

Disciplinary Board Reporter

Volume 11

January 1, 1997 to December 31, 1997

*Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Supreme Court for 1997*

Donna J. Richardson
Editor

Caroline Stein
Production Assistant



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DISCIPLINARY BOARD REPORTER

REPORT OF CASES

Decided by the
Disciplinary Board
of the
Oregon State Bar

and

Supreme Court
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for 1997

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Preface

This Reporter contains final decisions of the Oregon State Bar Disciplinary Board. The Disciplinary Board Reporter should be cited as 11DB Rptr 1 (1997).

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. 321 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, 1998 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 1997 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 Table of Disciplinary Rules and Statutes, Table of Cases, and the Table of Rules of Procedure. This year we have added descriptions of Disciplinary Rules (BRs), Statutes (ORSs), and Rules of Procedure (BRs) to their respective indexes, and have eliminated the Subject Matter Index for ease of use.

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.

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TABLE OF CONTENTS

References are to Pages

	<u>Page</u>
Supreme Court, Board of Governors, State Professional Responsibility Board.....	iv
Disciplinary Board	
1998	v
1997	vii
Table of Opinions	ix
Table of Cases	xiii
Table of Disciplinary Rules and Statutes	xix
Table of Rules of Procedure	xxix
Decisions	1-206

Justices of the Supreme Court

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7. Robert W. Wilson (Public Member) (96-98)

TABLE OF OPINIONS

Appearing in this Volume

Volume 11 DB Reporter

(includes Supreme Court stipulations and Supreme Court decisions
which also appear in Advance Sheets)

	<u>Page</u>
A	
<u>In re Alway</u>	153
Violation of DR 5-105(C). Stipulation for Discipline. Public Reprimand.	
B	
<u>In re Bailey</u>	117
Violation of DR 7-102(A)(3). Stipulation for Discipline. Public Reprimand.	
<u>In re Blakely</u>	59
Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), DR 7-102(A)(3), DR 7-102(A)(5). Stipulation for Discipline. Six-month suspension.	
<u>In re Bourcier</u>	89
Violation of DR 1-103(C), DR 6-101(B). Disbarred.	
<u>In re Bowersox</u>	91
Violation of DR 1-102(A)(3), DR 6-101(B), DR 1-103(C). Stipulation for Discipline. 90-day suspension.	
<u>In re Bozgoz</u>	39
Violation of DR 5-105(C), DR 7-110(B)(2). Stipulation for Discipline. 60-day suspension.	
<u>In re Brown</u>	111
Violation of DR 5-101(A), DR 5-104(A). Stipulation for Discipline. Public Reprimand.	
C	
<u>In re Clark</u>	123
Violation of DR 7-102(A)(3). Stipulation for Discipline. Public Reprimand.	

D

In re Deguc 201
Violation of DR 6-101(A), DR 6-101(B), DR 9-101(A). Stipulation for Discipline.
180-day suspension.

In re Dietz..... 75
Violation of DR 3-101(A). Stipulation for Discipline. Public Reprimand.

In re Dodge 135
Violation of DR 7-104(A)(1). Stipulation for Discipline. Public Reprimand.

In re Drew 67
Violation of DR 1-102(A)(2), DR 1-102(A)(3), ORS 9.460(1), ORS 9.527(1),
ORS 9.527(2). Stipulation for Discipline. Two-year suspension.

F

In re Fish..... 105
Violation of DR 5-101(A), DR 5-104(A). Stipulation for Discipline. Public Reprimand.

G

In re Garvey 29
Violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C),
DR 6-101(B), DR 7-102(A)(5), DR 7-102(A)(7), ORS 9.527(4). Disbarred.

In re Gildea 73
Violation of DR 1-102(A)(3), DR 5-101(A), DR 5-101(B), DR 5-104(A), DR 9-101(A),
DR 9-101(C)(3), ORS 9.527(4). 120-day suspension.

In re Gudger 171
Violation of DR 1-102(A)(2). Stipulation for Discipline. Seven-month suspension.

H

In re Hanson..... 17
Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C). Stipulation for
Discipline. 90-day suspension.

In re Hassenstab 65
Violation of DR 1-102(A)(2), DR 5-101(A). Disbarred.

In re Hellewell 31
Violation of DR 1-102(A)(4), DR 1-103(C), DR 6-101(B), DR 7-101(A)(2). Stipulation for Discipline. One year suspension, 10 months stayed pending completion of two year supervised probation.

In re Hostetter 195
Violation of DR 1-102(A)(3), ORS 9.527(4). Stipulation for Discipline. 90-day suspension.

I

In re Ingram 55
Violation of DR 6-101(B). Stipulation for Discipline. Public Reprimand.

J

In re Jackson 23
Violation of DR 6-101(B). Stipulation for Discipline. Public Reprimand.

K

In re Klemp 1
Violation of DR 9-101(C)(3) and DR 1-103(C). Stipulation for Discipline. Public Reprimand.

L

In re Lafky 9
Violation of DR 7-109(C). Public Reprimand.

In re Leonhardt 7
Violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(1), DR 7-102(A)(2), DR 7-101(A)(3), DR 7-101(A)(5), DR 7-101(A)(8), DR 7-103(A), ORS 9.460(1), ORS 9.460(2), ORS 9.527(2), ORS 9.527(4). Disbarred.

In re Lofton 129
Violation of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(C), DR 5-105(E). Stipulation for Discipline. 60-day suspension.

M

In re Miller 165
Violation of DR 1-102(A)(1), DR 1-102(A)(3), DR 7-102(A)(5), ORS 9.527(4). Stipulation for Discipline. 60-day suspension.

In re Moroney 15
Violation of DR 1-102(A)(3), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4). Disbarred.

N

In re Nash 177
Violation of DR 1-102(A)(4), DR 7-102(A)(2). Stipulation for Discipline. 60-day suspension stayed, one-year probation.

P

In re Parker 81
Violation of DR 2-106(A), DR 6-101(B), DR 9-101(A)(1), DR 9-101(C)(3).
Public Reprimand.

In re Peterson 99
Violation of DR 5-101(A), DR 5-104(A). Stipulation for Discipline. Public Reprimand.

S

In re Schaffner 87
Violation of DR 1-103(C), DR 6-101(B), DR 7-102(A)(2), DR 9-101(C)(4). Two-year suspension.

In re Scott 159
Violation of DR 1-103(C), DR 6-101(B), DR 7-102(A)(2), DR 9-101(C)(4). Stipulation for Discipline. 120-day suspension.

In re Singer 141
Violation of DR 1-102(A)(3). Stipulation for Discipline. Public Reprimand.

In re Skinner 189
Violation of DR 1-102(A)(4). Stipulation for Discipline. Public Reprimand.

In re Solomon 47
Violation of DR 2-106(A), DR 6-101(B), DR 7-101(A)(2), DR 9-101(A),
DR 9-101(C)(3). 30-day suspension.

In re Speck 183
Violation of DR 1-102(B)(1). Stipulation for Discipline. Public Reprimand.

T

In re Thompson 97
Violation of DR 1-102(A)(4), DR 7-110(B). 63-day suspension.

W

In re White 147
Violation of DR 7-102(A)(1). Stipulation for Discipline. Public Reprimand.

TABLE OF CASES

Appearing in this Volume

References are to Pages Cited in Opinions

	<u>Page</u>
<u>In re Babcock</u> 10 DB Rptr (1996) Solomon	52
<u>In re Baer</u> 298 Or 29, 688 P2d 1324 (1984) Lofton.....	134
<u>In re Barrett</u> 269 Or 264, 524 P2d 1208 (1974) Alway	157
<u>In re Bell</u> 294 Or 202, 655 P2d 569 (1982) Bozgoz.....	44
<u>In re Bennett</u> 1 DB Rptr 54 (1985) Jackson	26
<u>In re Benzinger</u> 6 DB Rptr 51 (1992) Miller	169
<u>In re Bishop</u> 297 Or 479, 686 P 2d 350 (1984) Brown..... Fish..... Peterson	115 109 103
<u>In re Boardman</u> 312 Or 452, 822 P 2d 709 (1991) Bailey	121
Clark	127
Singer	145
<u>In re Borneman</u> 10 DB Rptr (1996) Solomon	52
<u>In re Bourcier</u> 7 DB Rptr 115 (1993) Solomon	52
<u>In re Bozgoz</u> 8 DB Rptr 113 (1994) Bozgoz.....	43

<u>In re Brownlee</u> Or SCt 43489 (1996)	
Hellewell	35
<u>In re Busby</u> 317 Or 213, 855 P2d 156 (1993)	
Hostetter.....	199
<u>In re Carey</u> 307 Or 315, 767 P2d 438 (1989)	
Brown.....	115
Fish.....	109
Peterson	103
<u>In re Clark</u> Or SCt No. S39799 (1993)	
Gudger.....	175
<u>In re Cohen</u> 9 DB Rptr 229 (1995)	
Hellewell	35
<u>In re Dames</u> 10 DB Rptr 81 (1996)	
Blakely.....	64
<u>In re Durbin</u> 9 DB Rptr 71 (1995)	
Lofton.....	133
<u>In re Edstrom</u> 10 DB Rptr 115 (1996)	
Dietz	80
<u>Florida Bar v. Machin</u> 635 So. 2d 938 (Fla 1994)	
Lafky.....	12
<u>In re Gant</u> 293 Or 130, 645 P2d 23 (1982)	
Bozgoz.....	44
<u>In re Gilchrist</u> 272 Or 552, 538 P2d 913 (1975)	
Dietz	79
<u>In re Greene</u> 290 Or 291, 620 P2d 1379 (1980)	
Blakely.....	64
<u>In re Gregg</u> 252 Or 174, 446 P2d 123 (1968)	
Drew	72
<u>In re Gudger</u> Or SCt S43561 (1996)	
Gudger.....	174

<u>In re Hall</u> 10 DB Rptr 19 (1996)	
Deguc	205
Jackson	26
 <u>In re Hanson</u> 11 DB Rptr 17 (1997)	
Bowersox.....	96
 <u>In re Harrington</u> 301 Or 18, 718 P2d 725 (1986)	
Brown.....	115
Fish.....	109
Peterson	103
 <u>In re Haws</u> 310 Or 741, 801 P2d 818 (1990)	
Klemp.....	4
 <u>In re Hedges</u> 280 Or 155, 570 P2d 73, (1977)	
Blakely.....	64
 <u>In re Hilke</u> Or SCt 40610 (1993)	
Hellewell	35
 <u>In re Hiller et al.</u> 298 Or 526, 694 P2d 540 (1985)	
Blakely.....	64
Hanson.....	21
 <u>In re Hockett</u> 303 Or 150, 734 P2d 877 (1987)	
Bozgoz.....	44
 <u>In re Hopp</u> 291 Or 697, 634 P2d 238 (1981)	
Miller	169
 <u>In re Huffman</u> 289 Or 515, 614 P2d 586 (1980)	
White	150
 <u>In re Jackson</u> 11 DB Rptr 23 (1997)	
Deguc	205
 <u>In re Johnson</u> 9 DB Rptr 151 (1995)	
Bowersox.....	96
 <u>In re Jones</u> 308 Or 306, 779 P2d 1016 (1989)	
Dietz	80
Lofton.....	134
 <u>In re Kent</u> 9 DB Rptr 180 (1995)	
Ingram	58

<u>In re Mammen</u> 9 DB Rptr 203 (1995)	
Alway	157
<u>In re Mannis</u> 295 Or 594, 668 P2d 1224 (1983)	
Deguc	205
<u>In re McCaffrey</u> 275 Or 23, 549 P2d 666 (1976)	
Dodge	138
<u>In re Melmon</u> 322 Or 380, P2d 822 (1995)	
Miller	168
Singer	145
<u>In re Mendez</u> 10 DB Rptr 129 (1996)	
Bowersox	96
<u>In re Michaels</u> 10 DB Rptr (1996)	
Solomon	52
<u>In re Miles</u> 324 Or 218, 923 P2d 1219 (1996)	
Scott	163
<u>In re Miller</u> 7 DB Rptr 87 (1993)	
Miller	168
<u>In re Moore</u> 10 DB Rptr (1996)	
Solomon	52
<u>In re Morin</u> 319 Or 547, 878 P2d 393 (1994)	
Dietz	80
Drew	70
<u>In re Muir</u> 10 DB Rptr 37 (1996)	
Lofton	134
<u>In re Orcutt</u> 8 DB Rptr 33 (1994)	
Hostetter	199
<u>In re Ortiz</u> 77 Or App 532, 713 P2d 1068 (1986)	
Dietz	79
<u>In re Paauwe</u> 294 Or 171, 654 P2d 1117 (1982)	
Nash	180
Speck	186

<u>In re Porter</u> 320 Or 692, 890 P2d 1377 (1995)	
Miller	169
<u>In re Reid</u> 10 DB Rptr 45 (1996)	
Ingram	58
<u>In re Riedlinger</u> 10 DB Rptr 193 (1996)	
Jackson	26
<u>In re Robertson</u> 290 Or 639, 624 P2d 603 (1981)	
Bozgoz	44
<u>In re Rook</u> 276 Or 695, 556 P2d 1351 (1976)	
White	150
<u>In re Schaffner</u> 323 Or 472, 918 P2d 803 (1996)	
Scott	163
<u>In re Schmechel</u> 7 DB Rptr 95 (1993)	
Hanson	21
<u>In re Smith</u> 316 Or 55, 848 P2d 612 (1993)	
Nash	180
Skinner	192
<u>In re Sousa</u> 323 Or 137, 915 P2d 408 (1996)	
Bozgoz	43
Dietz	78
<u>In re Stodd</u> 279 Or 565, 568 P2d 665 (1977)	
Drew	72
<u>In re Thompson</u> 325 Or 467, 940 P2d 512 (1997)	
Nash	180
Skinner	192
<u>In re Toner</u> 8 DB Rptr 63 (1994)	
Lofton	134
<u>In re Watson</u> Or SCt No. S38919 (1992)	
Gudger	175

In re Williams 314 Or 530, 840 P2d 1280 (1992)

Blakely.....	63
Bozgoz.....	43
Dietz	79
Scott.....	162

In re Zumwalt 296 Or 631, 678 P2d 1207 (1984)

Bailey	121
Clark	127

TABLE OF DISCIPLINARY RULES (DR) and STATUTES (ORS)

Appearing in this Volume

	<u>Page</u>
<u>DR 1-102(A)(1)</u> - Misconduct - a lawyer shall not knowingly violate rules	
Miller	165
<u>DR 1-102(A)(2)</u> - Misconduct - a lawyer shall not commit criminal act that reflect adversely	
Drew	67
Garvey	29
Gudger	171
Hassenstab	65
Leonhardt	7
<u>DR 1-102(A)(3)</u> - Misconduct - a lawyer shall not engage in dishonest conduct	
Blakely	59
Bowersox	91
Drew	67
Garvey	29
Gildea	73
Hanson	17
Hostetter	195
Leonhardt	7
Miller	165
Moroney	15
Singer	141
<u>DR 1-102(A)(4)</u> - Misconduct - a lawyer's conduct prejudicial to administration of justice	
Blakely	59
Garvey	29
Hanson	17
Hellewell	31
Leonhardt	7
Nash	177
Skinner	189
Thompson	97
<u>DR 1-102(B)(1)</u> - Misconduct - a lawyer orders or has specific knowledge of conduct	
Speck	183

<u>DR 1-103(C)</u> - Disclosure/Duty to Cooperate - a lawyer must fully reveal knowledge	
Bourcier	89
Bowersox.....	91
Garvey	29
Hanson.....	17
Hellewell	31
Schaffner	87
Scott.....	159
Klemp.....	1
<u>DR 2-106(A)</u> - Fees - a lawyer shall not charge an illegal or excessive fee	
Parker	81
Solomon	47
<u>DR 3-101(A)</u> - Unlawful Practice of Law - a lawyer shall not aid a nonlawyer in	
Dietz	75
Lofton.....	129
<u>DR 3-102(A)</u> - Dividing Legal Fees with Nonlawyer - a lawyer shall not share in	
Lofton.....	129
<u>DR 5-101(A)</u> - Conflict of Interest - Lawyer's Self-Interest - except with client's consent	
Brown.....	111
Gildea	73
Fish.....	105
Hassenstab	65
Lofton.....	129
Peterson	99
<u>DR 5-101(B)</u> - Conflict of Interest - Self-Interest - a lawyer shall not prepare a legal instrument for a relative	
Gildea	73
<u>DR 5-104(A)</u> - Limiting Business Relations w/ Client - shall not enter into a business transaction with differing interests	
Brown.....	111
Fish.....	105
Gildea	73
Peterson	99
<u>DR 5-105(C)</u> - Conflicts of Interest: Former and Current Clients. Former Client Conflicts - Prohibition	
Alway	153
Bozgoz	39
Lofton.....	129

<u>DR 5-105(E)</u> - Conflicts of Interest: Former and Current Clients. Current Client Conflicts - Prohibition Lofton.....	129
<u>DR 6-101(A)</u> - Competence & Diligence - a lawyer shall provide competent representation Blakely..... Deguc	59 201
<u>DR 6-101(B)</u> - Competence & Diligence - a lawyer shall not neglect a legal matter Bowersox..... Bourcier	91 89
Deguc	201
Garvey	29
Hellewell	31
Ingram	55
Jackson	23
Parker	81
Schaffner	87
Scott.....	159
Solomon	47
<u>DR 7-101(A)(2)</u> - Zealous Representation - a lawyer shall not intentionally fail to carry out a contract of employment Deguc	201
Hellewell	31
Solomon	47
<u>DR 7-102(A)(1)</u> - Representing a Client Within the Bounds of Law. A lawyer shall not, during representation, take any action that serves to harass or maliciously injure another Leonhardt	7
White	147
<u>DR 7-102(A)(2)</u> - Representing a Client Within the Bounds of Law. A lawyer shall not, during representation, advance an unsupportable claim Clark	123
Leonhardt	7
Nash.....	177
Scott.....	159
<u>DR 7-102(A)(3)</u> - Representing a Client Within the Bounds of Law. A lawyer shall not, during representation, conceal or knowingly fail to disclose all required to reveal Bailey	117
Blakely.....	59
Leonhardt	7

<u>DR 7-102(A)(5)</u> - Representing a Client Within the Bounds of Law. A lawyer shall not, during representation, knowingly make a false statement	
Blakely	59
Garvey	29
Leonhardt	7
Miller	165
<u>DR 7-102(A)(7)</u> - Representing a Client Within the Bounds of Law. A lawyer shall not, during representation, counsel or assist client in illegal or fraudulent acts	
Garvey	29
<u>DR 7-102(A)(8)</u> - Representing a Client Within the Bounds of Law. A lawyer shall not, during representation, knowingly engage in other illegal conduct	
Leonhardt	7
<u>DR 7-103(A)</u> - Performing the Duty of Public Prosecutor or Other Government Lawyer. A...lawyer shall not institute or cause to be instituted unsupportable criminal charges	
Leonhardt	7
<u>DR 7-104(A)(1)</u> - Communicating with a Person Represented by Counsel. A lawyer shall not, during representation, communicate or cause another to communicate about the subject of representation	
Dodge	135
<u>DR 7-109(C)</u> - Contact with Witnesses - a lawyer shall not pay or offer to pay a witness contingent upon testimony	
Lafky	9
<u>DR 7-110(B)</u> - Contact with Officials. A lawyer shall not, in an adversarial proceeding, communicate with a judge the merits of a case	
Thompson	97
<u>DR 7-110(B)(2)</u> - Contact with Officials. A lawyer shall not, in an adversarial proceeding, communicate with a judge the merits of a case except in writing with a copy to opposing counsel	
Bozgoz	39
<u>DR 9-101(A)</u> - Preserving Identity of Funds and Property of a Client. All funds of client paid to lawyer must be held in identifiable trust accounts with no funds belonging to lawyer being deposited therein	
Gildea	73
Moroney	15
Solomon	47

DR 9-101(A)(1) - Preserving Identity of Funds and Property of a Client. All funds of client paid to lawyer must be held in identifiable trust accounts with no funds belonging to lawyer being deposited therein except funds to pay account charges

Parker 81

DR 9-101(C)(3) - Preserving Identity of Funds and Property of Client. A lawyer shall maintain complete records of all funds, securities & properties coming into their possession.

Gildea 73
Klemp 1
Moroney 15
Parker 81
Solomon 47

DR 9-101(C)(4) - Preserving Identity of Funds and Property of Client. A lawyer shall promptly pay when requested by client all funds and properties client is entitled to receive.

Schaffner 87
Scott 159

ORS 9.160 - Practice of Law by Persons Other than Active Members

Dietz 75

ORS 9.280(1) - Prohibition on Acting as Immigration Consultant - Unless person is an active Bar member

Dietz 75

ORS 9.460(1) - Duty of Attorneys. A member shall support the U.S. Constitution, laws of the United States, and state

Drew 67
Leonhardt 7

ORS 9.460(2) - Duty of Attorneys. A member shall employ means consistent with truth, never seeking to mislead

Leonhardt 7

ORS 9.527(1) - Grounds for Disbarment, Suspension, Reprimand. A member has carried on a course of conduct whereby an application for admission to the bar would be denied.

Drew 67
Gudger 171

ORS 9.527(2) - Grounds for Disbarment, Suspension, Reprimand. A member has been convicted of a misdemeanor involving moral turpitude, or felony.

Drew 67
Leonhardt 7

ORS 9.527(4) - Grounds for Disbarment, Suspension, Reprimand. A lawyer is guilty of willful
deceit or misconduct in the legal profession.

Garvey	29
Gildea	73
Hostetter	195
Leonhardt	7
Miller	165

ORS 45.010 - Modes of Taking Testimony - Testimony taken in five modes

Lafky	9
-------------	---

ORCP 36 and 43

Bailey	117
--------------	-----

TABLE OF RULES OF PROCEDURE (BR)

Appearing in this Volume

References are to Opinions and Pages

	<u>Page</u>
<u>BR 3.6</u> - Discipline by Consent	
Always	153
Bailey	117
Blakely	59
Bowersox	91
Bozgoz	39
Brown	111
Clark	123
Deguc	201
Dietz	75
Dodge	135
Drew	67
Fish	105
Gudger	171
Hanson	17
Hellewell	31
Hostetter	195
Ingram	55
Jackson	23
Lofton	129
Miller	165
Nash	177
Peterson	99
Scott	159
Singer	141
Skinner	189
Solomon	47
Speck	183
White	147
<u>BR 3.6(c)</u> - Discipline by Consent - Stipulation for Discipline	
Always	153
Bailey	117
Blakely	59
Bowersox	91
Bozgoz	39

Brown.....	111
Clark	123
Deguc	201
Dietz	75
Dodge.....	135
Drew	67
Fish.....	105
Gudger	171
Hanson.....	17
Hellewell	3
Hostetter.....	195
Ingram	55
Jackson	23
Klemp.....	1
Lofton.....	129
Miller	165
Nash.....	177
Peterson	99
Scott.....	159
Singer	141
Skinner	189
Solomon	47
Speck.....	183
White	147

BR 3.6(h) - Discipline by Consent - Confidentiality

Alway	153
Bailey	117
Bowersox.....	91
Clark	123
Deguc	201
Dodge.....	135
Drew	67
Hanson.....	17
Ingram	55
Lofton.....	129
Miller	165
Nash.....	177
Scott.....	159
Skinner	189
Speck.....	183

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
Complaint as to the Conduct of) Case No. 95-194
RANDALL D. KLEMP,)
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: n/a

Disposition: Violation of DR 9-101(C)(3) and DR 1-103(C).
Stipulation for Discipline. Public Reprimand.

Effective Date of Order: 1-13-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 95-194
)	
RANDALL D. KLEMP,	)	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(C)(3) and DR 1-103(C).

DATED this 13th day of January, 1997.

/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	)	No. 95-194
)	
RANDALL D. KLEMP,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Randall D. Klemp, 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, Randall D. Klemp, was admitted by the Oregon Supreme Court to the practice of law in Oregon on January 8, 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 freely and voluntarily.

4.

The Accused's client's ex-wife, Sharon Rhyne (hereinafter "Rhyne"), owed money to the client. Rhyne received a \$588.40 check from the Ford Motor Company (hereinafter "Ford"), endorsed the check and gave it to the Accused to pay the client. After checking with Ford and being advised the check would be honored, the Accused deposited the check into his lawyer trust account and then wrote a check in the same amount to his client who negotiated the check. Sometime later, Ford stopped payment on the check, resulting in an overdraft of the Accused's lawyer trust account. At the time of the overdraft, no other client funds were in the trust account.

5.

The Accused contacted Ford, and on July 25, 1995, Ford honored the check. At no time were other client funds used to cover the overdraft.

6.

On July 5, 1995, the Bar received notice from U.S. National Bank that the Accused's lawyer trust account had been overdrawn in the amount of \$548.40. The Bar advised the Accused of the overdraft, requested his explanation of the overdraft and asked that the Accused provide copies of his May through June bank statements. On August 15, 1995, the Accused tendered a response indicating that for the prior two years, since his practice was negligible, he had not retained copies of his bank records nor had he maintained client ledgers showing amounts held in trust for clients. The Accused failed to provide his trust account bank records. Despite repeated demands to provide the statements, the Accused failed to do so.

7.

Because the Accused failed to provide copies of his bank statements, the matter was referred to the Local Professional Responsibility Committee (hereinafter "LPRC") on October 19, 1995. During the course of the LPRC investigation, the Accused agreed to obtain records

from his bank as he did not maintain an office ledger or other record of his bank accounts. The Accused failed to do so, and the investigator was required to subpoena the records.

8.

The Accused and the Bar stipulate that the Accused violated DR 9-101(C)(3) by failing to maintain records of funds deposited or withdrawn from his lawyer trust account. They further stipulate that when he failed to voluntarily produce bank records in response to requests by Disciplinary Counsel's Office and the LPRC investigator, the Accused failed to comply with the reasonable requests of an authority empowered to investigate his conduct in violation of DR 1-103(C).

9.

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 and mitigating circumstances.

A. Duty.

By violating DR 9-101(C)(3) and DR 1-103(C), the Accused violated his duties to the general public and the legal profession. ABA Standards 5.14 and 7.4.

B. State of Mind.

In failing to maintain adequate records of his trust account, 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. In failing to respond to the reasonable requests of the Bar, the Accused acted intentionally, or with the conscious objective or purpose to accomplish a particular result.

C. Injury.

By failing to maintain complete records of all funds coming into his possession, the Accused caused potential injury to clients in that, if requested, he could not render an appropriate accounting of those funds. Further, in failing to provide the bank documents as agreed, the Accused caused actual damage by delaying the investigation and resolution of this matter. In re Haws, 310 Or 741, 801 P2d 818 (1990).

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

1. The Accused has one prior public reprimand in September of 1995, for violating DR 2-110(A)(2) (improper withdrawal) in connection with the handling of a client matter.

2. The Accused has substantial experience in the practice of law, having been admitted to practice in 1987.

E. Mitigating Factors. Mitigating factors to be considered include (ABA Standards §9.32):

1. The Accused did not act with a dishonest or selfish motive.

2. The Accused made a timely good faith effort to rectify to his client the consequences of his conduct.

10.

The ABA Standards provide that a reprimand is appropriate where a lawyer engages in conduct that adversely reflects on the lawyer's fitness to practice law. Standards at 5.13.

11.

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

Cite as 324 Or 498 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
 Complaint as to the Conduct of)
)
 JULIE A. LEONHARDT,)
)
 Accused.)
 _____)

(OSB 94-36; SC S41228)

On review of the recommendation of a Trial Panel of the Disciplinary Board.
 Submitted on the record and brief filed on behalf of the Oregon State Bar September 16,
 1996.

Jeffrey D. Sapiro, Lake Oswego, filed a brief for the Oregon State Bar.

No appearance by or for the accused.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Fadeley, Graber, and
 Durham, Justices.

PER CURIAM

The accused is disbarred.

Summary:

On May 20, 1997, the Supreme Court denied a petition to reconsider the court's January 16, 1997 opinion disbaring Julie A. Leonhardt, the former district attorney of Clatsop County. The opinion followed Leonhardt's criminal conviction in 1994 on four felony counts of forgery, two misdemeanor counts of tampering with public records, and one misdemeanor count of official misconduct. Based on the convictions, the court suspended Leonhardt on an interim basis in 1994, pending the outcome of the underlying disciplinary proceeding which has now been concluded.

In the summer of 1993, Leonhardt obtained from a grand jury indictments against two Astoria police officers. The indictments were not based on any witness testimony, written reports or affidavits. The only information provided to the grand jury was Leonhardt's unsworn statements that she had talked with an informant who had implicated the police officers in criminal activity. After the indictments were signed, Leonhardt directed that they be altered to reflect that a sworn statement from the informant had been provided to the grand jury, when in fact this was not true. In a subsequent hearing in circuit court on a defense motion to dismiss one of the indictments, Leonhardt represented that the informant actually testified before the grand jury. This was also untrue. The Supreme Court found that the false statement to the court was part of a purposeful effort to conceal Leonhardt's illegal and unethical conduct regarding the procurement and alteration of the indictments. The indictments were ultimately dismissed as unfounded.

In a second matter, Leonhardt complained to the Astoria Police about a reckless driving citation issued to her fiancé, and asked them for professional courtesy to reduce or dismiss the charge. Leonhardt's fiancé was on probation for a federal felony at the time and a conviction on the driving charge could have affected his probation negatively. This conduct led to Leonhardt's

conviction for official misconduct.

Leonhardt was found by the Supreme Court to have committed a number of ethical violations including: ORS 9.527(2) for her criminal convictions; DR 1-102(A)(2), DR 7-102(A)(8), ORS 9.460(1) and ORS 9.527(4) for the conduct underlying the convictions; DR 1-102(A)(2), (A)(3) and (A)(4), DR 7-102(A)(3), DR 7-102(A)(5), ORS 9.460(2) and 9.527(4) for misrepresentations to the trial court and to others; and DR 1-102(A)(4), DR 7-102(A)(1), DR 7-102(A)(2) and DR 7-103(A) for abusing the grand jury system.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 95-71
)	
KEVIN T. LAFKY,)	
)	
Accused.)	
<hr/>		

Bar Counsel:	Mark Bronstein, Esq.
Counsel for the Accused:	Gregory Hansen, Esq.
Disciplinary Board:	Miles Ward, Chair; William G. Blair, Esq; Robert Wilson, Public Member
Disposition:	Violation of DR 7-109(C). Public Reprimand.
Effective Date of Opinion:	2-6-97

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. 95-71
)	
KEVIN T. LAFKY,	)	OPINION
)	
Accused.)	

This matter came before a trial panel of the Oregon State Bar Disciplinary Board on the 18th day of September, 1996. Trial panel members were: Miles A. Ward, Chair, William G. Blair, and Robert Wilson. The Oregon State Bar was represented by Mark P. Bronstein, Bar Counsel, and Mary A. Cooper, Assistant Disciplinary Counsel. The Accused appeared personally and through his attorney Gregory C. Hansen. Proceedings were reported by Judy F. Ross, court reporter.

