciplinary Counsel  
James C. Coyle, Assistant Disciplinary Counsel

Denver, Colorado

Attorneys for Complainant

No Appearance by Attorney-Respondent

PER CURIAM

Three separate lawyer disciplinary proceedings have been consolidated for one opinion and order. For the reasons below, we order that the respondent be disbarred and that any application for readmission be conditioned on the satisfaction of certain conditions, including restitution.

## I

The respondent was admitted to the Colorado bar in 1981. He is now before us involving three separate matters, cases nos. 94SA197, 95SA128, and 95SA236, which were consolidated by order of this court. On April 26, 1994, we immediately suspended respondent from the practice of law.

## A

In No. 94SA197, the hearing board entered a default against the respondent as a sanction for failing to appear at his deposition and failing to comply with the board's discovery orders. C.R.C.P. 37(b)(2), (d)241.13(b) People v. Proffitt, 854 P.2d 787, Colo. 1993). The factual allegations in the complaint were therefore deemed admitted. Id. The respondent did not attend the hearing.

Based on the respondent's default, and evidence tendered by the disciplinary counsel, the hearing board found that the respondent was retained on January 24, 1992, by Carolyn Boynton, the client, to pursue a wrongful death action. Client's child was killed as the result of an automobile accident. The client had been informed that the driver's insurance company would not dispute liability or damages and would tender the policy limits of \$15,000. The respondent told his client that she might be entitled to more, and she signed a one-third contingency fee contract for the respondent's services in connection with the "wrongful death of son and investigation into circumstances of death and medical treatment."

By check dated February 24, 1992, the insurance company paid the respondent and his client the policy limits of \$15,000. The respondent kept \$5,000 and disbursed \$10,000 to his client.

The respondent therefore collected a \$5,000 contingency fee when there was effectively no risk of nonrecovery and little work was performed on the client's behalf. The hearing board found, and we agree, that the respondent's conduct violated DR 2-106(A) (a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee). People v. Walker, 832 P.2d 935, 936 (Colo. 1992) (lawyer's fee was excessive in violation of DR 2-106(A) where compensation claimed bore no rational relationship to the work performed); People v. Nutt, 696 P.2d 242, 248 (Colo. 1985) (where attorney fee, whether characterized as fixed or contingent, was not indicative of time, labor and skill invested, it was prohibited as excessive under DR 2-106).

## B

The respondent defaulted in No. 95SA128, and did not appear at the hearing. The hearing board found that the following had been proven by clear and convincing evidence.

The respondent visited a woman and her son, a juvenile, at the hospital where the juvenile was being treated for wounds inflicted by a store owner during a shoplifting incident on or about July 18, 1991. The respondent provided unsolicited legal advice contrary to DR 2-104(A) to the juvenile and his mother neither of whom were close friends of respondent, relatives or former clients. Respondent advised



them to take legal action against the store owner, and then suggested that he could represent them. They entered into a contingency fee agreement and the mother paid the respondent \$500 for costs. The mother subsequently terminated the respondent's services in 1993 and asked for an accounting and a refund of her deposit.

The respondent did not provide either an accounting or a refund, in violation of R.P.C. 1.15(b)<sup>1</sup>, and the former client filed a request for investigation on October 5, 1993. The respondent then offered to refund the majority of client's deposit if she would sign a letter stating that she did not want to file a grievance. The client agreed to the request and respondent refunded most of her deposit. This conduct violated R.P.C. 8.4(d) (conduct that is prejudicial to the administration of justice). The respondent also engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, R.P.C. 8.4(c), when he told his client that the filing fee for a complaint was \$200.

2

In a post-dissolution matter in 1993, the respondent failed to adequately communicate with his client, tried to withdraw from representation without protecting the client's interests, and misrepresented to the court that he did not know his client's current address, did not represent her in any way, and had no way to contact her. This conduct violated R.P.C. 1.4(a) (fail to communicate with client); R.P.C. 1.16(d) (upon termination of representation, a lawyer shall take reasonable steps to protect a client's interests); and R.P.C. 8.4(c) (dishonesty, fraud, deceit or misrepresentation).

3

The respondent represented a juvenile injured in an automobile accident. The respondent and the juvenile's mother signed a doctor's lien which directed that Dr. Michael E. Jackson, the treating physician, would be paid from any settlement or recovery as a result of the accident. Although the case was settled and the proceeds received in August 1992, the respondent did not pay any of the \$4,993 owed to Dr. Jackson, nor did he institute an arbitration proceeding against the PIP carrier for payment of Dr. Jackson's fee. The respondent's conduct thereby violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation) DR 1-102(A)(6) (conduct adversely reflecting on fitness to practice law) and DR 6-101(A)(2) (a lawyer shall not handle a legal matter entrusted to the lawyer without adequate preparation under the circumstances).

4

The respondent represented Ricky Lynn Butler, a/k/a Albert Fuggins in various criminal proceedings. Pursuant to a plea agreement, Butler was sentenced on July 23, 1993. The respondent agreed to file a Crim. P. 35(c) motion for post conviction relief, but did not file the motion.

Following sentencing, the district attorney's office released \$7,000.00, which had been seized from Butler's safety deposit box, to the respondent. The respondent did not transfer the funds to either Butler or Patricia Shaver, a co-owner of the funds. He initially

<sup>1</sup> The effective date of the Rules of Professional Conduct was January 1, 1993. For conduct occurring before January 1, 1993, the Code of Professional Responsibility applied.

misrepresented to Shaver that Butler had instructed the respondent to invest the money, and then told her that he had invested the funds with a friend and would obtain them the following week. The respondent had in fact converted the funds to his own use.

After several unsuccessful attempts to get the funds back, an action was filed against the respondent on October 5, 1993, for return of the money. In his answer to the complaint, the respondent falsely stated that the funds were applied to Butler's outstanding attorney fees. The respondent's fees were actually paid in advance. The respondent's conduct violated R.P.C. 1.3 (neglect of a legal matter); R.P.C. 1.4(a) (failure to keep client reasonably informed); R.P.C. 1.15(b) (failure (sic) to deliver client funds upon request and to provide an accounting); R.P.C. 3.3(a)(1) (make a false statement of material fact or law to a tribunal); R.P.C. 4.1(a) (make a false or misleading statement of fact or law to a third person); and R.P.C. 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

During 1992 and 1993, the respondent borrowed \$10,000 from Butler. The respondent failed to properly disclose the possibility of a conflict of interest and to advise Butler to seek independent legal advice on the loans. Respondent secured the two loans with a promissory note and lien which were essentially worthless. The respondent thereby violated DR 1-102(A)(4) and R.P.C. 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 5-104(A) (entering into a business transaction with a client having differing interests without full disclosure); R.P.C. 1.7(b) (representing a client if the representation of that client may be materially limited by the lawyer's own interests) and R.P.C. 1.8(a) (entering into a prohibited business transaction with a client).

The respondent sold twelve acres of real property to Butler in December 1992 for \$6,000. The respondent misrepresented the extent of his ownership of the real property, and he forged his wife's name on the quit claim deeds and falsely notarized the deeds using his wife's notary seal. His conduct violated DR 1-102(A)(4) (dishonesty, fraud, deceit, or misrepresentation) DR 1-102(A)(6) (conduct adversely reflecting on fitness to practice law); and C.R.C.P. 241.6(5) (violation of the criminal laws of a state or of the United States).

5

The respondent represented a client in a personal injury action to recover damages. The client received treatment at Heuser Chiropractic, a clinic where she had accrued \$1,489.50 in charges. Client signed a lien statement agreeing to pay the clinic's charges from any settlement proceeds. The respondent was aware that his client signed the lien statement. Following settlement of the personal injury action, however, the respondent failed to pay the full amount owed to the clinic after he received the funds in trust, and has not paid the balance due in the amount of \$739.50. The foregoing conduct violated R.P.C. 1.3 (neglect of a legal matter); R.P.C. 1.15(b) (failure to deliver to a third party funds that person is entitled to receive); and R.P.C. 8.4(c) (dishonesty, fraud, deceit, or misrepresentation).

6

The respondent represented Charles and Lola Downs and Sue Smith in relation to Lester Downs's estate. Smith had been Lester Downs's caretaker. When the respondent represented the Downs and Smith, they

had differing interests. He neglected to file Smith's claim against the estate and petition for allowance after the claim was disallowed, misrepresented to Smith that the claim had been timely filed, misrepresented to Lola Downs that he had filed an answer in a civil action when he had not, failed to advise any of the clients that he had decided not to continue with their representation, and failed to return any unused retainer to the Downses. A default judgment was entered against the Downses in the amount of \$10,000. The Downses had paid the respondent a retainer totalling (sic) \$1,924 as of December 1, 1993. In addition, they have paid \$2,800 to another lawyer appealing the default Judgment.

The respondent's conduct violated R.P.C. 1.3 (neglect); R.P.C. 1.7(a) (representing client with an interest directly adverse to another client); R.P.C. 1.7(b) (representing multiple clients); R.P.C. 1.15(b) (failing to deliver client funds); R.P.C. 1.16(d) (failing to take reasonable steps to protect clients' interests upon termination of representation); and R.P.C. 8.4(c) (dishonesty, fraud, deceit, or misrepresentation).

7

On December 14, 1993, Robert J. Voitl paid the respondent a \$400 retainer to represent him in connection with a dissolution of marriage matter. On January 15, 1994, however, Voitl received a letter from another lawyer stating that the respondent had transferred the file to him because the respondent had discontinued the practice of law. The \$400 retainer was not transferred with the file and has not been returned. The above conduct violated R.P.C. 1.3, 1.15(b), and 8.4(c).

C

The respondent also defaulted in No. 95SA236. He represented a couple in relation to an automobile-pedestrian accident in which one of his clients was injured. The automobile driver's insurance company issued a \$25,000 settlement check to the respondent on February 8, 1994. The respondent endorsed the check and forged his clients' signatures on the check. He cashed the check on February 11, 1994. On March 21, 1994, the respondent gave his clients a cashier's check in the amount of \$7,000 as part of the settlement, but has not paid anything more to them. The clients did receive the remaining \$18,000 from Norwest Bank, the bank that had cashed the settlement check.

The respondent engaged in criminal conduct by forging his clients' signatures on a negotiable instrument, 18-5-102(1)(c), 8B C.R.S. (1995 Supp.) (forgery of a check is a class 5 felony), and he converted client funds; thereby violating R.P.C. 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) R.P.C. 8.4(c) (dishonesty); and C.R.C.P. 241.6(5) (violation of the criminal laws of a state or of the United States).

II

The hearing panel In No. 94SA197 approved the hearing board's recommendation that the respondent be suspended for six months, be required to petition for reinstatement, and pay restitution. The hearing panel in No. 958A128 approved the board's recommendation that the respondent be disbarred, and that he comply with certain conditions including restitution to be readmitted. Finally, in No. 95SA236, the hearing panel recommended that the respondent be disbarred and pay additional restitution. The respondent defaulted in

all three proceedings and no mitigating circumstances were found.

The respondent in this case has committed several types of misconduct which alone could result in disbarment. He has converted client funds, abandoned clients, made misrepresentations (sic) to his clients, and engaged in criminal conduct by forging deeds and a settlement check. See People v. Lefly, 902 P.2d 361, 364 (Colo. 1995) (lawyer's knowing conversion of client funds almost always warrants disbarment even if funds are eventually replaced); People v. Tucker, No. 95SA257, slip op. at 10-11 (Colo. Nov. 14, 1995) (lawyer disbarred for abandoning clients); People v. Marmon, 903 P.2d 651 (Colo. 1995) (lawyer disbarred for falsifying and forging three court documents). We therefore accept the recommendations of the hearing panel in Nos. 95SA128 and 95SA236, and order that the respondent be disbarred.

### III

It is hereby ordered that Lyle Otis Robertson be disbarred and that his name be stricken from the list of attorneys authorized to practice before this court, effective immediately upon the release of this opinion. It is further ordered that, prior to any application for readmission, the respondent demonstrate that he has made the following restitution

(1) \$3,600 plus statutory interest from February 27, 1992, to Carolyn Boynton;

(2) \$4,993 plus statutory interest from August 31, 1992, to Michael E. Jackson;

(3) \$7,000 plus statutory interest from August 31, 1993, to Patricia Shaver and Ricky Lynn Butler;

(4) \$5,000 plus statutory interest from October 29, 1992, to Ricky Lynn Butler;

(5) \$5,000 plus statutory interest from April 12, 1993, to Ricky Lynn Butler;

(6) \$6,000 plus statutory interest from December 31, 1992, to Ricky Lynn Butler;

(7) \$739.50 plus statutory interest from July 31, 1993, to Heuser Chiropractic Clinic;

(8) \$14,724 plus statutory interest from December 31, 1993, to Charles and Lola Downs;

(9) \$400 plus statutory interest from December 14, 1993, to Robert J. Voitl;

(10) \$18,000 plus statutory interest from June 28, 1994, to Norwest Bank or its successor entity.

It is further ordered that, should he seek readmission the respondent must demonstrate the ability to practice law with competence and in accordance with the rules of professional conduct. It is further ordered that the respondent pay the combined costs of these proceedings in the amount of \$1,110.40 to the Supreme Court Grievance Committee, 600 Seventeenth Street, Suite 920-S, Dominion Plaza, Denver, Colorado 80202; within thirty days of the date of this opinion.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-144; 95-240
	)	
JOSEPH R. MENDEZ,	)	
	)	
Accused.	)	
	)	

---

Bar Counsel: Paul Silver, Esq.

Counsel for the Accused: Bradley F. Tellam, Esq.

Disciplinary Board: Chair: None

Disposition: Violation of DR 1-103(C), DR 6-101(B),  
DR 2-110(A)(2). Stipulation for Discipline.  
Thirty-day suspension.

Effective Date of Opinion: September 7, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-144; 95-240
	)	
JOSEPH R. MENDEZ,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

---

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 parties is accepted and the Accused shall be suspended for a period of 30 days, commencing September 7, 1996 or seven (7) days after the Disciplinary Board approves the Stipulation for Discipline, whichever is later, for violation of DR 2-110(A)(2), DR 6-101(B), DR 1-103(C) (Case No. 95-114), and DR 2-101(A)(1) (Case No. 95-240).

DATED this 28th day of August, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
Ann L. Fisher, Region 5  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-114, 95-240
	)	
JOSEPH R. MENDEZ,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

JOSEPH R. MENDEZ (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 the practice of law in this state and a member of the Oregon State Bar, maintaining 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 of Rule of Procedure 3.6(h).

4.

At its December 14, 1995 and January 13, 1996 meetings, the State Professional Responsibility Board directed that formal disciplinary proceedings be filed against the Accused for violation of DR 2-110(A)(2), DR 6-101(B), DR 1-103(C) (Case No. 95-114), and DR 2-101(A)(1) (Case No. 95-240). The Bar filed its Formal Complaint, which was served together with a Notice to Answer upon the Accused.

5.

Advertisements  
(Case No. 95-240)

The Accused advertised his and his law firm's availability to provide legal services by sending letters to individuals who filed complaints concerning their employers with the Oregon Bureau of Labor and Industries (hereinafter, "Advertisements"). In the Advertisements, the Accused characterizes the employer's actions as "unlawful actions" without investigation and when no court or administrative agency authorized to investigate or act upon such complaints has completed any investigation or other action, or determined the employer's actions to be unlawful. As a result, the Accused made or caused to be made communications which contained a material misrepresentation of fact or law or omitted a

statement of fact or law necessary to make the communication considered as a whole not materially misleading. The Accused admits that the aforementioned conduct constitutes violation of DR 2-101(A) (1) of the Code of Professional Responsibility.