Prior to hearing the Bar and the accused each filed a Trial Memorandum. Bar Exhibits 1 through 6 were offered and received. Accused's Exhibits 101 through 115 were also offered and received.

FINDINGS

General:

The accused, Kevin T. Lafky, is an attorney admitted to practice in the State of Oregon since 1985. He maintains his principal office in Salem, Marion County, Oregon, and now concentrates on civil litigation, including personal injury and business litigation. When he began practicing, indigent criminal defense constituted approximately 80 percent of his work. Currently his practice is 80 percent civil and 20 percent criminal.

The Accused has been involved in a number of Bar activities, serving as president of the Oregon Young Attorneys Association, as a member of the Marion/Linn/Clackamas Local Professional Responsibility Committee, and as a member of the Board of Governors. The Bar stipulated that the Accused has no record of previous discipline, and that he completely cooperated during the investigation of this complaint.

Heidi Dozier/Brian Hessel

In 1990 Brian Hessel was convicted of aggravated murder for killing Heidi Dozler, but did not receive the death sentence. His conviction was subsequently upheld by the Oregon appellate courts. Hessel hired the Accused to seek post-conviction relief. In 1994 many prisoners in Oregon began to hope that the governor might commute some death penalty and other substantial criminal sentences prior to the expiration of her term. Hessel asked the Accused to prepare a commutation request to send to the governor in his case. The Accused suggested that the support of the victim's family might be helpful and decided to contact them.

The Accused did not know that the parents of Heidi Dozler, through her estate, had sought and obtained a judgment for \$1.4 million in compensatory and punitive damages against Hessel in a wrongful death action. Hessel knew this since he had stipulated to the judgment, but for some reason did not tell the Accused. The estate was represented in that action by attorney Michael R. Shinn of Portland.

In July 1994 the Accused called Ms. Dozler's parents by telephone. Juanita Yeoman, Ms. Dozler's mother, informed the Accused in clear terms of her contempt for Hessel. The Accused fully perceived Mrs. Yeoman's attitude, and advised his client that he felt confident from her reaction that she was unlikely to agree to any favorable treatment for Hessel.

She also told the Accused that Shinn was her attorney. The Accused called Shinn, who

told him that the family of Heidi Dozler had been and still remained absolutely devastated over her murder. Regarding payment on the judgment Shinn told the Accused that he would convey any offer or proposal to his clients.

On August 15, 1994 the Accused wrote and sent a letter to Shinn (Bar Exhibit 1), which Shinn conveyed to the Yeomans. Bill Yeoman, Ms. Dozler's step-father, called Shinn to express his outrage. He was furious not only with Brian Hessel but also with the Accused. The letter provided in relevant part:

"Brian would like to attempt to settle any outstanding legal matters with your clients. In addition, we seek your clients' support for the reduction of Brian's conviction to manslaughter. Brian hopes that he and your clients can begin to heal their wounds.

We are currently in the midst of litigating Brian's post-conviction case. If Brian wins his post-conviction case, he would be returned to the position he was in previously, before the trial. Although post-conviction cases are difficult to win, the possibility that Brian may be in a position to plea bargain his case again with the Multnomah County district attorney's office is a real one. In that event, we would PO (sic) like your clients' support for a plea agreement to the charge of manslaughter.

Further, we anticipate presenting a commutation package to the governor. We seek your clients' support of the governor's commutation of Brian's sentence. That does not mean he would "get off," instead he would be sentenced for the crime of manslaughter.

In return for your clients' support of the reduction of Brian's sentence, in the form of signatures to affidavits that could be used in the commutation or the plea bargaining that would follow successful post-conviction, Brian would pay your clients \$15,000. Upon a successful commutation or plea bargain, Brian would make an additional payment of \$25,000 to your clients.

In addition, your clients will still have the judgment outstanding against Brian. The sooner Brian is released from incarceration, the sooner your clients will be able to begin collecting on that judgment."

Mr. Yeoman wrote a letter of complaint against the Accused which he mailed to the Oregon State Bar on September 2, 1994. In it he characterized the Accused's letter as a "form of bribery" in which the Accused was asking him to sell out his step-daughter for a sum of money.

The Accused admits, in hindsight, that his letter to Shinn was a mistake. While he denies that it was his intent to suggest or imply that his client was offering to "pay for testimony", he acknowledges that he can now see how the Yeomans could interpret it that way. The Accused demonstrated significant remorse during his testimony and suggests that sending the letter was a naive and stupid attempt to get negotiations started in a very difficult case. The Accused also takes the position that offering to pay for signatures on an affidavit does not violate DR 7-109 (C), and contends that the rule applies only to cases in which witnesses offer testimony under oath which is subject to cross-examination.

CONCLUSIONS

This panel finds that the Accused intentionally made an offer to pay compensation to witnesses that was contingent upon both the content of their testimony and the outcome of future plea bargaining and a request for commutation.

DR 7-109(C) of the Code of Professional Responsibility provides that:

"A lawyer shall not pay, offer to pay, or acquiesce in payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case "

The Accused offered to pay the Yeomans \$15,000 only if they would sign an affidavit stating that they supported a reduction or commutation of Hessel's sentence. This was clearly

an offer to pay witnesses for testimony that was contingent upon the content of that testimony. By offering to pay an additional \$25,000 to the Yeomans "upon a successful commutation or plea bargain" the Accused violated DR 7-109(C) by offering compensation that was contingent upon the outcome of the case. As to whether this case involves "witness's testimony" under DR 7-109(C), the Accused sought to obtain testimony in the form of affidavits, which would have to be executed by each witness under oath. ORS 45.010 specifically provides that the testimony of a witness may be taken by five different modes, one of which is by affidavit. This panel concludes that soliciting affidavits under the circumstances and conditions described in this case does constitute an offer to pay a "witness" for "testimony" under DR 7-109(C). The panel sees little distinction or difference between offering to pay for signing an affidavit and offering to pay for testimony at a deposition or at a trial. The panel finds that the accused violated DR 7-109(C) as alleged in the Bar's Formal Complaint.

SANCTIONS

The Bar recommends that the Accused be publicly reprimanded. For the reasons given below, the Panel adopts that recommendation.

In considering appropriate sanctions the trial panel has considered the ABA *Standards for Imposing Lawyer Sanctions* ("*Standards* ") as well as Oregon case law. Under these *Standards* four separate but related factors serve as focus for analysis: duty violated, mental state involved, injury sustained, and aggravating or mitigating circumstances.

Duty violated. In this case the Accused had a duty to abide by the disciplinary rules, and other rules of substance and procedure which govern the conduct of lawyers in the administration of justice. A lawyer who interferes with the outcome of a legal proceeding or utilizes harassing tactics violates this duty. *Standards* 6.2 and 6.3.

Mental state. In this case the Accused's actions were deliberate and intentional in making the offer to pay money for favorable testimony. Intentional is the most culpable mental state under the *Standards*. However, the Accused acted only negligently in judging whether the offer was appropriate under the circumstances of this case or under the applicable disciplinary rule. Negligent is the least culpable mental state under the *Standards*.

Injury. *Standard 25* provides that sanctions may be imposed for potential rather than actual injury since the purpose of the disciplinary process is to protect the public. In this case there was the potential for injury to the criminal justice process by the introduction of testimony that was gained by an improper payment. There was also inexcusable injury done to the grieving parents of a murdered daughter by presenting an improper offer of payment to them. The accused knew that the parents absolutely hated Hessel and did not support any reduction in his sentence, yet offered to pay them money if they would testify otherwise. The testimony of the parents during this disciplinary hearing demonstrates to this panel how deeply they were wounded by the Accused's conduct.

Aggravating or Mitigating Circumstances. The applicable aggravating standards in this case are *Standards* 9.22(h), vulnerability of victims, and 9.22(i), substantial experience in the practice of law. The mitigating standards in this case under *Standards* 9.32 are the absence of a prior disciplinary record, the absence of any dishonest or selfish motive, and the full and free disclosure to the disciplinary board or cooperative attitude toward these proceedings.

There are no Oregon cases applying DR 7-109(C). The most analogous case authority in the view of the trial panel is *Florida Bar v. Machin*, 635 So. 2d 938 (Fla 1994) in which a lawyer offered to set up a trust fund for a murder victim's child if the family agreed not to provide aggravation testimony at the sentencing hearing. The Florida Supreme Court held that this offer violated a Florida Bar Rule that prohibited a lawyer from requesting a person other than a client to refrain from giving relevant information to another party. The Court held that a lawyer who tries to buy a victim's silence at sentencing prejudices the administration of justice, since justice requires that the rich and poor receive equal treatment. The Court ordered a 90 day suspension.

Cite as 324 Or 457 (1996)
 IN THE SUPREME COURT
 OF THE STATE OF OREGON

In Re:)
)
 Complaint as to the Conduct of)
)
 JOHN W. MORONEY,)
)
 Accused.)
 _____)

(OSB 94-95; SC S42899)

In Banc

On review of the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted November 8, 1996.

Michael G. Hanlon, Portland, argued the cause and filed the briefs for the accused. With him on the reply brief was Keith Burns, Portland.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

The accused is disbarred.

Summary:

On February 5, 1997, the Oregon Supreme Court disbarred Portland attorney John W. Maroney.

The court found that Maroney intentionally converted \$3,800 of his client's funds to his own use. When his client discovered the conversion, Maroney agreed to make repayment and wrote the client two checks at different times. Each check was returned for insufficient funds.

The client suffered much inconvenience in attempting to obtain repayment, but was eventually repaid.

The court found that Maroney violated DR 1-102(A)(3) for converting the funds and also by endorsing his client's name to the settlement check. He violated DR 9-101(A) by placing the settlement proceeds into his personal bank account and then spending the money. He violated *former* DR 9-101(B)(3) (current DR 9-101(C)(3)) by failing to keep records accounting for the settlement funds and violated *former* DR 9-101(B)(4) (current DR 9-101(C)(4)) by failing to repay the client's funds promptly when asked to do so.

Although Maroney had repaid his client by the time he learned that the client had complained to the Bar, the Supreme Court reiterated that a single act of intentionally converting client funds will result in disbarment.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 95-15, 95-134
)	
ERIC L. HANSON,)	
)	
Accused.)	
<hr/>		

Bar Counsel: n/a

Counsel for the Accused: Marc Blackman, Esq.

Disciplinary Board: Robert M. Johnstone, Esq., Chair; William B. Kirby, Esq.; Phillip R. Edin, Public Member.

Disposition: Violation of DR 1-102 (A)(3), DR 1-102 (A) (4) and DR 1-103 (C). Stipulation for Discipline. 90-day suspension.

Effective Date of Opinion: 3-14-97

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 S44003
)	
ERIC L. HANSON,	)	ORDER ACCEPTING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE

The Oregon State Bar and Eric L. Hanson have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Eric L. Hanson is suspended from the practice of law for a period of 90 days. The Stipulation for Discipline is effective March 14, 1997.

DATED this 11th day of February, 1997.

/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 Nos. 95-15, 95-134
)	
ERIC L. HANSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
<hr style="border-top: 1px solid black;"/>		

Eric L. Hanson, 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, Eric L. Hanson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on July 3, 1984, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Yamhill County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, voluntarily and with the advice of counsel. 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 7-104 (A)(1), DR 1-102 (A)(3) (two counts), and DR 1-103 (C) of the Code of Professional Responsibility. Subsequently, the Bar filed its Formal Complaint, and on August 15, 1996, its Amended Formal Complaint. A copy of the Amended Formal Complaint is attached hereto as Exhibit A and by this reference made a part hereof. After further investigation and discussion, the SPRB authorized a modification of charges for stipulation to include DR 1-102 (A)(4), DR 1-103 (C) and DR 1-102 (A)(3) and dismissal of one count of DR 1-102 (A)(3) and DR 7-104 (A).

5.

In or about late July 1994, William Sloss (hereinafter, "Sloss") was arrested on criminal charges in Yamhill County, Oregon. Thereafter, friends of Sloss delivered \$4,500 to Marybeth Raymond (hereinafter "Raymond") for her to deposit with the court as bail for Sloss' release from custody. Raymond deposited the bail as required. On or about August 1, 1996, Sloss retained the Accused to represent him on the criminal charges. The Accused agreed to represent Sloss for \$2,500. Sloss requested that Raymond sign a partial assignment of bail for the Accused's attorney fees. Sloss's friends agreed to the request.

6.

On August 2, 1994, the Accused prepared a written assignment that was signed by Raymond and notarized by the Accused's secretary (hereinafter "Assignment"). Pursuant to the Assignment, \$2,500 of the bail was assigned to the Accused. The balance of the bail was to be returned to Raymond. A true copy of the Assignment as signed by Raymond is attached to the Amended Formal Complaint as Exhibit 1. The Accused presented the Assignment to the court clerk's office. The document was not accepted because the court clerk misread it. The clerk told

the Accused that the part of the document that identified Raymond's name and address should instead reflect his name and address.

7.

Thereafter, the Accused returned to his office and without first consulting with or notifying Raymond, instructed his secretary to place a sticker that over that portion of the Assignment that bore Raymond's name and address and replace them with his firm's name and address. She did so. A true copy of the assignment as changed is attached to the Amended Formal Complaint as Exhibit 2. The Accused also instructed his secretary to contact Raymond and ask her to come to his office to initial the change. On August 3, 1994, the Accused's secretary called Raymond on the telephone. She was not in. His secretary left a voice mail message conveying the Accused's instructions.

8.

On August 4, 1994, Raymond came to the Accused's office and reviewed Exhibit 2. The Accused was not present. Raymond informed the Accused's secretary that she would not initial the change and asked for a copy, which she was given. Raymond then left the Accused's office and went to Yamhill County Courthouse, where she knew members of the clerk's staff. She instructed them not to accept the altered Assignment if the Accused presented it for filing, because it had been altered without her consent. The Accused was scheduled to appear in court with Sloss on the morning of August 5, 1994. The Accused left his office for court before his secretary arrived for work. He took with him the file that contained the altered Assignment (Exhibit 2). Prior to the scheduled court appearance, he presented it to the clerk. The clerk refused to accept it. She did, however, look at it more closely than she had originally and realized that it was intended to be for only a portion of the bail. She then informed the Accused that he had prepared it correctly to begin with. The Accused then scraped the sticker off and presented it to the clerk, who accepted it for filing.

9.

By directing that the notarized Assignment (Exhibit 1) be altered without Raymond's prior knowledge, consent or authority, and by presenting the altered Assignment (Exhibit 2) to the court without confirming that Raymond had consented to and approved the change, the Accused engaged in conduct prejudicial to the administration of justice in violation of DR 1-102 (A)(4).

10.

On August 15, 1994, Raymond filed a complaint concerning the above matter with the Oregon State Bar. Disciplinary Counsel's Office informed the Accused of the complaint by letter dated August 17, 1994, which asked the Accused to provide an explanation. The Accused received this letter on August 18, 1994, and immediately prepared his response. He did not review his file or confer with his secretary before doing so. In his response, the Accused represented that "Ms. Raymond had agreed to the change." Thereafter, when the Accused was interviewed by the Local Professional Responsibility Committee, he stated that he did not present the altered Assignment for filing. These representations were inaccurate and untrue, and the Accused knew or should have known that his explanation was not in accord with the facts. The Accused admits that by failing to respond fully and truthfully to the inquiries of the Disciplinary Counsel's Office and the Local Professional Responsibility Committee he engaged in conduct involving misrepresentation in violation of DR 1-103 (C) and DR 1-102 (A)(3).

11.

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 1-102 (A)(4), DR 1-102 (A)(3) and DR 1-103(C), the Accused violated his duties to the public, the legal system and the profession. Standards, §§ 5.0, 6.0 and 7.0.
- b. State of Mind. The Accused's conduct demonstrates knowledge or the conscious awareness or attendant circumstances but without the conscious objective or purpose to accomplish a particular result. Standards, p. 7.
- c. Injury. As a result of the Accused's conduct, there existed the potential for injury to his client, the legal system and the profession. But for Raymond's notification to the court that the document had been altered without her consent, the document would have been accepted for filing, and the clerk's office would have delivered a greater portion of the bail to the Accused than he was entitled to receive, even though the Accused did not intend to obtain a greater benefit than he was entitled. Standards, p.7.
- d. Aggravating factors. Aggravating factors to be considered include:
 1. The Accused was admitted to practice in 1984 and has substantial experience in the practice of law. Standards, § 9.22(i).
 2. This Stipulation involves three (3) rule violations. Standards, § 9.22(d).
 3. The Accused failed to provide a full and truthful response to the Bar's requests for explanation of the Raymond complaint. Standards § 9.22(f).
- e. Mitigating factors. Mitigating factors to be considered include:
 1. The Accused has no prior record of discipline. Standards, § 9.32(a).
 2. The Accused acknowledges the wrongfulness of his conduct and is remorseful. Standards, § 9.32(l).

12.

The Standards provide that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of the duty owed to the profession, and causes injury or potential injury to a client, the public or the legal system, or when a lawyer knows that false statements or documents are being submitted to the court, or withholds material information, and takes no remedial action, and causes an adverse or potentially adverse effect on the legal proceeding or a party to the proceeding. Standards, §§ 6.12, 7.2.

There are no Oregon cases describing the exact conduct and circumstances detailed in this Stipulation. However, a few cases provide some guidance. In In re Hiller and Janssen, 298 Or 526, 684 P2d 540 (1985), the court imposed a four (4) month suspension for violation of former DR 1-102 (A)(4) [current DR 1-102 (A)(3)]. The Disciplinary Board imposed a public reprimand in In re Schmechel, 7 DB Rptr 95 (1993), for violation of DR 1-102 (A)(3), DR 1-102 (A)(4) and DR 6-101 (A). In Schmechel, the lawyer was very inexperienced and failed to understand the necessity of obtaining original signatures at the time she submitted an amended final accounting to the court. In this case, the Accused is an experienced lawyer who knew and understood the need to obtain the affiant's approval of any changes to the notarized document, even though he was not attempting to obtain a greater benefit than he was entitled. The case is also aggravated by the Accused's failure to respond truthfully to the Bar in its investigation.

13.

In light of the Standards and Oregon case law, the Bar and the Accused agree that the Accused should be suspended from the practice of law for a period of ninety (90) days for violation of DR 1-102 (A)(4), DR 1-102 (A) (3) and DR 1-103 (C). Other charges alleged in the Amended Formal Complaint including DR 1-102(A)(3) [one count] and DR 7-104 (A)(1) shall be dismissed.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
Complaint as to the Conduct of) Case No. 96-35
NEIL W. JACKSON,)
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: n/a

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

Effective Date of Order: 2-12-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-35
)	
NEIL W. JACKSON,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,
 IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 6-101(B).
 DATED this 12th day of February, 1997.

 /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. 96-35
)	
NEIL W. JACKSON,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
<hr/>		

Neil W. 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, Neil W. Jackson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On January 16, 1997, the State Professional Responsibility Board authorized the filing of a Formal Complaint against the Accused for alleged violation of DR 6-101(B).

FACTS AND VIOLATIONS

5.

On May 2, 1994, the Accused was retained by Balinda Shannon (hereinafter "Shannon") in connection with a dissolution matter. The Accused filed a Dissolution Petition, Show Cause Motion and Mediation Request on or about July 7, 1994. The Accused engaged in discovery and trial preparation through the end of 1994.

6.

Trial was originally set for February 17, 1995, but reset to March, 1995. The Accused failed to appear at call and report the case ready. Therefore, on March 16, 1995, Multnomah County Circuit Court sent a Notice of Intent to Dismiss for Want of Prosecution which was received in the office of the Accused on March 21, 1995. The Notice indicated that a Judgment of Dismissal would be entered without further court notice on April 6, 1995, unless a final judgment or order was filed or good cause was shown.

7.

On April 14, 1995, Multnomah Circuit Court sent the Accused a Notice that a Judgment of Dismissal had been entered, which was received in the Accused's office on April 18, 1995.

8.

On April 24, 1995, Shannon wrote the Accused regarding the status of her divorce, demanding that the divorce be finalized by July 1, 1995. The letter was received in the Accused's office on April 26, 1995. The Accused did not respond to this letter and failed to

advise Shannon that the dissolution proceeding had been dismissed for want of prosecution.

9.

Shannon learned of the dismissal from her husband and then attempted to contact the Accused about the status of her case. The Accused did not return Shannon's telephone calls and did not advise her of the dismissal. When Shannon did speak with the Accused, she advised him that she was retaining another lawyer and demanded return of her file.

10.

At no time did the Accused take any steps to reinstate Shannon's dissolution proceeding. Shannon retained another attorney who had the case reinstated on October 20, 1995. The Accused withdrew as attorney of record on November 16, 1995.

11.

The Accused admits that by his conduct, as described in paragraphs 5-10, he neglected a legal matter in violation of DR 6-101(B).

SANCTIONS ANALYSIS

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter "Standards") 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 6-101(B), the Accused violated his duty to his client. Standards § 4.4.
- b. State of Mind. The Accused's conduct demonstrates negligence, that being 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 in that the case was dismissed and delayed. In addition, she was required to retain new counsel to reinstate the case and complete the dissolution.
- 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 discipline record for violation of DR 6-101(B) for which he received an admonition in July 1989. Standards, § 9.22(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 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 refunded that portion of the Client's retainer that constituted the filing fee. Standards, § 9.32(d).

13.

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 the client. Standards, §4.43. Oregon case law is in accord. *In re Bennett*, 1 DB Rptr 54 (1985), public reprimand for violating 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 *In re Riedlinger*

10 DB Rptr 193 (1996), public reprimand for violation of DR 6-101(B).

14.

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.

15.

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 to BR 3.6.

EXECUTED this 31st day of January, 1997.

/s/

Neil W. Jackson

EXECUTED this 3rd day of February, 1997.

/s/

Chris L. Mullmann
Assistant Disciplinary Counsel
Oregon State Bar

Cite as 325 Or 34 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
Complaint as to the Conduct of)
MARK E. GARVEY,)
Accused.)

(OSB 94-236, 94-237, 95-30; SC S42052)

In Banc

On review of the decision of a Trial Panel of the Disciplinary Board.

Submitted on the record January 27, 1997.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, waived appearance for the Oregon State Bar.

No appearance *contra*.

PER CURIAM

The accused is disbarred.

Summary:

Effective April 9, 1997, the Supreme Court disbarred former Newberg attorney Mark E. Garvey for multiple violations of the disciplinary rules. The Bar's formal complaint was based on Garvey's representation of three clients in unrelated matters.

In two client matters, Garvey was found to have violated DR 6-101(B) and DR 1-103(C). Garvey failed to perform necessary services on each of the matters entrusted to him. Garvey also failed to cooperate or participate in the Bar's investigations and failed to participate in the disciplinary proceedings.

In a third matter, Garvey was found to have violated ORS 9.527(4); DR 1-102(A)(2), (3) and (4); and DR 7-102(A)(5) and (7). In March 1994, Garvey was indicted by a grand jury in the Circuit Court for the County of Yamhill, and thereafter convicted of the offenses of Escape II, Supplying Contraband, two (2) counts of perjury and six (6) counts of false swearing. Garvey brought money into the Yamhill County Correctional Facility, which he gave to his client, an inmate, to be used to facilitate the client's later escape from jail.

Garvey testified twice before the Yamhill County grand jury that was investigating the foregoing events. On each occasion, he denied having given the client any money at the jail. On each occasion, he also testified that the client had threatened him and his family during a telephone call, that the client had accused Garvey of turning him into authorities on additional burglaries and other statements. Each of the statements was false and material and formed the basis for the multiple charges of perjury and false swearing.

Following jury verdicts, Garvey failed to appear for sentencing. Warrants for his arrest have been outstanding since April 1995. Garvey remains a fugitive from justice.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 95-125; 95-149;
	)	95-189 and 96-26
RONALD M. HELLEWELL,)	
)	
Accused.)	
_____)	

Bar Counsel: n/a

Counsel for the Accused: Walter J. Todd, Esq.

Disciplinary Board: n/a

Disposition: Violation of DR 1-102(A)(4); DR 6-101(B); DR 7-101(A)(2) and DR 1-103(C). Stipulation for Discipline. One year suspension. Ten months of the suspension stayed pending the Accused's completion of two years of supervised probation.

Effective Date of Stipulation: 4-18-97

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. 95-125; 95-149;
	)	95-189 and 96-26
RONALD M. HELLEWELL,)	
	)	STIPULATION FOR
Accused.	)	DISCIPLINE
)	

Ronald M. Hellewell, attorney at law (hereinafter "the Accused"), and the Oregon State Bar (hereinafter 'the Bar') hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Ronald M. Hellewell, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 13, 1983, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

At its January 13, 1996 meeting, the State Professional Responsibility Board authorized disciplinary proceedings against the Accused, alleging violation of DR 6-101(B); DR 7-101(A)(2) and DR 1-102(A)(4) in Case Nos. 95-125, 95-189 and 95-149. The Bar and the Accused stipulate that Case Nos. 95-129 and 95-189 are based upon identical facts which were brought to the attention of the Bar by two separate complainants. On February 21, 1996, the Oregon State Bar filed its Formal Complaint, which was served, together with a Notice to Answer, upon the Accused.

5.

At its June 20, 1996 meeting, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for violation of DR 6-101(B), DR 7-101(A)(2) and DR 1-103(C) in Case No. 96-29. On (sic) June 28, 1996 the Oregon State Bar filed its Amended Formal Complaint (Case Nos. 95-125, 95-189, 95-149 and 96-29), 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), DR 7-101(A)(2) and DR 1-103(C).

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 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.

The ABA Standards assume that the most important ethical duties are those that a lawyer owes to a client. ABA Standards at 5. In this case, the Accused violated his duty to act diligently to three different clients by failing to work on cases to which he has been assigned. ABA Standards 4.4 (duty of diligence). In violating DR 1-102(A)(4) and DR 1-103(C), the Accused violated duties owed to the legal profession and the legal system. Standards 6.0 and 7.0.

B. State of Mind.

The Standards define "intent" as the "conscious objective or purpose to accomplish a particular result." "Knowledge" is defined as "the conscious awareness of the nature or attendant circumstances of the conduct without the conscious objective or purpose to accomplish a particular result." Standards at 17. The Accused acted with knowledge and intent in accepting appointments in these matters and failing to work to carry out the employment. In addition, the Accused acted intentionally in failing to respond to the inquiry from the Court of Appeals in the Lundstedt matter and by initially failing to respond to the Disciplinary Counsel's inquiries.

C. Injury.

The Standards define the level of injury from "serious" injury to "little or no" injury and actual or potential injury. In the Ballow matter, Case No. 95-149, the client suffered potential injury and the justice system suffered actual injury as the trial was postponed and new counsel had to be appointed. In the Anstett matter, Case Nos. 95-125 and 95-189, the client suffered potential injury when the Accused failed to respond to the Court of Appeals' letter regarding his failure to file a brief. The client suffered actual damage in that he was required to file the brief pro se to protect his rights which denied the client the expertise of a lawyer in his post-conviction appeal. In failing to respond to the Bar's inquiries in the Lunstedt matter, Case No. 96-29, the Bar was required to refer the case 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 for similar conduct. On January 3, 1992, the Accused received a letter of admonition for neglect of a legal matter in violation of DR 6-101(B). On February 23, 1995, the Accused received a second letter of admonition for neglect of a legal matter in violation of DR 6-101(B). Copies of these admonitions are attached as Exhibits 2 and 3, respectively. Standards, 9.22(a).
2. The Accused has engaged in a pattern of misconduct. Standards 9.22(c).
3. The conduct involves multiple offenses and multiple clients. Standards 9.22(d).
4. In the Lunstedt matter, the Accused obstructed the disciplinary process by initially failing to respond to Disciplinary Counsel's inquiries. Standards 9.22(e).
5. All of the clients were vulnerable in that they were incarcerated individuals and the Accused had been appointed to represent them. Standards 9.22(h).
6. The Accused has substantial experience in the practice of law. Standards 9.22(i).

E. Mitigating Factors.

Mitigating factors to be considered include:

1. Absence of a dishonest or selfish motive. Standards 9.32(c).
2. Remorse. Standards 9.32(1).

The Standards provide that suspension generally is appropriate when "a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client" or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a

client." Standards 4.2. 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. Suspension is also appropriate when a lawyer has been disciplined 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 and 2.8.

7.

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 a two-year probation with conditions for violations 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 Brownlee, Or S Ct 43489 (1996), the Court approved a one (1) year suspension from the practice of law, all but 90 days of which was stayed subject to a two (2) year period of probation and requiring compliance with numerous conditions to monitor his office practice, attention to cases, and mental health treatment. See also, In re Cohen, 9 DB Rptr 229 (1995), where the court suspended the lawyer for 180 days, stayed 120 days, subject to supervised probation with conditions for violation of DR 6-10103), where there existed a prior record of discipline for violation of DR 6-10103) (two charges) and DR 5-105(E).

8.

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, 60 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 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 counselling and treatment with Gary E. Nielsen, Ph.D., or such other mental health professional acceptable to the Bar. The mental health professional shall determine the frequency and scope of treatment. 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 counselling/treatment needs. The Accused shall comply with all reasonable recommendations of the mental health professional, including, without limitation, more frequent counselling 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. Nielsen is of the opinion that the Accused is emotionally 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. Nielsen, or 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 this suspension, the Accused shall meet with the Supervising Attorney to review his existing caseload 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 needing any action during the period of imposed suspension, 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 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 report shall identify 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 the 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 certifying the following:

a. The Accused has conducted a "complete review of pending cases with the Supervising: Attorney, including the date of such review. If not, the Accused shall explain his reason for the 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 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 in compliance with recommendations to the Accused. In the event the Accused has not complied with the recommendations, he shall describe in detail the nature and reasons for the non-compliance

e. The Accused has complied with all terms of the probation since the last report. In the event of non-compliance, the Accused shall describe in detail the reasons for the non-compliance.

H. The Accused hereby waives any privileges and expressly consents and authorizes the release and disclosure of all information by the OAAP, the Professional Liability Fund, Dr. Nielsen and any other medical and/or medical health provider, to the Disciplinary Counsel's Office and the 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 the Stipulation for Discipline shall be in writing, signed by the party 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 60 days of imposed suspension expire.

9.

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

EXECUTED this 26th day of November, 1996.

/s/

Ronald M. Hellewell, OSB No. 83231

EXECUTED this 2nd day of December, 1996.

/s/

Chris M. Mullman, OSB No. 72311
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 95-104
)	
ENVER BOZGOZ,)	
)	
Accused.)	
_____)	

Bar Counsel: n/a

Counsel for the Accused: Stanley C. Jones, Esq.

Disciplinary Board: n/a

Disposition: Violation of DR 5-105(C) and DR 7-110(B)(2).
Stipulation for Discipline. Sixty-day suspension.

Effective Date of Opinion: 4-3-97

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. 95-104
)	
ENVER BOZGOZ,	)	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 from the practice of law for a period of 60 days for violation of DR 5-105(C) and DR 7-110(B)(2). The Stipulation for Discipline is effective on April 3, 1997.

DATED this 19th day of March, 1997.

_____/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. 95-104
)	
ENVER BOZGOZ,)	
)	
Accused.	)	STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Enver Bozgoz, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 16, 1966, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Klamath County, Oregon.

3.

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

4.

In September 1988, the Accused was retained to represent Tammy Palmer (hereinafter "Palmer") and James Daniel Story to request dismissal of a juvenile court petition filed by Children's Services Division alleging that Palmer's daughter (hereinafter "[REDACTED]") had been sexually abused while in Palmer's custody. Story was the natural father of [REDACTED] and had so acknowledged, under oath. On October 13, 1988, the juvenile court returned [REDACTED] to Palmer's custody and the petition was later dismissed.

5.

During the course of his representation of Palmer and Story, it is alleged that the Accused received information from them regarding Palmer's fitness as a parent and the identity of [REDACTED]'s father. During this representation, the Bar contends the Accused obtained confidences or secrets from Palmer relating to the paternity of her child and her fitness as a parent the use of which in the Accused's representation of Story would or would likely inflict injury or damage upon Palmer. The Accused contends that he did not obtain such information from Story or Palmer other than the fact that Story was the father of [REDACTED].

In August 1994, Palmer and [REDACTED] left the Klamath Falls area and relocated in Clackamas County. On August 11, 1994, Palmer obtained a restraining order against Story under the provisions of the Family Abuse Prevention Act. One of the provisions of the order was the award of temporary custody of [REDACTED] to Palmer. The restraining order designated attorney David Mannix (hereinafter "Mannix") as Palmer's specified agent. After the issuance of the restraining order, it was served on Story, who then contacted the Accused for representation.

7.

On or about August 12, 1994, the Accused undertook to represent Story to obtain temporary and immediate custody of [REDACTED] and to establish his paternity of her without Palmer's consent after full disclosure. The Accused's representation of Story was significantly related to his prior representation of Palmer and Story in the juvenile matter and would or would likely inflict injury or damage on Palmer in connection with that matter.

At the time the Accused agreed to represent Story he had no recollection of his previous representation of Story and Palmer from 1988. The Accused contends that his 1988 file and card reference had been set up in the name of Dan Story and he did not check his client records sufficiently to identify his previous representation of Palmer and James Daniel Story. As a result, the Accused made no effort to contact Palmer to obtain her consent to the representation of Story.

The interest of Palmer and Story were in actual or likely conflict of interest in August 1994. The subject matter of the subsequent representation of Story was significantly related to his representation of Palmer and Story in 1988. Because the interests of Story and Palmer in the custody of [REDACTED] were actually or likely adverse, and because the 1994 action was significantly related to the prior representation, the Accused was faced with a former client conflict of interest.

8.

On August 17, 1994, the Accused filed, in Klamath County Circuit Court, a petition to establish paternity which was simultaneously followed by the filing of a motion for temporary custody on August 17, 1994, followed by the filing of a motion for a writ of assistance dated August 19, 1994, which references a Clackamas County restraining order that had been obtained by Palmer when she moved to Clackamas County. A copy of the Clackamas County restraining order was attached to the Accused's motion for a writ of assistance.

9.

On August 17, 1994, the Klamath County Circuit Court issued a temporary custody order in favor of Story and that same court issued a writ of assistance on August 19, 1994. These orders enabled Story to obtain custody of his daughter approximately one month later. Both the temporary custody order and the writ of assistance were obtained ex parte, with no notice to Palmer or Mannix.

10.

On September 22, 1994, after a prior telephone conversation with the Accused informing him of the Accused's prior representation of Palmer, Mannix filed a motion to disqualify counsel, a motion to set aside the ex parte temporary custody order, and a motion staying the proceedings. As a result of this filing, an informal meeting occurred with the court, the Accused and Mannix (who appeared by telephone) at which time it was pointed out that the Accused had previously represented Palmer and Story in 1988. The Accused denied the allegation and a formal hearing on the pleadings filed by Mannix was set for September 26, 1994. At that hearing, the Accused was presented with documents showing his prior representation of Palmer and Story, and he withdrew as attorney for Story.

11.

The Accused admits that by agreeing to represent Story without obtaining the informed consent of Palmer and Story, he violated DR 5-105(C). The Accused further admits that by obtaining the ex parte orders described above, with knowledge that Mannix was the attorney for Palmer, he communicated as to the merits of the cause with a judge before the proceeding was pending in violation of DR 7-110(B)(2).¹

¹ Full disclosure is defined by DR 10-101(B)(1) as an explanation sufficient to apprise the recipient of the potential adverse impact on the recipient, of the matter to which the recipient is asked to consent. DR 10-101(B)(2) notes that as used in DR 5-105 "full disclosure" shall also include a recommendation that the recipient seek independent legal advice to determine if consent should be given and shall be contemporaneously confirmed

SANCTION

In determining an appropriate sanction, the ABA Standards for Imposing Lawyer Sanctions (hereinafter "Standards") are to be considered. In re Sousa, 323 Or 137, 145, 915 P2d 408 (1996). 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. Duties Violated.

As noted in the Standards, in determining the nature of the ethical duty violated, the Standards, assume that the most important ethical duties are those obligations which a lawyer owes to clients, and include the duty to avoid conflicts of interest. Standards, p. 5 and § 4.3.

In addition, in violating DR 7-110(B), the Accused violated his duty to the legal system. Standards, § 6.0.

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. Standards p. 17.

C. Injury.

Under the Standards and case law, injury may be actual or potential. Standards, p. 17. 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, p. 7. In this case, there was injury as Palmer was required to retain Mannix to force the disqualification of the Accused and Story was obligated to retain a second lawyer to handle the legal matter.

D. Aggravating Factors.

The Standards identify factors which may be considered that may justify an increase in the degree of discipline to be imposed. Standards § 9.22. The following aggravating factors are present in this case: (a) prior disciplinary offenses. The Accused was admonished in 1983 for violating DR 7-106(C)(7) when he took a default against a defendant without giving notice to the defendant's counsel and for violating DR 7-104(A)(1) when he communicated with a represented party. He was also admonished in 1991 for violating DR 3-101(B) when he filed and made an appearance in the State of California while neither a member of the California Bar nor admitted pro hoc vice. The Accused stipulated to a public reprimand in 1994 for two separate violations of DR 5-105(C). In re Bozgoz, 8 DB Rptr 113 (1994), attached. It is noteworthy that the Accused executed the 1994 stipulation for discipline on August 1, 1994, just eight days before Story retained him in the Klamath Falls matter. The Accused had to be acutely aware of the prohibitions of DR 5-105(C).²

The Standards also note that when dealing with prior discipline orders:

"Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct 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 §8.2

Other aggravating factors present in this case are: (c) a pattern of misconduct based on the prior reprimand for similar conduct; (h) vulnerability of the victim; and (i) substantial experience in the law.

in writing.

² The Accused contends that he had no recollection of his previous representation of Story and Palmer. When he checked his prior files he saw a 1998 file and card reference in the name of Dan Story and he did not check his client records sufficiently to identify his previous representation of Palmer and James Daniel Story. As a result, the Accused made no effort to contact Palmer and he undertook the representation of Story against Palmer.

E. Mitigating Factors.

Mitigating factors are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. In this case, the following mitigating factors are present: (b) absence of a dishonest or selfish motive and, (e) full and free disclosure.

Oregon case law is in accord. Suspension is appropriate for conflict of interest charges where the conflict is so obvious that the lawyer should know better. In In re Robertson, 290 Or 639, 624 P2d 603 (1981), the lawyer was found guilty of violating DR 5-105 for representing both the buyer and seller in a real estate transaction. The court found that the conflict of interest was "so clear and flagrant that, in our opinion, a reprimand would not be appropriate." At the time of the violation, the lawyer had been practicing for approximately 18 years and was suspended for 30 days. In In re Hockett, 303 Or 150, 734 P2d 877 (1987), the lawyer represented two couples: the husbands in business matters and the wives as dissolution petitioners. The purpose of the dissolutions was to thwart creditors and the court found the lawyer guilty of violating former DR 1-102(A)(4), ORS 9.460(3) and (4), and DR 7-102(A)(7). The lawyer was suspended for 63 days and, in imposing this sanction, the court wrote, "By itself, the violation of the conflicts role, DR 5-105, would justify a 30-day suspension" because the conflict was "patent". Supra, at 164.

Perhaps a more analogous case is In re Gant, 293 Or 130, 645 P2d 23, reh'g denied, 293 Or 359 (1982). There, the lawyer represented a client in a divorce and one other matter. He then entered into business with this client and her second husband, drafting a partnership agreement without making proper disclosures. After the partnership dissolved, the lawyer performed additional legal services for the client. Ultimately, however, the lawyer represented the client's second husband in a dissolution of their marriage and sued her under the partnership agreement he had drafted. In imposing a 30 day suspension, the court stated, "With regard to what discipline is appropriate, it appears to us that it should have been clear to the accused, a lawyer of 25 years experience, that it was improper for him to represent [husband] in litigation against [wife]", 293 Or at 137.

12.

Suspension is also appropriate in instances where a lawyer has an ex parte contact with a trial judge when the contact is on the merits of the representation. The ABA Standards note that:

"Suspension is generally 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, at §6.32.

Oregon case law is in accord. In In re Bell, an attorney was suspended for 30 days when he personally presented to a trial judge for signature, and without notice to opposing counsel, a decree that effectively eliminated the adverse party's right to plead further. The suspension was appropriate, according to the court, even though the lawyer intended only to leave the document with the court for signature and the improper contact occurred by accident in a courthouse interior stairwell as the accused and the judge were passing.

13.

Consistent with the ABA Standards, and Oregon case law, the Bar and the Accused agree that the Accused be suspended from the practice of law 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 thirty days after approval.

14.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and will be submitted to the State Professional Responsibility Board (SPRB) for approval. Upon approval 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 22nd day of January, 1997.

/s/

Enver Bozgoz

EXECUTED THIS 31st day of January, 1997.

/s/

Chris L. Mullman
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. 94-49; 94-99
)	
GLENN N. SOLOMON,)	
)	
Accused.)	
<hr/>		

Bar Counsel: Charles Coulter, Esq.

Counsel for the Accused: Susan D. Isaacs, Esq.

Disciplinary Board: Kathleen A. Pool, Esq., Chair; James S. Leigh, Esq.;
Bette L. Worcester, Public Member

Disposition: Violation of DR 6-101(B) (first matter); DR 2-106(A)
DR 6-101(B) (second matter); DR 7-101(A)(2);
DR 9-101(A); Former DR 9-101(B)(3) [current DR 9-
101(C)(3)]. Stipulation for Discipline. Thirty-day
suspension.

Effective Date of Opinion: 4-9-97

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. 94-49; 94-99
)	
GLENN N. SOLOMON	)	ORDER APPROVING
	)	NO CONTEST PLEA
Accused.)	
<hr/>		

This matter having come on to be heard upon the No Contest Plea of the Accused and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the no contest plea is accepted and the Accused shall be suspended from the practice of law for 30 days for violation of DR 6-101(B) (2 counts); DR 2-106(A); DR 7-101(A)(2); DR 9-101(A) and former DR 9-101(B)(3) [current DR 9-101(C)(3)]. The suspension shall commence 21 days after the date of this order.

DATED this 19th day of March, 1997.

/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	)	No. 94-49; 94-99
)	
GLENN N. SOLOMON	)	NO CONTEST PLEA
)	
Accused.)	

Glenn N. Solomon, 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, Glenn N. Solomon, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 13, 1983, 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 No Contest Plea freely and voluntarily after consultation with counsel.

4.

On January 21, 1995, the State Professional Responsibility Board (hereinafter referred to as "the Board") authorized formal disciplinary proceedings against the Accused for alleged violation of DR 6-101(B) in Case No. 94-49; and DR 2-106(A), DR 6-101(B), DR 7-101(A)(2), DR 9-101(A), former DR 9-101(B)(3) [current DR 9-101(C)(3)] and former DR 9-101 (B)(4) [current DR 9-101(C)(4)] in Case No. 94-99. On May 23, 1995, a formal complaint was filed alleging violations of these rules. A copy of the Amended Formal Complaint is attached hereto as Exhibit 1 and incorporated by reference herein. The Accused and the Bar agree to the following facts and sanction as a resolution of the above-referenced matters.

CASE NO. 94-49
Greenfield Matter

5.

In March, 1991, Lori Greenfield retained the Accused to represent her in litigation to dissolve her domestic partnership. In May, 1992, the Marion County Circuit Court entered an order that dissolved the domestic partnership and permitted Ms. Greenfield's domestic partner (hereinafter referred to as "the father") only supervised visitation with the parties' child until his mental health counsellor certified to the court that he was not dangerous to Ms. Greenfield or the child.

6.

In July 1, 1992, the father's mental health counsellor certified that the father was not dangerous to the child or to Ms. Greenfield. In March, 1993, pursuant to the terms of the May, 1992 circuit court order, the father filed a motion for unsupervised visitation with the child. A copy of this motion and the supporting documentation was served on the Accused.

7.

The Accused attempted by telephone to advise Greenfield of the July, 1992 certification by the mental health counsellor and the father's motion, but was unable to reach her. The Accused did not explore other methods of locating Greenfield, who had changed her address several times, nor did he attempt to mail Greenfield a copy of the father's motion. Father had complied with the conditions to unsupervised visitation set by the court. The Accused did not oppose' father's motion and it was granted by the court.

8.

The Accused is charged with violation of DR 6-101(B) for the conduct described in paragraphs 5 through 7 herein. The Accused does not desire to defend against the charge and agrees to accept the form of discipline specified herein in paragraph 21.

CASE NO. 94-99

Kelgard Matter

9.

On or about October 25, 1991, Kip and Craig Kelgard (hereinafter referred to as "the Kelgards") retained the Accused to represent them in an action against their former employer. The Accused filed on behalf of the Kelgards a complaint in Multnomah County Circuit Court, Case No. 9204-02908, captioned Kelgard and Kelgard v. West Coast Training Inc. and Eileen Kelgard.

10.

Two of the three claims in the complaint in the above-described litigation were dismissed on defendants' motion for summary judgment. The Accused advised the Kelgards to dismiss the remaining claim. The Kelgard's third claim was voluntarily dismissed. The Accused filed a notice of appeal from the order on the summary judgment, and voluntarily dismissal of the third claim, although the orders were probably not appealable.

11.

On or about November 9, 1992, the Accused and the Kelgards signed a fee agreement that provided for a "flat fee" of \$2,000 payable in installments of \$200 per month for the Accused's services in the appeal. A copy of the fee agreement is attached hereto as Exhibit 2 and incorporated by reference herein. Thereafter, the Kelgards began making the required monthly payments of \$200. The Accused mistakenly believed that to designate a fee as a "flat fee" created a fee that was non-refundable and earned on receipt and, therefore, he did not deposit any of the money paid to him by the Kelgards into his lawyer trust account.

12.

On or about December 16, 1992, the Accused filed a notice of appeal from the circuit court's order dismissing the two claims. On or about January 27, 1993, the Court of Appeals notified the Accused that the circuit court's order was not appealable, granted the circuit court leave to enter a judgment that was appealable, granted the Accused leave to file an amended notice of appeal when he obtained an appealable judgment and held the appeal in abeyance pending the filing of an amended notice of appeal. The Court of Appeals also notified the Accused that the appeal he had filed would be dismissed for lack of prosecution if he did not timely file an amended notice of appeal.

13.

After the Accused filed the notice of appeal, he did not obtain an appealable judgment from the circuit court. The Accused knew that further action was necessary to obtain an appealable judgment. He did not understand the Court of Appeals' January 27, 1993, notice to limit the time in which he was permitted to obtain the circuit court judgment required to perfect the Kelgard's appeal.

14.

The Accused intended to obtain an appealable circuit court judgment when the Kelgards had paid him half of his "flat fee" for the appeal. The Kelgards paid the Accused \$200 per month as agreed through May, 1993.

15.

On May 28, 1993, the Court of Appeals dismissed the Kelgard appeal for lack of prosecution. The Accused did not notify the Kelgards that their appeal had been dismissed before the Kelgards terminated his employment on or about June 29, 1993, when they secured other counsel. The Accused believed that the appeal could be refiled when the circuit court judgment was obtained.

16.

The Kelgards retained new counsel who demanded that the Accused account for the funds he had received from them. The Accused did not render a written accounting for the Kelgards' funds although he did offer to return \$1,000.00 to them.

17.

By the time the Kelgards terminated his services, the Accused had not earned the full \$1,200.00 in fees he had collected for the appeal.

18.

The Accused is charged with violation of DR 2-106(A), DR 6-101(B), DR 7-101(A)(2), DR 9-101(A) and former DR 9-102(B)(3) [current DR 9-101(C)(4)] for the conduct alleged in paragraphs 9 through 17 herein. The Bar agrees to dismiss the former DR 9-101(B)(4) [current DR 9-101(C)(4)] charge. The Accused does not desire to defend against the remaining charges in Case No. 94-99 and agrees to accept the form of discipline specified herein in paragraph 21.

19.

The following factors were considered under the ABA Standards for Imposing Lawyer Sanctions in establishing the appropriate sanction in this case; the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating or mitigating circumstances.

Duties Violated.

- a. The Accused violated his duties to his clients to represent them diligently and to preserve their funds in a trust account. ABA Standards for Imposing Lawyer Sanctions §4.0.

Mental State.

- b. With respect to the Greenfield matter (Case No. 94-49), the Accused acted negligently in failing to take reasonable steps to locate or determine how to locate Ms. Greenfield to notify her of the father's motion or of the court's ensuing order. With respect to the Kelgard matter (Case No. 94-99), the Accused acted knowingly in failing to obtain an appealable circuit court judgment. The Accused acted negligently in determining whether he was required to deposit and maintain the Kelgards' funds in his lawyer trust account or whether those funds were earned on receipt. The Accused acted negligently in determining whether the time in which he could obtain a circuit court order was limited by either the circuit court or Court of Appeals.

Actual or Potential Injury.

- c. Greenfield suffered potential injury in that she was denied the opportunity to oppose father's motion.
The Kelgards suffered actual injury in that they had to obtain and pay other counsel to determine the status of their appeal, attempt to reinstate it and recover their unearned fees. The Kelgards did not suffer monetary injury, however, because they received approximately \$5,000 from the Professional Liability Fund in settlement of their malpractice claim against the Accused and \$15,000 from the defendants in the litigation. ABA Standards at 7.
- d. The aggravating factors to be considered are:
 1. The Accused acted with a selfish motive in failing to prosecute the Kelgard appeal until he received one-half his agreed-upon fee.

2. The Accused is charged with multiple disciplinary rule violations.
 3. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1983. ABA Standards 9.22.
- e. The mitigating factors to be considered are:
1. The Accused has no prior record of reprimand, suspension or disbarment.
 2. The Accused was contacted by the Kelgards' new counsel and, shortly after this contact, offered to return \$1,000 of the money he received with the acknowledgment that he had not earned this amount. The Accused made a timely good faith effort to resolve the Kelgards' and their new counsel's concern regarding the entry of a final judgment. The Accused also contacted the Professional Liability Fund in an attempt to rectify any consequences to the Kelgards of his conduct. The Professional Liability fund undertook to obtain an appealable judgment from the circuit court, but did not complete its efforts because of the settlement. Thereafter, the Kelgards' claim of malpractice and the issue of the account of fees to which the Accused was entitled was settled. The Kelgards' new counsel agreed that the Accused could retain the \$1,200 paid for the appeal.
 3. The Accused had no dishonest or selfish motive in failing to take any significant action in the Greenfield matter. His failure to take or explore additional methods to contact Greenfield was motivated in part by a desire to protect Greenfield's privacy.
 4. The Accused mistakenly believed that because he had designated the Kelgard fee as a "flat fee" it was earned on receipt and he was not required to deposit it into his trust account.
 5. The Accused is remorseful for any anguish he caused Greenfield.
 6. The Accused has made full and fair disclosure to the Bar and has cooperated in its investigation of these matters.
 7. The Accused has a good reputation. ABA Standards 9.32.

20.

The ABA Standards provide that suspension is appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client, or when he or she knowingly fails to perform services for a client and causes injury or potential injury to a client. ABA Standards 4.12, 4.32. Oregon precedent is in accord. See, In re Bourcier, 7 DB Rptr 115 (1993); In re Michaels, 10 DB Rptr (No. 94-161, 1996); In re Babcock, 10 DB Rptr (No. 95-113, 1996); In re Borneman, 10 DB Rptr No. 96-2; 96-3, 1996); In re Moore, 10 DB Rptr (No. 95-169, 1996).

21.

Consistent with the ABA Standards, and Oregon precedent, the Bar and the Accused agree that the Accused receive a 30 day suspension from the practice of law commencing 21 days after this No Contest Plea is accepted by the Disciplinary Board.

22.

This No Contest Plea 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 plea is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 28th day of February, 1997.

/s/
Glen N. Solomon

EXECUTED this 7th day of March, 1997.

/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. 96-85
CLAUD A. INGRAM,)
Accused.)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: n/a

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

Effective Date of Order: 3-24-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-85
)	
CLAUD A. INGRAM,	)	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 6-101(B).

DATED this 24th day of March, 1997.

 /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 Nos. 96-85
)	
CLAUD A. INGRAM,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
_____)	

Claud A. Ingram, 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, Claud A. Ingram, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1961, 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 October 17, 1996, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused alleging that he had violated DR 6-101(B) with respect to one matter, the facts of which are set forth below.

5.

On February 27, 1992, Jason Nicholson, a minor, was injured by electrical current generated through a junction box belonging to Pacific Corporation. Jason's father, Charles Nicholson, retained the Accused in early 1993 to represent Jason in an action against Pacific Corporation.

6.

The Accused had Charles Nicholson appointed as Jason's guardian *ad litem* and filed a complaint in Linn County Circuit Court on August 20, 1993. Pacific Corporation was served on August 26, 1993, and the Return of Service was filed with the court on September 7, 1993. No Answer was ever filed by Pacific Corporation and the Accused took no further action on the case.

7.

On May 9, 1994, the court notified the Accused that the case would be dismissed for lack of prosecution. The Accused did not respond to that notice. On July 7, 1994, the case was dismissed by court order. The Accused did not notify Mr. Nicholson of the dismissal. Mr. Nicholson discovered it for himself in September, 1995, and thereupon hired another attorney. No statute of limitations had run at that point, and the new attorney was able to reinstate the case and reach a settlement with the defendant.

8.

The Accused admits that he neglected his client's legal matter in violation of DR 6-101(B).

9.

The Accused and the Bar agree that in fashioning the appropriate sanction, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions and Oregon case law. The Standards require analysis of 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 or mitigating factors. In this case, the Accused violated his duty to his client to act diligently. Standard 4.4. The Accused's mental state was negligent. Standards at 7. The client's recovery in the case was delayed, which constitutes some injury. Aggravating factors present in this case include a prior disciplinary record (the Accused was admonished in 1983 for neglect) and substantial experience in the practice of law. Standards 9.22(a) and (i). Mitigating factors include absence of a dishonest or selfish motive and a cooperative attitude toward the disciplinary proceedings. Standards 9.32(b) and (e).

10.

The Standards provide that reprimand is generally appropriate when a lawyer is negligent and fails to act with reasonable diligence in representing a client, and causes injury or potential injury to a client. Standard 4.43.

11.

The following Oregon case decisions appear to be on point: In re Reid, 10 DB Rptr. 45 (1996), an attorney was publicly reprimanded for undertaking a personal injury case but then failing to pursue it, resulting in the complaint being dismissed; In re Kent, 9 DB Rptr. 180 (1995) [public reprimand imposed for neglect of two matter].

12.

The Accused was previously admonished in 1983 for neglect.

13.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded.

14.

This Stipulation for Discipline has been approved by the State Professional Responsibility Board (SPRB) and Disciplinary Counsel of the Oregon State Bar. 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 February, 1997.

/s/

 Claud A. Ingram

EXECUTED this 5th day of March, 1997.

/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. 95-92
)	
LARRY H. BLAKELY,)	
)	
Accused.)	
_____)	

Bar Counsel: Theodore Heap, Esq.

Counsel for the Accused: Thomas Tongue, Esq.

Disciplinary Board: n/a

Disposition: Violation of DR 1-102(A)(3); DR 1-102(A)(4); DR 6-101(A) DR 7-102(A)(3) DR 7-102(a)(5). Stipulation for Discipline. Six-month suspension.

Effective Date of Order: 3-25-97

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:)	
	)	SC S44102
Complaint as to the Conduct of)	
	)	ORDER ACCEPTING
LARRY H. BLAKELY,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
_____)	

The Oregon State Bar and Larry H. Blakely have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Larry H. Blakely is suspended from the practice of law for a period of 6 months. The Stipulation for Discipline is effective the date of this order.
 DATED this 25th day of March, 1997.

 /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. 95-92
)	
LARRY H. BLAKELY,)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
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Larry H. Blakely, attorney at Law (hereinafter "the Accused"), and the Oregon State Bar (hereinafter "the Bar"), hereby stipulate to the following matters pursuant to the 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, Larry H. Blakely, was admitted by the Oregon Supreme Court to the practice of law in the 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 Hood River County.

3.

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

4.

Mary Brathovd (hereinafter "Mary") and her husband, Clark Brathovd (hereinafter "Clark"), executed mutual reciprocal wills prepared by the Accused's former law partner, Vawter Parker, in 1965. Each will left their property to their children or their children's descendants if the spouse did not survive. Clark predeceased Mary. The couple had two children, James and Gail. James also predeceased Mary, leaving two children, Drew and April.

5.

Mary was remarried to William Tallman and entered into a prenuptial agreement by which Mr. Tallman was not entitled to take anything under Mary's estate. Mary died in 1987, and, at the time of her death, she had a part-interest in a piece of real property in Washington state. After Mary's death, Gail contacted the Accused in February 1987 concerning the probate of her mother's estate, indicating that Mary had revised her will leaving everything to Gail. Vawter Parker had recently died and Gail requested that the Accused probate her mother's estate.

The Accused had minimal prior experience in any probate matters and did inadequate or no research or other preparation necessary to acquire the skill and knowledge to competently handle the probate.

6.

The Accused reviewed what records he could locate and concluded that Mary had prepared another will leaving all her assets to Gail. He found that in 1972, shortly after their son's death, Mary and Clark established trusts for Drew and April and deposited a significant amount of money into the trusts. He also found drafts of a joint venture agreement concerning the Washington property, indicating Gail owned the property with Mary. The Accused spoke

with the co-owner of the Washington property and was told that Mary has advised him that her share of the property would go to Gail. The Accused also spoke with William Tallman who told the Accused that Mary had told him that Gail was to get Mary's entire estate. Based on this information, the Accused believed that another will would be found naming Gail as Mary's sole devisee.

7.

On February 13, 1987, the Accused filed a petition to probate Mary's will on behalf of Gail as Personal Representative of the estate. The petition alleged that Mary's only heirs were Gail and Mary's second husband. The petition further alleged Mary's only devisee was Gail. The petition made no mention of Drew and April although the Accused knew of their existence. No notice of probate was given to Drew or April. No subsequent will was found.

8.

The probate proceedings were completed on July 27, 1987, when the estate was closed, and Gail was discharged as Personal Representative. The Order Approving Final Account and Decree of Final Distribution, dated July 17, 1987, vested in Gail ownership of all of the estate assets.

9.

The Final Account listed assets in Gail's possession totaling \$245,136.93, with costs of administration to be paid of \$3,337.36, which included an attorney fee to the Accused in the amount of \$2,895. No ancillary probate proceeding was filed in Washington state regarding the real property owned by Mary at the time of her death. After the close of the estate in Oregon, Gail and the co-owner of the Washington real property tried to sell the property. However the title company refused to recognize Gail's ownership of Mary's share.

10.

When Drew and April learned of their exclusion from the estate, the probate of Mary's estate was re-opened and Drew and April, through their attorneys, filed claims against the Accused and Gail. Those claims were settled with the Accused contributing 4,000, the Professional Liability Fund approximately \$35,000 and Gail making a monetary contribution. Settlement was approved by the court on January 26, 1995. A copy of the order approving settlement is attached as Exhibit 1. The settlement represented the approximate 50% share of the estate Drew and April would have received under Mary's will when the estate closed in 1987.

11.

The Accused admits that by failing to list Drew and April as devisees in the petition filed with the court, when he knew they were alive, the Accused engaged in conduct involving misrepresentation in violation of DR 1-102(A)(3); he failed to disclose a fact required by law to be revealed in violation of DR 7-102(A)(3); and knowingly made a false statement of law and fact in violation of DR 7-102(A)(5). The Accused further admits that by misleading the court as to the devisees, he also engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4), as his conduct changed what would otherwise have been the result of the probate and required subsequent litigation to correct it.

12.

The Accused admits that he failed to provide competent representation in one of more of the following particulars:

1. In failing to recognize that Drew and April were legal heirs entitled to notice even if Gail was the sole devisee of the estate;
2. In failing to acquire the skill and knowledge necessary to complete the probate;
3. In failing to associate or otherwise consult with a lawyer who had the skill and knowledge to complete the probate;
4. In accepting a probate matter without prior experience in probate matters and failing to familiarize himself with applicable law.

The Accused admits that by engaging in such conduct, he violated DR 6-101(A).

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 and mitigating circumstances.

A. Duty Violated.

In violating DR 1-102(A)(3), DR 6-101(A) and DR 7-102(A)(3), the Accused violated duties to his client in failing to provide competent representation and by acting with a lack of candor. Standards §4.5 and 4.6.

In violating DR 1-102(A)(3) and (4) and DR 7-102(A)(3) and (5), the Accused violated his duty to the public by failing to maintain his personal integrity by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Standards §5.1. By engaging in this same conduct, the Accused violated his duty to the legal system Standards §6.1.

B. Mental State.

The Accused asserts that he was certain a subsequent will would be found naming Gail as the sole devisee and he believed that he was carrying out Mary's wishes in regard to her estate. Nevertheless, the Accused acted with 'intent', that is, the conscious objective or purpose to accomplish a particular result and 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 Standards, page 7.

C. Injury

Under the Standards and case law, injury may be either 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'. In this case, the Accused's conduct caused serious injury. Two heirs were omitted from timely sharing in the estate, they were required to retain lawyers to file claims against the personal representative and the Accused, and the Professional Liability Fund was required to defend the actions of the Accused and pay substantial sums for his misconduct. His actions caused serious injury to the judicial system in that a separate action had to be filed, the probate reopened, and the court was required to oversee resolution of a matter that should have been completed in the underlying probate. The Accused's conduct resulted in injury to his own client in that a claim was filed against her and she was required to return a portion of the assets she had received when the estate was improperly closed.