6.

Eastman Matter  
(Case No. 95-114)

In another matter, Eva Eastman (hereinafter "Eastman") filed a claim with the Bureau of Labor and Industries against Newberry's. On or about November 9, 1994, the Bureau of Labor and Industries notified Eastman of her right to file a civil claim in the courts and that such action must be commenced within 90 days after the date of the notice. On or about November 11, 1994, Eastman retained the Accused to pursue her claim against Newberry's. On January 30, 1995, Accused's law firm sent Eastman a letter notifying that they would no longer represent her. Eastman received the letter several days later. Between about November 21, 1994 and January 30, 1995, the Accused neglected the legal matter entrusted to him by: failing to take action to protect Eastman's rights and interests in her claim; failing to insure that his firm maintained communication with Eastman; failing to associate with or refer the case to outside counsel qualified to handle Eastman's claim; failing to notify Eastman that he had asked someone in his firm to work on or handle her claim; failing to supervise or monitor Eastman's case; failing to notify Eastman in a timely manner that he and/or his law firm would not be able to handle her claim; and failing to withdraw as Eastman's attorney in a timely manner. The Accused also withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to Eastman's rights, including providing reasonable notice to Eastman, allowing time for her employment of other counsel, and delivering all client papers and property to which the client was entitled. The Accused admits the aforementioned conduct constitutes violation of DR 6-101(B) and DR 2-110(A) (2) of the Code of Professional Responsibility.

7.

After the Bar received Eastman's complaint, Disciplinary Counsel's Office forwarded a copy to the Accused and requested his explanation. In responding to the complaint, the Accused represented to Disciplinary Counsel's Office that Eastman was contacted by telephone to explain the decision to no longer represent her, and the January 30, 1995 letter was subsequently mailed to her. The Accused also represented that his colleague, Robert Birk, had contacted Eastman on a number of other occasions regarding the case as it was being researched. The Accused later acknowledged to the Local Professional Responsibility Committee that his statements to Disciplinary Counsel's Office were assumptions, the accuracy of which he did not fully confirm before responding to the Bar. The Accused did not know whether Mr. Birk had ever spoken with Eastman before or after sending her the January 30, 1995 letter terminating the attorney/client relationship. The Accused admits that his response to inquiries from the Disciplinary Counsel's Office were not true and that such conduct constitutes violation of DR 1-103(C) of the Code of



## Professional Responsibility.

## 8.

## Sanction

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter "Standards") and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 1-103(C), DR 6-101(B), DR 2-110(A)(2) and DR 2-101(A)(1) the Accused violated duties to his client and to the profession. Standards, §4.4, § 4.5, and § 7.0.

B. State of Mind. The Accused acted with knowledge or the conscious awareness of the nature of the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. Standards, p. 7.

C. Injury. The Accused caused actual and potential injury to Eastman by his conduct. Eastman believed her interests were being pursued when they were not, and after she was notified that the Accused and his lawfirm would no longer represent her, there was insufficient time to secure new counsel to evaluate or pursue her claim. The Accused also caused potential injury to those persons to whom he sent his advertisements in that he created incorrect and unrealistic expectations. He also caused potential or actual injury to the reputation of the employers whose conduct was not unlawful or not yet determined to be so.

D. Aggravating Factors. Aggravating factors to be considered include:

1. The Accused has a prior disciplinary record consisting of an admonition imposed in 1993 for violation of DR 1-102(A)(3) and an admonition imposed in 1994 for violation of DR 2-101(C). Standards, § 9.22 (a).

2. This stipulation involves four (4) rule violations arising out of two (2) complaints. Standards, §9.22 (d).

3. Eastman was vulnerable in that she relied on the Accused to represent her interests. Standards, §9.22 (h).

4. The Accused was admitted to practice in 1982 and has substantial experience in the practice of law. Standards, §9.22 (l).

5. The Accused failed to provide a full and truthful response to the Bar's request for explanation of the Eastman complaint. Standards, § 9.22 (f).

E. Mitigating Factors. Mitigating factors to be considered include:

1. The Accused acknowledges the wrongfulness of his conduct and is sorry for it. Standards, § 9.32 (l).

## 9.

The 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). Suspension is also 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. Standards, § 7.2 Oregon case law is in accord. In re Bennett, 8 DB Rptr 1 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(B)(2) and DR 1-103(C); In re Force, 8 DB Rptr 195 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(A)(1) and DR 2-110(A)(2); In re Ross, 8 DB Rptr 195 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(A)(1), (2).

10.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for a period of 30 days, commencing September 7, 1996, or seven (7) days after the Disciplinary Board approves this Stipulation for Discipline, whichever is later.

11.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board and shall be submitted to the Disciplinary Board for consideration pursuant to the provisions of BR 3.6.

EXECUTED this 13th day of August, 1996.

\_\_\_\_\_/s/  
JOSEPH R. MENDEZ

OREGON STATE BAR

\_\_\_\_\_/s/  
JANE E. ANGUS  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No: 94-15; 94-16
Complaint as to the Conduct of	)	and 95-86
	)	
GREGORY L. GUDGER,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 1-102(A)(4), DR 2-106(A), DR 2-110(C), DR 9-101(A), DR 7-101(A)(2), DR 9-101(C)(3) and DR 9-101(C)(4). Supreme Court Stipulation for Discipline. 180-day suspension, 90 days stayed pending a 2 year probation period.

Effective Date of Opinion: September 23, 1996.

**Note: Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	Case No: 94-15; 94-16
Complaint as to the Conduct of	)	and 95-86
	)	
GREGORY L. GUDGER,	)	
	)	
Accused.	)	
	)	

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Upon consideration by the court.\*

The Oregon State Bar and Gregory L. Gudger have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Gregory L. Gudger is suspended from the practice of law for a period of 180 days. 90 days of this suspension shall be stayed pending the accused's completion of two years of probation commencing the effective date of this stipulation. The Stipulation for Discipline is effective September 23, 1996.

DATED this 30th day of August, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
WALLACE P. CARSON, JR.  
Chief Justice

\* Unis, J. retired June 30th, 1996 and did not participate in this decision.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No: 94-15; 94-16 and 95-86
	)	
GREGORY L. GUDGER,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
<hr style="width: 50%; margin-left: 0;"/>		

Gregory L. Gudger, 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, Gregory L. Gudger, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 17, 1987, 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 December 15, 1994, the State Professional Responsibility Board (hereinafter "SPRB") of the Oregon State Bar, authorized formal disciplinary proceedings against the Accused alleging that he violated DR 6-101(A) in connection with his representation of a criminal defendant and DR 1-102(A)(4), DR 2-106(A), DR 2-110(C), DR 7-101(A)(2), DR 7-101(A)(3), DR 9-101(C)(3) and DR 9-101(C)(4) in connection with his representation of a client in a civil matter. On May 20, 1995, the SPRB authorized formal disciplinary proceedings against the Accused alleging that he violated DR 9-101(A) and DR 9-101(C)(3) for failing to maintain client funds in trust and failing to maintain complete records of client funds. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

Nelson Matter - Case No. 94-15

In late 1992, Robin Nelson (hereinafter "Nelson") and Theophilus Jermany (hereinafter "Jermany") were charged with promoting prostitution. Nelson retained the Accused and Susan Russell was appointed to represent Jermany. Counsel and both clients agreed to a joint trial.

On May 4, 1993, a three-day jury trial was held before R.P. Jones of the Multnomah County Circuit Court. On May 7, 1993, the jury returned guilty verdicts against Nelson and Jermany.

On May 30, 1993, Gary Babcock (hereinafter "Babcock"), Nelson's successor-counsel, moved for a new trial alleging that the Accused had provided Nelson with ineffective assistance of counsel. Babcock alleged that the Accused had failed to keep track of and produce two key witnesses at Nelson's trial, selected jurors who the Accused and co-counsel had agreed should be released and disqualified jurors who they had agreed to keep, failed to cross-examine a witness on a material aspect of the case, objected to exonerating evidence and in closing argument admired to the jury that he had done a poor job throughout the trial and requested that the jury not hold his performance against his client.

On July 27, 1993, Judge R.P. Jones issued an opinion granting Nelson's request for a new trial. In his opinion, Judge Jones found that the Accused had provided Nelson with ineffective assistance of counsel and was a detrimental factor to her defense. Nelson, after being granted a new trial, pled guilty.

Judge Jones notified the Bar of the Accused's ineffective assistance of counsel, but later opined that the Accused ought not be sanctioned beyond required course work in evidence and trial preparation. See, Exhibit 1.

The Accused admits that for providing Nelson with ineffective assistance of counsel he violated DR 6-101(A).

6.

Salstrom Matter - Case No. 94-16

A. DR 1-102(A) (4)

In June 1992, Michael Salstrom retained the Accused to pursue an unfair debt collection case on Mr. Salstrom's behalf. Pursuant to a written fee agreement, the Accused's fees for services were dependent upon obtaining money on Mr. Salstrom's behalf and the amount of those fees was based on the stage of the proceeding at which the recovery was effectuated.

Prior to October 1992, the Accused associated, pro hac vice, Washington attorney Dean Webb (hereinafter "Webb ") to broaden Mr. Salstrom's case to include allegations of RICO and ORICO violations. In October 1992, the Accused, on Mr. and Mrs. Salstrom's behalf, filed a complaint in the U.S. District Court alleging that Citicorp and several other institutions and individuals had violated RICO, ORICO and the unfair debt collections practices statutes. Within days, the Accused filed a 92 page First Amended Complaint.

Defendant Citicorp moved to dismiss the complaint for failure to comply with FRCP 8A. On April 8, 1993, U.S. District Court Judge Helen Frye found that the First Amended Complaint did not comply with FRCP 8A and dismissed the complaint without prejudice. In granting the Salstroms' motion to file a Second Amended Complaint, Judge Frye ordered that it comply with FRCP 8A.

On May 7, 1993, the Accused, on the Salstroms' behalf, filed a Second Amended Complaint. The Second Amended Complaint consisted of 144 pages, alleging numerous claims for relief, added additional parties and a new claim without seeking or receiving leave of the court.

The defendants moved to dismiss the Second Amended Complaint with prejudice, citing a failure to comply with FRCP 8A and Judge Frye's order. The defendants' motion was granted by Judge Ashmanskas, who dismissed the case on August 13, 1993.

Prior to Judge Ashmanskas' dismissal, some of the defendants had filed motions for sanctions against the Salstroms, the Accused and Webb. On May 20, 1994, Judge Ashmanskas granted those portions of defendants' motion against the Accused, finding that he had acted recklessly during the course of the representation and unreasonably and vexatiously multiplied the time and money expended in violation of 28 U.S.C. § 1927. Judge Ashmanskas ordered the Accused to pay \$13,750 to three of the defendants to offset a portion of their incurred defense costs.

Throughout the Salstrom representation the Accused relied heavily on Webb who he believed was experienced in RICO and ORICO matters, an area of law in which the Accused had no such experience.

The Accused admits that for engaging in the above-referenced conduct, he violated DR 1-102(A)(4).

B. DR 2-106(A), DR 2-110(C), DR 7-101(A)(2)

On August 20, 1993, the Accused wrote the Salstroms to inform them of the court's findings and that the dismissal could be appealed to an Article III judge. The Accused also informed the Salstroms that any appeal to the district court judge needed to be filed by August 27, 1993, but that the Accused would not continue to work on the Salstroms' behalf unless they would agree to convert their case from a contingency fee to an hourly fee and pay him a \$1500 retainer. Up to that point, the Accused had not received any money to be applied toward his fee and he believed he could not afford to continue on with complex litigation without some payment by the clients. The Accused gave the Salstroms three days to agree to his proposed modification.

Based on the written fee agreement between the parties which provided that the Accused would represent the Salstroms through any appeal, the Salstroms refused to agree to the conditions set forth in the Accused's August 20, 1993, letter and instructed the Accused to abide by the written fee agreement and file their appeal.

On August 23, 1993, three days before the Salstroms' appeal needed to be perfected, the Accused terminated his representation. Judge Ashmanskas' dismissal with prejudice became final.

The Accused admits that in conditioning his further representation of the Salstroms on their agreement to modify the written fee agreement which provided that he would represent them on a contingency basis throughout the life of the legal matter and then terminating the representation when the Salstroms refused to modify the agreement, he violated DR 2-106(A), DR 2-110(C) and DR 7-101(A)(2).

C. DR 9-101(C)(3) and DR 9-101(C)(4)

From late August 1993 through November 1993, the Salstroms and their successor-counsel, Michael Shinn (hereinafter "Shinn"), made numerous requests of the Accused for a copy of the Salstroms' file and an accounting. At the time of these requests, sanction motions were pending against the Salstroms and Shinn needed the file to respond to these motions on the Salstroms' behalf. The Accused failed to deliver a copy of the file to Shinn unffi early December 1993 and never provided Shinn with an appropriate accounting regarding the monies which the Salstroms had advanced to cover the costs associated with the litigation. No contention is made by the Bar, however, that client funds were misapplied or convened. The Accused's failure was in not providing an adequate and timely explanation of how the client funds

were disbursed.

The Accused admits that by failing to promptly deliver the Salstroms file to successor-counsel Shinn and by failing to render an appropriate account he violated DR 9-101(C) (3) and DR 9-101(C) (4).

7.

Trust Account Matter - Case No. 95-86

In October 1994, the Accused maintained a lawyer trust account (hereinafter "account") with the U.S. National Bank in Portland, Oregon. In October 1994, the Accused represented Johnnie Wilson in a conservatorship matter. On or about October 17, 1994, the Accused withdrew \$300 from the account for services performed on the Wilson conservatorship. At the time the Accused withdrew these funds, Johnnie Wilson had no funds on deposit in the account. The Accused did not maintain adequate or complete records reflecting deposits made to or disbursements from the account, such that he was unaware that he was drawing excessively on the account.

As a result, the Accused inadvertently withdrew funds belonging to other clients and withdrew funds when the account itself contained insufficient funds altogether.

The Accused admits that the above-referenced conduct violated DR 9-101(A) and DR 9-101(C) (3).

8.

For purposes of this stipulation, the Bar agrees to dismiss the DR 7-101(A) (3) charge previously authorized by the SPRB.

9.

#### Sanction

The Accused and the Bar agree that in fashioning the appropriate sanction the Supreme Court should consider the ABA Standards and Oregon ease 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. Ethical Duty.

1. With respect to the DR 6-101(A), DR 7-101(A) (2), DR 9-101(A), DR 9-101(C) (3), and DR 9-101(C) (4) violations, the Accused violated duties owed to his clients. Standards at 5.
2. With respect to the DR 1-102(A) (4) violation the Accused violated a duty owed to the legal system. Standards at 5.
3. With respect to DR 2-106(A) and DR 2-110(C) violations, the Accused violated duties owed to the profession. Standards at 5.

#### b. Mental State.

1. With respect to the Nelson matter, the Accused acted negligently. At the time of the trial, he was ill and had been ill for a few weeks. He failed to realize the extent to which his illness was going to effect his preparation and presentation.
2. With respect to the court filings and management of the Salstrom litigation, the Accused acted negligently in relying on associate counsel Webb, an attorney who he believed had expertise in RICO litigation, an area of law in which the Accused had no experience.
3. When the Accused conditioned his continued representation on the Salstroms converting their contingency fee to an hourly



fee and when he withdrew as the Salstrom's counsel, the Accused acted with knowledge. At no time, however, did the Accused receive any compensation for the services which he provided to the Salstroms.