D. Aggravating Factors.

The following aggravating factors are present in this case: vulnerability of the victims and substantial experience in the practice of law. Standards §9.22 (h), and (i).

E. Mitigating Factors.

The following mitigating factors are present in this case: absence of a disciplinary record, absence of a dishonest or selfish motive; full and free disclosure; good character or reputation, and remorse. Standards, 9.32(a), (b), (e), (g) and (1).

The Accused had a number of witnesses prepared to testify as to his good character and reputation.

F. Factors Neither Aggravating Nor Mitigating.

The following factors neither aggravate nor mitigate the sanction in this proceeding: compelled restitution and failure of injured client to complain. Standards.§ 9.4 (a) and (f).

14.

The Standards provide that a suspension is generally appropriate, when a lawyer knows that false statements or documents are being submitted to the court or that material information 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 also provide that a suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. Standards, § 4.52.

Oregon case law is in accord. In In re Hedges, 280 Or 155, 570 P2d 73 (1977), the court noted that delay in the handling of a probate matter was sufficient in itself to warrant a public reprimand but, when combined with a misrepresentation to the court in a final accounting that an application for Oregon inheritance tax releases had been sought when it had not, deserved a greater sanction and suspended the lawyer for 30 days.

In re Greene, 290 Or 291, 620 P2d 1379 (1980), involved an experienced probate and guardianship lawyer who deliberately failed to advise the court in a petition filed by the guardian seeking permission to sell estate securities in order to purchase real property for the benefit of the wards that the property being purchased was owned by the guardian. The court held this conduct violated DR 1-102(A)(3), (4), and (5) [former DR 1-102(A)(4)(5) and (6)]. The court took specific note that the wards suffered no injury as a result of the transaction but suspended the lawyer for 60 days.

A baseline for analysis of the Accused's conduct in this case is In re Hiller and Janssen, 298 Or 526, 694 P2d 540 (1985). In that case, both lawyers were suspended for four months when they failed to disclose in an affidavit in support of a motion for summary judgment the actual consideration for a purported sale of real property. They noted that a misrepresentation may include nondisclosure of a material fact and need not be done with an intent to deceive or commit a fraud. The conduct of the Accused in this case exceeds that in Hiller.

The harm caused in this case exceeds that of In re Dames, 10 DB Rptr 81 (1996) in which the lawyer was suspended for four months for, among other things, violating DR 1-102(A)(3), DR 1-102(A)(4) and DR 7-102(A)(5) by filing an inventory and accounting in a conservatorship knowing that an executed promissory note did not exist yet representing to the court such a note was an asset of the estate.

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 6 months. Should this Stipulation for Discipline be approved by the Oregon Supreme Court, the parties agree that the suspension shall become effective immediately upon 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 was approved by the State Professional Responsibility Board (SPRB). The parties agree the stipulation is to be submitted to the Oregon Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 14th day of February, 1997.

/s/
Larry H. Blakely

EXECUTED this 14th day of February, 1997.

/s/
Chris L. Mullman
Assistant Disciplinary Counsel
Oregon State Bar

Cite as 325 Or 166 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
DAVID J. HASSENSTAB,)
)
Accused.)
_____)

(OSB 94-37, 95-25; SC S43513)

On review of the decision of a trial panel of the Disciplinary Board.
Submitted on the record and brief November 22, 1996; resubmitted March 7, 1997.
Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, filed a brief for the Oregon State

Bar.

No appearance *contra*.
Before Carson, Chief Justice, and Gillette, Van Hoomissen, Graber, Durham, and

Kulongoski, Justices.*

PER CURIAM

The accused is disbarred.

* Fadeley, J. did not participate in the decision of this case.

Summary:

On May 20, 1997, the Supreme Court denied a petition filed by Salem lawyer David J. Hassenstab asking that the court reconsider its March 27, 1997 opinion disbaring him. In that opinion, Hassenstab was found guilty of violating DR 5-101(A) - lawyer self interest conflict, and DR 1-102(A)(2) - criminal act reflecting adversely on fitness.

Between 1988 and 1992, Hassenstab engaged in varying degrees of sexual contact with many of his female clients ranging from inappropriate touching to sexual intercourse. Hassenstab also made suggestive, sexual comments to many clients and told them he was interested in commencing a relationship with them either during or after their legal matters were concluded. He further insinuated that clients could exchange sex for legal services.

Many of the clients were indigent defendants or parties in juvenile proceedings for whom Hassenstab was appointed counsel in criminal matters, probation violations, child dependency proceedings or proceedings to terminate parental rights. Several of the clients reported that they felt compelled to engage in sexual contact with Hassenstab, fearing that refusal may jeopardize their legal matters. In some cases, Hassenstab implied that the quality of his representation depended on the clients engaging in sexual contact with him.

Noting that the conduct occurred prior to the adoption of DR 5-110(A), which now prohibits sexual relations with a current client, the court examined Hassenstab's conduct under DR 5-101(A) and found multiple violations. The court also found that Hassenstab violated criminal statutes when he touched two clients intimately without their consent, and by engaging in an act of prostitution with a client for which he pled no contest and was convicted in state

court.

Finally, the court found that Hassenstab committed an additional violation of DR 5-101(A) when he engaged in a sexual relationship with a deputy district attorney at a time when they were opposing counsel in a pending criminal case.

In determining that disbarment was appropriate, the court noted a number of aggravating factors including Hassenstab's selfish motive in placing his sexual gratification above his clients' needs, his refusal to acknowledge the wrongful nature of his misconduct, and the harm suffered by vulnerable clients.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of)	Case No. 95-66
)	
JAMES S. DREW,)	
)	
Accused.)	
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Bar Counsel: n/a

Counsel for the Accused: John R. Faust, Jr., Esq.

Disciplinary Board: n/a

Disposition: Violation of DR 1-102(A)(2); DR 1-102(A)(3);
ORS 9.460(1); ORS 9.527(1); and ORS 9.527(2).
Stipulation for Discipline. Two-year suspension .

Effective Date of Order: 4-15-97

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:)	
	)	SC S42163
Complaint as to the Conduct of)	
JAMES S. DREW,	)	ORDER ACCEPTING
	)	STIPULATION FOR
Accused.	)	DISCIPLINE

The Oregon State Bar and James S. Drew have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. James S. Drew 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 15th day of April, 1997.

/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. 95-66
)	
JAMES S. DREW,)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
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James S. Drew, attorney at law (hereinafter "the Accused"), and the Oregon State Bar (hereinafter "the Bar") hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, James S. Drew, 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 Deschutes County, Oregon.

3.

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

4.

On June 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 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility and ORS 9.460(1), ORS 9.527(1) and ORS 9.527(2). This Stipulation for Discipline is intended by the parties to resolve all charges in this matter.

FACTS AND VIOLATIONS

5.

On February 17, 1995, the Accused pled guilty to violating ORS 164.055, First Degree Theft, a Class C Felony. A copy of the petition to enter the plea of guilty is attached as Exhibit "A". As a result of the plea, the Accused was sentenced and placed on probation for a period of 24 months with a special condition of probation of 20.8 custodial units to be served as manual, physical labor on a county work team. The Accused was also required to pay restitution, fines, fees and assessments through the State of Oregon Trial Court Administrator in the sum of \$2,599.39. A copy of the judgment of conviction is attached hereto as Exhibit "B".

6.

On December 30, 1996, the Honorable Donald L. Kalberer, Senior Judge, granted the Accused's motion to reduce his conviction to a misdemeanor and signed an order so doing on January _____, 1997. A copy of the order is attached hereto as Exhibit "C".

7.

The Accused's criminal conviction was the result of a plea agreement disposing of three "shoplifting" events by the Accused. Those events are described in paragraphs 7-9 herein. On or about May 4, 1994, the Accused unlawfully and knowingly committed theft of motor vehicle

tires, shocks, tie rod ends, bed rail, tailgate cap, sleeves and the labor to install the same, which were the property of Les Schwab Tires, with a value in excess of \$1,000, by driving away from the Les Schwab premises without paying for work done on his truck.

8.

On or about October 16, 1993, the Accused did unlawfully and knowingly commit theft of a comforter which had a retail value of not less than \$595 from the retail business of Bon Marche.

9.

On or about November 9, 1994, the Accused did unlawfully and knowingly commit theft of a car stereo from the business premises of Hates Electronics which had a retail value of not less than \$186.

10.

The Accused admits that even though the underlying conduct did not involve the practice of law, and there is no evidence of any misuse of client funds, nevertheless, by his conduct, as described in paragraphs 5-9, he committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness to practice law in violation of DR 1-102(A)(2) and that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A)(3). The Accused further admits that this conduct violated ORS 9.460(1), ORS 9.527(1) and ORS 9.527(2).

11.

On March 29, 1995, at the direction of the State Professional Responsibility Board ("SPRB"), Disciplinary Counsel's Office of the Bar advised the Oregon Supreme Court of the conviction of the Accused as required by Rule of Procedure (BR) 3.4(a), recommending that the Accused be immediately suspended from the practice of law based on that conviction.

12.

By order dated May 23, 1995, the Supreme Court immediately suspended the Accused from the practice of law until further order. A copy of the order is attached as Exhibit "D". The Accused has been suspended on an interim basis ever since.

13.

The Accused sought psychological treatment in November 1994 after his arrest for theft. By report dated July 10, 1995, his treating psychologist opined that at the time of the thefts identified herein, the Accused was suffering from an "Impulse-Control Disorder Not Otherwise Specified" which was treatable but would require continued therapy for at least a period of two years. The treating psychologist also identified other significant personal and emotional problems, including a breakdown of the Accused's marriage and business relationship that contributed to this underlying diagnosis. As a result of the diagnosis, the Accused's treating psychologist was of the opinion that the Accused could not resist an impulse to perform an act that was harmful to himself and/or others without continued therapy. As of the date of this Stipulation, the Accused has continued his course of treatment.

The Bar has confirmed to its satisfaction, with expert consultation, that the Accused's diagnosis is supported by objective diagnostic testing and reports of mental health providers.

SANCTION

14.

The Accused and the Bar agree that the Court should consider the ABA Standards for Imposing Lawyer Sanctions (hereinafter the "ABA Standards") and Oregon case law in determining the appropriate sanction in this case. *In re Morin*, 319 Or 547, 878 P2d 393 (1994). 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 owed to the public which the Standards consider to be a lawyer's most fundamental duty. Standards, § 5.0. In addition, the Accused violated

his duty to the legal system by failing to operate within the bounds of law. Standards, § 6.0.

- (b) The Accused acted with intent, that is the conscious objective to accomplish a particular result. ABA Standards at p. 7. However, see mitigating factors below.
- (c) The conduct of the Accused resulted in serious injury to the public, the legal system and the profession. ABA Standards at p. 7.
- (d) Aggravating factors to be considered are:
 - (1) The Accused was admonished in 1985 for violating DR 2-110(A)(2);
 - (2) The Accused acted with a dishonest or selfish motive;
 - (3) The Accused engaged in a prolonged pattern of misconduct;
 - (4) The conduct involved multiple offenses;
 - (5) The Accused has substantial experience in the practice of law. ABA Standards, 9.22 (a), (b), (c), (d), and (i).
- (e) Mitigating factors to be considered are:
 - (1) The Accused was diagnosed as having significant personal and emotional problems and has continued a course of psychiatric treatment for these underlying personal and emotional problems;
 - (2) The Accused has made full and free disclosure to the Bar and has displayed a cooperative attitude toward these proceedings;
 - (3) The Accused has a good reputation in the legal community;
 - (4) The conduct of the Accused was impacted by a diagnosed and treatable mental impairment;
 - (5) The Accused acknowledges the wrongfulness of his conduct and is remorseful;
 - (6) Other penalties have been imposed; and
 - (7) The Accused has never been subjected to formal disciplinary proceedings; the prior admonition is remote in time. ABA Standards, 9.32 (c), (e), (g), (h), (k), (l) and (m).

15.

The ABA Standards note that absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation. Relevant Standards provide:

"5.11 Disbarment is generally appropriate when:

- (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, * * * theft; or
- (b) a lawyer engages in other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law."

Section 5.12 of the ABA Standards provides:

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

Section 7.0 of the ABA Standards notes that absent aggravating or mitigating factors, disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer and causes serious or potentially serious injury. 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.

The Accused and the Bar agree that in this case the mitigating factors, particularly the

diagnosed impulse disorder, are such that suspension rather than disbarment is an appropriate sanction. The court has recognized instances where the accused lawyer has a good chance to demonstrate rehabilitation after an interim suspension sufficient to give the Bar and the public assurance that the rehabilitation is successful. See, In re Gregg, 252 Or 174, 446 P2d 123, 448 P2d 547 (1968) in which the court reduced an original penalty of disbarment to a three-year suspension because it found grounds to hope for rehabilitation. See also, In re Stodd, 279 Or 565, 568 P2d 665 (1977) where the accused was suspended for two years for "borrowing" funds from a non-profit association of which he was president.

Based upon the above, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for an additional period of two years from the date this Stipulation is approved by the Supreme Court and thereafter until he files a formal petition for reinstatement pursuant to Bar Rule of Procedure 8.1 and demonstrates under that rule his renewed moral qualifications and general fitness to practice law in Oregon, and that his conduct disorder has been successfully treated and brought under control.

16.

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

EXECUTED this 4th day of March, 1997.

/s/
James S. Drew

EXECUTED this 21st day of March, 1997.

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

Cite as 325 Or 281 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
 Complaint as to the Conduct of)
)
 LARRY O. GILDEA,)
)
 Accused.)
 _____)

(OSB 92-125; SC S42543)

On review of the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted March 6, 1996.

David Jensen, of Jensen, Fadeley & Elmore, P.C., Eugene, argued the cause and filed the briefs for the accused.

F. William Honsowetz of Lombard, Gardner, Honsowetz, Brewer & Potter, Eugene, argued the cause for the Oregon State Bar. With him on the brief was Chris Mullman, Assistant Disciplinary Counsel, Lake Oswego.

Before Carson, Chief Justice, and Gillette, Can Hoomissen, Graber, and Durham, Justices.*

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.

* Unis, J., retired June 30, 1996 and did not participate in this decision; Fadeley, J., did not participate in the consideration or decision of this case.

Summary:

Effective June 27, 1997, the Supreme Court suspended Eugene attorney Larry O. Gildea from the practice of law for 120 days for multiple violations of the disciplinary rules. The bar's formal complaint was based on Gildea's friendship with and representation of an elderly woman from approximately 1965 until her death in 1992.

In 1988, Gildea began working on two foreclosures for the client. In October of 1988, Gildea and his wife became concerned about the client's health and brought her from the coast to Eugene to meet with a local physician who ultimately diagnosed the client as having multi-infarct dementia. It was agreed that the client should be placed in foster care. It was also agreed that Gildea would close the coast home, discard any useless property and bring the balance to his home in Eugene. Gildea hired his housekeeper and her husband to do so, but no inventory of the property was made by Gildea or the housekeeper. The court concluded that the failure to inventory the personal property and render an accounting of it to the client constituted a violation of DR 9-101(C)(3).

While living in foster care, the client frequently visited Gildea's family at their home. The client was unhappy in foster care so, in January 1989, she moved to Riverpark Care Center ("RCC") where she remained until her death. Gildea personally guaranteed the client's

payments to RCC. While at RCC, the client and Gildea agreed that the client would give him a power of attorney over her affairs. Gildea prepared the power of attorney and had the client sign it. During her stay at RCC, the client would endorse checks to Gildea who would place those checks into his general client trust account from which he would pay her bills. Gildea also set up a separate trust account in the client's name into which he deposited income from her property.

During December 1988 and January 1989, Gildea transferred \$8,212.95 from the client's trust account to his firm's account, after discussions with his client, as "advances on fees" or "flat fees". Although Gildea testified that he had discussed the withdrawals with the client in advance, he did not render an accounting of the withdrawals after the funds had been removed from the trust account in violation of DR 9-101(C)(3).

In August of 1991, Gildea received a check for \$321.34 as a final payment for certain property the client had sold. This check was deposited into Gildea's personal account without Gildea's knowledge and he did not advise the client of receipt of this check. The court concluded this conduct violated DR 9-101(A) and DR 9-101(C)(3).

Using the power of attorney the client had signed, Gildea assigned to himself a trust deed on certain property owned by the client to ensure that future monthly payments on the property would be applied to the client's monthly RCC payments which Gildea had guaranteed. While the client did agree to the arrangement, Gildea did not instruct her to seek independent legal advice nor did he explain in writing the conflict of interest this arrangement created. Gildea admitted and the court concluded this conduct violated DR 5-101(A)(1) and (B) and DR 5-104(A).

Part of the property brought to Gildea's home was a 1976 Volkswagen van which Gildea repaired at his expense. While the client no longer had a driver's license, she had a strong interest in the van. However, for insurance reasons, the client and Gildea agreed to transfer title of the van to his professional corporation. On November 12, 1989, Gildea had the client sign a power of attorney in his favor to transfer the van. No consideration was paid for the van and Gildea did not advise the client to seek independent advice. The court concluded this action violated DR 5-101(A).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
Complaint as to the Conduct of) Case No. 95-221; 96-33
JAMES DIETZ,)
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: Ervin B. Hogan, Esq.

Disciplinary Board: n/a

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

Effective Date of Order: 6-23-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Nos. 95-221; 96-33
)	
JAMES DIETZ,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,
 IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 3-101(A).
 DATED this 23rd day of June, 1997.

 /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 Nos. 95-221 and 96-33
)	
JAMES DIETZ,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	

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

1.

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

2.

The Accused, James Dietz, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 6, 1986, 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, and with the advice of counsel.

FACTUAL ALLEGATIONS

4.

In 1994, the Accused placed an advertisement in the Medford yellow pages in the attorney section under the caption "Immigration & Naturalization" listing his name and that of his legal assistant, Elaine Gilbert (hereinafter "Gilbert"). Gilbert had been hired by the Accused specifically for her experience in immigration matters. When Gilbert was initially hired, the Accused described the limitations of her job, including her duty not to give legal advice and to consult with him concerning any legal problems. The Accused was available for consultation with clients and with Gilbert and, in fact, consulted with Gilbert on immigration matters while Gilbert was employed as his paralegal.

Before placing the advertisement referred to and employing Gilbert, the Accused consulted with Oregon State Bar personnel concerning the proposed advertisement and employment of a paralegal and followed the advice thereby received in establishing the immigration practice.

THE THELEN MATTER (Case No. 95-221)

5.

In October 1994, Margarete M. Thelen (hereinafter "Thelen") was advised by the National Visa Center ("NVC") that she had been selected for a specific visa application program. Thelen consulted the Medford yellow pages and saw the advertisement listing Dietz and his legal assistant, Gilbert. Thelen contacted Dietz, who advised her to make an appointment with Gilbert, and Thelen did so.

6.

On October 6, 1994, Thelen met with Gilbert at the office of the Accused. At no time did she meet with the Accused. Thelen discussed the letter she had received from NVC with

Gilbert and provided Gilbert with documents which had come with the letter. Although Thelen believed the documents required her to contact NVC immediately, Thelen alleges Gilbert advised her not to do so, and to return the forms and wait for a second notice from NVC, which allegation is denied by Gilbert. At the conclusion of the consultation, Thelen paid Gilbert \$100.

7.

Thelen mailed the forms and waited for a second notice from NVC. When she did not receive a second notice from NVC, Thelen called NVC on January 3, 1995 and was told to immediately take action to protect her rights. Thelen called Gilbert and met with her in the office of the Accused the following day. The Accused was not present at this meeting. Thelen alleges that Gilbert advised that Thelen did not have to contact NVC. Gilbert discussed with Thelen how to complete forms necessary to carry out instructions Thelen had received from NVC and Thelen paid Gilbert \$50. Although it was the practice of the Accused to review all pending immigration files and discuss them with Gilbert, neither the Accused nor Gilbert has any present recollection of any such discussion concerning Thelen.

8.

Thelen subsequently contacted another attorney who specialized in immigration matters and learned that she should have contacted NVC in October.

THE JAVIER C. COMPANY MATTER (Case No. 96-33)

9.

Javier Company (hereinafter "Company") saw the Accused's yellow pages advertisement and called the Accused for information regarding naturalization proceedings. The Accused told Company to call Gilbert to set up an appointment, which he did. Gilbert told Company the fee for this service would be \$300.

10.

Company met with Gilbert at the office of the Accused but did not meet the Accused. Gilbert selected certain paperwork and helped Company complete the documents. Gilbert provided Company with a list of items to bring back to the office to attach to the paperwork she prepared. Company made a follow up appointment with Gilbert at which time Gilbert again reviewed the paperwork. Company did not meet the Accused at this meeting.

11.

After the paperwork was completed, it was forwarded to the Immigration and Naturalization Service (hereinafter "INS") for processing. INS wrote Company and made an appointment for him to meet with INS personnel in Portland on October 5, 1995. At this meeting, Company was advised that the wrong forms had been completed and he was required to start the process again.

12.

Company subsequently retained the services of another lawyer to complete the proper naturalization paperwork, and his naturalization was delayed for several months.

13.

The Accused admits that the above-described conduct, and particularly his failure to more closely supervise Gilbert and to meet with the clients directly, constituted aiding a nonlawyer in the unlawful practice of law in violation of DR 3-101(A).

SANCTION

14.

In determining an appropriate sanction, the ABA Standards for Imposing Lawyer Sanctions (hereinafter "Sanctions") are to be considered. *In re Sousa*, 323 Or 137, 145, 915 P2d 408 (1996). 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. Duties Violated

By assisting a nonlawyer in the practice of law, the Accused violated his duty owed to the profession. Standards, § 7.0.

B. Mental State.

The mental state of the Accused, as defined by the Standards, was one of “negligence”, that is, the failure of the Accused 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.

Under the Standards and case law, injury may be actual or potential. Standards, p. 7. *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, p. 7. In this case, both Thelen and Company suffered injury as they were required to take remedial action to complete the legal matters initially undertaken by Gilbert.

D. Aggravating Factor.

The Standards identify factors which may be considered that may justify an increase in the degree of discipline to be imposed. Standards, § 9.22. The following aggravating factors are present in this case: (1) vulnerability of victim and (2) substantial experience in the law. Standards, § 9.22(h) and (i).

E. Mitigating Factors.

Mitigating factors are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. In this case, the following mitigating factors are present: (1) absence of prior disciplinary record; (2) absence of dishonest or selfish motive; and (3) full and free disclosure during the investigation. Standards § 9.32 (a), (b) and (e).

The commentary to § 7.0 of the Standards notes that while the duties owed to the profession as set forth in § 7.0 have been developed to protect the public, a violation of these standards are generally less likely to cause injury. In general, a violation of this standard will rarely require disbarment or suspension. Instead, a sanction of reprimand, admonition or probation will be sufficient to ensure that the public is protected and the bar is educated. As noted in § 7.3, “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.” P. 46.

Oregon law is in accord. ORS 9.160 prohibits anyone other than a lawyer who is an active member of the bar from practicing law. ORS 9.280(1) makes it a violation of ORS 9.160 for any person to act as an “immigration consultant” unless that person is a member of the bar. “Immigration consultant” is defined as:

- (a) ... means any person who gives advice on an immigration matter, including but not limited to drafting an application, brief, petition or other paper or completing a form provided by a federal or state agency in an immigration matter.
- (b) “Immigration matter” means any proceeding, filing or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Immigration and Naturalization Service, the United States Department of State or the United States Department of Labor.”

Injunctive relief is available to the Bar against a nonlawyer who renders legal advice to resident aliens on matters of immigration law. *Oregon State Bar v. Ortiz*, 77 Or App 532, 713 P2d 1068 (1986).

Contact between nonlawyers, including paralegals, which is in the nature of consultation, explanation, recommendation or advice, or other assistance in selection of particular forms, or in

filling out any part of forms, or in suggesting how forms should be used in solving particular legal problems, will constitute the practice of law. *Oregon State Bar v. Gilchrist*, 272 Or 552, 538 P2d 913 (1975).

By failing to properly supervise Gilbert, the Accused created a situation in which Gilbert had the opportunity to practice law. *In re Morin*, 319 Or 547, 562-64, 878 P2d 393 (1994). See, also, *In re Edstrom*, 10 DB Rptr 115 (No. 94-241, 1996); *In re Jones*, 308 OR 306, 309, 779 P2d 1016 (1989).

15.

Consistent with the ABA Standards and Oregon case, the Bar and the Accused agree that the Accused shall receive a Public Reprimand for violating DR 3-101(A).

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction 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 6th day of June, 1997.

/s/
James Dietz

EXECUTED this 11th day of June, 1997.

/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. 95-152
)	
LAURANCE W. PARKER,)	
)	
Accused.)	
<hr/>		

Bar Counsel: Steven Wilgers, Esq.

Counsel for the Accused: Thad Guyer, Esq.

Disciplinary Board: Arminda J. Brown, Esq., Chair; John Trew, Esq.;
Alfred Willstatter, Public Member

Disposition: Violation of DR 2-106(A); DR 6-101(B); DR 9-101(A)(1) and DR 9-101(C)(3). Stipulation for Discipline. Public Reprimand.

Effective Date of Opinion: 6-25-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)) Complaint as to the Conduct of)) LAURANCE W. PARKER,)) Accused.) _____)	Case No. 95-152 OPINION OF THE TRIAL PANEL
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This matter came before a trial panel of the Disciplinary Board on May 21, 1997. The Oregon State Bar Association appeared by and through Steve Wilgers, Bar Counsel, and by Chris L. Mullman, Assistant Disciplinary Counsel. The accused appeared personally and was represented by Thad M. Guyer.

The accused has been charged with four violations of the code of Professional Responsibility.

They are:

1. DR 2-106(A) which prohibits a lawyer from charging or collecting a clearly excessive fee;
2. DR 6-101(3) which prohibits a lawyer from neglecting a legal matter entrusted to the lawyer;
3. DR 9-101 (A)(1) which requires a lawyer to deposit and maintain client funds in trust, and;
4. DR 9-101 (C)(3) which requires a lawyer to maintain complete records of all funds of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding those funds.

At the outset of the hearing, stipulated facts were read into the record. Thereafter, the accused admitted violation of the Code of Professional Responsibility as charged. Testimony and arguments were received by the trial panel limited to the issue of the sanction to be imposed on the accused.

STIPULATED FACTS

In April 1994, Huberty had several meetings with the Accused regarding the possibility of retaining him to file a federal civil rights action on Huberty's behalf. On April 19, 1994, Huberty signed a "Retainer Agreement" with the Accused. This agreement called for a \$4,000 "flat fee." In exchange, the Accused agreed to "file suit in Federal Court, initiate discovery, up to 3 depositions & then reevaluate position."

Huberty provided the Accused with certain background information. The Accused reviewed the material and, on June 15, 1994, sent a draft of the complaint to his client. Huberty promptly reviewed the complaint, made notations on the draft and returned it to the Accused. On July 5, 1994, Huberty called the Accused to discuss the draft, its revisions and a time for filing. Huberty sent him a letter, dated July 11, 1994, requesting immediate action in the case. The Accused did not write back to Huberty but filed the complaint on September 13, 1994.

On October 3, 1994, attorney Robert E. Franz (hereinafter "Franz") sent a letter to the Accused on behalf of some of the defendants, enclosing their answer and requesting copies of certain documents. The Accused did not respond orally or in writing to this letter. However, the Accused had Huberty come into the office with the documents covered by the request. The

Accused and Huberty reviewed the documents, but the Accused did not forward them to Franz.

On October 12, 1994, Assistant Attorney General Kendall Barnes (hereinafter "Barnes") served the Accused her client's first request for admissions and interrogatories. The Accused does not recall seeing these documents, although they were properly addressed and in his file. The Accused did not have an office staff and believes the documents were simply put in the file. The Accused admits he did not respond to the requests for admissions or the interrogatories. He acknowledges that he knew they had to be answered within thirty days, and a failure to respond to the request for admissions would result in their being deemed admitted.

On November 1, 1994, the Accused received a letter from Huberty raising 11 issues. The Accused does not recall reading this letter, did not respond to it in writing and has no recollection of discussing it with Huberty. In this letter, Huberty suggests "moving quickly" and completing discovery by December 31, 1994.

Huberty followed this letter with another dated November 7, 1994. The Accused has no specific recollection of the letter, but will testify that he believes he did speak with Huberty about the letter sometime later. He acknowledges he did not respond to the letter in writing.

On December 30, 1994, the Accused met with Huberty and his friend, Sylvia Cox, to discuss the case. Between the letter of November 7 and this meeting, the Accused did little, if anything, on the case as he was busy with other files. However, as a result of this meeting, the Accused indicated that he would try to get the interrogatories out by January 20, 1995.

Huberty followed up the meeting of December 30 with a letter on that same date. The Accused did not respond to this letter. The Accused began the draft of the interrogatories in late January or early February, 1995. These documents were never finalized.

At some point, the Accused received notice from the court that a pretrial order was to be lodged no later than February 10, 1995. The Accused was aware that it was the Plaintiff's responsibility to see that the pretrial order was timely filed. The pretrial order was not filed by February 10, 1995, as he and Huberty were "having difficulties." No request for an extension of time for filing of the pretrial order had been filed by the Accused as of that date.

On April 11, 1995, the court issued an Order to Show Cause why the case should not be dismissed for want of prosecution for failure to file the pretrial order. The Plaintiff was required to file a report with the Clerk's Office by April 21, 1995. Failure to file the report would result in dismissal of the case. The Accused did not file the report and did not provide Huberty with a copy of the Order to Show Cause. Instead, on April 21, 1995, he filed a Request for Extension of Time to File Pretrial Order and a Motion and Order to Withdraw.

Up to April 21, 1995, the Accused had not completed the interrogatories, had not noticed any depositions nor had he discussed the scheduling of any depositions with defense counsel. The Motion for Extension of Time was granted. However, the Motion to Withdraw was denied pending the filing of sufficient information. The Court ordered Huberty himself was to submit an affidavit as to his consent and his intention to retain new counsel. No such affidavit was submitted or prepared by the Accused.

On June 6, 1995, a substitution of counsel was filed replacing the Accused as attorney of record. Based upon the substitution, the Accused's Motion to Withdraw was granted by minute order of June 8, 1995.³

SANCTION

In fashioning an appropriate sanction, the Trial Panel was guided by the evidence and the ABA Sanctions for Imposing Lawyer Sanctions (hereinafter "Standards"). 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) existence of aggravating or mitigating circumstances.

Prior to discussing the four factors individually, the Trial Panel made the following findings and conclusions. The Trial Panel found that the retainer agreement prepared by the

³ All citations to exhibits have been omitted.

Accused and signed by Huberty did not meet the requirements of the Supreme Court in that it did not contain language indicating that the flat fee paid was not refundable and that it was earned upon receipt. The Trial Panel concluded that this omission was the result of inexperience and ignorance of what is required.