4. When the Accused failed to promptly provide successor counsel Shinn with a copy of the Salstroms' file or render an appropriate account, the Accused acted negligently. While an appropriate account was not rendered, the Accused had documentation to verify that monies advanced by the Salstroms were used solely to fund the litigation.
5. When the Accused failed to maintain adequate and complete records with respect to the receipt and disbursement of funds relative to the Wilson conservatorship, the Accused acted negligently. The trust account overdraft was a mistake due to an accounting error. When the overdraft occurred, the Accused reviewed his trust account procedures and took steps to rectify the same.

c. Potential or Actual Injury.

1. Nelson was injured by failing to receive competent representation. She did, however, receive a new trial.
2. The Salstroms suffered monetary damage in that they advanced several thousand dollars in court costs to the Accused and were required to retain successor-counsel to defend against defendants' motions for sanctions.
3. All clients who had monies in trust at the time the Accused overdrew his lawyer trust account were at potential risk, however, none was actually injured.

d. Aggravating/mitigating factors.

1. Aggravating factors to be considered:
  - a. With respect to the Accused's handling of the Salstrom matter, the misconduct involved multiple offenses.
2. Mitigating factors to be considered:
  - a. The Accused has no prior disciplinary record. Standards 9.32(a).
  - b. The Accused had no dishonest or selfish motive. Standards 9.32(b).
  - c. The Accused made full and free disclosure and had a cooperative attitude toward the proceedings. Standards 9.32(e).
  - d. The Accused has submitted evidence of his good character and reputation. See, Exhibit 2. Standards 9.32(g).
  - e. With respect to the Salstrom matter, monetary sanctions were imposed. Standards 9.32(1).
  - f. The Accused has expressed remorse. Standards 9.32(1).

The Standards provide that a public reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client. Standards 4.53. Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Standard 4.13. In addition, the Standards provide that a reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and

causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. Standards 6.23. Finally, the Standards also provide that public reprimand is generally appropriate when a lawyer negligently 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, but a suspension is generally appropriate when a lawyer knowingly engages in such conduct. Standards 7.2, 7.3.

Given the number and type of violations, the Standards and Oregon case law support the imposition of a suspension. In re Loew, 296 Or 328, 676 P2d 294 (1984); In re Rudie, 294 Or 740, 662 P2d 321 (1983); In re Chambers, 292 Or 670, 642 P2d 286 (1982); In re Loew, 292 Or 806, 642 P2d 1171 (1982).

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that for violating the above-referenced disciplinary rules, the Accused will be suspended for a period of 180 days, 90 days of which is stayed, pending a two-year probation period, commencing the effective date of the Supreme Court's approval of this Stipulation for Discipline. The imposition of a term of probation is appropriate as the Accused's misconduct was the result of a combination of factors including illness, inexperience and undue reliance upon a co-counsel. In addition, the Accused has always practiced on his own, without benefit of supervisors or established practitioners. The probation employs certain safeguards to ensure that client funds will be properly maintained and accounted for, and to ensure that the Accused is timely handling his clients' matters or if he cannot, those matters are routed to other counsel.

During the two-year probation period, the Accused will meet the following terms:

- A. Comply with all provisions of the Code of Professional Responsibility and ORS Chapter 9.
- B. Work with Carol Wilson of the Professional Liability Fund with respect to the Accused's current trust account practices and management to identify and resolve problem areas. Ms. Wilson will review the Accused's office practices to determine if he is maintaining adequate and complete trust account records and will develop a plan to eliminate any and all system problems in this area. If the plan requires the Accused to seek further advice or to attend seminars or training sessions in the area of office management, the Accused will comply with such requests and bear all costs. The Accused will adopt all procedures recommended by Ms. Wilson. In addition, Ms. Wilson will review the Accused's trust account records quarterly throughout the term of probation and within 10 days of each review, the Accused and Carol Wilson will prepare and file with the Oregon State Bar a notarized affidavit signed by the Accused and approved by Wilson which indicates that the Accused has maintained adequate and complete trust account records.
- C. Work with Michael Sweeney of the Professional Liability Fund's Attorney Assistance Program to determine what PLF-OAAP sponsored programs would be beneficial for the Accused and comply with Mr. Sweeney's recommendations so long as Mr.

- Sweeney deems appropriate.
- D. The Accused hereby waives any privileges as may be necessary to permit any and all information pertinent to the services offered by Carol Wilson and Michael Sweeney in conjunction with this Stipulation to be disclosed to the Oregon State Bar.
- E. Attorney Ernest Warren of Portland, Oregon shall act as the Accused's caseload monitor. Within 10 days of the effective date of this Stipulation, Mr. Warren will meet with the Accused and review his existing caseload. At the direction of Mr. Warren, the Accused will refer out to other counsel all cases in need of immediate attention. Once the Accused is reinstated, the review and referral process in which Mr. Warren is to participate shall recur every 90 days throughout the term of this probation.
- F. Within 10 days of each review, the Accused and Mr. Warren will prepare and file with the Oregon State Bar a notarized affidavit signed by the Accused and approved by Mr. Warren which indicates that the Accused has:
1. Conducted a complete review of existing cases;
  2. Brought all cases to a current status or referred them out to other counsel;
  3. Complied with all terms of probation since the last report or acknowledged that he has not fully complied and describe the nature of the non-compliance.
- G. Ernest Warren, Carol Wilson and Michael Sweeney have authority to request that the Accused undertake additional remedial action to protect the Accused's clients beyond the steps expressly required by this Stipulation. The Accused agrees to cooperate with all reasonable requests of Ernest Warren, Carol Wilson and Michael Sweeney provided that the requests are designed to achieve the purpose of the probation. In addition, the Accused acknowledges that Carol Wilson, Michael Sweeney and Ernest Warren are to immediately report to the Oregon State Bar any noncompliance by the Accused with the terms of this probation.
- H. In the event the Accused fails to comply with the terms of this probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the remaining suspension to which the Accused has stipulated herein.

10.

The sanctions set forth in this Stipulation for Discipline were approved by the Chair of the State Professional Responsibility Board on January 5, 1996. The Stipulation is subject to approval by the Oregon Supreme Court pursuant to the terms of BR 3.6.

EXECUTED this 29th day of July, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Gregory L. Gudger

EXECUTED this 31st day of July, 1996.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 95-113  
GARY D. BABCOCK, )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: David L. Slader, Esq.

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

Disciplinary Board: None

Disposition: Violation of DR 6-101(A), DR 6-101(B), DR 7-101(A) (2). Stipulation for Discipline.  
Thirty-day suspension.

Effective Date of Opinion: November 1, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
Complaint as to the Conduct of	)	No. 95-113
GARY D. BABCOCK,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.	)	

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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 parties is accepted and the Accused shall be suspended for a period of thirty (30) days, commencing November 1, 1996, for violation of DR 6-101(A), DR 6-101(B) and DR 7-101(A) (2).

DATED this 9th day of September, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
 Todd A. Bradley  
 State Disciplinary Board  
 Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
 Walter A. Barnes, Region 6,  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-113
	)	
GARY D. BABCOCK,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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GARY D. BABCOCK (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 the practice of law in this state and a member of the Oregon State Bar, maintaining his office and place of business in the County of Marion, 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.

At its February 15, 1996 meeting, the State Professional Responsibility Board directed that formal disciplinary proceedings be filed against the Accused for violation of DR 6-101(A), DR 6-101(B) and DR 7-101(A)(2) of the Code of Professional Responsibility. The Bar filed its Formal Complaint, which was served, together with a Notice to Answer upon the Accused.

5.

The State of Oregon filed a petition in the Circuit Court of the State of Oregon for the County of Coos to terminate Michelle Colon's (hereinafter, "Colon") parental rights to two of her children, Case Nos. J4728 and J4729. On or about June 29, 1994, the court entered a judgment terminating Colon's parental rights, permanently committing the children to the care, custody and control of the State of Oregon, Department of Human Resources, (hereinafter, "Judgment"). Colon was represented by an attorney at trial of the termination proceeding. After entry of the Judgment, and on or about June 29, 1994, the court granted Colon's motion for the appointment of an attorney for appeal. The Accused was appointed to represent Colon on appeal of the Judgment. Colon's trial attorney notified the Accused of the appointment and

provided him with a copy of the Judgment on or about June 30, 1994.

The Accused failed to take any significant action on Colon's appeal, including: failing to prepare and file a notice of appeal; failing to take action to protect Colon's rights on appeal; failing to order and review the trial court transcript; failing to consult with trial counsel concerning possible issues on appeal; failing to respond to Colon's attempts to communicate with the Accused; failing to notify Colon that he had taken no action to appeal the Judgment; and failing to respond to inquiries from the Attorney General's Office concerning the status of Colon's appeal. After only a brief telephone conversation with Colon and without reviewing the trial court transcript or consulting Colon's trial attorney, the Accused unilaterally determined that Colon's appeal lacked merit and decided not to file or pursue Colon's appeal.

Based on the foregoing, the Accused admits that he neglected a legal matter entrusted to him, failed to provide competent representation, and intentionally failed to carry out a contract of employment in violation of DR 6-101(A), DR 6-101(B) and DR 7-101(A) (2) of the Code of Professional Responsibility.

#### 6.

##### Sanction

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions, (hereinafter, "Standards"), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed with consideration of the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 6-101(A), DR 6-101(B) and DR 7-101(A) (2), the Accused violated duties to his client. Standards §4.4, § 4.5.

B. State of Mind. In part, the Accused acted with intent, or the conscious awareness of the objective to accomplish a particular purpose. Standards, p. 7. The Accused unilaterally determined that Colon's appeal lacked merit and decided to take no action concerning the appeal. In other respects, the Accused acted with knowledge, or the conscious awareness of the attendant circumstances but without the conscious objective to accomplish a particular result. Id. The Accused knew it was necessary to consult with the client and trial counsel and to review the trial court transcript to fully evaluate the merits of Colon's appeal.

C. Injury. The Accused caused actual and potential injury to his client by his conduct. By failing to pursue the appeal, Colon was denied the opportunity for appellate review of the trial court record and Judgment terminating her parental rights to her children.

D. Aggravating Factors. Aggravating factors include:

1. The Accused has a prior disciplinary record consisting of an admonition imposed in February 1993 for violation of DR 6-101(B). Standards, § 9.22(a).
2. This stipulation involves three (3) rule violations arising out of a single client matter.



Standards, §9.22(d).

3. The Accused's client was vulnerable. Colon was incarcerated in Nevada and relied on the Accused to protect her interests by pursuing review of the trial court record and Judgment. Standards, §9.22(h).

4. The Accused was admitted to practice in 1961 and has substantial experience in the practice of law. Standards, §9.22(l).

E. Mitigating Factors. Mitigating factors include:

1. The Accused did not act with dishonest or selfish motives. Standards, §9.32 (b). He did not apply for or receive any compensation for the Colon matter.

2. The Accused has devoted a substantial portion of his 35 year legal career to representing indigent persons. He counts among his cases many where he successfully protected the rights of his clients and established significant legal precedent for persons accused of violating the criminal law. Standards, §9.32(g).

3. The Accused acknowledges the wrongfulness of his conduct and is sorry for it. Standards, §9.32 (l).

4. The Accused is in the process of retiring from the practice of law.

7.

The 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 an area of practice where the lawyer knows he is not competent, and causes injury or potential injury to a client. Standards, § 4.42(a), §4.52. See, In re Geurts, 290 Or 241, 620 P2d 1373 (1980), 30 days suspension for violation of DR 6-101(B); In re Odman, 297 Or 744, 687 P2d 153 (1984), public reprimand for violation of DR 6-101(A), DR 6-101(B) and DR 5-105(C); In re Force, 8 DB Rptr 195 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(A) (1) and DR 2-110 (A) (2); In re Ross, 8 DB Rptr 195 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(A) (1), (2).

8.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for a period of 30 days, commencing seven days (7) days after the Disciplinary Board approves this Stipulation for Discipline. The Accused acknowledges that he is required to apply for reinstatement pursuant to BR 8.3 upon completion of the period of suspension.

9.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and shall be submitted to the Disciplinary Board for consideration pursuant to the provisions of BR 3.6.

EXECUTED this 29th day of August, 1996.

\_\_\_\_\_  
/s/

GARY D. BABCOCK, OSB 61001

OREGON STATE BAR

\_\_\_\_\_  
/s/

JANE E. ANGUS, OSB 73014  
Assistant Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case Nos. 96-2; 96-3  
NANCY A. BORNEMAN, )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: None

Disposition: Violation of DR 6-101(B). Stipulation for  
Discipline. Thirty-day suspension.

Effective Date of Opinion: October 13, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Nos. 96-2; 96-3
	)	
NANCY A. BORNEMAN,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall be suspended from the practice of law for a period of 30 days, commencing October 13<sup>th</sup>, 1996, for violation of DR 6-101(B) and DR 7-101(A)(2) of the Code of Professional Responsibility.

DATED this 3rd day of October, 1996.

\_\_\_\_\_/s/  
Todd A. Bradley  
State Disciplinary Board  
Chairperson

\_\_\_\_\_/s/  
W. Eugene Hallman, Region 1,  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-2; 96-3
	)	
NANCY A. BORNEMAN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

NANCY A. BORNEMAN (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 the practice of law in this state and a member of the Oregon State Bar, maintaining her office and place of business in the County of Deschutes, 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.

At its May 20, 1996 meeting, the State Professional Responsibility Board directed that formal disciplinary proceedings be filed against the Accused for violation of DR 6-101(B), two (2) counts, and DR 7-101(A)(2) of the Code of Professional Responsibility. The Bar filed its Formal Complaint which was served, together with a Notice to Answer upon the Accused.

5.

Oatman Matter  
Case No. 96-2

In or about September 1994, Jerry and Patti Oatman (hereinafter "Oatmans") retained the Accused to prepare and complete an uncontested step-parent adoption by Jerry Oatman of Patti's Oatman's daughter. Between September 1994 and October 1995 the Accused neglected a legal matter entrusted to her by failing to complete the adoption, failing to respond to the Oatmans telephone calls, failing to communicate with the Oatmans, and failing to monitor or review the Oatmans' file. The Accused admits that her conduct constitutes neglect of a legal matter entrusted to her and violation of DR 6-101(B) of the Code of Professional Responsibility.

6.

Weaver Matter  
Case No. 96-3

Prior to August 1994, Linda and James Weaver (hereinafter, "Weavers") retained the Accused to represent their interests in the adoption of a child. The child was born on August 9, 1994. On or about August 10, 1994, the Accused obtained a temporary order appointing Linda Weaver temporary guardian of the child for a period not to exceed 30 days. Between August 10, 1994 and early May 1995, the Accused failed to take any significant action concerning the Weavers' adoption, including failing to file a petition for adoption, failing to obtain an Interstate Compact Agreement permitting the Weavers to remove the child from Oregon to Washington, failing to communicate with or respond to the Weavers' telephone calls and letters, and failing to respond to the Weavers' Washington attorney's attempts to communicate with her. The Accused admits that her conduct constitutes neglect of a legal matter entrusted to her and an intentional failure to carry out a contract of employment in violation of DR 6-101(B) and DR 7-101(A) (2) of the Code of Professional Responsibility.

7.

## Sanction

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions, (hereinafter, "Standards"), and Oregon case law should be considered. The Standards require that the Accused's conduct be analyzed with consideration of the following factors:

(1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty. In violating DR 6-101(B) and DR 7-101(A) (2), the Accused violated duties to her clients. Standards §4.4.

B. State of Mind. In part, the Accused acted with knowledge, or the conscious awareness of the attendant circumstances, but without the conscious objective to accomplish a particular result. The Accused knew that she needed to take action in both client matters, but due to stresses and pressures of the practice causing a kind of emotional paralysis, she did not do what was she was required to do for the clients. Standards, p. 7.

C. Injury. The Accused caused potential and actual injury to her clients by her conduct. Shortly after the Weavers obtained physical custody of the child, the child's biological mother changed her mind and demanded that the child be returned. The biological mother later changed her mind again, and returned the child to the Weavers. The court had granted the Weavers only a thirty (30) day temporary custody order. By failing to file the petition and pursue the adoption, the Weavers were at risk of losing the child for a period of over 10 months, which caused them significant emotional distress. They also incurred additional attorney expense because they were required to obtain new counsel to perform the services which the Accused had agreed, but failed to perform. In the Oatman matter, the Accused caused the clients upset and frustration when she failed to complete the

uncontested adoption in a timely manner. Only after the Oatmans reported the matter to the Bar did the Accused complete the work she had agreed and been paid to perform.

- D. Aggravating Factors. Aggravating factors include:
1. This stipulation involves three (3) rule violations arising out of a two (2) client matters. Standards, §9.22(d).
  2. The Accused's clients were vulnerable. The Weavers and the Oatmans relied on the Accused to complete required procedures to secure their legal rights and relationships. In the Weaver matter, the biological mother changed her mind on at least one occasion and could have done so again. Standards, §9.22(h).
  3. The Accused was admitted to practice in 1978 and has substantial experience in the practice of law. Standards, §9.22(l).
- E. Mitigating Factors. Mitigating factors include:
1. The Accused has no prior record of discipline. Standards, §9.32(a).
  2. The Accused did not act with dishonest or selfish motives. Standards, §9.32(b).
  3. The Accused closed her office and has limited her practice since December 1995. During the time the Accused represented the Weavers and the Oatmans, she experienced difficulty handling various matters due to what she characterizes as a kind of paralysis brought on by the stresses, pressures and conflicts from the practice itself and the demands of clients and other persons. Standards, §9.32(c).
  4. The Accused has a good reputation, sometimes taking on more than she should, sometimes representing clients who may not have an ability to pay but required legal assistance. Standards, §9.32(g).
  5. The Accused acknowledges the wrongfulness of her conduct and is remorseful. Standards, §9.32(l).

7.

The Standards provide that suspension is appropriate where a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

Standards, § 4.42(a). See, In re Geurts, 290 Or 241, 620 P2d 1373 (1980), 30 days suspension for violation of DR 6-101(B); In re Odman, 297 Or 744, 687 P2d 153 (1984), public reprimand for violation of DR 6-101(A), DR 6-101(B) and DR 5-105(C); In re Force, 8 DB Rptr 195 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(A)(1) and DR 2-110(A)(2); In re Ross, 8 DB Rptr 195 (1994), 30 days suspension for violation of DR 6-101(B), DR 2-110(A)(1) and (2).

8.

Consistent with the 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, commencing October 13, 1996, or seven (7) days after the Disciplinary Board approves this stipulation, whichever is later.

9.

The Accused acknowledges that this stipulation shall not be effective until approved by the State Professional Responsibility Board and, if approved shall be submitted to the Disciplinary Board for consideration pursuant to the provisions of BR 3.6. If approved the Accused is required to apply for reinstatement pursuant to BR 8.3 upon completion of the period of suspension.

EXECUTED this 13th day of September, 1996.

/s/

NANCY A. BORNEMAN, OSB 78152

OREGON STATE BAR

/s/

JANE E. ANGUS, OSB 73014  
Assistant Disciplinary Counsel



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-86
	)	
WILLIAM W. BROMLEY,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: Christopher R. Hardman, Esq.

Disciplinary Board: None

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

Effective Date of Opinion: October 11, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the conduct of	)	No. 96-86
	)	
WILLIAM W. BROMLEY,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall be publicly reprimanded for violation of DR 9-101(A).

DATED this 11th day of October, 1996.

\_\_\_\_\_  
 /s/  
 Todd A. Bradley  
 State Disciplinary Board  
 Chairperson

\_\_\_\_\_  
 /s/  
 Howard E. Speer, Region 2,  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-86
	)	
WILLIAM W. BROMLEY,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

William W. Bromley, 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 W. Bromley, 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 of Rule of Procedure 3.6(h).

4.

On June 20, 1996, the State Professional Responsibility Board (SPRB) authorized a formal disciplinary proceeding against the Accused alleging a violation of DR 9-101(A) of the Code of Professional Responsibility. It is the intent of the parties to resolve all charges in the proceeding with this stipulation.

FACTS

5.

At all times relevant to these proceedings, the Accused was a partner in a small firm, Henderson and Bromley, engaged in the private practice of law in Eugene, Oregon. The firm maintained a lawyer trust account for client funds. Day-to-day responsibility for deposits to, withdrawals from and accountings for the trust account was delegated by the Accused to his bookkeeper with oversight responsibility residing with the partners and associates. Prior to 1992, the Accused's staff used various methods of trust accounting, including a manual or hand-written method. Between 1992 and 1995, the Accused's office staff obtained and used a computer software program.

6.

Between 1992 and 1995, errors were made by the Accused's office in the handling of client trust funds and in record-keeping

concerning the lawyer trust account including:

- A. Deposits intended for the trust account were made instead to the firm's office account;
- B. Transactions were posted to the trust ledger but checks were not written such that the client balances shown in the ledger were not accurate;
- C. Checks were written but the transactions were not posted to the trust ledger such that client balances appeared to be greater than they actually were and withdrawals were thereafter made on behalf of those clients for more than those clients had on deposit, thereby drawing on the funds of other clients on deposit in the trust account;
- D. Minor math errors were made in fund transfers and in the amount of checks written;
- E. Periodic reconciliations of office accounting records with trust account bank statements were discontinued, and reliance was solely on the accuracy of the computer software, thereby allowing accounting errors to go undetected.

7.

Errors made in the handling of client funds were inadvertent, and not the result of intentional conduct by the Accused or his staff. The Accused relied on his staff in part to manage the trust account and trust accounting in a proper manner, and the office as a whole operated on the mistaken belief that the computer software programs were sufficient to keep the trust account in balance. When problems with the trust account were brought to the Accused's attention, the Accused remedied the problem and implemented new accounting procedures to safeguard the trust account and to ensure accounting accuracy. Until December, 1995, there were no indications that a potential problem existed with regard to the reconciliation of the computer software program figures and the bank account statements and individual account figures. The Accused was not aware that any potential problems existed or that there were discrepancies between the computer software program and the trust ledgers or trust account.

8.

In December, 1995, the Accused and the Bar received notice from the Accused's bank of two overdrafts on the Accused's trust account. The Accused undertook an audit of the account and discovered the extent of the errors referred to in paragraph 6. The Accused then remedied all account deficiencies and established a new accounting system within the office to avoid a recurrence of similar errors in the future.

9.

The Accused is responsible for the acts of his office and office staff and, accordingly, admits a violation of DR 9-101(A) of the Code of Professional Responsibility.

#### SANCTION

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, Standards), and Oregon Case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (A)

ethical duty violated; (B) attorney's mental state; (C) actual or potential injury; and (D) existence of aggravating and mitigating circumstances.

A. Duty

The Accused violated his duty to his clients to preserve client property. Standards 4.0.

B. State of Mind

The Accused acted with a negligent state of mind, defined in the ABA Standards as "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 care that a reasonable lawyer would exercise in this situation."

C. Injury

There was no actual injury to the clients in that any deficiencies in or excessive disbursements from the trust account were rectified immediately upon discovery. There was potential injury to the extent that some client funds were drawn upon inadvertently when they shouldn't have been, were therefore not maintained as required by DR 9-101(A) for periods of time and, accordingly, were not afforded during these periods the protections that a trust account provides.

D. Aggravating Factors

There were multiple errors made in the trust account and the Accused has substantial experience in the practice of law. Standards 9.22(d) and (i).

E. Mitigating Factors

The Accused has no prior disciplinary record; he did not act with any dishonest or selfish motive; he made timely, good faith efforts to rectify the consequences of the accounting situation; and he made a full and free disclosure to the Bar with a cooperative attitude toward these proceedings. Standards 9.32(a), (b), (d), (e).

11.

The Standards provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property resulting in potential injury to a client. Standards 4.13. Reprimand is also appropriate when a lawyer is negligent in training or supervising office staff concerning proper procedures in handling client funds. Commentary, Standards 4.13. Oregon case law is in accord. In re Mannis, 295 Or 594, 668 P2d 1224 (1983).

12.

Consistent with the ABA Standards and Oregon case law, the Accused agrees to accept a public reprimand for a violation of DR 9-101(A), and the Bar agrees that such a sanction is appropriate given the facts and circumstances of this case.

13.

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 September, 1996.

                  /s/                    
William W. Bromley, Accused

EXECUTED this 4th day of October, 1996.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 96-87  
JOHN L. HENDERSON, )  
Accused. )

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Bar Counsel: None

Counsel for the Accused: Christopher R. Hardman, Esq.

Disciplinary Board: Chair: None

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

Effective Date of Opinion: October 11, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 96-87
	)	
JOHN L. HENDERSON,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

---

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 parties is accepted and the Accused shall be publicly reprimanded for violation of DR 9-101(A).

DATED this 11th day of October, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
Howard E. Speer, Region 2,  
Disciplinary Board Chairperson



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-87
	)	
JOHN L. HENDERSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

---

John L. Henderson, 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 L. Henderson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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.

On June 20, 1996, the State Professional Responsibility Board (SPRB) authorized a formal disciplinary proceeding against the Accused alleging a violation of DR 9-101(A) of the Code of Professional Responsibility. It is the intent of the parties to resolve all charges in the proceeding with this stipulation.

FACTS

5.

At all times relevant to these proceedings, the Accused was a partner in a small firm, Henderson and Bromley, engaged in the private practice of law in Eugene, Oregon. The firm maintained a lawyer trust account for client funds. Day-to-day responsibility for deposits to, withdrawals from and accountings for the trust account was delegated by the Accused to his bookkeeper with oversight responsibility residing with the partners and associates. Prior to 1992, the Accused's staff used various methods of trust accounting, including a manual or hand-written method. Between 1992 and 1995, the Accused's office staff obtained and used a computer software program.

6.

Between 1992 and 1995, errors were made by the Accused's office in the handling of client trust funds and in record-keeping

concerning the lawyer trust account including:

- A. Deposits intended for the trust account were made instead to the firm's office account;
- B. Transactions were posted to the trust ledger but checks were not written such that the client balances shown in the ledger were not accurate;
- C. Checks were written but the transactions were not posted to the trust ledger such that client balances appeared to be greater than they actually were and withdrawals were thereafter made on behalf of those clients for more than those clients had on deposit, thereby drawing on the funds of other clients on deposit in the trust account;
- D. Minor math errors were made in fund transfers and in the amount of checks written;
- E. Periodic reconciliations of office accounting records with trust account bank statements were discontinued, and reliance was solely on the accuracy of the computer software, thereby allowing accounting errors to go undetected.

7.

Errors made in the handling of client funds were inadvertent, and not the result of intentional conduct by the Accused or his staff. The Accused relied on his staff in part to manage the trust account and trust accounting in a proper manner, and the office as a whole operated on the mistaken belief that the computer software programs were sufficient to keep the trust account in balance. When problems with the trust account were brought to the Accused's attention, the Accused remedied the problem and implemented new accounting procedures to safeguard the trust account and to ensure accounting accuracy. Until December, 1995, there were no indications that a potential problem existed with regard to the reconciliation of the computer software program figures and the bank account statements and individual account figures. The Accused was not aware that any potential problems existed or that there were discrepancies between the computer software program and the trust ledgers or trust account.

8.

In December, 1995, the Accused and the Bar received notice from the Accused's bank of two overdrafts on the Accused's trust account. The Accused undertook an audit of the account and discovered the extent of the errors referred to in paragraph 6. The Accused then remedied all account deficiencies and established a new accounting system within the office to avoid a recurrence of similar errors in the future.

9.

The Accused is responsible for the acts of his office and office staff and, accordingly, admits a violation of DR 9-101(A) of the Code of Professional Responsibility.

#### SANCTION

10.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, Standards), and Oregon Case law should be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (A)

ethical duty violated; (B) attorney's mental state; (C) actual or potential injury; and (D) existence of aggravating and mitigating circumstances.

A. Duty

The Accused violated his duty to his clients to preserve client property. Standards 4.0.

B. State of Mind

The Accused acted with a negligent state of mind, defined in the ABA Standards as "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 care that a reasonable lawyer would exercise in this situation."

C. Injury

There was no actual injury to the clients in that any deficiencies in or excessive disbursements from the trust account were rectified immediately upon discovery. There was potential injury to the extent that some client funds were drawn upon inadvertently when they shouldn't have been, were therefore not maintained as required by DR 9-101(A) for periods of time and, accordingly, were not afforded during these periods the protections that a trust account provides.

D. Aggravating Factors

There were multiple errors made in the trust account and the Accused has substantial experience in the practice of law. Standards 9.22(d) and (i).

E. Mitigating Factors

The Accused has no prior disciplinary record; he did not act with any dishonest or selfish motive; he made timely, good faith efforts to rectify the consequences of the accounting situation; and he made a full and free disclosure to the Bar with a cooperative attitude toward these proceedings. Standards 9.32(a), (b), (d), (e).

11.

The Standards provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property resulting in potential injury to a client. Standards 4.13. Reprimand is also appropriate when a lawyer is negligent in training or supervising office staff concerning proper procedures in handling client funds. Commentary, Standards 4.13. Oregon case law is in accord. In re Mannis, 295 Or 594, 668 P2d 1224 (1983).

12.

Consistent with the ABA Standards and Oregon case law, the Accused agrees to accept a public reprimand for a violation of DR 9-101(A), and the Bar agrees that such a sanction is appropriate given the facts and circumstances of this case.

13.

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 September, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
John L. Henderson, Accused

EXECUTED this 4th day of October, 1996.

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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 96-1  
BRUCE W. NEWTON, )  
Accused. )

---

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

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

Effective Date of Opinion: October 11, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-1
	)	
BRUCE W. NEWTON,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

---

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 parties is accepted and the Accused shall be publicly reprimanded for violation of DR 5-105(E).

DATED this 11th day of October, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
Howard E. Speer, Region 2  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-1
	)	
BRUCE W. NEWTON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily and after having had the opportunity to consult with counsel. This Stipulation is made under the confidentiality restrictions of Rule of Procedure 3.6(h).

4.

On July 20, 1996, the State Professional Responsibility Board (hereinafter referred to as "the Board") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(C) and DR 5-105(E).

5.

A formal complaint against the Accused has not yet been filed, but the Accused admits the following facts and violation of the Code of Professional Responsibility.

6.

On or about February 3, 1995, Keith Anders, Jr. (hereinafter referred to as "Son") consulted with the Accused about drafting an irrevocable inter vivos trust, with Son as beneficiary and for his father, Keith Anders, Sr. (hereinafter referred to as "Father"), as trustor. On or about March 10, 1995, Son asked the Accused to draft the trust and paid him \$200.

7.