The Accused admitted violation of DR 2-106(A) which prohibits a lawyer from charging or collecting a clearly excessive fee. Although the Trial Panel is bound by that admission, for purposes of determining the appropriate sanction, it was not convinced that the fee actually charged was indeed excessive. The evidence showed that on September 11, 1996, the Accused returned \$1,500 to Huberty representing \$500 for each of the three depositions that were promised but never taken. (Exhibit X) Thus, in total, the Accused received \$2,500 for his work which included considerable time with Huberty, legal research, the drafting, filing and service of the complaint, review of answers filed and the drafting of interrogatories. The Panel found that the amount retained by the Accused is not excessive in view of the services that were actually performed.

Lastly, under the facts as stipulated, the Trial Panel was convinced that the Accused seriously neglected legal matters entrusted to him by Huberty.

1. Duty Violated.

The Accused violated his duty to Huberty to act with reasonable diligence and promptness. Standards § 4.4. Section 4.43 of the Standards states 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." The trial panel finds that the Accused's neglect of Huberty's case was the result of inexperience, lack of personnel and negligence. It was not part of a pattern of neglect nor did his conduct rise to the level of a knowing failure to perform. In violating DR 9-101(A) and DR 9-101(C), the Accused violated his duty to preserve client's property. Standards § 4.1. This standard was violated by not including the appropriate language in the fee agreement which then made the acts of not placing the money in the Accused's trust account and accepting it as his own prior to completion of the services promised, violations of the Disciplinary Rules. A reprimand is the appropriate sanction, according to the Standards when the lawyer is "negligent in dealing with client property and causes injury or potential injury to a client." The Trial Panel finds that the Accused was negligent in his ignorance of the requirements of flat fee agreements mandated by the Supreme Court and for that, a reprimand is appropriate.

2. Mental State.

"Negligence" is defined in the 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 the situation." p. 7, Standards.

The Trial Panel finds that the mental state of the Accused in this case was one of negligence.

3. Injury.

The evidence as to actual injury in this case was not clear. Huberty's case was not dismissed and although Huberty's new counsel was required to do some "damage control," no evidence was presented as what was done as a direct consequence of the Accused's actions or lack thereof. For instance, an amended complaint was filed. However, the Trial Panel finds that amended complaints are often filed and there was no evidence linking the necessity of an amended complaint to neglect on the part of the Accused. There was testimony that responses to Request for Admissions were not filed on time. There was no testimony as to the importance of the actual requests and what, if any, actual damage was done to the case by the automatic admissions which resulted, from the Accused's neglect.

The Trial Panel does find that the potential damage to Huberty was great. Neglect could have resulted in dismissal of the case and the admissions resulting from failure to respond to

the Requests of Admissions could have placed Huberty's case in grave jeopardy.

4. Aggravating and Mitigating Factors.

The Trial Panel finds that there are no aggravating factors present in this case. As to mitigating factors there are several. The Accused does not have a history of prior discipline. It appears that he cooperated fully with the Bar. Further, there was no evidence of dishonesty or greed. The Accused presented himself at the hearing as honest and sorry for his conduct and the trouble it has caused Huberty. He has now employed his wife who acts as secretary and office manager, he has revised his fee agreement to comply with current requirements, and he returned \$1,500 of the fee he originally collected to Huberty (although this was done somewhat late).

Final decision.

Based upon the evidence offered, the exhibits and the above factors, it is the decision of the Trial Panel that a public reprimand is the appropriate sanction in this case.

DATED this 11th day of June, 1997.

/s/

ARMINDA BROWN
Trial Panel Chairperson

/s/

JOHN TREW, Attorney Member

/s/

ALFRED WILLSTATTER, Public Member

Cite as 325 Or 421 (1997)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
 Complaint as to the Conduct of)
)
 RONALD K. SCHAFFNER,)
)
 Accused.)

(OSB 95-70; SC S42986)

In Banc

On review of the decision of a trial panel of the Disciplinary Board.

Submitted on the record April 24, 1997.

Mary A. Cooper, Assistant Disciplinary Counsel, 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 two years commencing on the effective date of this decision.

Summary:

Effective August 20, 1997, the Oregon Supreme Court suspended Portland lawyer Ronald Kent Schaffner for a period of two years for violating DR 6-101(B), DR 9-101(C)(4) and DR 1-103(C).

Schaffner was retained in October, 1994 to represent a client in a real estate matter. Schaffner agreed to prepare a demand letter within ten days, but failed to do so for over a year. He also failed to communicate with his client or respond to her attempts to contact him.

The client asked Schaffner to return her original documents, but he failed to do so promptly, thus violating DR 9-101(C)(4).

The client eventually complained to the Bar, which undertook to investigate. Schaffner refused to respond to inquiries from disciplinary counsel's office and the matter was referred to a local professional responsibility committee. Schaffner thereafter responded to the LPRC's requests for information. The court held that Schaffner's initial failure to cooperate with the Bar constituted a violation of DR 1-103(C).

The court found several aggravating factors in this case, most significant of which was the fact that Schaffner had recently been disciplined by the Supreme Court for virtually identical misconduct.

Cite as 325 Or 421
 IN THE SUPREME COURT
 OF THE STATE OF OREGON

In Re:)
)
 Complaint as to the Conduct of)
)
 JOHN BOURCIER,)
)
 Accused.)
 _____)

(OSB No. 96-37; SC S42594)

In Banc

On review of the decision of a trial panel of the Disciplinary Board.

Submitted on the record May 2, 1997.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, waived appearance for the Oregon State Bar.

No appearance *contra*.

PER CURIAM

The accused is disbarred.

Summary:

On June 26, 1997, the supreme court filed its opinion disbaring John Bourcier. John Bourcier was found to have violated DR 6-101(B), neglect of a legal matter, and DR 1-103(C), failing to cooperate with a disciplinary investigation.

The trial court appointed Bourcier to represent a client on appeal of a criminal conviction. He filed a brief (after the court granted him five extensions of time for that task) and represented the client at oral argument. However, Bourcier never communicated with the client concerning the appeal. Specifically, he failed to advise the client of the requests for extensions, failed to discuss and review the brief with the client, failed to inform the client that the appellant's brief had been filed or to provide the client with a copy of the brief, failed to advise the client that the respondent's brief had been filed or to provide a copy of the brief, failed to inform the client of scheduled oral argument, failed to advise the client of the court's decision which affirmed the conviction and failed to provide the client with a copy of the decision and appellate judgment.

Several years later, the client filed a complaint with the bar. At that time, Bourcier was suspended as a result of an earlier disciplinary action. The disciplinary counsel's office notified Bourcier of the new complaint and requested his explanation. He did not respond. The matter was then referred to the Local Professional Responsibility Committee. Bourcier did not respond to its inquiries.

Bourcier had a prior record of discipline. In September 1993, the Disciplinary Board approved a stipulation for discipline whereby he accepted a 60-day suspension from the practice of law. In February 1996, the supreme court suspended Bourcier for three years, based on a complaint that Bourcier failed to consult with or advise his client about an appeal, failed to file an appellant's brief, failed to respond to his client's inquiries about the status of his appeal or its dismissal and failed to respond to the bar's inquiries about the complaint.

In disbarring Bourcier, the court noted that his failure to cooperate with the bar in the most recent proceeding occurred after he had received the maximum sanction, short of disbarment, for similar misconduct in the second proceeding. Bourcier's continuation of similar misconduct was deemed particularly significant. The court concluded that a lawyer who neglects clients' cases and fails to cooperate with the disciplinary authorities is a threat to the profession and the public, and that such conduct warrants a significant sanction, in this case, disbarment.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
Complaint as to the Conduct of) Case No. 95-179
JEFFREY A. BOWERSOX,)
Accused.)
_____)

Bar Counsel: Gregory A. Chaimov, Esq.
Counsel for the Accused: Michael A. Greene, Esq.
Disciplinary Board: Norman Wapnick, Esq., Chair; Mark M. McCulloch, Esq.; Wilbert H. Randle, Jr., Public Member
Disposition: Violation of DR 1-102(A)(3), DR 6-101(B) and DR 1-103(C). Stipulation for Discipline. Ninety-day suspension.
Effective Date of Opinion: 7-1-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	OSB No. 95-179
)	
JEFFREY A. BOWERSOX,	)	ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.)	
_____)	

This matter having come on to be heard upon the Stipulation of 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 approved and the Accused shall be suspended from the practice of law for a period of ninety (90) days for violation of DR 1-102(A)(3), DR 6-101(B) and DR 1-103(C) of the Code of Professional Responsibility, effective July 1, 1997.
 Dated this 1st day of July, 1997.

_____/s/
 Todd A. Bradley
 State Disciplinary Board Chairperson

_____/s/
 Ann 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. 95-179
)	
JEFFREY A. BOWERSOX,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Jeffrey A. Bowersox, 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, Jeffrey A. Bowersox, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, voluntarily and with the advice of counsel. 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 1-102(A)(3), DR 1-103(C) and DR 6-101(B) of the Code of Professional Responsibility. The Bar filed its Formal Complaint on September 20, 1996.

Facts

5.

On or about February 22, 1994, Tamisha White (hereinafter, "White") was involved in a motor vehicle accident. White sustained personal injuries and property damage to her vehicle and retained the Accused to pursue her claims against the other driver, who was insured by State Farm Mutual Automobile Insurance Company. The Oregon Department of Human Resources, Adult and Family Services, (hereinafter, "AFS"), claimed a lien for \$1,384, paid for certain of White's medical expenses, upon any judgment, settlement or compromise of White's claim against the other driver (hereinafter, "AFS Lien"). AFS notified State Farm and the Accused of its lien.

6.

On or about October 24, 1994, the Accused told AFS that White would not settle her claim for an amount of money that would be insufficient to pay all outstanding medical bills and liens. An AFS caseworker (hereinafter, "AFS Caseworker") who was in charge of Ms. White's case understood that the Accused would notify the AFS Caseworker when White's claim was settled or resolved. On October 25, 1994, the Accused and State Farm settled White's claim for \$20,000. The Accused acknowledged to State Farm that AFS claimed a lien against the personal injury recovery. White had informed the Accused that she did not want to pay the AFS lien "unless she had to."

7.

On October 26, 1994, State Farm prepared and delivered two drafts to the Accused. One draft (hereinafter, "White Draft") was payable to White and the Accused in the amount of \$18,616. The White Draft was endorsed by White and the Accused and was deposited into the Accused's trust account. The proceeds were thereafter properly disbursed to White, to doctors with outstanding medical bills owed by White, and to the Accused for his attorney fee.

8.

The second draft (hereinafter "AFS Draft") was made payable to AFS, White and the Accused in the amount of the AFS Lien, \$1,384. State Farm's adjuster understood that the Accused would deliver the AFS Draft to AFS. White and the Accused endorsed the AFS Draft, which the Accused then placed in his file. Shortly thereafter, the Accused determined that there was no basis to challenge the AFS Lien.

9.

On October 26, 1994, the AFS Caseworker assigned to White's case was informed by State Farm that White's case had settled the day before, on October 25, 1994. AFS was required to satisfy its lien within six months after the personal injury claim was settled, or its lien was unenforceable against White. The Accused told White that he was in no hurry to deliver the AFS Draft to AFS because, in another case, AFS did not demand payment within the six month time limitation to satisfy its lien from the settlement proceeds, and, as a result, the client received the money. The Accused did not have any attorney-client relationship with AFS or the AFS Caseworker.

10.

Between about November 1994 and early March 1995, the Accused did not inform State Farm that he had not delivered the AFS Draft to AFS, nor inform AFS or State Farm that White challenged the AFS Lien. During this time, the Accused did not properly communicate with or respond to the AFS Caseworker's attempts to communicate with him regarding the lien.

11.

On or about March 3, 1995, the AFS Caseworker again contacted State Farm regarding White's personal injury claim. State Farm again informed the AFS Caseworker that White's personal injury claim had been settled on October 25, 1994, and that the AFS Draft had been delivered to the Accused shortly thereafter. AFS notified State Farm that the AFS Lien remained unpaid, and demanded payment. About March 10, 1995, the Accused told the AFS Caseworker that he would mail the AFS Draft to AFS the first of the following week. The Accused failed to mail the AFS Draft to AFS for approximately three weeks. If uncollected, the AFS lien would have expired on or about April 26, 1995.

12.

About March 31, 1995, AFS filed a complaint with the Oregon State Bar concerning the Accused's conduct. By letter dated April 6, 1995, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his explanation. Before the Accused received the Bar's letter, AFS had already received and cashed the AFS Draft.

13.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(3) and DR 6-101 (B) of the Code of Professional Responsibility.

14.

In responding to the inquiry of the Disciplinary Counsel's Office, the Accused represented: (1) White had legal and factual disputes regarding the AFS Lien; (2) White did not give the Accused authority to distribute funds to AFS; (3) it was never his intent to deprive AFS of funds to which it could prove it was entitled; (4) his response to the Bar was limited to the extent necessary to preserve White's confidences and secrets; and (5) there was a "short delay" in AFS's receipt of the AFS Draft after he had authority from White to send it to AFS. These representations were inaccurate and incomplete and the Accused knew or should have known that his explanation was not in accord with the facts. The Accused admits that by failing to respond

fully and accurately to the inquiries of the Disciplinary Counsel's Office, he violated DR 1-103(C).

Sanction

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards") 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. Standards, § 3.0.

a. Duty. In violating DR 1-102(A)(3), DR 6-101(B) and DR 1-103(C), duties to the client, the public and the profession are implicated. Standards, §§ 4.4, 5.1(b), 6.12 and 7.2.

b. State of Mind. The Accused's conduct in formulating a plan to hold the AFS Draft until AFS's Lien rights were lost, and in responding inaccurately and incompletely to the Bar, demonstrates intent, which is the conscious awareness to accomplish a particular purpose. With respect to the charge of neglect, the Accused acted with knowledge, which is the conscious awareness of the attendant circumstances, but without the conscious objective or purpose to accomplish a particular result. Standards, p. 7.

c. Injury. As a result of the Accused's conduct, there existed the potential for injury to his client, the public, the legal system and the profession, even though the Accused had no intent to obtain for himself a greater benefit than he was entitled. Standards, p. 7.

- d. Aggravating factors. Aggravating factors to be considered include:
1. The Accused was admitted to practice in 1981 and has substantial experience in the practice of law. Standards, § 9.22(i).
 2. This Stipulation involves three rule violations. Standards, § 9.22(d).
 3. The Accused's conduct demonstrates improper and overzealous motives in his effort to obtain additional benefits for his client. Standards, §9.22(b).
 4. The Accused initially failed to provide a complete and accurate response to the Bar's request for explanation of the AFS complaint. Standards, § 9.22(f).
- e. Mitigating factors. Mitigating factors to be considered include:
1. The Accused has no prior record of discipline. Standards, § 9.32(a).
 2. The Accused acknowledges the wrongfulness of his conduct and is remorseful. Standards, § 9.32(l).
 3. The Accused has demonstrated a cooperative attitude in resolving this disciplinary proceeding. After his initial response, the Accused made a voluntary and full explanation of all material facts. Standards, § 9.32(e).

16.

The Standards provide that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of the duty owed to the profession and causes injury or potential injury to a client, the public or the legal system, when the lawyer knows that false statements are being submitted, or withholds material information and takes no remedial action, when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyers fitness to practice, and causes an adverse or potentially adverse effect to the proceeding or a party to the proceeding. Standards, §§ 5.11(b), 6.12,

7.2.

17.

There are no Oregon cases which describe the exact conduct and circumstances detailed in this Stipulation. However, a few cases provide some guidance. In In re Hansen, the Supreme Court approved a 90-day suspension for violation of DR 1-102(A)(4), DR 1-102(A)(3), and DR 1-103(C). The underlying conduct concerned the alteration of a bail assignment and later misrepresentations to the Bar in its investigation concerning the lawyer's actions and his knowledge of the events which led to the disciplinary violations. In In re Johnson, 9 DB Rptr 151 (1995), the lawyer admitted violation of DR 1-102(A)(3), DR 7-102(A)(7) and DR 2-110(B)(2) and was suspended for 90 days. There, the lawyer was aware his client had collected worker's compensation benefits to which the client was not entitled, did not direct the client to return the money and took steps to assist the client in retaining the funds. In In re Mendez, 10 DB Rptr 129 (1996), the Disciplinary Board approved a 30-day suspension for the lawyer's violation of DR 2-101(A), DR 1-102(A)(3), and DR 1-103(C). The latter charges concerned the lawyer's misrepresentations to the Bar, more specifically a cavalier approach in responding to the allegations. The lawyer claimed that he had made some "assumptions" rather than checking the file and confirming representations before presenting them to the Bar.

18.

In light of the Standards and Oregon case law, the Bar and the Accused agree that the Accused should be suspended from the practice of law for ninety (90) days for violation of DR 1-102(A)(3), DR 6-101(B) and DR 1-103(C) of the Code of Professional Responsibility.

19.

This Stipulation for Discipline has been approved by the State Professional Responsibility Board, reviewed by the Disciplinary Counsel of the Oregon State Bar and is subject to the approval of the Disciplinary Board pursuant to BR 3.6. If this Stipulation is approved by the Disciplinary Board, the Accused shall be suspended from the practice of law effective July 1, 1997, or the day of such approval, whichever is later.

DATED this 30th day of June, 1997.

/s/

Jeffrey A. Bowersox, OSB No. 81442

OREGON STATE BAR

By: _____

/s/

Jane E. Angus, OSB No. 73014
Assistant Disciplinary Counsel

Cite as 325 Or 467
IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
)
Complaint as to the Conduct of)
)
ROY B. THOMPSON,)
)
Accused.)
_____)

(OSB 94-198; SC S43466)

On review of the decision of a Trial Panel of the Disciplinary Board.

Argued and submitted January 17, 1997.

Brad Littlefield, of Williams, Fredrickson & Stark, P.C., Portland, argued the cause for the accused. With him on the briefs was Steven M. Claussen, Portland.

Mary Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

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 63 days commencing on the effective date of this decision.

* Kulongoski, J., did not participate in the consideration or decision of this case.

Summary:

Effective August 25, 1997, the Oregon Supreme Court suspended Lake Oswego attorney Roy B. Thompson for 63 days for violating DR 7-110(B) and DR 1-102(A)(4).

The charges arose out of a case in which Thompson sued former clients for attorneys fees. The clients prevailed at trial, and Thompson appealed. The appellate court issued its opinion upholding the judgment against Thompson. Immediately upon receiving the opinion, Thompson drove from his office in the Portland area to Salem intending to discuss the matter with the appellate judges. Thompson testified that he did not call ahead to schedule an appointment because he wanted to surprise the judges so they would not have time to prepare a "cover-up".

When Thompson arrived at the appellate court offices, he asked a judicial assistant about the availability of the judges who had sat on his panel. The judicial assistant noted that Thompson appeared to be angry and agitated, and she became frightened. She informed Thompson that the judges were not available. At that moment, one of the judges walked down the hallway.

Thompson stepped around the judicial assistant and approached the judge, waving a rolled copy of the appellate opinion in his outstretched hand. Thompson angrily said to the judge, "These are lies. You know these are lies. You are sending me to hell with these lies. You haven't read the record. The least you could do is read the record." Out of concern for the judge's safety, a law clerk stepped between the judge and Thompson, who then left.

The court found that by contacting a judge concerning a matter pending before the court

(the reconsideration period had not yet expired), without notifying the other side, Thompson engaged in an impermissible *ex parte* contact in violation of DR 7-110(B). The court found that the communication was an attempt to affect the appellate judge's decision-making process, and was therefore "on the merits."

The court also found that Thompson's conduct violated DR 1-102(A)(4). It was an unfair attack upon the independence, integrity and respect due a judge. The conduct also had the potential to cause substantial harm or injury because the judge might have been improperly influenced or intimidated into changing her decision or recusing herself from further participation in the case. Thompson's conduct caused substantial harm to the administration of justice by subjecting court personnel to his frightening emotional outburst.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
Complaint as to the Conduct of) Case No. 96-112-A
JOHN R. PETERSON,)
Accused.)
_____)

Bar Counsel: n/a

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

Disciplinary Board: Chair: n/a

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

Effective Date of Opinion: 7-21-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-112-A
)	
John R. Peterson,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
<hr/>		

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 public reprimand for violation of DR5-101(A) and DR 5-104(A).
DATED this 21st day of July, 1997.

/s/
Todd A. Bradley
State Disciplinary Board Chairperson

/s/
Robert M. Johnstone, Region 4,
Disciplinary Board Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-112-A
)	
JOHN R. PETERSON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

John R. Peterson, 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 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 R. Peterson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Yamhill County, Oregon.

3.

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

4.

In March 1997, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused for violations of DR 5-101(A) and DR 5-104(A) in connection with the Accused’s representation of Norm and Jeannette Scott. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

DR 5-101(A) and DR 5-104(A)

Since 1976, the Accused has performed legal services on behalf of Norm and Jeannette Scott (hereinafter “the Scotts”) on a variety of legal matters. On or about January 1, 1988, the Accused joined the firm of Cummins, Brown, et al. (hereinafter, “the firm”). At the time, the Accused represented the Scotts in their efforts to sell a portion of real property (hereinafter, “the Lancaster property”) to a tenant.

As of October 1991, no sale had occurred and the Scotts’ lender on the Lancaster property had declined the Scotts’ request for a loan extension. Between October 1991 and July 1993, the Accused continued to represent the Scotts in their attempts to sell the real property to one or more tenants and a potential purchaser. These sales were unsuccessful and the Scotts were also unsuccessful in their attempts to refinance the property. The Scotts asked the Accused to help them attempt to secure refinancing. The Accused was unsuccessful in his refinancing attempts and, in July 1993, the Scotts’ current lender made demand for immediate payment of the loan balance.

On or about July 1993, the Accused’s law partner, Reuel Fish, began checking for other sources of financing on the Scotts’ behalf. As of September 1993, Fish’s efforts were unsuccessful. The Accused and Fish discussed resolving the Scotts’ legal problem by way of a co-ownership of the Lancaster property between the Scotts and the firm.

In October 1993, Fish contacted Commercial Bank to explore obtaining a loan on

behalf of both the firm and the Scotts. On or about November 30, 1993, the firm received a commitment letter from Commercial Bank approving a loan between the firm and the Scotts. On December 1, 1993, the Accused notified the Scotts' current lender's attorney of the Commercial Bank commitment letter.

On December 6, 1993, the Accused wrote the Scotts and advised them of the Commercial Bank commitment letter. He also outlined in general terms the proposed joint venture: the firm would acquire an undivided interest in the Lancaster property in consideration for satisfaction of the outstanding legal fees owed by the Scotts to the firm and the pay-off of the Scott's debt on the property.

As of December 6, 1993, the Accused knew that the interests of the firm and the Scotts in the transaction were in conflict, and also knew that the Scotts expected the Accused to exercise his independent judgment on their behalf. The Accused's December 6, 1993, letter to the Scotts failed to apprise the Scotts of the conflict of interest between the Scotts and the firm in the proposed joint venture. The letter also failed to advise the Scotts to seek independent counsel to determine if they should consent to the transaction and the firm's continued representation of the Scotts in the transaction.

On or about December 17, 1993, the Accused met with Fish and a second partner, Jerry Brown, to discuss the firm's involvement in the joint venture. As a result of the meeting, Fish drafted a memo to the Accused and Brown regarding the structure of the refinancing, a proposed tenants-in-common agreement between the Scotts and the firm, and an option agreement. Included in the memo was a "to do" list which included having the Scotts obtain legal counsel to review the transaction and the documents, or for the firm to convince itself that it would be acceptable to have the Scotts waive any conflict.

As of December 17, 1993, the Scotts had not received a written explanation from the Accused, Brown or Fish of the parties' differing business interests. As of December 17, 1993, the Accused knew that the interests of the firm and the Scotts in the transaction were adverse and that the Scotts expected the firm to exercise its professional judgment on their behalf.

On January 14, 1994, the Accused orally advised the Scotts of their need to consult independent counsel and documented this discussion in a file note indicating that a letter would be provided before or at the close of the transaction.

On February 16, 1994, the day before the closing of the sale and the refinance transaction, the Accused provided the Scotts with a detailed letter outlining the transaction. While the letter contained an acknowledgment and a signature line reciting that the Scotts understood that a potential conflict existed between themselves and the firm and that the Scotts had been advised to seek independent counsel, the letter contained no specific recitation of the adversity of the parties' respective interests.

The Accused's February 16, 1994, letter did not comply with the full disclosure requirements of DR 10-101(B)(1). On February 17, 1994, the Accused's partner Fish represented the Scotts in closing the transaction. At no time prior to the closing did the Accused fully disclose the adverse interests between the firm and the Scotts. In failing to do so, the Accused admits that he violated DR 5-101(A) and DR 5-104(A).

6.

Sanction

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions 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.

Ethical Duty Violated

The Accused violated his duty of loyalty to current clients, a duty which includes an obligation to avoid a conflict of interest. ABA Standards § 4.3.

Mental State

The Accused, in an attempt to help his client out of a financially difficult situation, was negligent in not determining whether a lawyer's self interest and a business relations conflict existed between himself and the Scotts. ABA Standards at 7.

Injury

Given the respective parties' differing interests in the transaction, a potential for injury to the Scotts existed. In actuality, the Scotts had no alternative financing but for the involvement of the law firm, and likely would have lost their interest in the Lancaster property without the firm's participation. The transaction closed in February 1994, and the Scotts expressed their appreciation to the Accused thereafter. However, a dispute between the Scotts and the firm developed in July 1995 when the firm gave the Scotts notice that it was going to exercise its option and purchase the Scotts' remaining interest in the Lancaster property. That legal dispute has not been resolved to date.

Aggravating/Mitigating Factors

- a. Aggravating factor:
 1. The Accused has substantial experience in the practice of law having been admitted to the Bar in 1972. ABA Standards § 9.22(i).
- b. Mitigating factor:
 1. The Accused has no prior disciplinary record. ABA Standards § 9.32(a).

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interest and causes injury or potential injury to a client. Standards § 4.33 at 31.

Oregon case law is in accord. See, In re Carey, 307 Or 315, 767 P2d 438 (1989); In re Harrington, 301 Or 18, 718 P2d 725 (1986); In re Bishop, 297 Or 479, 686 P2d 350 (1984).

7.

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

8.

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 March 15, 1997. Pursuant to BR 3.6, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration.

EXECUTED this 7th day of July, 1997.

/s/
John R. Peterson

EXECUTED this 14th day of July, 1997.

/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. 96-112-B
REUEL FISH,)
Accused.)

Bar Counsel: n/a

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

Disciplinary Board: n/a

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

Effective Date of Opinion: 7-21-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-112-B
)	
REUEL FISH,	)	ORDER ACCEPTING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
)	

This matter, having come to to be heard upon the Stipulation 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 public (sic) reprimanded for violation of DR 5-101(A) and DR 5-104(A).

DATED this 21st day of July, 1997.

 /s/
 Todd A. Bradley
 State Disciplinary Board Chairperson

 /s/
 Robert M. Johnstone, Region 4,
 Disciplinary Board Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-112-B
)	
REUEL FISH,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Reuel Fish, 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 all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

2.

The Accused, Reuel Fish, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 30, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Yamhill County, Oregon.

3.

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

4.

In March 1997, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused for violations of DR 5-101(A) and DR 5-104(A) in connection with the Accused’s representation of Norm and Jeannette Scott. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

DR 5-101(A) and DR 5-104(A)

Since 1976, John Peterson (hereinafter “Peterson”) has performed legal services on behalf of Norm and Jeannette Scott (hereinafter “the Scotts”) on a variety of legal matters. On or about January 1, 1988, Peterson joined the firm of Cummins, Brown, et al., of which the Accused was a member. At the time, Peterson represented the Scotts in their efforts to sell a portion of real property (hereinafter, “the Lancaster property”) to a tenant.

As of October 1991, no sale had occurred and the Scotts’ lender on the Lancaster property had declined the Scotts’ request for a loan extension. Between October 1991 and July 1993, the Accused’s firm continued to represent the Scotts in their attempts to sell the real property to one or more tenants and a potential purchaser. These sales were unsuccessful and the Scotts were also unsuccessful in their attempts to refinance the property. The Scotts asked the Accused’s firm to help them attempt to secure refinancing. The Accused’s firm was unsuccessful in his refinancing attempts and, in July 1993, the Scotts’ current lender made demand for immediate payment of the loan balance.

In or about July 1993, the Accused began checking for other sources of financing on the Scotts’ behalf. As of September 1993, the Accused’s efforts were unsuccessful. The Accused and Peterson discussed resolving the Scotts’ legal problem by way of a co-ownership of the Lancaster property between the firm and the Scotts.

In October 1993, the Accused contacted Commercial Bank to obtain a loan on behalf of

both the firm and the Scotts. As of November 30, 1993, the firm received a commitment letter from Commercial Bank approving a loan between the firm and the Scotts. On December 1, 1993, Peterson notified the Scotts' current lender's attorney of the Commercial Bank commitment letter.

On December 6, 1993, Peterson wrote the Scotts and advised them of the Commercial Bank commitment letter. He also outlined in general terms the proposed joint venture: the firm would acquire an undivided interest in the Lancaster property in consideration for satisfaction of the outstanding legal fees owed by the Scotts to the firm and the pay-off of the Scott's debt on the property.

On or about December 17, 1993, the Accused met with Peterson and a second partner, Jerry Brown, to discuss the firm's involvement in the joint venture. As a result of the meeting, the Accused drafted a memo to Peterson and Brown regarding the structure of the refinancing, a proposed tenants-in-common agreement and an option agreement. Included in the memo was a "to do" list which included having the Scotts obtain legal counsel to review the transaction and the documents, or for the firm to convince itself that it would be acceptable to have the Scotts waive any conflict.

As of December 17, 1993, the Scotts had not received a written explanation from the Accused, Peterson or Brown of the parties' differing business interests. As of December 17, 1993, the Accused knew that the Scotts expected the Accused, Peterson and Brown to exercise their professional judgment on the Scotts' behalf.

On January 14, 1994, the Accused's firm orally advised the Scotts of their need to consult independent counsel and documented this discussion in a file note indicating that a letter would be provided before or at the close of the transaction.

On February 16, 1994, the day before the closing of the sale and the refinance transaction, Peterson provided the Scotts with a detailed letter outlining the transaction. While the letter contained an acknowledgment and a signature line reciting that the Scotts understood that a potential conflict existed between themselves and the firm and that the Scotts had been advised to seek independent counsel, the letter contained no specific recitation of the adversity of the parties' respective interests.

Peterson's February 16, 1994, letter did not comply with the full disclosure requirements of DR 10-101(B)(1). On February 17, 1994, the Accused represented the Scotts in closing the transaction.

At no time prior to the closing did the Accused fully disclose the adverse interests between the firm and the Scotts. In failing to do so, the Accused admits that he violated DR 5-101(A) and DR 5-104(A).

6.

Sanction

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions 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.

Ethical Duty Violated

The Accused violated his duty of loyalty to current clients, a duty which includes an obligation to avoid a conflict of interest. ABA Standards § 4.3.

Mental State

The Accused was negligent in not disclosing that a lawyer's self-interest and a business relations conflict existed between himself and the Scotts. ABA Standards at 7.

Injury

Given the respective parties' differing interests in the transaction, a potential for injury to the Scotts existed. In actuality, the Scotts had no alternative financing but for the

involvement of the law firm, and likely would have lost their interest in the Lancaster property without the firm's participation. The transaction closed in February 1994, and the Scotts expressed their appreciation to the Accused's partner, Peterson, thereafter. However, a dispute between the Scotts and the firm developed in July 1995 when the firm gave the Scotts notice that it was going to exercise its option and purchase the Scotts' remaining interest in the Lancaster property. That legal dispute has not been resolved to date.

Aggravating/Mitigating Factors

- a. Aggravating factor:
 1. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1986. ABA Standards § 9.22(i).
- b. Mitigating factor:
 1. The Accused has no prior disciplinary record. ABA Standards § 9.32(a).

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interest and causes injury or potential injury to a client. Standards § 4.33 at 31.

Oregon case law is in accord. See, In re Carey, 307 Or 315, 767 P2d 438 (1989); In re Harrington, 301 Or 18, 718 P2d 725 (1986); In re Bishop, 297 Or 479, 686 P2d 350 (1984).

7.

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

8.

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 March 15, 1997. Pursuant to BR 3.6, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration.

EXECUTED this 19th day of June, 1997.

_____/s/
Reuel Fish

EXECUTED this 14th day of July, 1997.

_____/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. 96-112-C
JERRY K. BROWN,)
Accused.)
_____)

Bar Counsel: n/a
Counsel for the Accused: Peter R. Jarvis, Esq.
Disciplinary Board: Chair: n/a
Disposition: Violation of DR 5-101(A), DR 5-104(A).
Stipulation for Discipline. Public Reprimand.
Effective Date of Opinion: 7-21-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-112-C
)	
JERRY K. BROWN,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be public reprimand for violation of DR5-101(A) and DR 5-104(A).

DATED this 21st day of July, 1997.

/s/
Todd A. Bradley
State Disciplinary Board Chairperson

/s/
Robert M. Johnstone, Region 4,
Disciplinary Board Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-112-C
)	
JERRY K. BROWN,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
<hr/>		

Jerry K. Brown, 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 all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

2.

The Accused, Jerry K. Brown, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1979, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Yamhill County, Oregon.

3.

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

4.

In March 1997, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused for violations of DR 5-101(A) and DR 5-104(A) in connection with the Accused's representation of Norm and Janette Scott. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

DR 5-101(A) and DR 5-104(A)

In 1993, the Accused was a partner in the firm of Cummins, Brown, et al (hereinafter "the firm"). In July 1993, two of his partners, John Peterson and Reuel Fish, were assisting Norm and Jeannette Scott (hereinafter, "the Scotts") in efforts to sell a portion of real property (hereinafter, "the Lancaster property") and to obtain refinancing.

As of October 1991, no sale had occurred and the Scotts' lender on the Lancaster property had declined the Scotts' request for a loan extension. Between October 1991 and July 1993, the Accused's firm continued to represent the Scotts in their attempts to sell the real property to one or more tenants and a potential purchaser. These sales were unsuccessful and the Scotts were also unsuccessful in their attempts to refinance the property. The Scotts asked the Accused's firm to help them attempt to secure refinancing. The Accused's firm was unsuccessful in his refinancing attempts and, in July 1993, the Scotts' current lender made demand for immediate payment of the loan balance.

As of the fall of 1993, Peterson's efforts had been unsuccessful and he and Fish began discussing resolving the Scotts' legal problems by way of a co-ownership of the Lancaster property between the Scotts and the firm. As of late November, the firm had received a commitment letter from Commercial Bank approving a loan between the firm and the Scotts.

On or about December 17, 1993, the Accused met with Peterson and Fish to formalize the nature of the firm's interest in the property and discuss the refinancing of the property, the

firm's interest in it and an option to purchase the Scotts' interest at some future date. As a result of the meeting, Fish drafted a memo to the Accused and Peterson regarding the transaction, and the need to have the Scotts obtain legal counsel to review the transaction or for the firm to convince itself that it would be acceptable to have the Scotts waive any conflict.

As of December 17, 1993, the Scotts had not received a written explanation from the Accused or his partners of the parties' differing business interests in the transaction. As of December 17, 1993, the Accused knew that the interests of the firm and the Scotts in the transaction were adverse, and that the Scotts expected the firm to exercise its professional judgment on their behalf.

On January 14, 1994, the Accused's firm orally advised the Scotts of their need to consult independent counsel and documented this discussion in a file note indicating that a letter would be provided before or at the close of the transaction.

On February 16, 1994, the day before the closing of the sale and the refinance transaction, the Accused's partner, Peterson, provided the Scotts with a detailed letter outlining the transaction. While the letter contained an acknowledgment and a signature line, reciting that the Scotts understood that a potential conflict existed between themselves and the firm, and that the Scotts had been advised to seek independent counsel, the letter contained no specific recitation of the adversity of the parties' respective interests.

The Accused acknowledges that Peterson's February 16, 1994, letter did not comply with the full disclosure requirements of DR 10-101(B)(1), and further acknowledges that at no time prior to the closing of the transaction did the Accused fully disclose the adverse interests between the firm and the Scotts. For failing to do so, the Accused admits that he violated DR 5-101(A) and DR 5-104(A).

6.

Sanction

The Accused and the Bar agree that in fashioning the appropriate sanction the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions 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.

Ethical Duty Violated

The Accused violated his duty of loyalty to current clients, a duty which includes an obligation to avoid a conflict of interest. ABA Standards § 4.3.

Mental State

The Accused was negligent in not disclosing that a lawyer's self-interest and a business relations conflict existed between himself and the Scotts. ABA Standards at 7.

Injury

Given the respective parties' differing interests in the transaction, a potential for injury to the Scotts existed. In actuality, the Scotts had no alternative financing but for the involvement of the law firm, and likely would have lost their interest in the Lancaster property without the firm's participation. The transaction closed in February 1994, and the Scotts expressed their appreciation to the Accused's partner, Peterson, thereafter. However, a dispute between the Scotts and the firm developed in July 1995 when the firm gave the Scotts notice that it was going to exercise its option and purchase the Scotts' remaining interest in the Lancaster property. That legal dispute has not been resolved to date.

Aggravating/Mitigating Factors

- a. Aggravating factor:
 1. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1979. ABA Standards § 9.22(i).
- b. Mitigating factor:
 1. The Accused has no prior disciplinary record. ABA Standards

§ 9.32(a).

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interest and causes injury or potential injury to a client. Standards § 4.33 at 31.

Oregon case law is in accord. See, In re Carey, 307 Or 315, 767 P2d 438 (1989); In re Harrington, 301 Or 18, 718 P2d 725 (1986); In re Bishop, 297 Or 479, 686 P2d 350 (1984).

7.

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

8.

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 March 15, 1997. Pursuant to BR 3.6, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration.

EXECUTED this 18th day of June, 1997.

/s/

Jerry K. Brown

EXECUTED this 14th day of July, 1997.

/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. 95-213
RONALD E. BAILEY,)
Accused.)
_____)

Bar Counsel: Frank Noonan, Jr., Esq.
Counsel for the Accused: Peter R. Jarvis, Esq.
Disciplinary Board: n/a
Disposition: Violation of DR 7-102(A)(3). Stipulation for Discipline.
Public Reprimand.
Effective Date of Opinion: 8-2-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 95-213
)	
RONALD E. BAILEY,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Ronald E. Bailey, 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, 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, voluntarily and with the advice of counsel. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

At its September 21, 1996, meeting, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(3) of the Code of Professional Responsibility.

FACTS

5.

Beginning in 1990, the Accused represented Federated Service Insurance Company ("Federated") in an action brought against it by plaintiff Michael Mathews entitled Mathews v. Federated Mutual Insurance Co., Multnomah County Circuit Court Case No. 90-08-05231. During the course of initial discovery requests in that case, counsel for plaintiff served a request for production of documents that called for the production of "all insuring policies between Carlson Chevrolet ("Carlson") and Federated." Although Federated had in fact issued an excess policy to Carlson, it provided two copies of the primary liability policy but did not provide a copy of the excess policy to the Accused in response to the discovery request, with the result that the excess policy was not produced to plaintiff at the time. The Accused was not aware of this oversight.

6.

Prior to May 8, 1991, the Accused inquired of Federated regarding the existence of an excess policy and upon being advised one existed, requested that it be sent for review and production. Shortly thereafter, the Circuit Court granted summary judgment in Federated's favor on grounds unrelated to the presence or absence of an excess policy. The plaintiff appealed. Over two and one half years later, the Court of Appeals reversed the order granting summary

judgment and remanded the matter for trial. Mathews v. Federated Service Ins. Co., 122 Or App 124, 857 P2d 852 (1993). In the interim, the excess policy was forgotten, was not received by the Accused, and was therefore not produced.

7.

Although the Accused had not been involved in the matter while it was on appeal, he did become involved again as the trial date approached in early 1994. The Accused, with the help of another attorney at his firm, tried the case from March 15 to March 21, 1994. The only issue at the trial concerned coverage under Federated's primary liability policy. The jury returned a verdict for plaintiff in the amount of \$750,000, which exceeded the \$500,000 amount of the primary liability policy.

8.

On April 1, 1994, the Accused, with the assistance of another lawyer in his firm, filed Federated's Objections to Plaintiff's Proposed Judgment, the effect of which would be to limit the judgment to \$500,000, the amount of Federated's primary liability policy. The Accused did not then recall that Federated had represented that it had issued an excess policy to Carlson Chevrolet or other communications concerning the policy. On April 7, 1994, the court held a hearing on Federated's objections. Plaintiff's counsel conceded the objection based on his understanding that the primary liability policy was the only insuring policy issued, because it was the only policy produced.

9.

On April 10, 1994, the Accused's associate became aware that the excess policy had not been produced to the plaintiff. The Accused was notified and requested a copy of any excess policy from Federated on April 12, 1994, which was supplied by Federated and received by the Accused on April 22, 1994.

10.

At that point, the Accused participated in asking another attorney in the coverage practice group in his office to review the excess policy in order to determine whether the policy applied to plaintiff's claim. The initial review was completed on May 5, 1994, and was followed by in-house discussions and further research at the Accused's firm to confirm its application in order to be in a position to advise plaintiff's counsel of its application to the case at the time of producing it. These discussions were completed on May 11, 1994, and the excess policy was voluntarily disclosed to plaintiff's counsel on that date. The Accused also voluntarily assisted in correcting the judgment to reflect the full amount of the verdict, \$750,000.

11.

Prior to the production of the excess policy on May 11, 1994, the Accused did not disclose its existence to counsel for plaintiff. The Accused acknowledges that he had the knowledge and opportunity on April 12, 1994, and at all times prior to May 11, 1994, to disclose the existence of the excess policy to the plaintiff, but chose instead to analyze the applicability of the policy before producing it.

12.

The Accused also acknowledges that during this period of April 12 (knowledge that the policy had not been produced) to May 11 (production of policy) the Accused participated in preparing and filing a motion for JNOV which was argued and denied by the trial judge on May 10. The Accused maintains that the timing of the JNOV hearing and production of the policy were unrelated, except as preparation for and participating in the motion for JNOV delayed attention to the analysis and production of policy. The policy would have been produced regardless of the ruling on the JNOV.

13.

At all material times, ORCP 36 and 43 as construed in light of plaintiff's earlier request for production required the production of the excess policy without regard to the question whether the excess policy was or was not in fact applicable to plaintiff's claim. The Accused's failure to disclose and produce the excess policy to plaintiff's counsel without delay after it was

determined that it had not been disclosed or produced and at a time when motions were pending constituted a violation of these rules and thus a violation of DR 7-102(A)(3). Although the Accused did not intend to mislead plaintiff and was not aware that his actions could or would mislead or harm any party, the Accused's obligation to provide discovery required him to disclose and produce the excess policy before he did so.

14.

All charges under other Disciplinary Rules are withdrawn.

SANCTION

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards") 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 7-102(A)(3), the Accused violated a duty to the profession. Standards, § 7.0.

b. State of Mind. The Accused's conduct demonstrates negligence. "Negligence" is 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 potential injury to plaintiffs.

d. Aggravating factors. Aggravating factors include:

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

e. Mitigating factors. Mitigating factors include:

1. The Accused does not have a 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 did not believe that plaintiff would be harmed by delay in production of the excess policy because the Accused intended to produce it once it had been fully analyzed and discussed with Federated.

4. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving the disciplinary proceeding. Standards, §9.32(e).

5. The Accused is of good character and reputation. Standards, §9.32(g).

6. The Accused acknowledges the wrongfulness of his conduct. Standards, §9.32(l).

15.

The Standards provide that a reprimand is generally appropriate in such circumstances. Standards, § 7.3. Oregon case law imposing discipline for a violation of DR 7-102(A)(3) is scant. However, reprimands were imposed in cases involving arguably similar conduct. In re Boardman, 312 Or 452, 822 P2d 709 (1991) (violation of DR 1-102(A)(3) and DR 7-102(A)(5)); In re Zumwalt, 296 Or 631, 678 P2d 1207 (1984) (violation of DR 1-102(A)(3) and DR 7-102(A)(4)).

16.

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

17.

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 terms of BR 3.6.

DATED this 25th day of July, 1997.

/s/
Ronald E. Bailey, OSB No. 63002

OREGON STATE BAR

By _____
/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. 95-213
)	
RONALD J. CLARK,)	
)	
Accused.)	
<hr/>		

Bar Counsel:	Frank Noonan, Jr., Esq.
Counsel for the Accused:	Peter R. Jarvis, Esq.
Disciplinary Board:	n/a
Disposition:	Violation of DR 7-102(A)(3). Stipulation for Discipline. Public Reprimand.
Effective Date of Opinion:	8-1-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 95-213
)	
RONALD J. CLARK,	)	ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.)	
)	

This matter having come on to be heard upon the Stipulation of Discipline of Ronald J. Clark and the Oregon State Bar, and good cause appearing, it is hereby ORDERED that the Stipulation entered into between the parties is approved. Ronald J. Clark shall be publicly reprimanded for violation of DR 7-102(A)(3) of the Code of Professional Responsibility.

DATED this 1st day of August, 1997.

/s/
Todd A. Bradley, OSB No. 77018
State Disciplinary Board Chairperson

/s/
Ann L. Fisher, OSB No. 84045
Region 5 Disciplinary Board Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of)	Case No. 95-213
)	
RONALD J. CLARK,)	STIPULATION FOR
)	DISCIPLINE
Accused.)	
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Ronald J. Clark, 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, 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, voluntarily and with the advice of counsel. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

At its September 21, 1996, meeting, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(3) of the Code of Professional Responsibility.

FACTS

5.

Beginning in 1990, the Bullivant Houser lawfirm represented Federated Service Insurance Company ("Federated") in an action brought against it by plaintiff Michael Mathews entitled Mathews v. Federated Mutual Insurance Co., Multnomah County Circuit Court Case No. 90-08-05231. The Accused and other attorneys in the lawfirm provided litigation support to Ronald J. Bailey (hereinafter "Bailey"), who was principally responsible for the case. During the course of initial discovery requests in that case, counsel for plaintiff served a request for production of documents that called for the production of "all insuring policies between Carlson Chevrolet ("Carlson") and Federated." Although Federated had in fact issued an excess policy to Carlson, it provided two copies of the primary liability policy but did not provide a copy of the excess policy in response to the discovery request, with the result that the excess policy was not produced to plaintiff at the time. The Accused was not then aware of this oversight.

6.

Prior to May 8, 1991, Bailey inquired of Federated regarding the existence of an excess policy and upon being advised one existed, requested that it be sent for review and production. Shortly thereafter the Circuit Court granted summary judgment in Federated's favor on grounds unrelated to the presence or absence of an excess policy. The plaintiff appealed. Over two and

one half years later, the Court of Appeals reversed the order granting summary judgment and remanded the matter for trial. Mathews v. Federated Service Ins. Co., 122 Or App 124, 857 P2d 852 (1993). In the interim, the excess policy was forgotten, was not received and was therefore not produced.

7.

Although the Accused had not been involved in the matter while it was on appeal, he did become involved again as the trial date approached in early 1994. Bailey, with the Accused's litigation support tried the case from March 15 to March 21, 1994. The only issue at the trial concerned coverage under Federated's primary liability policy. The jury returned a verdict for plaintiff in the amount of \$750,000, which exceeded the \$500,000 amount of the primary liability policy.

8.

On April 1, 1994, Bailey, with the assistance of another lawyer in his firm, filed Federated's Objections to Plaintiff's Proposed Judgment, the effect of which would be to limit the judgment to \$500,000, the amount of Federated's primary liability policy. He did not then recall that Federated had represented that it had issued an excess policy to Carlson Chevrolet or other communications concerning the policy. On April 7, 1994, the court held a hearing on Federated's objections. Plaintiff's counsel conceded the objection based on his understanding that the primary liability policy was the only insuring policy issued, because it was the only policy produced. The Accused did not participate in the preparation of the objections or argument, as he was out of town and occupied with others matters after the trial and until about April 10, 1994.

9.

On April 10, 1994, the Accused became aware that the excess policy had not been produced to the plaintiff. He reviewed the file in its entirety and notified Bailey by memorandum dated April 11, 1994. On April 12, Bailey reviewed the memorandum and requested a copy of any excess policy from Federated which was supplied by Federated and received on April 22, 1994.

10.

At that point, Bailey participated in asking another attorney in the coverage practice group in his office to review the excess policy in order to determine whether the policy applied to plaintiff's claim. The initial review was completed on May 5, 1994, and was followed by in-house discussions between Bailey, the Accused and others, and further research to confirm its application in order to be in a position to advise plaintiff's counsel of its application to the case at the time of producing it. These discussions were completed on May 11, 1994, and the excess policy was voluntarily disclosed to plaintiff's counsel on that date. The Accused notified plaintiff's counsel and also assisted in voluntarily correcting the judgment to reflect the full amount of the verdict, \$750,000.

11.

Prior to the production of the excess policy on May 11, 1994, the Accused did not disclose its existence to counsel for plaintiff. The Accused acknowledges that he had the knowledge and opportunity on April 12, 1994, and at all times prior to May 11, 1994, to disclose the existence of the excess policy to the plaintiff, but chose instead to analyze the applicability of the policy before producing it.

12.

The Accused also acknowledges that during this period of April 12 (knowledge that the policy had not been produced) to May 11 (production of policy) the Accused participated in a limited role in preparing and filing a motion for JNOV which was argued and denied by the trial judge on May 10. The Accused maintains that the timing of the JNOV hearing and production of the policy were unrelated, except as preparation for and participating in the motion for JNOV delayed attention to the analysis and production of policy. The policy would have been produced regardless of the ruling on the JNOV.

13.

At all material times, ORCP 36 and 43 as construed in light of plaintiff's earlier request for production required the production of the excess policy without regard to the question whether the excess policy was or was not in fact applicable to plaintiff's claim. The Accused's failure to disclose and produce the excess policy to plaintiff's counsel without delay after it was determined that it had not been disclosed or produced and at a time when motions were pending constituted a violation of these rules and thus a violation of DR 7-102(A)(3). Although the Accused did not intend to mislead plaintiff and was not aware that his actions could or would mislead or harm any party, the Accused's obligation to provide discovery required him to disclose and produce the excess policy before he did so.

14.

All charges under other Disciplinary Rules are withdrawn.

SANCTION

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards") 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 7-102(A)(3), the Accused violated a duty to the profession. Standards, § 7.0.

b. State of Mind. The Accused's conduct demonstrates negligence. "Negligence" is 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 potential injury to plaintiffs.

d. Aggravating factors. Aggravating factors include:

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

e. Mitigating factors. Mitigating factors include:

1. The Accused does not have a 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 did not believe that plaintiff would be harmed by delay in production of the excess policy because the Accused intended to produce it once it had been fully analyzed and discussed with Federated.

4. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving the disciplinary proceeding. Standards, §9.32(e).

5. The Accused is of good character and reputation. Standards, §9.32(g).

6. The Accused acknowledges the wrongfulness of his conduct. Standards, §9.32(l).

15.

The Standards provide that a reprimand is generally appropriate in such circumstances. Standards, § 7.3. Oregon case law imposing discipline for a violation of DR 7-102(A)(3) is scant. However, reprimands were imposed in cases involving arguably similar conduct. In re Boardman, 312 Or 452, 822 P2d 709 (1991) (violation of DR 1-102(A)(3) and DR 7-102(A)(5)); In re Zumwalt, 296 Or 631, 678 P2d 1207 (1984) (violation of DR 1-102(A)(3) and DR 7-102(A)(4)).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-66; 96-67
)	
THOMAS LOFTON,)	
)	
Accused.)	
<hr/>		

Bar Counsel:	John L. Klor, Esq.
Counsel for the Accused:	Timothy Daly Smith, Esq.
Disciplinary Board:	n/a
Disposition:	Violation of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(C), DR 5-105(E). Stipulation for Discipline. Sixty-day suspension.
Effective Date of Opinion:	9-1-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-66; 96-67
)	
THOMAS D. LOFTON,	)	ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.)	
)	

This matter having come before the Disciplinary Board upon the Stipulation of Discipline of Thomas D. Lofton and the Oregon State Bar, and good cause appearing, it is hereby ORDERED that the Stipulation entered into between the parties is approved. Thomas D. Lofton shall be suspended from the practice of law for a period of sixty (60) days, effective September 1, 1997.

DATED this 12th day of August, 1997.

/s/
Todd A. Bradley, OSB No. 77018
State Disciplinary Board Chairperson

/s/
Ann L. Fisher, OSB No. 84045
Region 5 Disciplinary Board Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-66; 96-67
)	
THOMAS LOFTON,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Thomas Lofton, 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 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 all times herein mentioned 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 an office and place of business in the County of Washington, State of Oregon.

3.

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

4.

At its May 3, 1996 meeting, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused. A formal complaint was subsequently filed alleging violations of DR 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(C), DR 5-105(E) and DR 5-108(A) of the Code of Professional Responsibility.

FACTS

5.

Between about October 1992 and March 1995, the Accused was employed as an associate or corporate counsel for Secure Benefits, Inc., formerly known as Security Benefits, Inc. (hereinafter “Inc.”).

6.

During the Accused’s employment by Inc., Inc. utilized non-lawyer agents to sell estate planning documents and related services. The non-lawyer agents were employed by Secure Benefits Group (hereinafter, “Group”). The Accused provided legal advice and training to the non-lawyer agents. Group’s primary purpose was to sell estate planning, investment and insurance services and products. Although the Accused did not realize it at the time, Inc. was organized as a for-profit corporation and was owned by a non-lawyer. Inc. and Group were owned by the same individual until at least April 1995.

7.

The non-lawyer agents met with individuals who responded to Group’s advertisements. The non-lawyer agents gathered personal and financial information and checks made payable to Inc. from the individuals who purchased Inc.’s documents and services, and then forwarded the checks and other information to Inc. When the Accused received information from the agents, he declined representation in approximately 15 percent of the cases.

8.

During the Accused's employment with Inc., fees for Inc.'s estate planning documents and related services were collected by and paid to Inc. The Accused received compensation for his legal services performed for the individual clients from Inc. As a result, the Accused aided non-lawyers in the unauthorized practice of law and shared legal fees with non-lawyers. The Accused admits that his conduct violated DR 3-101(A) and DR 3-102(A) of the Code of Professional Responsibility.

9.

As an employee of Inc., the Accused's own financial, business, property or personal interests reasonably could have affected the exercise of his professional judgment on behalf of the individual clients. During the Accused's employment with Inc., Inc. was also a client of the Accused. Although the Accused endeavored to disclose this conflict of interest through the use of language that he believed satisfied the requirements of full disclosure, the Accused's disclosures did not satisfy the requirements of DR 10-101(B). The Accused admits that his conduct violated DR 5-101(A) of the Code of Professional Responsibility.

10.

During the Accused's employment by Inc., the Accused provided legal services and advice to the individual clients who purchased Inc.'s documents and services from the non-lawyer agents (hereinafter, "Individual Clients"). An attorney-client relationship was formed between the Accused and the Individual Clients.

11.

By simultaneously representing Inc. as the seller and the Individual Clients as buyers of Inc.'s documents and services, the Accused represented multiple current clients when such representation resulted in an actual or likely conflict of interest. The Accused admits that such conduct violated DR 5-105(E) of the Code of Professional Responsibility.

12.

In or about July 1993, a non-lawyer agent met with Mr. and Mrs. Paul DeBusk (the "DeBusks") concerning Inc.'s estate planning options. As a result, the DeBusks purchased an Inc. estate plan, and made a partial payment, which was forwarded to Inc., in the amount of \$750. The non-lawyer representative then forwarded the DeBusks' application to the Accused who began the preparation of documents on their behalf. The DeBusks hired an attorney who thereafter notified the Accused that they wished to terminate any relationship with Group or Inc., and demanded a refund of the \$750.

13.

The Accused represented Inc. concerning the DeBusks' dispute and attempted to resolve the dispute by proposing a partial refund of their payment. The interests of the DeBusks, as former clients of the Accused, were in actual or likely conflict with those of Inc., a current client, in a matter which was the same or significantly related to the matter in which the Accused had formerly represented the DeBusks. The Accused admits that such conduct violated DR 5-105(C) of the Code of Professional Responsibility.

14.

The remaining portions of the Formal Complaint that are not specifically addressed in this Stipulation including allegations of violation of DR 5-108 are withdrawn.

SANCTION

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter "Standards") 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 3-101(A), DR 3-102(A), DR 5-101(A), DR 5-105(C), and DR 5-105(E), the Accused violated duties to his clients and the profession. Standards,

§ 4.0, § 7.0.

b. State of Mind. The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is an awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. "Negligence" is 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. The Accused knew or should have known that he had numerous client conflicts of interest; that he had a business or financial interest in the work performed; that Inc., by its status as a for-profit corporation owned by a non-lawyer, was engaging in the unlawful practice of law and failed to prevent it; and that he was sharing fees with a non-lawyer.

c. Injury. The Accused's conduct resulted in potential injury to his clients in that he could have approved the sale of living trusts to clients for whom the estate planning option was not appropriate. Furthermore, the clients were not permitted the opportunity to determine, with knowledge of the circumstances, whether the Accused should represent them or provide legal advice in regard to their individual interests.

d. Aggravating factors. Aggravating factors include:

1. The Accused engaged in a pattern of misconduct over an extended period of time in his representation of Group, Inc., and the Individual Clients. Standards, § 9.22(c).
2. The Accused committed multiple disciplinary offenses in his representation of Group, Inc., and the Individual Clients. Standards, § 9.22(d).
3. Individual Clients were vulnerable in that they relied upon the Accused to provide them with independent legal advice. Standards, § 9.22(h).

e. Mitigating factors. Mitigating factors include:

1. The Accused does not have a prior record of discipline. Standards, § 9.32(a).
2. The Accused did not act with dishonest motives. Standards, § 9.32(b).
3. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving the disciplinary proceeding. Standards, § 9.32(e).
4. The Accused did not have substantial experience in the practice of law. Standards, § 9.32(f).
5. The Accused acknowledges the wrongfulness of his conduct. Standards, § 9.32(l).
6. The Accused was unaware until August 10, 1995 that a non-lawyer was an officer and the owner of Secure Benefits, Inc., and until September 1995 that Inc. was a "C" corporation. Since the Accused was hired by and initially reported to the president of Inc., who was a lawyer and since the Accused later reported to the successor president, also a lawyer, the Accused did not question the form of organization in which he was practicing. The Accused also did not know until August 28, 1995 that a "C" corporation could not practice law.
7. The Accused tried to comply with the rules against the unlawful practice of law, but failed to understand the rules or the significance of his conduct.
8. Most of the Accused's conduct took place before the decision in In re Durbin, 9 DB Rptr 71 (1995), was reported. Inc. lead the Accused to

believe that outside counsel had reviewed its structure, and had advised that the structure was not inappropriate. The Accused was, however, aware of the Bar's investigation and disciplinary proceeding against Durbin, his predecessor at Inc. prior to the Durbin decision. When he became aware of the Bar investigation, the Accused moved to transform Inc. into a law firm.

16.

The Standards provide that suspension is generally appropriate when a lawyer should have known 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 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. See, In re Jones, 308 Or 306, 779 P2d 1016 (1989), six-month suspension for violation of DR 1-102(A)(1), (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); In re Muir, 10 DB Rptr 37 (1996), 60-day suspension for violation of DR 3-101(A) [two counts], DR 5-101(A) [two counts], and DR 5-105(B) [two counts].

17.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a 60-day suspension from the practice of law to commence September 1, 1997, or three (3) days after approval of this Stipulation by the Disciplinary Board, whichever is later.

18.

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 to BR 3.6.

DATED this 31st day of July, 1997.

/s/

Thomas Lofton, OSB No. 90324

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. 97-118
JAMES DODGE,)
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: n/a

Disposition: Violation of 7-104((A)(1). Stipulation for Discipline.
Public Reprimand.

Effective Date of Opinion: 8-25-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 97-118
)	
JAMES DODGE,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimand for violation of DR 7-104(A)(1).

DATED this 25th day of August, 1997.

/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. 97-118
)	
JAMES DODGE,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
)	

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

1.

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

2.

The Accused, James Dodge, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1983, 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 Bar Rule of Procedure 3.6 (h).

4.

On June 19, 1997, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused for alleged violations of DR 7-104(A)(1) and DR 7-102(A)(8) in connection with the Accused's handling of a worker's compensation matter on behalf of a claimant. The Accused and the Bar agree to the following facts and disciplinary rule violations.

FACTS

5.

Sometime prior to November 13, 1996, the Accused was retained by Patricia Harrington to represent her in a worker's compensation matter. On November 13, 1996, attorney Allen W. Lyons wrote the Accused and advised that he represented Harrington's employer, Hoffman Corporation, and its insurer Sedgwick of Oregon in connection with Harrington's worker's compensation claim. Lyons' letter further stated that if the Accused needed to communicate with any present or former officer, director, representative or employee of his client, that the Accused's inquiries were to be made through Lyons' office.

6.

On January 8, 1997, Lyons submitted a master exhibit list to Gary N. Peterson, the administrative law judge assigned to the matter. A copy of this list was provided to the Accused. On January 21, 1997, the Accused submitted a supplemental exhibit list to Referee Peterson. The Accused sent the service copy of the supplemental exhibit list to Lyons' clients, rather than Lyons.

7.