The corpus of the trust proposed by Son to the Accused was to be Father's real property upon which both Father and Son resided. By the terms of the proposed trust, title to this real property would vest in Son and his wife upon the death of Father and his

wife. Son represented to the Accused that Father had consented to establish an irrevocable trust in order to secure or compensate Son for improvements he had made to Father's property.

8.

With the consent of Son, the Accused contacted and met with Father to discuss the terms of the trust. When they met, Father informed the Accused he did not intend to establish an irrevocable trust in favor of Son. The Accused thereupon agreed to represent Father to terminate Son's tenancy on his property and to draft a lease to establish new terms for Son's continued occupancy of the property.

9.

The Accused undertook to represent Father at a time when he represented Son in the same matter and the interests of Father and Son were adverse.

10.

On behalf of Father, on or about April 18, 1995, the Accused terminated Son's tenancy on Father's property and advised him that he would prepare a lease to establish the terms of Son's future occupancy of Father's property.

11.

Son retained other counsel, and the Accused promptly withdrew from representing both Father and Son when Son's counsel advised him of the existence of a conflict of interest.

12.

The Accused admits that his conduct described in paragraphs 6 through 11 herein constituted a current client conflict of interest in violation of DR 5-105(E).

13.

The Accused and the Bar agree that the charge of violation of DR 5-105(C) should be dismissed, as the conflict of interest arose while Son and Father were current clients of the Accused.

14.

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 or mitigating circumstances.

- a. The Accused violated his duty to his clients to avoid conflicts of interest. ABA Standards §4.0.
- b. The Accused knew that he had advised Son about the trust when he undertook to represent Father, but did not undertake the representation of Father with the purpose of injuring or damaging Son's interests. ABA Standards at 7.
- c. The Accused caused no actual injury to his clients' interests by his conduct. However, the dual representation involved potential injury to both clients in that their interests in Father's property were adverse. ABA Standards at 7.
- d. Aggravating factors to be considered are:



1. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1980. ABA Standards §9.22.
- e. Mitigating factors to be considered:
1. The Accused has no record of prior disciplinary offenses;
  2. The Accused had no dishonest or selfish motive;
  3. The Accused withdrew from representing both clients and returned Son's \$200 retainer immediately upon being advised of a conflict of interest by Son's new counsel;
  4. The Accused has made full and free disclosure to the Bar and has displayed a cooperative attitude towards these proceedings;
  5. The Accused acknowledges the wrongfulness of his conduct and is remorseful. ABA Standards §9.32.

15.

The ABA Standards provide that, without mitigating circumstances, suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose the possible effect of that conflict, causing injury or potential injury. ABA Standards §4.32. Oregon case law indicates that where a knowing conflict of interest is accompanied by substantial mitigating factors, as here, a public reprimand is appropriate. See, In re Cohen, 316 Or 657, 853 P2d 286 (1993) (public reprimand for violation of DR 5-105(E)); In re Havranek, 10 DB Rptr 109 (1996) (stipulation for public reprimand for violation of DR 5-105(E) approved by the Disciplinary Board on May 22, 1996).

16.

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

17.

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 26th day of September, 1996.

\_\_\_\_\_  
/s/  
BRUCE W. NEWTON

EXECUTED this 1st day of October, 1996.

\_\_\_\_\_  
/s/  
MARTHA M. HICKS  
Assistant Disciplinary Counsel  
Oregon State Bar



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-178
	)	
ADAM KIMMELL,	)	
	)	
Accused.	)	
	)	

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Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

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

Effective Date of Opinion: October 11, 1996

**Note: Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar.**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 95-178
	)	
ADAM KIMMELL,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall be publicly reprimanded for violation of DR 3-101(B) and DR 2-101(A).

DATED this 11th day of October, 1996.

\_\_\_\_\_/s/  
Todd A. Bradley  
State Disciplinary Board  
Chairperson

\_\_\_\_\_/s/  
Ann L. Fisher, Region 5,  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 95-178
	)	
ADAM KIMMELL,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Adam Kimmell, 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, Adam Kimmell, was admitted by the Oregon Supreme Court to the practice of law in Oregon on November 5, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

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

PRACTICING LAW IN CALIFORNIA WHILE INACTIVE

4.

The Accused was admitted to the California Bar in 1985. After being admitted to practice in Oregon, the Accused became a shareholder of a professional corporation, practicing with Robert Ericsson and William Lewis. The Accused voluntarily transferred to inactive status in California on January 1, 1992. From then on, the Accused was only an active member of the Oregon Bar.

5.

After January 1, 1992, the Accused conducted discovery and/or prepared and caused to be filed legal documents bearing his name as attorney of record in three cases filed in California courts while not licensed to do so. By engaging in such conduct, the Accused was practicing law in a jurisdiction where to do so would be in violation of the regulations of the profession of that jurisdiction. As a result, the Accused received a "Warning Letter" from the State Bar of California. A copy of the Warning Letter is attached as Exhibit 1.

6.

The Accused admits that, by engaging in the above described conduct, he violated DR 3-101(B).

## MISLEADING LETTERHEAD

7.

After beginning practice in Oregon and after January 1, 1992, the Accused represented on firm letterhead that he was admitted to practice law in California. The letterhead was a communication which contained a material misrepresentation of fact necessary to make the communication as a whole not misleading, as the Accused was on inactive status and was not entitled to practice law in California without reactivating his status. A copy of the letterhead is attached as Exhibit 2. The letterhead was intended to create the impression that the Accused could currently practice in California.

8.

The Accused admits that, by engaging in the above-described conduct, he violated DR 2-101(A).

## SANCTION

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter "Standards") are to be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. Duty Violated

The Accused violated his duty to the profession by practicing law in a jurisdiction in violation of the regulations of the profession in that jurisdiction. Standards, §§7.0 and 7.3. The Accused violated that same duty by using letterhead that omitted facts necessary to make the communication as a whole not misleading.

B. Mental State

The Accused asserts that the letterhead was not misleading as he could have become active in California on any day by paying an activation fee. However, he was not eligible to practice until he did so, and the letterhead was misleading as a whole. The Accused was negligent in failing to determine that his letterhead was misleading as to his status as a member of the California Bar.<sup>2</sup> As to practicing in California while on inactive status, the Accused acted with knowledge, which is the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. Standards, page 7.

C. Injury

Under Oregon case law, injury may be either actual or potential. In re Williams, 314 Or 530, 840 P2d 1280 (1992). In this case, there was actual injury in that the California Bar was required to investigate the Accused's conduct while he was

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<sup>2</sup> The ABA Standards defines negligence as the failure to heed a substantial risk that circumstances exist or that a result will follow which is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

practicing in Oregon. While there is no actual injury in the use of the letterhead, there was potential injury in the event a client, or prospective client, needed legal work in California and believed that the Accused could provide that assistance when, in fact, he would have to reactivate his status before he could do so.

D. Aggravating Factors

The following aggravating factor is present in this matter: substantial experience in the law. Standards §9.22 (i).

E. Mitigating Factors

The following mitigating factors are present in this matter: absence of a prior disciplinary matter; absence of a dishonest or selfish motive; and full and free disclosure to the disciplinary board. Standards §9.32 (a), (b), and (e).

10.

The Standards provide that a public reprimand is the appropriate sanction in most cases of a violation of a duty owed to the profession. Usually there is little or no injury to a client, the public, or the legal system, and the purposes of lawyer discipline will be best served by imposing a public sanction that helps educate the lawyer and deter future violations. A public sanction also informs both the public and other members of the profession that this behavior is improper. See Standards §7.3, Commentary.

11.

Consistent with the ABA Standards, 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 was approved by the State Professional Responsibility Board (SPRB) at its meeting on May 18, 1996. 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, 1996.

\_\_\_\_\_  
/s/  
Adam Kimmell

EXECUTED this 20th day of September, 1996.

\_\_\_\_\_  
/s/  
Chris L. Mullmann  
Assistant Disciplinary Counsel  
Oregon State Bar





IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-140
	)	
THEODORE D. LACHMAN,	)	
	)	
Accused.	)	
	)	

---

Bar Counsel: None

Counsel for the Accused: Michael Bloom, Esq.

Disciplinary Board: Chair: None

Disposition: Violation of DR 3-101(B) and ORS 9.160.  
Stipulation for Discipline. Thirty-day suspension.

Effective Date of Opinion: November 5, 1996

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	No. 96-140
	)	
THEODORE D. LACHMAN,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall be suspended from the practice of law for a period of 30 days, commencing upon the date of this order, for violation of DR 3-101(B) and ORS 9.160.

DATED this 5th day of November, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
 Todd A. Bradley  
 State Disciplinary Board  
 Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
 Walter A. Barnes, Region 6,  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-140
	)	
	)	
THEODORE D. LACHMAN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	

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Theodore D. Lachman, 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, Theodore D. Lachman, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1950 and was an active member of the Oregon State Bar, having his office and place of business in Multnomah County, Oregon, until January 30, 1995, at which time he voluntarily transferred to inactive membership status.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, and after having the opportunity to consult with counsel. This stipulation is made under the confidentiality provisions of Bar Rule of Procedure 3.6(h).

4.

On September 21, 1996, the State Professional Responsibility Board ("SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 3-101(B) and ORS 9.160. A formal complaint against the Accused has not been filed. The Accused admits the facts and violations set forth herein. This stipulation is intended by the parties to resolve all charges in this matter.

FACTS

5.

The Accused became an inactive member of the Oregon State Bar in January 1995. In his Request for Enrollment as an Inactive Member, the Accused acknowledged that, as an inactive bar member, he would not be eligible or entitled to practice law or give legal advice or counsel in Oregon.

6.

ORS 9.160 provides that no person shall practice law or represent that person as qualified to practice law unless that

person is an active member of the Oregon State Bar.

7.

In August 1995, the Accused was approached by Ted Godfrey, a personal friend of the Accused. Godfrey was the step-son of Thelma Wyatt Nunemaker, who had recently died. In the years before her death, Godfrey had cared for Nunemaker and had handled her business affairs under a power of attorney. Nunemaker had a step-daughter in California from whom she was estranged. While alive, and prior to a stroke totally disabling her both physically and mentally for the last two years of her life, Nunemaker expressed a desire to disinherit the step-daughter. Godfrey did not know whether any valid will existed for Nunemaker, did not know whether the step-daughter was still alive, and had no knowledge of other heirs. Godfrey was not a beneficiary of Nunemaker's estate but did desire to be reimbursed for services he had rendered to Nunemaker while she was alive and for funeral and related expenses he incurred following her death.

8.

To accommodate Godfrey, the Accused drafted for Godfrey's signature and filed in Multnomah County Circuit Court a Petition for Appointment of Personal Representative and Letters of Administration (No. 950891420) dated August 25, 1995. The Accused had in mind that, if there was no valid will and no heirs, his involvement in the probate would be minimal.

9.

Thereafter, the Accused learned that the step-daughter from California was asserting an interest in the Nunemaker Estate based on a holographic will executed in 1988 in California. In fact, the step-daughter initiated a probate proceeding in California and obtained an order in that state appointing her as Administrator.

10.

In December 1995, the Accused prepared for Godfrey's signature an Amended Petition for Appointment of Personal Representative and Letters of Administration. This petition, filed in Multnomah County in January 1996, listed two second cousins as Nunemaker's heirs, and also identified the step-daughter as a person asserting an interest in the estate.

11.

The step-daughter then filed, through Oregon counsel, her own petition in Multnomah County objecting to Godfrey's appointment as Personal Representative and asking that she be appointed instead, and a petition seeking probate of the holographic will. On Godfrey's behalf, the Accused prepared and filed written objections to the step-daughter's petitions. The Accused and Godfrey were motivated by their belief that Nunemaker clearly intended to leave no part of her estate to the step-daughter.

12.

On June 24, 1996, the Accused represented Godfrey at a hearing before the probate judge concerning the various petitions filed by the parties. The judge, after hearing witness testimony and arguments by counsel, including argument of the Accused on Godfrey's behalf, ruled in favor of the step-daughter. At no time did the Accused disclose to opposing counsel or the court that he was no longer an active member of the Bar.

13.

The Accused admits that his conduct described herein constituted violations of DR 3-101(B), prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulations of that jurisdiction, and ORS 9.160, restricting the practice of law to active members of the Oregon State Bar.

SANCTION

14.

The Accused and the Bar agree that the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions and Oregon case law in determining the appropriate sanction in this case. The ABA Standards require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the Accused's mental state; the actual or potential injury; and the existence of aggravating or mitigating circumstances.

- (a) The accused violated his duty to the legal profession by acting contrary to the statutory regulations concerning the practice of law. Standards, § 7.0. The Accused also violated his duty to his client to the extent he was representing a client without legal authority or liability coverage. Standards, § 4.5.
- (b) The Accused acted with knowledge that his representation of Godfrey was not permitted by law so long as he was an inactive member of the Bar. Standards at p. 7.
- (c) There was no demonstrable actual injury to Godfrey as a result of the Accused's conduct. Standards at p. 7. There was a potential for injury in that Godfrey had no authorized legal representative in what became a contested matter.
- (d) Aggravating factors to be considered are:
  - (1) The Accused engaged in repeated acts of rendering legal advice to Godfrey, including an appearance in court and argument before the probate judge; and
  - (2) The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1950. Standards, 9.22(c) and (i).
- (e) Mitigating factors to be considered are:
  - (1) The Accused has no prior record of disciplinary offenses;
  - (2) The Accused had no dishonest or selfish motive. The Accused did not charge or collect any fee from Godfrey. The Accused was motivated by a desire to assist his friend with a legal problem;
  - (3) The Accused has made full and free disclosure to the Bar and has displayed a cooperative attitude toward these proceedings; and
  - (4) The Accused acknowledges the wrongfulness of his conduct and is remorseful. Standards, § 9.32(a), (b), (e) and (l).

15.

The ABA Standards provide that suspension is generally appropriate when a lawyer knowingly violates duties owed to the profession, in this case violating the regulations of the law practice in Oregon. ABA Standards, § 7.2. Oregon precedent is



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 94-169  
JOHN C. MOORE, )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: John Klor, Esq.

Counsel for the Accused: Bradley Tellam, Esq., and  
Peter Jarvis, Esq.

Disciplinary Board: Chair: None

Disposition: Violation of DR 7-102(A)(2) and DR 2-106(A).  
Stipulation for Discipline. Sixty-day suspension.

Effective Date of Opinion: November 7, 1996

**Note: Due to space restrictions, exhibits are not included but  
may be obtained by calling the Oregon State Bar.**





IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 94-169
	)	
JOHN C. MOORE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

John C. Moore, 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 C. Moore, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, 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.

FACTS AND VIOLATIONS

4.

On March 1, 1995, a Formal Complaint was filed against the Accused in this proceeding pursuant to the authorization of the State Professional Responsibility Board alleging violations of DR 2-106(A), DR 1-102(A)(3), DR 1-103(C) and DR 7-102(A)(5). This Stipulation is intended by the parties to resolve all charges in this matter.

5.

On February 17, 1993, the Accused agreed to represent Glenn Gilbert (hereinafter "Gilbert"), a resident of Hawaii, as Respondent in a Petition for Unlimited Separation filed by Tammy Gilbert in Multnomah County Circuit Court. Petitioner also sought custody of the couple's minor children. Gilbert signed a written fee agreement that same day. (See Exhibit 1 attached hereto and incorporated herein as if fully set forth.) The agreement provided for an hourly fee of \$120. Payment of fees incurred pursuant to this agreement were guaranteed by one or more guarantors.

6.