On February 6, 1997, the Accused submitted an additional supplemental exhibit list to Referee Peterson. The Accused sent the service copy of the supplemental exhibit list to Lyons' clients, rather than Lyons.

8.

On February 7, 1997, Lynn McMillan, a claims representative for Sedgwick of Oregon wrote the Accused regarding his failure to copy Lyons with service copies of the documents filed in the Harrington matter. On February 10, 1997, Lyons also wrote the Accused and advised that continued direct correspondence to Lyons' clients would not be tolerated.

9.

On March 20, 1997, the Accused submitted another supplemental exhibit list to Referee Peterson. Again, the Accused sent the service copy of the supplemental exhibit list directly to Lyons' clients.

VIOLATION

10.

The Accused acknowledges that his repeated communication with Lyons' clients at a time when he knew them to be represented by counsel violated DR 7-104(A)(1).

11.

For purposes of this Stipulation, the Accused and the Bar agree that the DR 7-102(A)(8) charge is withdrawn.

SANCTION

12.

The Accused and the Bar agree that in fashioning the appropriate sanction, the Disciplinary Board should consider the ABA Standards for Imposing Lawyer Sanctions 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 factors.

a. Ethical Duty Violated

The Accused violated his duty to the legal system when he communicated with a person he knew to be represented by counsel. ABA Standards §6.3.

b. Mental State

The Accused has a large worker's compensation practice. When the office receives notification that an insurance carrier is represented by counsel, this information is supposed to be entered into the firm's data base so that correspondence can be routed to the attorney rather than the carrier. In this instance, while the Accused knew that Lyons was representing the carrier, he was negligent in both reviewing his outgoing correspondence and insuring that his staff had made the appropriate data base entries reflecting Lyons' involvement.

c. Injury

While there was no actual injury as Lyons was provided the information by his clients, the potential for injury existed.

d. Aggravating Factors

1. The Accused has substantial experience in the practice of law having been admitted in 1983. ABA Standards §9.22(a).

e. Mitigating Factors.

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

13.

The Standards provide that a reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system and causes injury or potential injury to a party. Standards §6.33 at 43. Oregon case law is in accord. See, In re McCaffrey, 275 Or 23, 549 P2d 666 (1976).

14.

Consistent with the Standards and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for violation of DR 7-104(A)(1) of the Code of Professional Responsibility.

15.

The State Professional Responsibility Board (SPRB) approved the sanction contained herein on July 19, 1997. Pursuant to BR 3.6, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration.

EXECUTED this 4th day of August, 1997.

_____/s/
James Dodge

EXECUTED this 7th day of August, 1997.

_____/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. 96-167
PAMELA EGAN SINGER,)
Accused.)

Bar Counsel: n/a
Counsel for the Accused: Allen E. Gardner, Esq.
Disciplinary Board: n/a
Disposition: Violation of DR 1-102(A)(3). Stipulation for Discipline.
Public Reprimand.
Effective Date of Opinion: 9-2-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-167
)	
PAMELA EGAN SINGER,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimanded for violation of DR 1-102(A)(3).

DATED this 2nd day of September, 1997.

/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. 96-167
)	
PAMELA EGAN SINGER,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Pamela Egan Singer, 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, Pamela Egan Singer, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State Oregon to practice law in this state and a member of the Oregon State Bar, having her office and place of business in the County of Lane, State of Oregon.

3.

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

4.

On November 23, 1996, the State Professional Responsibility Board of the Oregon State Bar authorized formal disciplinary proceedings against the Accused for violations of the Code of Professional Responsibility. A formal complaint has not yet been filed against the Accused. The Accused and the Bar agree to the following facts and disciplinary rule violations.

5.

In 1995, the Accused represented the plaintiff, Douglas Payne (hereinafter, "Payne") in Payne v. Brieger and Rider, Lane County Circuit Court No. 16-94-08723. The litigation involved allegations that certain home remodeling performed by Payne on Brieger's home was of poor quality.

6.

At all relevant times, the Accused was known to the parties in the above-described litigation as Pamela Egan. During the course of the litigation, the Accused married and changed her last name to Singer.

7.

In May or June, 1995, the Accused wanted to depose one of Brieger's witnesses who was a home remodeling contractor. The Accused believed it was necessary to serve this witness with a subpoena, but she did not have the witness' address, despite her efforts to locate the witness.

8.

In order to obtain an address where the above-described witness could be served with a subpoena and to confirm prior to any deposition whether or not the witness would be adverse to her client, the Accused directed her secretary to telephone the witness and make one or more of the following representations:

1. That her name was Pamela Singer;
2. That she was familiar with the Payne's work;
3. That her purpose in calling was to mail the witness a list of concerns she had about work Payne was performing on her own home; and
4. That she might be interested in employing the witness.

These representations were false and the Accused knew they were false when she directed or allowed her secretary to make them. The secretary did contact the witness and obtained an address and a general statement to indicate that the witness would be adverse to the Accused's client, but did not inquire about any specific, detailed information regarding the witness' potential testimony.

9.

The Accused admits that she violated the disciplinary rules through the acts of her secretary and that her secretary's representations to the witness constituted misrepresentations in violation of DR 1-102(A)(3).

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 and mitigating circumstances.

- a. The Accused violated her duties to the public to maintain her personal integrity. Standards § 5.0.
- b. With regard to the Accused's state of mind, she should have, but did not, know that her conduct violated the Code of Professional Responsibility.
- c. The Accused caused no actual injury to the witness or the opposing party by her conduct.
- 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. She was merely seeking to obtain an address for service of process and confirm the general nature of the witnesses' opinion about Paynes' work. She was not seeking to obtain privileged, confidential, proprietary or protected information or information she intended to use against the witness. She did not, moreover, have her secretary illegally impersonate a licensed professional.
 3. The Accused has made full and free disclosure to Disciplinary Counsel's Office and has displayed a cooperative attitude toward the proceedings.
 4. The Accused was inexperienced in the practice of law at the time of the conduct. Prior to the Accused's conduct, she had been self-employed and accepted primarily court appointed criminal defense matters. Her civil litigation experience was extremely limited. Since her admission to the practice of law, the Accused had not received any guidance from an experienced practitioner and was not experienced in appropriate procedures to locate and interview witnesses in litigation, nor did she have access to such information through a more experienced practitioner.
 5. Interim rehabilitation. The Accused has accepted employment with a law firm where she receives appropriate mentoring and guidance.
 6. The Accused is remorseful for her conduct.

12.

The ABA Standards provide that a public reprimand is generally appropriate when a lawyer knowingly engages in conduct that is not criminal but that involves dishonesty, fraud, deceit or misrepresentation. Standards § 5.13. Although the Supreme Court has indicated that generally a misrepresentation ought to result in a suspension, the absence of aggravating factors and the existence of several significant mitigating factors suggests that a public reprimand is appropriate. See, In re Melmon, 322 Or 380, 908 P2d 822 (1995); In re Boardman, 312 Or 452, 822 P2d 709 (1991).

13.

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 1-102(A)(3).

14.

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

EXECUTED this 18th day of August, 1997.

/s/

Pamela Egan Singer

EXECUTED this 22nd day of August, 1997.

/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)
JAMES EDUARD WHITE,) Case No. 96-34
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: n/a

Disposition: Violation of DR 7-102(A)(1). Stipulation for Discipline.
Public Reprimand.

Effective Date of Order: 9-15-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-34
)	
JAMES EDUARD WHITE,	)	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 reprimanded for violation of DR 7-102(A)(1).

DATED this 15th day of September, 1997.

_____/s/
Todd A. Bradley
State Disciplinary Board

_____/s/
Robert M. Johnstone, Region 4
Disciplinary Board Chairperson

8.

On or about April 10, 1995, the criminal charges against Sparks were dismissed. Ms. Jordan had had no further connection to the case after her departure from the District Attorney's office in late October of the prior year.

9.

After the Sparks case was dismissed, the Accused issued a press release, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein. In the press release, the Accused made the following statements about Ms. Jordan when he knew or it was obvious that such statements would serve merely to harass Ms. Jordan:

1. That the assignment of the Sparks case to Jenni Jordan "caused problems in getting the case dealt with quickly"; and
2. That he "had solid information at the beginning of the case that nothing ever happened in Yamhill County" and that he "had a hard time getting Jenni Jordan to pay attention to this evidence."

Violation

10.

The Accused admits that his conduct violated DR 7-102(A)(1) of the Code of Professional Responsibility.

Sanction

11.

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 considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

- a. The Accused violated his duty to the legal system. Standards § 6.0.
- b. With regard to the Accused's state of mind, he acted with conscious awareness of the nature or circumstances of his conduct.
- c. The Accused caused no actual injury to Jenni Jordan or to her reputation, but his conduct had the potential to cause injury to Ms. Jordan or to her reputation.
- d. There are no aggravating factors to be considered in this case.

The relevant mitigating factors (Standards, § 9.32) are:

1. The absence of a prior disciplinary record;
2. The Accused had no dishonest motive;
3. The Accused has made full and free disclosure to Disciplinary Counsel's Office and has displayed a cooperative attitude toward the proceedings;
4. The Accused's character and reputation are good;
5. The Accused displays remorse for his conduct and is willing to make a public apology to Jenni Jordan for his statements.

12.

The ABA Standards indicate that a public reprimand is an appropriate sanction for the Accused's conduct. Standards § 6.13. Oregon case law is in accord. See, In re Huffman, 289 Or 515, 614 P2d 586 (1980), where the lawyer was publicly reprimanded for advancing an unwarranted claim and taking a position that served merely to harass another. See, also, In re Rook, 276 Or 695, 556 P2d 1351 (1976), where a prosecutor was publicly reprimanded for refusing to plea bargain with a criminal defendant out of animosity for defense counsel in violation of former DR 1-102(A)(5) and DR 7-102(A)(1).

13.

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 7-102(A)(1). The Bar agrees to dismiss the DR 1-102(A)(3) charge.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)
Complaint as to the Conduct of) Case No. 96-12
RICHARD F. ALWAY,)
Accused.)
_____)

Bar Counsel: Ralph F. Rayburn, Esq.
Counsel for the Accused: James C. Edmonds, Esq.
Disciplinary Board: n/a
Disposition: Violation of DR 5-105(C). Stipulation for Discipline.
Public Reprimand.
Effective Date of Opinion: 10-2-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-12
)	
RICHARD F. ALWAY,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing, it is hereby ordered that the stipulation entered into between the parties is approved and the Accused shall receive a public reprimand for violation of DR 5-105(C).

DATED this 2nd day of October, 1997.

/s/
Todd A. Bradley
State Disciplinary Board Chairperson

/s/
Walter 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. 96-12
)	
RICHARD F. ALWAY,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
<hr/>		

Richard F. Alway, 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 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 Marion, State of Oregon.

3.

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

4.

At its November 23, 1996 meeting the State Professional Responsibility Board (hereinafter, "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(C) and DR 1-102(A)(3) of the Code of Professional Responsibility.

FACTS

5.

On July 15, 1994, Xavier Pichardo (hereinafter, "Pichardo"), met with the Accused and requested advice concerning a Section 1031 property exchange. Pichardo told the Accused that he had recently sold some property and was in the process of acquiring other property. Pichardo did not identify any property or any person from whom he intended to make the purchase.

6.

On July 18, 1994, Pichardo telephoned the Accused and explained that he had inspected some property, but title was not in the name of the purported owner. The Accused advised Pichardo that he would not be able to purchase the property without a transfer of title to the purported owner.

7.

On July 19, 1994, Pichardo and Dorothy M. Kal, a woman in her eighties, (hereinafter, "Kal"), met with the Accused at his office. Pichardo referred Kal to the Accused. Kal was the owner of the property which Pichardo wished to purchase and told the Accused that she was interested in selling her property to Pichardo. Title was not in Kal's name but in the name of her deceased husband. Kal requested that the Accused represent her to transfer title. Before proceeding further, the Accused contacted the Bar for advice. Based on information the Accused provided at that time, he was told that he may be able to handle the transfer of title to the property from Kal's deceased husband's name to Kal as a limited transaction, and then represent the buyer of the property, provided he complied with the full disclosure and consent requirements

of DR 10-101(B). The Accused returned to his office and asked Kal if she wanted Pichardo to leave the room. Kal told the Accused that Pichardo could stay. Pichardo was present during the Accused's meeting with Kal. The Accused discussed different options with Kal to transfer title to the subject property, including the filing of a Small Estate Affidavit. In doing so, Kal disclosed financial problems which she and her deceased husband had with their creditors.

8.

On July 22, 1994, Kal again met with the Accused at his office. Pichardo also attended the meeting. The Accused recalls that he again asked Kal if she wanted Pichardo to be present. The Accused had prepared an Affidavit of Small Estate, which Kal signed to achieve a transfer of title of the property to Kal. The Accused also prepared and later sent notices to Kal's creditors with a copy of the affidavit advising them of her limited financial resources and her homestead exemption claim.

9.

On July 22, 1994, the Accused informed Kal that he had completed his work for her and was terminating his representation. The Accused confirmed by letter the termination of his representation, that he would then be representing Pichardo, the prospective purchaser of her property, and would not represent her concerning the sale. The Accused did not have contact with Kal after his July 22, 1994, meeting.

10.

On July 25, 1994, the Accused mailed the notices to Kal's creditors. Later the same day, the Accused met with Pichardo to prepare an earnest money agreement reflecting Pichardo's offer for the purchase of Kal's real property. Thereafter, Pichardo obtained Kal's signature and returned the earnest money agreement to the Accused. The Accused then drafted a land sale contract. The land sale contract was delivered to escrow on July 29, 1994, where it was signed by Pichardo and Kal.

11.

The interests of Kal as the seller of the property and Pichardo as the buyer were in actual or likely conflict. The Accused understands that representation of Pichardo in the real property transaction was significantly related to the matters about which the Accused provided representation and legal advice to Kal. The Accused was not previously acquainted with Kal. Although it did not appear to the Accused that Kal lacked capacity, Kal may have had mental deficiencies which impaired her ability to understand the nature of her actions and the Accused's advice.

12.

To the extent consent was available to cure the conflict, the Accused failed to fully comply with the requirements of DR 10-101(B) and obtain Kal's consent, after full disclosure. The letter which the Accused delivered to Kal confirming that he had completed his work for her, and would then be representing Pichardo, did not contain an explanation sufficient to apprise Kal of the potential adverse impact on her of the matter giving rise to the conflict, nor did it request her consent to the conflict or contain a recommendation that she seek legal advice to determine if consent should be given.

13.

The Accused admits that his conduct violated DR 5-105(C) of the Code of Professional Responsibility. The remaining charge of DR 1-102(A)(3) is withdrawn.

SANCTION

14.

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 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. Standards, § 3.0.

a. Duty. In violating DR 5-105(C), the Accused violated a duty to his client.

- Standards, § 4.3.
- b. State of Mind. The Accused's conduct demonstrates negligence. "Negligence" is 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 potential injury to Kal. Although the Accused was not aware of the extent of Kal's limitations, she was not fully advised regarding the issues of conflict of interest and her need for independent legal advice. Subsequent to the sale transaction, a friend of Kal's became aware of the transaction and its terms. Legal counsel was obtained for Kal, and a lawsuit was filed against Pichardo. Later, claims were also made against the Accused and he was added as a defendant in the lawsuit. As a result, Pichardo agreed to rescind the land sale contract and return Kal to her original status. The claims against the Accused were also settled.
 - d. Aggravating Factors. "Aggravating factors" include:
 1. The Accused has substantial experience in the practice of law. Standards, § 9.22(i).
 - e. Mitigating Factors. Mitigating factors include:
 1. The Accused does not have a 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 attempted to comply with the requirements of the conflict rules. When he was first contacted by Pichardo and Kal, the Accused called the Bar for advice. Based on the information that the Accused provided at that time, he was told that he may be able to handle the transfer of title from the deceased husband's name to Kal as a limited transaction, and then represent the buyer of the property, provided that he comply with the full disclosure and consent requirements of DR 10-101(B). The Accused's representation of Kal did not fully comply with the requirements of the rule.
 4. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and resolving this disciplinary proceeding. Standards, § 9.32(e).
 5. The Accused is of good character and reputation. Standards, § 9.32(g).
 6. The Accused acknowledges the wrongfulness of his conduct and is remorseful. Standards, § 9.32(l).

15.

The Standards provide that reprimand is generally appropriate in such circumstances. Standards, § 4.33. Oregon case law is in accord. See, In re Barrett, 269 Or 264, 524 P2d 1208 (1974); In re Mammen, 9 DB Rptr 203 (1995).

16.

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

17.

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 terms of BR 3.6.
DATED this 19th day of September, 1997.

/s/

Richard F. Alway, OSB No. 77096

OREGON STATE BAR

By: /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. 97-106 and 97-107
C. BRIAN SCOTT,)
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: Chair: n/a

Disposition: Violation of DR 1-103(C); DR 6-101(B); DR 7-102(A)(2)
and DR 9-101(C)(4). Stipulation for Discipline.
120-day suspension.

Effective Date of Order: 10-24-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 97-106 and 97-107
)	
C. BRIAN SCOTT,	)	AMENDED ORDER APPROVING
	)	STIPULATION FOR DISCIPLINE
Accused.)	
_____)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 120 days for violation of DR 1-103(C), DR 6-101(B), DR 7-102(A)(2) and DR 9-101(C)(4).

DATED this 18th day of November, 1997, NUNC PRO TUNC October 24, 1997.

/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 Nos. 97-106 and 97-107
)	
C. BRIAN SCOTT,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
)	

C. Brian Scott, 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, C. Brian Scott, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 1977, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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.

On July 2, 1997, 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 6-101(B), DR 7-101(A)(2), DR 9-101(C)(3), DR 9-101(C)(4) and DR 1-103(C). This Stipulation for Discipline is intended by the parties to resolve all charges in this matter.

FACTS AND VIOLATIONS

5.

In November 1993, the Accused assumed responsibility for handling the legal affairs of Pamela Y. Bierly (hereinafter "Bierly"), including matters related to a parcel of real estate (hereinafter "the property") which Bierly managed for the benefit of a number of judgment creditors for whom she held a power of attorney.

6.

In 1992, the property had been sold on contract and, by 1994, the contract payments were infrequent. As part of his duties to Bierly, the Accused was to collect payments from the contract vendee, forward the payments to Bierly, assist in preparation of an accounting to the judgment creditor co-owners at Bierly's request, and provide a copy of the accountings to Stephen Buckley (hereinafter "Buckley"), a lawyer for one of the judgment creditor co-owners. The Accused prepared an accounting of the contract payments on November 18, 1994.

7.

In the spring of 1996, Bierly directed the Accused to initiate foreclosure proceedings on the property. Beginning in April 1996, the Accused represented to Bierly that he was attending to the foreclosure action. Thereafter, the Accused failed to take any significant action on the

foreclosure action, despite Bierly's reminders of his obligation to do so, and failed to respond to Bierly's repeated attempts to contact him.

8.

The Accused admits that he neglected a legal matter entrusted to him and intentionally failed 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.

9.

On October 15, 1996, Bierly filed a complaint concerning the Accused's conduct with the Oregon State Bar. On October 23, 1996, Disciplinary Counsel's Office forwarded a copy of Bierly's complaint to the Accused and requested his response by November 12, 1996. The Accused made no response. On December 16, 1996, Disciplinary Counsel's Office again requested the Accused's response to the complaint by December 23, 1996.

10.

On February 4, 1997, the Accused filed a response to Bierly's complaint and promised to provide Bierly with her file and cooperate with Bierly's new counsel. The Accused did not return Bierly's file to her despite Disciplinary Counsel's April 4, 1997 request that he do so. Bierly's new counsel was able to review and reconstruct all payments the Accused did receive and concluded all funds delivered to the Accused have been accounted for and delivered to Bierly.

11.

The Accused admits that he failed to comply with reasonable requests of an authority empowered to investigate his conduct and failed to promptly deliver to his client property in his possession which the client was entitled to receive, in violation of DR 1-103(C) and DR 9-101(C)(4) of the Code of Professional Responsibility.

SANCTION

12.

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 6-101(B), DR 7-101(A)(2), and DR 9-101(C)(4), the Accused violated his duty to his client by neglecting a legal matter, intentionally failing to carry out a contract of employment, and failing to promptly return client property which the client was entitled to receive. In violating DR 1-103(C), the Accused violated his duty to the profession by failing to cooperate in the disciplinary investigation. Standards §§ 4.1, 4.4 and 7.0.

B. Mental State.

In neglecting a legal matter, 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.

In intentionally failing to carry out a contract of employment, failing to cooperate with the disciplinary investigation, and failing to promptly return client property, the Accused acted with intent, that is, the conscious objective or purpose to accomplish a particular result. 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. The level of injury in this case ranged from serious actual injury to potential injury. Although all contract payments collected by the Accused were accounted for (i.e., no

misappropriation took place), Bierly was required to hire new counsel who had to reconstruct the file at additional cost to Bierly since the Accused failed to release the file. By failing to timely file the foreclosure action, Bierly suffered potential injury in that a judgment was not promptly entered against the debtor.

D. Aggravating Factors.

The following aggravating factors are present in this matter: (1) a pattern of misconduct; (2) multiple offenses; (3) failure to cooperate in the disciplinary investigation; (4) vulnerability of the victim; and (5) substantial experience in the law. Standards §9.22(c), (d), (e), (h), and (i).

E. Mitigating Factors.

The following mitigating factors are present in this matter. (1) an absence of a prior disciplinary record; (2) absence of dishonest motive; and (3) personal and emotional problems consisting of personal and family illness and the stress attendant thereto at or about the time of representation of Bierly. Standards, §9.32(a), (b), and (c).

13.

The Standards 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. Standards §4.2. Reprimand is generally appropriate when a lawyer fails to maintain adequate records or neglects to return client property promptly. Standards, § 4.13. According to the Standards, 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. For instance, in *In re Miles*, 324 Or 218, 923 P2d 1219 (1996), the court noted that suspension is generally an appropriate sanction for a knowing violation of DR 1-103(C), *supra*, at 223. In fact, the court has made clear that a 60-day suspension is appropriate for a lawyer found guilty of one violation of DR 1-103(C). *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996). In *Schaffner*, the court also noted that a suspension of 120 days was appropriate where a lawyer had neglected two matters for clients and failed to cooperate with the Bar's investigation.

14.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused be suspended from the practice of law for a period of 120 days. Should this Stipulation for Discipline be approved by the Disciplinary Board, the parties agree that the suspension will become effective immediately upon the date of approval.

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 17th day of October, 1997.

_____/s/
C. Brian Scott

EXECUTED this 17th day of October, 1997.

_____/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. 96-143
SARAH SUSANNAH MILLER,)
Accused.)

Bar Counsel: n/a

Counsel for the Accused: Donald Diment, Esq.

Disciplinary Board: n/a

Disposition: Violation of DR 1-102(A)(1), DR 1-102(A)(3), DR 7-102(A)(5) and ORS 9.527(4). Stipulation for Discipline. Sixty-day suspension.

Effective Date of Order: 12-5-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-143
)	
SARAH SUSANNAH MILLER,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 60 days, effective 30 days after this Stipulation is approved by the Disciplinary Board for violation of DR 1-102(A)(1), DR 1-102(A)(3), DR 7-102(A)(5) and ORS 9.527(4).

DATED this 5th day of November, 1997.

/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. 96-143
)	
SARAH SUSANNAH MILLER,)	STIPULATION FOR
)	DISCIPLINE
Accused.)	
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Sarah Susannah Miller, 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, Sarah Susannah Miller, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 1977, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

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

4.

On April 17, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(1), DR 1-102(A)(3), DR 7-102(A)(5) and ORS 9.527(4). A formal complaint has not yet been filed against the Accused. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 1996, the Accused represented the wife in a contentious dissolution of marriage proceeding in Lane County Circuit Court. Property division, particularly the valuation of husband's business, was an issue of significant dispute in the proceeding, which was tried from January 30 to February 13, 1996.

6.

As trial commenced, the Accused received documents reflecting financial information about husband's business and its debts, the accuracy of which the Accused questioned. The Accused decided to contact some of the business' creditors to verify the amount and status of the debts.

7.

On February 6, 1996, the Accused called at least one creditor, and had her secretary call others, to inquire about the debts of husband's business. In each call, the Accused or her secretary misrepresented herself to be a bookkeeper who was doing work for husband's business and who needed verification on account balances. In response to questions from the creditors

about their authority to obtain the information, the Accused and her secretary repeatedly represented that they were acting with husband's knowledge and authority. These representations were not true.

8.

To the extent that the Accused's secretary called creditors and made misrepresentations, she did so at the direction of the Accused.

Violations

9.

The Accused admits that, by engaging in the conduct described herein, she violated DR 1-102(A)(1), DR 1-102(A)(3), DR 7-102(A)(5) and ORS 9.527(4).

Sanction

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 Standards require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

- a. The Accused violated her duty to the public to maintain her personal integrity. Standards §5.0.
- b. With regard to the Accused's state of mind, the Accused acted with the knowledge that she and her secretary were making statements that were not true. While no excuse, the Accused was influenced in her conduct by the circumstances of the acrimonious dissolution of marriage, the belief that the husband was not being truthful, and the belief that the wife was being victimized by the husband in the proceeding.
- c. The Accused caused no actual injury to the creditors or the husband by her conduct.
- d. Aggravating factors include:
 - §9.22. The Accused has a prior disciplinary history, In re Miller, 7 DB Rptr 87 (1993).
 - § 9.22 (d). Multiple offenses.
 - § 9.22 (f) and (g). The Accused at first denied to Disciplinary Counsel and the LPRC that she had made misrepresentations to husband's creditors, suggesting instead that the creditors had misunderstood or were not being candid because of their relationship with husband.
 - § 9.22(i). The Accused has substantial experience in the practice of law, having been admitted in 1977.
- e. Mitigating factors include:
 - § 9.32 (b). The Accused did not have a selfish motive, but instead felt a need to "fight fire with fire" so as to equalize for her client what she viewed as an unfair battle in the litigation.
 - § 9.32 (c). The Accused was experiencing personal or emotional problems, such that she was not making decisions or exercising judgment in an objective, reasoned manner.
 - § 9.32 (e). In reaching this stipulation, the Accused has made full disclosure and been cooperative.
 - § 9.32 (j). The Accused has undergone counseling and is reported to have made therapeutic progress.
 - § 9.32 (l). The Accused has expressed substantial remorse.

11.

The ABA Standards provide that reprimand or suspension, depending on the circumstances, is appropriate for conduct involving dishonesty or misrepresentation. Standards 5.11, 5.12, 5.13. Oregon case law makes clear that suspension is appropriate. "Generally, a misrepresentation . . . ought to result in a suspension." In re Melmon, 322 Or 380, 386, 908

P2d 822 (1995). See, also, In re Porter, 320 Or 692, 890 P2d 1377 (1995); In re Hopp, 291 Or 697, 634 P2d 238 (1981); In re Benziger, 6 DB Rptr 51 (1992).

12.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 60 days, effective 30 days after this stipulation is approved by the Disciplinary Board.

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 16th day of October, 1997.

/s/

Sarah Susannah Miller

EXECUTED this 3rd day of November, 1997.

/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. 96-147
GREGORY L. GUDGER,)
Accused.)

Bar Counsel: Dianne Sawyer, Esq.

Counsel for the Accused: Greg Austin, Esq.

Disciplinary Board: Susan Howard Williams, Chair; Helle Rode, Esq.;
Marilyn Schultz, Public Member

Disposition: Violation of DR 1-102(A)(2). Stipulation for Discipline.
Seven-month suspension.

Effective Date of Opinion: 12-9-97

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 S43561
)	
GREGORY L. GUDGER,)	ORDER ACCEPTING STIPULATION
)	FOR DISCIPLINE
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 seven months.

The parties acknowledge that the effect of the suspension will be to terminate and render to no effect the probationary period established by the court's order accepting stipulation for discipline dated August 30, 1996, and that the stay of 90 days of the accused's suspension pursuant to probation will end on the effective date of this order. The Stipulation for Discipline is effective December 9, 1997.

DATED this 25th day of November, 1997.

_____/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. 96-147
)	
GREGORY L. GUDGER,)	STIPULATION FOR DISCIPLINE
)	
Accused.)	
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Gregory L. Gudger, attorney at law 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, at all times mentioned herein, authorized to carry out the provisions of ORS Chapter 9 relating to the discipline of attorneys.

2.

Mr. Gudger was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 17, 1987, and except as noted herein, 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.

Mr. Gudger enters this stipulation freely and voluntarily, after consultation with counsel and pursuant to the restrictions set forth in BR 3.6.

4.

The State Professional Responsibility Board authorized formal disciplinary proceedings against Mr. Gudger on October 17, 1996, for violation of DR 1-102(A)(2) and ORS 9.527(1). A formal complaint was filed on December 31, 1996, a copy of which is attached hereto as Exhibit 1, and incorporated by reference herein.

5.

On May 21, 1996, Mr. Gudger possessed and used cocaine. Possession of cocaine is a felony under ORS 475.992(4).

6.

On May 21, 1996, Mr. Gudger was travelling to a settlement conference, lost control of his automobile, and collided with a trailer that was being towed by a truck. Mr. Gudger and the driver of the truck were injured.

7.

At the accident site, the police recovered from Mr. Gudger's automobile a small metal pipe containing cocaine residue and a pistol.

8.

On or about June 19, 1996, Mr. Gudger was indicted by a Coos County grand jury for possession of a controlled substance in violation of ORS 475.992; unlawful possession of a firearm in violation of ORS 166.250, and reckless driving in violation of ORS 811.140. On or about August 27, 1996, pursuant to an agreement with the District Attorney involving participation in a deferred sentencing program for first offenders, Mr. Gudger plead guilty to violating ORS 475.992 for possession of cocaine, a felony. All other charges were dismissed.

9.

On or about September 24, 1996, the court deferred entry of judgment on Mr. Gudger's above-described guilty plea pursuant to ORS 475.245. Mr. Gudger was placed on probation for 18 months and ordered to spend 15 days in jail and pay a fine of \$694.00 as conditions of probation. Should Mr. Gudger successfully complete his term of probation, the possession charge will be dismissed. No judgment of conviction has to date been entered in any court against Mr. Gudger.

10.

The conditions of Mr. Gudger's probation include a prohibition on the illegal use or possession of controlled substances; a requirement that he abstain from the use of intoxicants, and a requirement that he refrain from knowingly associating with persons who use or possess controlled substances illegally and refrain from frequenting places where controlled substances are kept or sold.

11.

Mr. Gudger admits his use of cocaine over an extended period of time adversely affected his judgment in personal and professional matters and the quality of the legal services he rendered to his clients.

VIOLATIONS

12.

Mr. Gudger voluntarily admits he engaged in a criminal act that reflects adversely on his fitness to practice law in violation of DR 1-102(A)(2). The parties agree any allegations herein regarding violation of ORS 9.257(1) should be and are dismissed.

SANCTION

13.