In February of 1993, the Accused filed a motion to dismiss the Petition and send the case back to Hawaii. The motion was denied and the case was converted to a dissolution proceeding.

While the Oregon action was pending, there was a dissolution proceeding filed in Hawaii and Gilbert was represented by legal aid. The Accused was aware that Gilbert was represented by legal aid in that action.

7.

On July 8, 1993, without prior notice to Gilbert, the Accused increased his hourly rate to \$150. The Accused sent monthly bills to his client itemized on a billing summary prepared by the Accused and dated May 3, 1994. (See Exhibit 2, attached hereto and incorporated herein as if fully set forth.)

8.

The dissolution trial was set for January 19, 1994, at which time the parties settled the case. Between the time the Accused was retained and settlement documents were filed, the Accused had recorded 352.20 hours of time in the case claiming a fee of \$51,477.00 and expenses of \$1,337.91. During that same time, he had been paid \$4,154.50 leaving a balance due of \$48,660.41 as of the termination of representation. During the same period of time, the Petitioner had incurred approximately \$6,000 in legal fees and costs.

9.

The parties agree and stipulate that the factors to be used in determining whether a fee is reasonable can be found in DR 2-106(B). They further agree and stipulate that in this case, (1) the legal matter for which the Accused was retained was not novel and did not involve difficult legal questions to a lawyer experienced in domestic relations, (2) did not require other than ordinary skill of a member of the bar, (3) acceptance of this matter did not preclude other employment by the Accused, (4) no time limitations were imposed by Gilbert, (5) the Accused had no prior professional relationship with Gilbert and, (6) the Accused was a relatively new lawyer with little legal experience in domestic relation matters.

10.

The parties agree and stipulate that the fee charged by the Accused was clearly excessive in one or more of the following particulars:

1. The Accused raised his hourly fee from \$120 to \$150 without prior notice to and consent from Gilbert;
2. Gilbert was charged for work done by the Accused in securing payment of his fee including:
  - a. Preparing guarantees for third parties obligating them to pay the fee;
  - b. Charging Gilbert and the guarantees for telephone calls, conferences and correspondence in relation to guarantee, payment, and collection of his fee;
  - c. Preparation of a mortgage on real property in Hawaii in which Gilbert may have had an interest to secure payment of his fee;
  - d. Charging for correspondence, telephone calls and legal services from an attorney in Hawaii the Accused had retained to help prepare documents to obtain an interest in the Hawaii property to

- secure his fee;
- e. Charging for time the Accused spent in attempting to serve personally the Accused and a third party guarantor with promissory note and mortgage securing his fee by traveling from his office to their home in Vernonia, Oregon;
  - f. Charging, a second time, for personally delivering the note and mortgage to the third party guarantor in Vernonia, Oregon;
  - g. Charging for the cost of recording the note and mortgage in Hawaii including the cost of overnight delivery of the documents to Hawaii; and
3. The Accused charged Gilbert for investigation of a shooting of Gilbert relating to a possible personal injury claim, preparation of memorandums, conferences with Gilbert, review of correspondence, all in relation to a possible personal injury claim unrelated to the dissolution.

11.

Gilbert and the guarantors did not pay the balance of the bill. The Accused filed suit in May of 1994, against Gilbert and the guarantors. The suit was never served and ultimately dismissed.

12.

The Accused admits that by his conduct as described above, he charged a clearly excessive fee in violation of DR 2-106(A) of the Code of Professional Responsibility.

#### SANCTION

13.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards") are to be considered. The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating or mitigating circumstances.

#### A. Duty Violated.

In violating DR 2-106(A) the Accused violated his duty to the profession by charging an excessive fee. Standards §§ 7.0 and 7.2.

#### B. Mental State.

The Accused acted with "knowledge", that is, the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

#### C. Injury.

Under case law, injury may be actual or potential. In re Williams, 314 Or 530, 840 P2d 1280 (1992). The level of injury can range from "serious" injury to "little or no" injury. A reference to "injury" alone indicates any level of injury greater than "little or no" injury. Standards, page 7. In this case there was injury in that Gilbert and the guarantors were required to obtain independent counsel to defend the suit filed by the

Accused to collect an unreasonable fee.

D. Aggravating Factors.

The following aggravating factor is present in this matter:

- (1) a selfish motive.

E. Mitigating Factors.

The following mitigating factors are present in this matter:

- (1) absence of a prior disciplinary record; (2) full and free disclosure; and (3) inexperience in the law.

14.

The Standards provide 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. The Standards further provide that suspension is appropriate, for example, when a lawyer does not mislead a client but engages in a pattern of charging excessive or improper fees. Standards, §7.2.

Oregon case law is in accord. See, In re Miller, 303 Or 253, 735 P2d 591 (1987) [attorney disbarred for, among other things, billing client for work not performed and charging client for expenses not incurred] and In re Spies, 316 Or 530, 852 P2d 831 (1993) [attorney disbarred for, among other things, telling a client that only one hour of time at \$200 would be required to complete a task and then billing the client \$1,140 for preparation of a written agreement none of the parties involved could recall or produce].

15.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused be suspended for a period of sixty (60) days. Should this Stipulation for Discipline be approved by the Disciplinary Board, the parties agree that the suspension shall become effective November 1, 1996.

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and approved by the State Professional Responsibility Board (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 4th day of November, 1996.

\_\_\_\_\_/s/  
John C. Moore

EXECUTED this 4th day of November, 1996.

\_\_\_\_\_/s/  
Chris L. Mullmann  
Assistant Disciplinary Counsel  
Oregon State Bar

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
Complaint as to the Conduct of ) Case No. 96-42  
STEPHEN P. RIEDLINGER, )  
Accused. )  
\_\_\_\_\_ )

Bar Counsel: James Pippin, Esq.

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

Disciplinary Board: Wilford A. Carey, Esq., Chair; Donald  
R. Crane, Esq.; and Karen Franke, Public  
Member

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

Effective Date of Opinion: November 15, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-42
	)	
STEPHEN P. RIEDLINGER,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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 parties is accepted and the Accused shall receive a public reprimand for violation of DR 6-101(B).

DATED this 15th day of November, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
 Todd A. Bradley  
 State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
 W. Eugene Hallman, Region 1  
 Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-42
	)	
STEPHEN P. RIEDLINGER	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Stephen P. Riedlinger, 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 the practice of law in this State, and a member of the Oregon State Bar, maintaining his office and place of business in the County of Union, 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.

At its March 16, 1996, meeting, the State Professional Responsibility Board (hereinafter, "SPRB") authorized formal disciplinary proceedings against the Accused, alleging violation of DR 6-101(B) of the Code of Professional Responsibility.

5.

In or about February 1995, George W. Wallace (hereinafter, "Wallace") retained the Accused to pursue modification of custody and child support, and other issues related to a Decree of Dissolution of Marriage (hereinafter, "Decree"). On or about May 16, 1995, the Accused prepared and obtained an order to show cause why the Decree should not be modified (hereinafter, "Court Action"). The order was served on Wallace's ex-wife. Thereafter, the attorney representing Wallace's ex-wife contacted the Accused and made a proposal to resolve the matter without hearing. On or about May 23, 1995, the Accused agreed to provide 10 days written notice of intent to take default and to respond to the ex-wife's proposal to resolve the matter after he reviewed it with Wallace. The Accused also requested that Wallace's ex-wife provide an accounting of proceeds from the sale of certain property and payment of spousal and child support obligations, and copies of

tax returns. Thereafter, between about late May 1995 and November 1995, the Accused failed to take further action on the matter.

6.

The Accused neglected a legal matter entrusted to him in one or more of the following particulars by:

- A. Failing to communicate with Wallace regarding Court Action;
- B. Failing to respond to Wallace's attempts to communicate with him;
- C. Failing to file and serve a Notice of Intent to Take Default;
- D. Failing to pursue or obtain an accounting, copies of tax returns and other information from Wallace's ex-wife;
- E. Failing to communicate with the attorney representing Wallace's ex-wife;
- F. Failing to confirm with his legal assistant the status of the case;
- G. Failing to monitor the case for review or action; and
- H. Failing to take other action to resolve or conclude the Court Action.

7.

The Accused admits that his conduct violated DR 6-101(B) of the Code of Professional Responsibility.

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions should be considered (hereinafter, "Standards"). The Standards require that the Accused's conduct be analyzed considering the following four factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- a. Duty. In violating DR 6-101(B), the Accused violated his duty to his client. Standards, § 4.4.
- b. State of Mind. The Accused's conduct demonstrates a failure of the lawyer to heed a substantial risk that the circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards, p. 7.
- c. Injury. There is no evidence that the Accused's conduct resulted in actual injury to his client, but there existed the potential for injury. The client, through informal agreement with his ex-wife, had taken physical custody of their minor child. The proceedings to be pursued by the Accused would have modified the court's order, awarded legal custody to the client and terminated the client's future child support obligation to be paid to the client's ex-wife.
- d. Aggravating factors. Aggravating factors to be considered include:



1. The Accused was admitted to practice in 1977 and has substantial experience in the practice of law. Standards, § 9.22(i).
  2. The Accused has a prior record of discipline for violation of DR 2-110(A)(2), (C); DR 7-110(B) and DR 5-105(C), for which he received a 30-day suspension from the practice of law. Standards, § 9.22(i).
- e. Mitigating factors. Mitigating factors to be considered include:
1. The Accused did not act with dishonest or selfish motives. Standards, § 9.32(b).
  2. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. Standards, § 9.32(e).
  3. The Accused acknowledges the wrongfulness of his conduct and expresses remorse for its occurrence. Standards, § 9.32(l).
  4. The Accused promptly refunded the client's entire retainer to rectify the consequence of his misconduct. Standards, § 9.32(d).

9.

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standards, § 4.43. Oregon case law is in accord. In re Bennett, 1 DB Rptr 54 (1985), public reprimand for violation of DR 6-101(B) and DR 7-101(A)(2); In re Hall, 10 DR Rptr 19 (1996), public reprimand for violation of DR 6-101 (B).

10.

Consistent with the underlying Standards and Oregon case law, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

11.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board and shall be submitted to the Disciplinary Board for consideration pursuant BR 3.6. This Stipulation shall not be effective until approved.

DATED this 7th day of November, 1996.

/s/  
STEPHEN P. RIEDLINGER, OSB No. 77066

OREGON STATE BAR

/s/  
Jane E. Angus, OSB No. 73014  
Assistant Disciplinary Counsel



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-63
	)	
JAY R. JACKSON,	)	
	)	
Accused.	)	
<hr/>		

Bar Counsel: None

Counsel for the Accused: None

Disciplinary Board: Chair: None

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

Effective Date of Opinion: December 31, 1996.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-63
	)	
JAY R. JACKSON,	)	ORDER APPROVING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
	)	

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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 parties is accepted and the Accused shall receive a public reprimand for violation of DR 6-101(B) of the Code of Professional Responsibility.

DATED this 31st day of December, 1996.

\_\_\_\_\_/s/\_\_\_\_\_  
Todd A. Bradley  
State Disciplinary Board Chairperson

\_\_\_\_\_/s/\_\_\_\_\_  
Walter A. Barnes, Region 6  
Disciplinary Board Chairperson

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-63
	)	
JAY R. JACKSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.	)	
	)	

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Jay R. Jackson, 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 the practice of law in this State, and a member of the Oregon State Bar, maintaining office and place of business in the County of Marion, 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.

The State Professional Responsibility Board (hereinafter, "SPRB") authorized formal disciplinary proceedings against the Accused, alleging violation of DR 6-101(B) of the Code of Professional Responsibility.

5.

In late March 1995, an attorney with whom the Accused shared office space referred a client to him to handle the probate of a relative's estate. The Accused agreed to handle the matter and was provided required information. In mid-May and early June 1995, the Accused filed petitions for probate and obtained letters testamentary appointing the client as the personal representative of the relative's estate. Thereafter, between mid-June and mid-December 1995, the Accused failed to file an inventory, failed to obtain a tax identification number for the estate, failed to notify creditors, failed to prepare estate tax returns or to take other action. During this time, the Accused also failed to communicate with his client or to respond to the client's numerous attempts to communicate with him.

6.

The Accused admits that his conduct violated DR 6-101(B) of the Code of Professional Responsibility.

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions should be considered (hereinafter, "Standards"). The Standards require that the Accused's conduct be analyzed considering the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

- a. Duty. In violating DR 6-101(B), the Accused violated his duty of diligence to his client. Standards, § 4.4.
- b. State of Mind. The Accused's conduct demonstrates a failure of the lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Standards, p. 7. Although the Accused was aware that he had professional responsibilities, he incorrectly believed that he had made arrangements with other lawyers with whom he shared office space to handle certain client matters.
- c. Injury. The Accused's conduct has not resulted in actual injury to his client, but there existed the potential for injury. At the very least, the client was frustrated by her inability to communicate with the Accused and the probate and disposition of the estate was delayed.
- d. Aggravating factors. Aggravating factors to be considered include:
  1. The Accused has a prior record of discipline. In 1987, Jackson accepted a letter of admonition for violation of DR 6-101(B) and DR 1-103(C). Standards, § 9.22(a).
  2. The Accused was admitted to practice in 1976 and has substantial experience in the practice of law. Standards, § 9.22(i).
- e. Mitigating factors. Mitigating factors to be considered include:
  1. The Accused did not act with dishonest or selfish motives. Standards, § 9.32(b).
  2. As an explanation, but not an excuse, the Accused reports that he was having serious problems at home with a teenage son. The son's behavioral problems were so severe that he was placed in private foster care, and the Accused's wife became seriously depressed. The Accused was overwhelmed, and suffered some depression himself. As a result, his attentions were diverted from his professional responsibilities. Standards, § 9.32(c).
  3. The Accused refunded all fees paid by the personal representative for the limited services performed. Standards, § 9.32(d).

4. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. Standards, § 9.32(e). The Accused acknowledges the wrongfulness of his conduct and expresses remorse for its occurrence. Standards, § 9.32(1).

8.

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standards, § 4.43. Oregon case law is in accord. See, In re Hannam, 8 DB Rptr 9, (1994).; public reprimand for violation of DR 6-101(B); In re Bennett, 1 DB Rptr 54 (1985), public reprimand for violation of DR 6-101(B) and DR 7-101(A)(2); In re Hall, 10 DR Rptr 19 (1996), public reprimand for violation of DR 6-101(A) and (B).

9.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand upon the Disciplinary Board's approval of this Stipulation for Discipline.

10.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board and shall be submitted to the Disciplinary Board for consideration pursuant BR 3.6.

Dated this 16th day of December, 1996.

\_\_\_\_\_/s/  
JAY R. JACKSON, OSB No. 77066

OREGON STATE BAR

\_\_\_\_\_/s/  
Jane E. Angus, OSB No. 73014  
Assistant Disciplinary Counsel





Cite as 325 Or 31 (1997)

Filed: March 6, 1997

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In the Matter of the Application of

CRAIG D. WHITE

for Reinstatement as an Active  
Member of the Oregon State Bar

(SC S37007)

On review from the order of a Trial Panel of the Disciplinary Board.

Argued and submitted November 4, 1996.

Susan D. Isaacs, Beaverton, argued the cause and filed the briefs for applicant.

Stephen R. Frank, Bar Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, Gillette, Van Hoomissen, Fadeley, Graber, and Durham, Justices.

PER CURIAM

Reinstatement denied.

The Supreme Court adopted the recommendation of the trial panel to deny the reinstatement (trial panel opinion is included on the following pages). Pursuant to BR 10.6, the opinion of the trial panel shall stand as a statement of the decision of the court but not as the opinion of the court.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In the Matter of the:	)	
	)	Case No: SC S37007
Application of	)	
	)	FINDINGS OF FACT,
CRAIG D. WHITE,	)	CONCLUSIONS OF LAW
	)	AND RECOMMENDATION
for Reinstatement as an Active	)	OF THE TRIAL PANEL
member of the Oregon State Bar	)	
	)	
Defendant.	)	
	)	

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This matter came on regularly for trial on Tuesday, November 14, 1995 in Lake Oswego, Oregon, before Donald H. Upjohn, Chairperson, William G. Blair, Esquire, and Michael K. Wilkes, the duly appointed and constituted Trial Panel of the Disciplinary Board.

The applicant appeared in pro persona The Oregon State Bar appeared through Stephen Frank, Esquire, and Lia Saroyan, Esquire, its attorneys. Witnesses were sworn and did testify, and exhibits were offered and introduced into evidence. The Trial Panel kept a complete record of all proceedings in this matter, including the evidence and exhibits offered and received; and the Trial Panel transmits herewith its written memorandum opinion and its findings of fact, conclusions and recommendations and the complete record of all proceedings to be forwarded in this matter, with the original pleadings filed with it herein. To the extent that any of the findings of fact may be construed as conclusions of law or that the conclusions of law may be construed as findings of fact, they are deemed to be such.

The Trial Panel, having taken this matter under advisement, and having considered all the evidence and exhibits, and being fully advised in the premises, hereby makes the following:

FINDINGS OF FACT

1. Bar Status. 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 admission and licensing of attorneys.
2. Applicant. The applicant, a 1981 Oregon State Bar admittee, was suspended from practice for three years by the Oregon Supreme Court, effective October 23, 1991. The suspension was based on multiple violations, most of which involved excessive and abusive litigation on behalf of a Dr. Pettibon, a chiropractic physician, in cases against a Dr. Beeson, a chiropractic physician and former partner of Dr. Pettibon. There was also a finding of false statements to a trial court. In addition, the Court concluded that an act of criminal assault in 1983 violated DR1-102(A)(2). In Re White, 311 OR 573, 815 p2d 1257 (1991). In its opinion the Court determined that the applicant did not testify truthfully in the disciplinary proceeding concerning statements he denied making to opposing counsel. In Re

White, Ibid., p.578.

3. Sequence of Events. A summary of the sequence of events is as follows:

a. On August 5, 1994, the applicant submitted his Application for Reinstatement as an active member of the Oregon State Bar.

b. On December 12, 1994, Assistant Disciplinary Counsel wrote the applicant and requested certain additional information and asked to set-up a personal interview.

c. On December 22, 1994, the applicant met with lawyers from the Disciplinary Counsel's office for approximately four hours.

d. During a review and investigation of the applicant's file, Disciplinary Counsel discovered an existing Restraining Order against applicant, dated January 7, 1994, on file in Clackamas County Circuit Court. The Restraining Order was based on a petition filed by Sharralynn Woolworth, who described herself as the applicant's "fiancee" and who alleged that she lived with the applicant at 2524 S.W. Mossy Brae Road, West Linn, Oregon.

e. The petition alleged that on January 6, 1994, the applicant, at 204 S.W. Berwich Road, Lake Oswego, Oregon, had among other things, caused her bodily injury in the following way:

"He twisted my sweater in his fist and threw me around the room, then against the brick planter. He then screamed at me to get up and I said I could not. He kicked me out of the front door with his foot to my derriere (bottom) on the front door and porch, he told me I was 'human garbage,' closed the door and locked it. He kicked me and repeatedly threw me into the walls and brick. He rubbed blood over my face, screaming and yelling 'It is all your fault. I'm going to get rid of the dog and you. I'm going to throw your belongings into the street and you too. I'm going to do something to you."

f. The Assistant Disciplinary Counsel did not ask the applicant about the Restraining Order at the meeting on December 22, 1994 because she wanted to contact Ms. Woolworth first. The issue was not mentioned by the applicant during the interview.

g. The Assistant Disciplinary Counsel was unable to contact Ms. Woolworth, so she called the applicant on January 5, 1995 and asked him about the incident. He admitted that he knew Ms. Woolworth and that they had lived together, but had broken up. He denied ever hitting her and said he had never been served with a copy of the Restraining Order. He indicated to the Disciplinary Counsel that Ms. Woolworth filed such petitions all the time. The applicant stated that he was in contact with Ms. Woolworth. The Assistant Disciplinary Counsel said she wanted to talk with Ms. Woolworth. The applicant said he would find Ms. Woolworth and then get back to the Assistant Disciplinary Counsel. She did not hear from him again.

h. In late January, 1995, the Board of Governors reviewed applicant's request for reinstatement and recommended that the Supreme Court deny the application.

i. The applicant filed a petition with the Supreme Court that the case be reviewed. Thereafter, the Supreme Court referred the matter to the Disciplinary Board for a hearing. Upon appointment of this Trial Panel, the case was set for hearing on November 14, 1995.

j. After the Board's recommendation of denial and up to the date of the hearing, the applicant was in contact fairly frequently with Sharralynn Woolworth. He discussed with her whether she would testify. He states that she told him that she did not want to testify.

k. In July of 1995 the applicant prepared and Ms. Woolworth signed an affidavit which among other things referenced the restraining order filed in January of 1994. Significantly, in the affidavit Ms. Woolworth did not deny the allegations of the petition but only said that no medical treatment or expense was incurred.

l. In March of 1995 the Bar hired a private investigator to try to contact Ms. Woolworth. He was unable to find her. Again in October of 1995, the Bar hired the investigator in order to serve Ms. Woolworth with a subpoena for the hearing. He failed to locate and serve her.

m. At no time prior to the hearing, did the applicant contact the Bar or its Counsel and notify them of Ms. Woolworth's whereabouts.

n. During the hearing the applicant testified that an incident involving Sharralynn Woolworth did occur at 205 S.W. Berwick Road, Lake Oswego, Oregon, while both were guests at the home of a third party. The applicant stated that the incident was the outgrowth of an argument between the two individuals in which his hand was cut by a dog and Ms. Woolworth's clothes were torn while he was physically removing her from the premises. He described the physical contact as his "revoking consent" for her to be on the property. He insisted it was not a "battery." He also stated that he did not consider the event "remarkable."

o. Later in the hearing the applicant offered the affidavit he obtained from Ms. Woolworth in evidence in support of his case. He also explained her absence by saying she did not want to be involved. He stated he did not know he could subpoena her. He also testified that he considered her wish not to testify more important than any duty he had to notify the Bar of her whereabouts or her reluctance to testify so that the Bar could arrange to subpoena her.

p. Elsewhere in the proceeding the Bar presented Dr. Beeson as a witness in opposition to the application. While cross-examining Dr. Beeson, the applicant became rather agitated and aggressive in his questions and eventually was asked to terminate the line of inquiry by the Chairman. Later in his direct testimony the applicant admitted that he "felt himself going back to relitigating the cases..."

q. Finally, during the course of proceeding testimony was presented by two Assistant Disciplinary Counsels for the Bar. In later testimony and argument the applicant made unwarranted and derogatory references to these witnesses.

CONCLUSION OF LAW

Applicant has failed to meet his burden to prove that he has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest for the following reasons:

1. The applicant's reaction to Dr. Beeson's testimony and the nature of his cross-examination indicates that his obsession with these cases has not ended and his judgment is still unreliable with regard to the proper bounds of the litigation process.

2. The applicant's derogatory comments about Bar Disciplinary Counsel were unjustified and are timer evidence that he does not now have the proper professional understanding of the purpose and role of litigation.

3. Applicant's actions in response to the Woolworth Restraining Order were inappropriate and his explanation unbelievable:

a. In his own description of the events, underlying the petition, the applicant admitted that the incident involved screaming, name-calling, smearing of blood and a physical altercation that resulted in a fall and torn clothes. It was an extraordinary event by any standard. Nonetheless, the applicant sought to dismiss it as not remarkable. The Panel finds this testimony to be untrue and a clear attempt to mislead the Panel in its assigned role.

b. Moreover, the Trial Panel finds unbelievable the applicant's explanation of why he did not notify the Bar after stating in the conversation of January 5, 1995 that he would get back to the Disciplinary Counsel concerning Ms. Woolworth's location. The underlying event was, on its face, a serious matter that required further investigation. The Panel does not believe that the applicant did not contact the Bar out of a sense of respect for Ms. Woolworth's privacy. The Panel instead finds that the applicant, by his silence and the use of the affidavit at the hearing, was seeking to stonewall the Bar and prevent it from discovering the truth about this important matter.

c. The applicant's false and misleading testimony is a continuation of his prior established pattern of making false and misleading statements to the trial courts while in private practice and to the Trial Panel in the disciplinary hearing in 1991. It clearly does not meet the standards of truth-seeking and integrity required by a member of the Bar.

Whereupon the Trial Panel being fully advised on the premises makes the following RECOMMENDATION:

That the decision of the Board of Governors to deny the Application for Reinstatement filed by applicant Craig D. White on August 5, 1995 be upheld and approved.

Dated February 22, 1996.

                  /s/                    
Donald H. Upjohn, Chairperson

                  /s/                    
William G. Blair

                  /s/                    
Michael K. Wilkes

Cite as 322 Or 584 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
 Complaint as to the Conduct of )  
 )  
 HOWARD G. BINNS, )  
 )  
 Accused. )  
 )

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(OSB 91-79; SC S42046)

In Banc

On review from a decision of the Trial Panel of the Disciplinary Board.

Argued and submitted September 5, 1995. Filed: February 8, 1996.

Mary A. Cooper, Lake Oswego, argued the cause for the Oregon State Bar. With her on the brief was John L. Klor, Portland.

Charles P. Denkers, Portland, argued the cause and filed the brief for the accused.

PER CURIAM

The accused is disbarred.

Summary:

On February 8, 1996, the Oregon Supreme Court rendered an opinion disbaring Portland attorney Howard G. Binns. A petition for reconsideration was thereafter denied and the disbarment became effective April 16, 1996. The disbarment was the result of Binns' misconduct in handling settlement proceeds on behalf of personal injury clients.

Binns represented husband and wife clients who had sustained serious injuries in an automobile accident. After negotiating settlement of one of the clients' claims, but before the settlement was paid, Binns left on a three week vacation. Before leaving, he arranged for an attorney with whom he shared office space to deal with issues that might arise while he was away. Binns told the clients that they would be charged no fee for the other attorney's work on the settlement and that Binns would pay those charges out of his contingency fee.

While Binns was gone, the clients wished to purchase a new automobile out of their anticipated settlement proceeds. They therefore went to Binns's associate and asked him to help them purchase the car. The other lawyer spent about one and one-half hours preparing a partial assignment of settlement proceeds on their behalf.

Binns returned from vacation and the settlement was finalized. Binns thereupon wrote checks on his lawyer trust account to pay various bills and disbursements related to the client. He wrote a check to the other attorney for \$2,500. The \$2,500, however, was deducted from the clients' share of the settlement, not from Binns' share. The other attorney understood that the \$2,500 was for work he did for all of Binns' clients while Binns was away.

When the clients learned that Binns had paid the other attorney \$2,500 of their money, they complained to him and later to the Bar. When the Bar inquired of Binns, he said that the clients had never before objected to the payment, and in fact had specifically directed him, over his protest, to pay the other attorney that amount.

When Binns made these assertions to the Bar, he was unaware that his clients had tape-recorded a relevant telephone conversation with him. The audiotape recorded the clients protesting the \$2,500 payment and Binns insisting that the other attorney received that amount for his very skilled representation with respect to the car purchase. Based on the tape, the Court found that Binns intentionally lied to his clients about the reasonableness of the fees and to the Bar when he stated that his clients had never before objected, and in fact had directed him to pay the other attorney's fees.

Binns therefore violated DR 1-102(A)(3) [engaging in dishonesty and misrepresentation]; DR 1-103(C) [failing to respond fully and truthfully to the Bar]; DR 7-102(A)(5) [knowingly making a false statement of law or fact], DR 7-101(A)(3) [intentionally prejudicing or damaging client during course of professional relationship] and DR 2-106(A) [excessive fee]. The Court found that Binns acted intentionally and caused actual injury to his clients. Aggravating factors included a dishonest or selfish motive, a pattern of misconduct, vulnerability of victims, substantial experience in the practice of law, and indifference to making restitution. Binns had no prior discipline.



## Cite as 322 Or 561 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
Complaint as to the Conduct of )  
 )  
JOHN BOURCIER, )  
 )  
 )  
Accused. )  
 )

(OSB 94-71; SC S42594)

In Banc

On review from a decision of the Trial Panel of the  
Disciplinary Board

Submitted on record and brief November 14, 1995. Filed:  
February 1, 1996.

Jane E. Angus, Assistant Disciplinary Counsel, Oregon State  
Bar, Lake Oswego, filed a brief on behalf of the Oregon State  
Bar.

No appearance contra.

PER CURIAM

The accused is suspended from the practice of law for a  
period of three years commencing on the effective date of this  
decision.

Summary:

Effective March 6, 1996, the Supreme Court suspended  
Washington attorney John Bourcier for three years for violation  
of DR 6-101(B), neglect; DR 7-101(A)(2), intentional failure to  
carry out a contract of employment; DR 1-102(A)(3), dishonesty,  
fraud, deceit or misrepresentation; DR 7-102(A)(5), making a  
false statement of fact; DR 1-102(A)(4), conduct prejudicial to  
the administration of justice; and DR 1-103(C), failing to  
cooperate with the disciplinary investigation.

Bourcier was appointed to represent an inmate on an appeal.  
He accepted the appointment and subsequently filed two motions  
for extension of time in which to file and serve the appellant's  
brief. Both motions were granted. Shortly thereafter, Bourcier  
filed a motion to dismiss the appeal on the ground that there  
were no meritorious issues raised in the record.

The court found that Bourcier neglected the legal matter  
entrusted to him by failing to consult with and keep his client  
informed regarding the appeal; failing to take action to pursue  
the appeal; failing to advise his client that a pro se brief  
could be filed; failing to advise his client that the appeal was  
dismissed; and failing to respond to his client's inquiries  
regarding the appeal and its dismissal.

Bourcier represented to the court in the motion to dismiss

the appeal that he had reviewed the record and consulted with his client in making the determination that there were no meritorious issues raised which were reviewable on appeal. The representation was false and known by Bourcier to be false at the time made. Bourcier did not discuss or communicate with his client concerning the record or issues of possible appeal or the dismissal of the appeal. As a result, Bourcier knowingly made a false statement of fact to the court, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation and engaged in conduct that is prejudicial to the administration of justice.

After receiving the client's complaint, Disciplinary Counsel's Office requested Bourcier's explanation. Bourcier failed to respond or cooperate with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee which are empowered to investigate or act upon the conduct of lawyers.

Cite as 324 Or 69 (1996)

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re: )  
 )  
 Complaint as to the Conduct of )  
 )  
 PATRICK A. BUTLER, )  
 )  
 Accused. )  
 \_\_\_\_\_ )

(OSB 94-23; SC S40533)

On a review from a decision of the Trial Panel of the Disciplinary Board.

Argued and submitted March 4, 1996. Filed: August 22, 1996.

Lia Saroyan, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, argued the cause and filed the brief on behalf of the Oregon State Bar.

Patrick A. Butler, Portland, argued the cause and filed the briefs in propria persona.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Fadeley, Graber, and Durham, Justices.

PER CURIAM

The accused is suspended from the practice of law for a period of one year commencing on the effective date of this decision.

Summary:

On August 22, 1996, the Oregon Supreme Court issued an opinion suspending Patrick A. Butler from the practice of law for one year. Butler's suspension was effective September 27, 1996. Butler represented a client in a personal injury matter and failed to perfect service upon the defendant within the applicable statute of limitations. As a result, the court dismissed the case with prejudice. During the course of the representation, the client repeatedly asked Butler as to the status of the litigation. Butler assured the client that he was working on the case when in fact the case had been dismissed. Once dismissed, Butler failed to inform his client of the case's dismissal.

As Butler admitted that his conduct violated DR 6-101(B), neglect of a legal matter, and DR 1-102(A)(3), misrepresentations, the only issue on appeal was the appropriate sanction. Given that Butler had previously engaged in similar misconduct for which he had been disciplined, (In re Butler, Or Sct No. S40533 (1993), the court determined that a one year suspension was appropriate.



Cite as 322 Or 466 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
Complaint as to the Conduct of )  
 )  
WILLIAM J. CLAUSSEN, )  
 )  
 )  
Accused. )  
 )

---

(OSB 91-145; SC S42174)

In Banc

On review of the decision of the Trial Panel of the  
Disciplinary Board.

Argued and submitted September 6, 1995. Filed: January 26,  
1996.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego,  
argued the cause and filed the briefs for the Oregon State Bar.

Gary M. Bullock, Portland, argued the cause for the accused.

William E. Loose, Portland, filed the brief for the accused.

PER CURIAM

The accused is suspended from the practice of law for one  
year.

Summary:

On January 26, 1996, the Oregon Supreme Court rendered an  
Opinion suspending Salem attorney William Claussen for one year.  
The suspension became effective March 20, 1996. The suspension  
was the result of Claussen's handling of a Chapter 11 Bankruptcy.  
Claussen was good friends with husband and wife clients and  
represented both them and the corporations of which they were  
majority shareholders. In 1989, one of these corporations was  
sued by its landlord in circuit court for rent. Claussen filed a  
Chapter 11 Bankruptcy on the corporation's behalf. At the same  
time, Claussen's firm was representing wife, who was a secured  
creditor of the debtor corporation. Claussen was required under  
the bankruptcy rules to disclose this and other connections he  
had with the individual clients and their related corporations,  
but failed to do so. He also filed a document entitled  
Application to Employ Attorney for Debtor and Certificate of  
Disinterestedness in which he asserted "to the best of his  
knowledge" that his firm had no connection with creditors or  
other parties in interest in the matter. This assertion was  
untrue.

In January 1990, the clients, as individuals, together with  
their corporations, entered into a settlement agreement with the  
landlord. Claussen participated in the negotiation of the  
agreement and signed as the lawyer for all parties except the

landlord. The settlement was formalized by a stipulated judgment entered in the circuit court, but Claussen did not seek or receive permission from the bankruptcy court for the settlement. The Court found that by representing both the bankrupt debtor and one of its creditors, Claussen violated DR 5-105(E) [current client conflict]. The Court also found that Claussen intentionally made material misrepresentations to the bankruptcy court in order to further his clients' interests, in violation of DR 1-102(A)(3), and violated DR 1-102(A)(4) by submitting inaccurate and misleading documents to the bankruptcy court. Claussen also violated both DR 1-102(A)(4) and DR 7-102(A)(3) by failing to reveal to the bankruptcy court his prior and continuing relationship with his clients and the settlement with the landlord.

In sum, Claussen, an experienced bankruptcy lawyer, engaged in aggravated multiple client conflicts of interest, intentionally submitted documents to the bankruptcy court that he knew were untrue (thereby preventing the court from discovering his conflicts of interest), and repeatedly failed to disclose material information to the court that he had a duty to disclose. Under the ABA Standards and Oregon case law, the court concluded that the Accused should be suspended from the practice of law for one year.

Cite as 324 Or 218 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
 Complaint as to the Conduct of )  
 )  
 CORDELLA JO MILES, )  
 )  
 Accused. )

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(OSB 95-50, 95-80; SC S43341)

In Banc

On review from a decision of the Trial Panel of the Disciplinary Board.

Submitted on the record July 22, 1996. Filed: September 26, 1996.

Martha M. Hicks, Assistant Disciplinary Counsel, Lake Oswego, waived appearance for the Oregon State Bar.

No appearance contra.

PER CURIAM

The accused is suspended from the practice of law for a period of 120 days commencing on the effective date of this decision; formal application for reinstatement under BR 8.1 required.

Summary:

In an opinion filed September 26, 1996, the Supreme Court suspended Hillsboro attorney Cordella Jo Miles for a period of 120 days for two violations of DR 1-103(C) (failure to cooperate with a Bar investigation). The suspension commenced on October 29, 1996.

Miles failed to respond to inquiries from Disciplinary Counsel's Office regarding two separate complaints from her clients. She then failed to respond to the Local Professional Responsibility Committee's attempts to contact her and consented to be interviewed only after the LPRC investigator visited her home unannounced. Miles did not respond to the Bar's formal complaint, nor did she appear at trial, and a default was entered against her.

In determining the appropriate sanction, the court emphasized the seriousness with which it views a lawyer's failure to cooperate with a disciplinary investigation and considered Miles' substantial experience in the practice of law and that she had engaged in a pattern of misconduct. Because the court had no information about why Miles failed to cooperate with the Bar's investigation or any evidence that demonstrated her present

ability to practice law, it required her to file a formal application for reinstatement pursuant to BR 8.1 when her term of suspension expires.



Cite as 323 Or 472 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
Complaint as to the Conduct of )  
 )  
RONALD K. SCHAFFNER, )  
 )  
 )  
Accused. )  
 )

---

(OSB 94-72; SC S42986)

In Banc

On review from a decision of the Trial Panel of the  
Disciplinary Board.

Argued and submitted May 8, 1996. Filed: June 27, 1996.

Ronald K. Schaffner, Portland, argued the cause and filed a  
brief in propria persona.

Jeffrey D. Shapiro, Disciplinary Counsel, Lake Oswego,  
argued the cause and filed the briefs for the Oregon State Bar.

PER CURIAM

The accused is suspended from the practice of law for a  
period of 120 days commencing on the effective date of this  
opinion.

Summary:

On June 27, 1996, the Supreme Court issued its opinion  
suspending Ronald K. Schaffner from the practice of law for 120  
days.

Schaffner represented clients in litigation. Throughout the  
representation, Schaffner failed to return his clients' calls or  
calls from opposing counsel, failed to advise his clients of  
their scheduled depositions, did not advise them of a motion for  
sanctions based on their failure to appear for depositions, and  
failed to advise them of a scheduled arbitration. When the  
clients complained to the Bar, Schaffner did not respond either  
to Disciplinary Counsel or the local professional responsibility  
committee. Thereafter, he did appear for deposition but failed to  
appear at the disciplinary hearing.

The court concluded Schaffner neglected his clients' legal  
matter in violation of DR 6-101(B), and failed to cooperate with  
the Bar inquiry in violation of DR 1-103(C). The court noted,  
however, that Schaffner's failure to appear at hearing was not a  
separate violation of DR1-103(C), nor was it an aggravating  
factor regarding sanction.

Rejecting a shorter suspension and a term of probation established by the trial panel, the court instead suspended Schaffner for 120 days. The suspension became effective August 27, 1996.

Cite as 323 Or 137 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
Complaint as to the Conduct of )  
 )  
DENNIS J. SOUSA, )  
 )  
 )  
Accused. )  
 )

(OSB 94-85, 94-190, 94-239, 95-48; SC S42737)

In Banc

On review of the decision of a Trial Panel of the  
Disciplinary Board.

Submitted on the record January 25, 1996. Filed: May 2,  
1996.

Jane E. Angus, Assistant Disciplinary Counsel, waived  
appearance for the Oregon State Bar.

No appearance contra.

PER CURIAM

The accused is disbarred.

Summary:

Effective June 10, 1996, the Supreme Court disbarred Portland attorney Dennis J. Sousa for multiple violations of DR 1-102(A)(3), dishonesty, fraud, deceit or misrepresentation, DR 2-106(A), excessive fee, DR 6-101(B), neglect, DR 7-101(A)(2), intentional failure to carry out a contract of employment, and DR 9-101(C)(3), failure to provide an accounting of client funds. The Bar's formal complaint was based on the Sousa's representation of four different clients in unrelated matters. Sousa failed to cooperate or participate in the investigation of each of the matters brought to the Bar's attention and failed to participate in the disciplinary proceedings. As a result he was also found to have violated DR 1-103(C).

In one matter, Sousa represented a client who suffered from Alzheimer's disease. The client executed a general power of attorney authorizing Sousa to act on her behalf. Later, pursuant to the power of attorney, Sousa sold some of the client's real and personal property, including an automobile to a third party. Sousa could not locate the title to the vehicle and represented to the purchaser that he would take action necessary to obtain a new title to complete the transfer of ownership. Despite repeated requests from the purchaser, Sousa failed to take action.

In a second matter, a client retained Sousa to resolve several traffic charges pending in Colorado. Sousa represented that he was currently licensed to practice law in Colorado and he could resolve the matter with some telephone calls. At the time,

Sousa was an inactive member of the Colorado Bar. He never advised the client that he was not authorized to practice law in that state. Thereafter, Sousa failed to respond to repeated communications from the client and failed to resolve her traffic charges. After several months, the client terminated the professional contract and demanded an accounting of the work performed and the retainer which she had paid. Sousa failed to respond.

In a third matter, Sousa was retained to represent a client concerning certain traffic charges and a possible probation. The client paid Sousa a non-refundable retainer. Thereafter, and for a period of approximately ten months, Sousa failed to respond to the client's repeated attempts to communicate with him and failed to take action on the client's matter. On one occasion, the client was able to speak with Sousa at which time he represented that he was "working on it" when, in fact, he was not. Sousa did not refund any portion of the client's retainer.

In a fourth matter, a client retained Sousa to pursue certain claims against the client's employer and for unemployment compensation. Although Sousa initially performed some service for the client, he eventually failed to respond to the client's repeated attempts to communicate with him and failed to complete his contract for professional services. In one of the civil actions, the defendants had filed a motion to dismiss. Sousa did not inform the client. The client did not learn of the motion or hearing until he checked the court docket. Sousa neither objected nor responded to the motion and did not appear at the hearing. In an unemployment compensation proceeding, Sousa petitioned for judicial review following an adverse ruling by the Employment Department. The Court of Appeals dismissed the petition because Sousa failed to file a brief on the client's behalf. Sousa did not notify the client that he had failed to file a brief or that the court had dismissed the appeal.

Sousa was admitted to practice in the State of Oregon in 1973. His prior record of discipline consisted of a letter of admonition.

Cite as 324 Or 283 (1996)

IN THE SUPREME COURT

OF THE STATE OF OREGON

In Re: )  
 )  
 Complaint as to the Conduct of )  
 )  
 MONICA STAAR, )  
 )  
 Accused. )

---

(OSB 93-125; SC S42817)

On review of a decision of a Trial Panel of the Disciplinary Board.

Submitted on the record March 21, 1996. Filed: October 11, 1996.

Chris L. Mullman, Assistant Disciplinary Counsel, waived appearance for the Oregon State Bar.

No appearance contra.

Before, Carson, Chief Justice, and Gillette, Van Hoomissen, Fadeley, Graber, and Durham, Justices.

PER CURIAM

The accused is suspended from the practice of law for a period of two years commencing on the effective date of this decision.

Summary:

On October 11, 1996, the Oregon Supreme Court issued an opinion suspending Monica Staar, formerly of Portland, for two years for knowingly making a false statement in a Petition for Restraining Order to Prevent Abuse in violation of ORS 162.065 (perjury) and ORS 162.075 (false swearing), thereby violating DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4) and DR 7-102(A)(5). The court also found that Staar violated DR 1-103(C) by failing to cooperate with the investigation of the Bar and the Multnomah County Local Professional Responsibility Committee.

Staar did not respond to the Bar's formal complaint, and the trial panel entered an order of default deeming all allegations contained in the Bar's complaint admitted. Staar did not appear at the hearing nor did she file a brief or make any appearance in the Supreme Court.

By virtue of the default, the court found that in March 1993, Staar, acting on her own behalf, signed, verified and filed a Petition for a Restraining Order in Clackamas County alleging under oath that she had been living with the respondent since July 1988. On or about June 14, 1993, Staar, acting on her own behalf, signed, verified, and filed a similar restraining order in Multnomah County alleging under oath that she had lived with a different respondent from December 1992 to May 1993 and that she had been abused by him. These representations were false

and Staar knew them to be false when she made them. As a result, the respondent in the second proceeding was required to appear and move to dismiss the petition.

The court concluded that the fact Staar was not acting as a lawyer when she made the false statements of fact did not affect her culpability as the Disciplinary Rules apply to the conduct of lawyers when they are acting on their own behalf.

In imposing a sanction, the court noted that the repeated failure to respond to inquiries of the Bar and LPRC were strong aggravating factors. The court concluded that the only mitigating factor that led to the conclusion of less than disbarment was some evidence that Staar may have been suffering from a mental disability or impairment at the time of the misconduct. Therefore, Staar was suspended for a period of two years and if she seeks reinstatement, she shall be required to file a formal application for reinstatement and comply with the Rules of Procedure in effect at that time.

Staar's suspension became effective with the appellate judgment dated December 10, 1996.

Cite as 323 Or 285 (1996)

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In Re: )  
 )  
Complaint as to the Conduct of )  
 )  
ROSEMARY E. UNREIN, )  
 )  
Accused. )  
\_\_\_\_\_ )

(OSB 93-161; SC S42485)

In Banc

On review from the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted May 8, 1996. Filed June 7, 1996.

Paul R.J. Connolly, of Donaldson, Albert, Tweet, Connolly, Hanna & Muniz, LLP, Salem, argued the cause and filed the brief for the accused.

Martha H. Hicks, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the briefs for the Oregon State Bar.

PER CURIAM

The accused is suspended from the practice of law for 120 days.

Summary:

In an opinion filed June 7, 1996, the Oregon Supreme Court suspended attorney Rosemary E. Unrein of Salem for 120 days beginning on August 19, 1996.

The court found Unrein guilty of violating DR 1-102(A) (3) [conduct involving dishonesty, fraud, deceit or misrepresentation] in connection with her 1992 application for unemployment benefits. As part of her application for benefits, Unrein was required to certify that she had not worked in each week for which unemployment benefits were to be paid. For four weeks in March and April of 1992, Unrein applied for and received unemployment compensation benefits to which she knew she was not entitled because she was then employed by Marion County Legal Aid Services. On these facts, the court held that Unrein's application for benefits to which she knew she was not entitled and her misrepresentations in furtherance of that application violated DR 1-102(A) (3).

The court found that Unrein had violated her duty to maintain her personal integrity, had acted with the conscious objective to obtain unemployment benefits for which she was ineligible, and had caused actual harm to the Employment Division by improperly receiving benefits and putting the agency to the expense and inconvenience of a fraud investigation and a hearing.

The court also considered that Unrein had not been completely candid in the Bar proceedings.

In determining the appropriate sanction to be a 120 day suspension, the court noted Unrein's remorse, that she had no prior disciplinary record, and that she had received no disciplinary complaints in the four-year period between her conduct and the disciplinary hearing.



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