Mr. Gudger and the Bar agree that in fashioning the appropriate sanction in this case, the Supreme Court should consider the ABA Standards for Imposing Lawyer Sanctions and Oregon case law. The ABA Standards require that Mr. Gudger's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury, and the existence of aggravating and mitigating circumstances.

I. Mr. Gudger violated his duty to the public to maintain his personal integrity and abide by the law. Standards 5.0.

II. In acquiring and possessing cocaine, Mr. Gudger had the conscious awareness of the nature or the attendant circumstances of his conduct but did not intend to injure clients or others. Standards at 6.

III. Mr. Gudger's use of controlled substances and intoxicants contributed to the actual injuries suffered by the driver of the other vehicle involved in the above-described accident. Mr. Gudger's use of controlled substances and other intoxicants adversely affected the quality of legal services he rendered to his clients and thereby had the potential to adversely affect their interests. Standards at 7.

IV. The aggravating factors in this case are:

A. Mr. Gudger has a prior record of disciplinary violations. Effective September 23, 1996, Mr. Gudger was suspended for 180 days, with 90 days stayed pending the completion of two years probation, for violation of DR 1-102(A)(4); DR 6-101(A); DR 2-106(A); DR 2-110(C); DR 7-101(A)(2); DR 9-101(A), and DR 9-101(C)(3). See, In re Gudger, SC S43561, 1996, attached hereto as Exhibit 2 and incorporated by reference herein. Standards 9.22(a)

B. Mr. Gudger engaged in a pattern of misconduct which allowed his use of intoxicants and controlled substances to adversely affect, over an extended period of time, the quality of legal services he rendered to his clients. Standards 9.22(c).

V. The mitigating factors in this case are:

A. Mr. Gudger's conduct was significantly affected by personal and emotional

problems, Standards 9.32(c);

B. Mr. Gudger has consistently displayed a cooperative attitude toward the disciplinary proceedings, Standards 9.32(e)

C. Mr. Gudger's addiction resulted from a physical or mental disability or impairment, Standards 9.32(h)

D. Mr. Gudger has made significant voluntary efforts and demonstrated success at interim rehabilitation. Standards 9.32(j).

1. Mr. Gudger admits that he suffers from addiction to cocaine and realizes that to maintain this addiction, he violated the law which he is required to uphold. On November 22, 1996 Mr. Gudger voluntarily admitted himself to in-patient drug and alcohol rehabilitation at Springbrook Northwest. Mr. Gudger completed his residential treatment at Springbrook and was discharged on February 21, 1997 with a good prognosis to avoid a relapse. He no longer engages in the use of cocaine or other intoxicants. He attends meetings of the Oregon Attorney Assistance Program 3 times per week and maintains an active ANNA program.

2. Mr. Gudger has made arrangement for employment as a law clerk by Gregory Austin, Esq. for the period of his suspension and for supervision by Mr. Austin should he be reinstated to the practice of law.

3. Mr. Gudger has accepted an invitation to serve, on the Board of Directors of a major community mental health agency which provides community-based substance abuse treatment services.

4. Mr. Gudger regularly volunteers at a legal clinic to assist low-income clients.

E. Mr. Gudger has submitted statements attesting to his good character and professional reputation. Standards 9.32(g).

F. Monetary sanctions have been imposed and paid and he has successfully served time in jail. Standards 9.32(k);

G. Mr. Gudger has expressed remorse for his offending conduct, Standards 9.32(I);

14.

The ABA Standards provide that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not include the elements of more aggravated crimes described in Standards 5.11, and seriously adversely reflects on the lawyers fitness to practice law. Standards 5.12. Oregon case law is in accord. See, In re Kelly Clark, Or S Ct No. S39799 (1993); and In re S. Watson Or S Ct No. S38919 (1992).

15.

The parties acknowledge that Mr. Gudger's prior disciplinary record, his current probationary status and the conduct at issue in the present proceeding give rise to legitimate concern over Mr. Gudger's present fitness to practice law. In In re Gudger (Exhibit 2), the sanction imposed upon Mr. Gudger was structured to deal with what appeared to be the result of his inexperience, undue reliance on co-counsel, and lack of supervision by an experienced member of the Bar. Mr. Gudger now recognizes that substance abuse was an underlying factor in his prior behavior.

In light of the fact that Mr. Gudger's misconduct has been attributable, in part, to his substance abuse and because he is making a good faith effort at rehabilitation, a long term suspension or disbarment is not warranted. What is appropriate is a term of suspension long enough to permit Mr. Gudger to continue his recovery program and demonstrate that his substance abuse problem is under control.

16.

Consistent with the ABA Standards and Oregon case law, the Bar and Mr. Gudger agree that for violating DR 1-102(A)(2) Mr. Gudger shall be suspended from the practice of law for seven months to commence 14 days after the Oregon Supreme Court approves this

Stipulation For Discipline. The parties acknowledge that the effect of this suspension will be to terminate and render to no effect, the probationary period established in In re Gudger, SC S43561, 1996.

Mr. Gudger agrees and understands that he will be required under BR 8.1 to submit a formal application for reinstatement and will be required to show that he has good moral character and general fitness to practice law and that the resumption of practice of law in this state will not be detrimental to the administration of justice or to the public interest. Mr. Gudger understands that the Board of Governors or the Supreme Court may not agree that he has made a sufficient showing under BR 8.1 and may oppose his application for reinstatement. Mr. Gudger understands that he may submit his application for reinstatement for timely consideration not more than 3 months prior to the expiration of his term of suspension.

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 Supreme Court for consideration pursuant to terms of BR 3.6.

/s/

Gregory L. Gudger

/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. 96-189
ROBERT L. NASH,)
Accused.)
_____)

Bar Counsel: James Uerlings, Esq.

Counsel for the Accused: Allen Gardner, Esq.

Disciplinary Board: Stephen Bloom, Esq., Chair; J. Robert Moon, Jr., Public Member; Beatrice Jean Haskell, Public Member

Disposition: Violation of DR 1-102(A)(4) and DR 7-102(A)(2).
Stipulation for Discipline. Sixty-day suspension, stayed pending completion of a one-year probation.

Effective Date of Opinion: 12-8-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-189
)	
ROBERT L. NASH,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be suspended from the practice of law for a period of 60 days, all of which shall be stayed subject to a one-year probationary period on terms set forth in the Stipulation for Discipline, for violation of DR 1-102(A)(4) and 7-102(A)(2).

DATED this 8th day of December, 1997.

/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. 96-189
)	
ROBERT L. NASH,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
_____)		

Robert L. Nash, attorney at law, (hereinafter, "the Accused") and the Oregon State Bar (hereinafter, "the Bar"), hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Robert L. Nash, 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 Deschutes County, Oregon.

3.

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

4.

The State Professional Responsibility Board has authorized formal disciplinary proceedings against the Accused based on allegations in a Formal Complaint filed on April 3, 1997. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 1994, the Accused represented the defendants in civil litigation in Deschutes County Circuit Court entitled GM Industries, Inc. v. Balcom, No. 93-CV-0155-TM. The plaintiffs were represented by Paul J. Speck (hereinafter, "Speck"). Following a court trial, the judge ruled against the Accused's client. The Accused twice sought reconsideration, but a judgment in favor of the plaintiffs was entered in March, 1995. On behalf of the defendants, the Accused filed a notice of appeal in March 1995, and filed an appellant's brief in July 1995.

6.

Early in September, 1995, shortly before respondent's brief was due, the Accused and Speck negotiated a settlement of the litigated dispute, to set aside the trial court judgment, to dismiss the appeal, and for both sides to release all claims. That settlement agreement was confirmed by correspondence between counsel, and therefore Speck did not file a respondents' brief. In late September 1995, the Court of Appeals notified the parties that the case would be submitted on the record. Thereafter, in early October, 1995, before the documents memorializing the settlement were signed, the Accused proposed that the appeal be allowed to proceed to opinion by the Court of Appeals, the settlement notwithstanding. The Accused

believed that the trial court decision was wrong, that the outcome of the case was unfair to his clients, and that his clients would prevail on appeal. Even though an appellate opinion would have no effect on the parties because of the settlement, the Accused was hopeful that an appellate reversal would have an influence on the trial judge in future cases and would restore his clients' faith in the legal system. [The Bar makes no concession that the trial court decision was incorrect.] The Accused's proposal to allow the appeal to proceed, notwithstanding the earlier settlement, was agreed to by Speck and the parties on both sides of the case.

7.

The proposal to allow the appeal to proceed was made after confirmation of the settlement by correspondence between counsel, and after the settlement agreement and mutual release was prepared and circulated for signatures, although settlement documents had not yet been signed by all parties. Thereafter, the settlement documents were signed in November 1995, the same month that the appeal was submitted to the Court of Appeals on the record and appellant's brief.

8.

Some months later, the Accused's law firm, from which the Accused had since departed for unrelated reasons, dismissed the appeal before any opinion was issued by the Court of Appeals.

Violation

9.

The Accused admits that by allowing an appeal to proceed that had been made moot by settlement, he violated DR 1-102(A)(4) and DR 7-102(A)(2) of the Code of Professional Responsibility.

Sanction

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 Standards require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duty to the legal system and to the profession to avoid conduct prejudicial to the administration of justice and not to abuse the legal process. Standards § 6.1 and §6.2.

b. With regard to mental state, 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. Standards, p. 7. The Accused did not intend to engage in misconduct, although he admits that his overzealousness obscured his judgment that should have revealed to him that pursuit of a moot appeal was not appropriate.

c. The Court of Appeals had the appeal under consideration for several months before it was dismissed. To the extent that the Court of Appeals and its staff may have processed the appeal after the case had been settled, actual injury may have occurred. The potential for injury was substantial if the appellate court had been required to render an opinion in a case that was moot.

d. Aggravating factors include:

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

e. Mitigating factors include:

§ 9.32(e). The Accused fully cooperated with the Bar in this matter.

§ 9.32(l). The Accused is remorseful.

11.

The facts of this case are unique in Oregon such that no case law or ethics opinion is directly on point. Suspensions have been imposed, however, by the Oregon Supreme Court for conduct prejudicial to the administration of justice. See, In re Thompson, 325 Or 467, ___ P2d ___ (1997); In re Rex Q. Smith, 316 Or 55, 848 P2d 612 (1993); In re Paauwe, 294 Or 171, 654

P2d 1117 (1982), (attorney was disciplined, in part, for filing a notice of appeal in a meritless case). See, also ABA Standards, § 6.12 and 6.22.

12.

In determining an appropriate sanction in this matter, the Accused acknowledges that he has had difficulty in his law practice accepting or accommodating the opinions or positions of others that were adverse to his own, that the misconduct in this matter was the result of such difficulty, that the Accused's often relentless advocacy has led to poor relations with some opposing counsel and members of the judiciary, and that the Accused believes he would benefit from a program designed to assist him in moving away from such an aggressive approach to the law practice.

13.

The Bar and the Accused agree that, for violation of DR 1-102(A)(4) and DR 7-102(A)(2), the Accused shall be suspended from the practice of law for a period of sixty (60) days, all of which shall be stayed subject to successful completion of a probationary period of one (1) year to begin on the date this Stipulation for Discipline is approved by the Disciplinary Board.

The terms of probation shall be as follows:

a. The Accused shall comply with all provisions of this Stipulation, the Code of Professional Responsibility (CPR) and ORS Chapter 9. An alleged violation of the CPR or ORS Chapter 9 for conduct that predates the effective date of this Stipulation shall not be deemed a breach of this provision;

b. Within 30 days of the effective date of this Stipulation, the Accused shall undergo at his expense, an assessment or evaluation as directed by the Oregon Attorneys Assistance Program (OAAP), or its designee, the purpose of which is to identify and develop a program of assistance most beneficial to the Accused. The program of assistance shall include, to the extent directed by OAAP or its designee, but not necessarily be limited to, counseling with a qualified professional and course work focusing on mediation and interpersonal communication skills, the frequency and duration of which shall be established by OAAP or its designee. OAAP shall promptly advise Disciplinary Counsel's Office of the program of assistance developed for the Accused;

c. The Accused shall cooperate and comply with all aspects of the program of assistance developed by OAAP, or its designee, throughout the term of probation;

d. OAAP shall monitor and supervise the Accused's probation, and shall submit written, quarterly reports to Disciplinary Counsel's Office advising, if it is the case, that the Accused is in compliance with the terms of probation. The Accused acknowledges that OAAP shall immediately report to Disciplinary Counsel's Office if the Accused is not in compliance with the terms of probation, and he hereby waives any privileges or confidentiality necessary to permit the disclosure of non-compliance by OAAP to Disciplinary Counsel;

e. In the event the Accused fails to comply with the terms of this probation, Disciplinary Counsel may initiate proceedings to revoke the Accused's probation pursuant to BR 6.2(d) and to impose the term of stayed suspension set forth in this Stipulation.

14.

Disciplinary rule violations alleged in the Formal Complaint, other than those set forth in this Stipulation, shall be dismissed upon approval of the Stipulation by the Disciplinary Board.

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 21st day of March, 1997.

/s/
Robert L. Nash

EXECUTED this 1st day of December, 1997.

/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. 97-116
PAUL J. SPECK,)
Accused.)
_____)

Bar Counsel: James Uerlings, Esq.
Counsel for the Accused: Richard Forcum, Esq.
Disciplinary Board: n/a
Disposition: Violation of DR 1-102(B)(1). Stipulation for
Discipline. Public Reprimand.
Effective Date of Order: 12-8-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 97-116
)	
PAUL J. SPECK,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 1-102(B)(1).

DATED this 8th day of December, 1997.

 /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. 97-116
)	
PAUL J. SPECK,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Paul J. Speck, 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, Paul J. Speck, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, 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, and with the advice of counsel. This Stipulation is made under the restrictions of Rule of Procedure 3.6(h).

4.

The State Professional Responsibility Board has authorized formal disciplinary proceedings against the Accused based on allegations in a Formal Complaint filed on August 1, 1997. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 1994, the Accused represented the plaintiffs in civil litigation in Deschutes County Circuit Court entitled GM Industries, Inc. v. Balcom, No. 93-CV-0155-TM. The defendants were represented by Robert L. Nash (hereinafter, "Nash"). Following post-trial motions, a judgment in favor of the plaintiffs was entered in March, 1995. On behalf of the defendants, Nash filed a notice of appeal in March 1995, and filed an appellant's brief in July 1995. No respondent's brief was filed by the Accused.

6.

Thereafter, the Accused and Nash negotiated a settlement of the litigated dispute. Before the documents memorializing the settlement were signed, Nash proposed that the appeal proceed to opinion by the Court of Appeals, the settlement notwithstanding. Nash believed his client would prevail in such an appeal and, even though an appellate opinion would have no effect on the parties because of the settlement, he wanted to demonstrate to the trial judge that the judge's decision was wrong. Although the Accused strongly disagreed with Nash's contention that the trial judge's decision was wrong, the Accused acquiesced, with his client's consent, in order to avoid incurring additional attorney fees on behalf of his client.

7.

Thereafter, the settlement documents were signed in November 1995, the same month that the appeal was submitted to the Court of Appeals on the record and appellant's brief.

8.

Some months later, Nash's law firm, from which Nash had since departed, reviewed the file and dismissed the appeal before any opinion was issued by the Court of Appeals.

Violation

9.

Nash's pursuit of an appeal that had been made moot by settlement violated provisions of the Code of Professional Responsibility. By acquiescing in the plan, the Accused admits that he ratified the misconduct in violation of DR 1-102(B)(1).

Sanction

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 Standards require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

a. The Accused violated his duty to the legal system not to allow another to abuse the legal process. Standards § 6.2.

b. With regard to mental state, the Accused did not intend to engage in misconduct, although he admits that closer focus on what was being proposed to him by Nash would have made the misconduct clear. The litigation had been contentious between the parties and the lawyers, and the Accused was relieved to be done with the matter through settlement. He was concerned that a failure to acquiesce in Nash's plan to pursue the moot appeal may have led to the settlement falling apart.

c. The Court of Appeals had the appeal under consideration for several months before it was dismissed. To the extent that the court and its staff were required to process the appeal and consider its merits, actual injury occurred. The potential for injury was substantial if the appellate court had been required to render an opinion in a case that was moot.

d. Aggravating factors include:

§ 9.22(a). The Accused was admonished in 1985 for violation of DR 7-104(A)(1).

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

e. Mitigating factors include:

§ 9.32(b). Absence of a dishonest or selfish motive. There was nothing for the Accused or his client to gain by pursuit of a moot appeal. The trial court had ruled in his client's favor.

§ 9.32(e). The Accused fully cooperated with the Bar in this matter.

§ 9.32(g). The Accused has a good professional reputation.

§ 9.32(l). The Accused is remorseful.

11.

The ABA Standards suggest that a reprimand is the appropriate sanction in this matter. Standards 6.23. There is no Oregon case law concerning DR 1-102(B)(1). See, however, In re Paauwe, 294 Or 171, 654 P2d 1117 (1982), where an attorney was disciplined for filing a notice of appeal in a meritless case (30 day suspension for this and other misconduct).

12.

The Bar and the Accused agree that the Accused shall be reprimanded for violation of DR 1-102(B)(1). Other disciplinary rule violations alleged in the Formal Complaint shall be dismissed.

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 25th day of November, 1997.

_____/s/
Paul J. Speck

EXECUTED this 1st day of December, 1997.

_____/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. 97-180
TONI DeFRIEZ SKINNER,)
Accused.)
_____)

Bar Counsel: n/a

Counsel for the Accused: n/a

Disciplinary Board: n/a

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

Effective Date of Opinion: 12-15-97

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. 97-180
)	
TONI DeFRIEZ SKINNER,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	

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

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. The Accused shall be publicly reprimanded for violation of DR 1-102(A)(4).

DATED this 15th day of December, 1997.

 /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. 97-180
)	
TONI DEFRIEZ SKINNER,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	

Toni DeFriez Skinner, 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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1993, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Umatilla 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.

The State Professional Responsibility Board authorized formal proceedings against the Accused on October 16, 1997, for violation of DR 1-102(A)(4).

FACTS

5.

On June 26, 1991, George Farmer was convicted of murder and sentenced to life imprisonment by the Malheur County Circuit Court in the case of State of Oregon v. George Edward Farmer, Case No. 90-10-5117(C). In or about 1994, Farmer filed a petition for post-conviction relief, titled George Edward Farmer v. G. H. Baldwin, Superintendent of Eastern Oregon Correctional Institution, Case No. CV 94-0015.

6.

On July 19, 1996, the Accused was appointed to represent Farmer in the post-conviction proceeding. On December 18, 1996, at Farmer's request, the Accused prepared and sent a letter to the judge who presided over Farmer's trial and sentencing alleging that Farmer's constitutional rights had been violated and that he had been unfairly treated in the legal proceeding. In the letter, a copy of which is attached hereto as Exhibit 1, the Accused stated:

...Mr. Farmer desires to inform you of this landslide of legal research and the adverse effect it may have on you individually if he cannot resolve this matter in a timely manner.

Mr. Farmer wishes for a consensus of all parties involved in his trial and incarceration which would allow his conviction to be overturned, in concert with a plea of guilty on his part to manslaughter, credit for time served and the matter resolved.

Identical letters were sent to the presiding judge for Malheur County Circuit Court in which the post-conviction proceeding was pending, to the Malheur County District Attorney and other interested parties. The Accused's statements could reasonably be viewed, and were viewed by the recipients as a threat calculated to affect Farmer's conviction and sentence.

7.

The Accused admits her conduct constitutes a violation of DR 1-102(A)(4) of the Code of Professional Responsibility.

SANCTION

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA Standards for Imposing Lawyer Sanctions (hereinafter, "Standards") should be considered. The Standards establish a framework to analyze the Accused's conduct, including: (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 1-102(A)(4), the Accused violated duties to the legal system and to the profession to avoid conduct prejudicial to the administration of justice. Standards, §§ 6.3, 7.3.

b. Mental State. The Accused failed to heed a substantial risk that circumstances existed or that a result would follow, which was a deviation from the standard of care that a reasonable lawyer would exercise in this situation. Standards, p.7. Although not an excuse, but because of her inexperience, the Accused lacked the judgment or understanding to appreciate that her conduct was improper.

c. Injury. As a result of the Accused's conduct, there existed the potential for injury to the legal system and to the profession. There was a risk, albeit small, that the recipients of the letter would be persuaded or intimidated into modifying their decisions. Such risks may be characterized as "grave harm to the legal system."

d. Aggravating Factors. None.

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

1. The Accused was admitted to practice in 1993 and has limited experience in the practice of law and was relatively inexperienced in the handling of post-conviction cases. Standards, §9.32(f).

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

3. The Accused has no prior disciplinary record. Standards, § 9.32(a).

4. The Accused acknowledges the wrongfulness of her conduct and is remorseful. Standards, § 9.32(l).

9.

The Standards provide that 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, § 7.2. Reprimand is also appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of a legal proceeding. Standards, § 6.33.

In two cases where DR 1-102(A)(4) violations were found after lawyers engaged in threatening conduct, suspensions were imposed. In re Smith, 316 Or 55, 848 P2d 612 (1993); In re Thompson, 325 Or 467, ___ P2d ___ (1997). However, the conduct in those cases was more extreme and the mitigating circumstances present for Accused Skinner were not present in

the prior cases. The Accused's conduct is unacceptable. Reprimand will educate the Accused and deter future violations, and will inform both the public and other members of the profession that the behavior is improper.

10.

Consistent with Standards, the Bar and the Accused agree that the Accused should be publicly reprimanded.

11.

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

DATED this 2nd day of December, 1997.

/s/

Toni DeFriez Skinner, OSB No. 93105

OREGON STATE BAR

By: /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. 97-137
D. RAHN HOSTETTER,)
Accused.)
_____)

Bar Counsel: n/a

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

Disciplinary Board: n/a

Disposition: Violation of DR 1-102(A)(3), DR 5-104(A), ORS 9.527(4).
Stipulation for Discipline. Ninety-day suspension.

Effective Date of Opinion: 12-20-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 97-137
)	
D. RAHN HOSTETTER	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
<hr/>		

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 90 days, commencing on December 20, 1997, for violation of DR 1-102(A)(3) and ORS 9.527(4).
DATED this 17th day of December, 1997.

 /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. 97-137
)	
D. RAHN HOSTETTER,	)	STIPULATION FOR
	)	DISCIPLINE
Accused.)	
<hr style="border: 0.5px solid black;"/>		

D. Rahn Hostetter, 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, D. Rahn Hostetter, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Union County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily and after consultation with counsel and pursuant to the conditions and restrictions of BR 3.6.

4.

On July 19, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 5-104(A) and ORS 9.527(4). A formal complaint against the Accused has not yet been filed, but the Accused admits the following facts and violations of the Code of Professional Responsibility.

FACTS

5.

In 1996, the Accused was a partner in the law firm of Mautz, Baum, Hostetter & O'Hanlon and practiced primarily at the law firm's Enterprise, Oregon, office. Bill Pollard (hereinafter referred to as "Pollard") was the law firm's client and the Accused's personal acquaintance. As of October 15, 1996, Pollard owed the law firm approximately \$25,000 for legal services.

6.

On or before October 14, 1996, the Accused requested Pollard to make payment on his account directly to the Accused rather than to the law firm's Pendleton office where the bookkeeping department was located. At that time, the Accused told Pollard he needed some money personally and would later repay the law firm and make sure Pollard's account was credited with the amount Pollard had paid directly to the Accused.

7.

Accordingly, on or about October 14, 1996, Pollard provided to the Accused the sum of \$6,699.15 with the expectation that the Accused would exercise his professional judgment for Pollard's protection in the transaction. The Accused prepared no documentation memorializing the transaction, thereby leaving its nature (as a loan, payment on account; or something else) undetermined. The Accused entered this transaction without first having obtained Pollard's

consent after full disclosure.

8.

The Accused did not ask the firm's permission to borrow from it the money he had received from Pollard. The Accused did not disclose the unauthorized loan he had taken from the law firm until on or about December 9, 1996, when he received a letter from Pollard which reminded him that Pollard had not received the promised credit against his bill. The Accused forwarded Pollard's letter to the firm's bookkeeper and thereafter repaid the firm \$6,699.15.

9.

The partnership of Mautz, Baum, Hostetter & O'Hanlon has been dissolved. The former partners of the Accused have had the opportunity to review the accounts of the dissolved partnership. The Accused believes that all issues of which he is aware have been resolved with his former partners. The Accused has offered all of his financial records to the former partners for their review.

VIOLATIONS

10.

The Accused admits that the conduct described in paragraphs 4 through 7 constitutes conduct involving dishonesty in violation of DR 1-102(A)(3) and ORS 9.527(4) and entering into a business transaction with a client without the client's consent after full disclosure in violation of DR 5-104(A)

SANCTION

11.

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 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 client to avoid self-interest conflicts which might impair his independent judgment and his duty to the public to maintain his personal integrity. (Standards 4.0 and 5.0)
- b. With regard to the Accused's state of mind, he knowingly took an unauthorized loan from his law firm and entered into an undocumented business transaction with a client without first making full disclosures and obtaining the client's consent.
- c. The degree of actual injury to Pollock and the law firm from the two month delay in the firm's receiving Pollock's payment was minor. However, there is potential for serious injury when a lawyer engages in an undocumented business transaction with a client who has not received the benefit of full disclosures from the lawyer and when a lawyer borrows money from his firm without advising his partners or obtaining their consent to the loan. ABA Standards at 7.
- d. The aggravating factors to be considered are: (1) that the Accused acted with a selfish motive, and (2) the Accused has substantial experience in the practice of law. (Standards 9.22)

The mitigating factors to be considered are:

1. The Accused has no prior disciplinary record.
2. The Accused made a timely good faith effort to make restitution to his law firm and to rectify the consequences of his misconduct. He repaid the law firm in full on or about December 18, 1996.
3. The Accused has made full and free disclosure to Disciplinary Counsel's Office and has displayed a cooperative attitude toward the disciplinary proceedings.
4. The Accused has an excellent reputation in his community.
5. The Accused has displayed remorse for his conduct. He has publicly

apologized for his conduct and has resigned as president of his local bar association. (Standards 9.32)
12.

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) The ABA Standards also provide that suspension is generally appropriate when a lawyer knowingly engages in conduct involving dishonesty that seriously adversely reflects on the lawyer's fitness to practice law. (Standards § 5.12) Oregon case law is in accord. See, In re Busby, 317 Or 213, 855 P2d 156 (1993), where the lawyer was suspended for 4 months for violation of DR 1-102(A)(3) and ORS 9.527(4) for withholding a client's payments on its bill from the firm with which he had an "of counsel" agreement. See also, In re Orcutt, 8 DB Rptr 33 (1994) where the lawyer was suspended for 60 days for violation of DR 1-102(A)(3) and ORS 9.527(4) for establishing a separate bank account with law firm funds in the course of a dispute over a partnership accounting.

13.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused receive a 90 day suspension for violation of DR 1-102(A)(3), DR 5-104(A) and ORS 9.527(4), with the suspension to commence 30 days from the date on which the Disciplinary Board enters an order approving this Stipulation for Discipline.

14.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). On July 19, 1997, the SPRB authorized the sanction proposed in this stipulation. 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 December, 1997.

/s/

D. RAHN HOSTETTER

EXECUTED this 9th day of December, 1997.

/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. 96-191
)	
VINCENT A. DEGUC,)	
)	
Accused.)	
<hr/>		

Bar Counsel:	n/a
Counsel for the Accused:	Susan Isaacs, Esq.
Disciplinary Board: Chair:	Todd A. Bradley, Esq.
Disposition:	Reprimand for violation of DR 6-101(A), DR 6-101(B), DR 9-101(A). Stipulation for Discipline. Public Reprimand.
Effective Date of Opinion:	12-31-97

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	No. 96-191
)	
VINCENT A. DEGUC,	)	ORDER APPROVING STIPULATION
	)	FOR DISCIPLINE
Accused.)	
_____)	

This matter having come on to be heard upon the Stipulation for Discipline of the Accused and the Oregon State Bar, and good cause appearing,
IT IS HEREBY ORDERED that the stipulation entered into between the parties is accepted and the Accused shall be reprimanded for violation of DR 6-101(A), DR 6-101(B) and DR 9-101(A).
 DATED this 31st day of December, 1997.

 /s/
 Todd A. Bradley
 State Disciplinary Board Chairperson

 /s/
 Robert M. Johnstone, Region 4,
 Disciplinary Board Chairperson

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
)	
Complaint as to the Conduct of	)	Case No. 96-191
)	
VINCENT A. DEGUC,	)	STIPULATION FOR DISCIPLINE
)	
Accused.)	

Vincent A. Deguc, 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, Vincent A. Deguc, 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 Washington County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of BR 3.6(h).

4.

On September 20, 1997, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(A), DR 6-101(B) and DR 9-101(A). A Formal Complaint has not yet been filed. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

Facts and Violations

5.

In or about August 1995, the Accused was retained by American Drug Stores, Inc. ("ADS") to defend it in a lawsuit filed by I.D. Marketing, Inc. ("IDM") in Washington County Circuit Court, No. CV-95-0732CV. IDM had sold a number of child identification kits to ADS for retail sale. ADS was unable to sell much of the merchandise and returned them to IDM. IDM contended in the litigation that the kits had not been returned timely by ADS and that the returned merchandise was not in a re-saleable condition. Accordingly, IDM sought payment of the amount remaining due from ADS for the merchandise.

6.

The Accused was paid a \$1,000 retainer by ADS in August 1995, pursuant to a written retainer agreement. The Accused did not place the retainer in a lawyer trust account, even though he had not yet earned \$1,000 in fees from his client. The terms of the written retainer agreement did not specify the retainer as non-refundable. The Accused thereafter rendered legal services for ADS sufficient to earn the \$1,000 retainer.

7.

The Accused admits that, by failing to place the \$1,000 retainer in his trust account before it was all earned, he violated DR 9-101(A).

8.

During the course of representing ADS, the Accused:

- (a) failed to fully utilize for his client's benefit a letter he had in his possession from a former employee of IDM that contradicted, in part, IDM's assertions in the litigation. Specifically, the letter questioned the business ethics of IDM and indicated that the merchandise was in better condition when returned by ADS than claimed by IDM in its lawsuit. If presented to IDM, the letter may have affected IDM's position in any settlement discussions, according to IDM's attorney;
- (b) at times, was not responsive to his client's communications;
- (c) despite written instructions from the client, but without specific settlement parameters, did not attempt to settle the case or solicit a settlement offer from IDM;
- (d) failed to respond to various communications from opposing counsel, and did not initiate communications with opposing counsel when extensions of time were necessary for the Accused to meet deadlines for the disclosure of discovery and the filing of opposition papers concerning a summary judgment motion. In fact, the Accused's responsive papers in the summary judgment motion were not timely and the motion was granted, although on other grounds.

9.

The Accused admits that his conduct as described in Paragraph 8 constituted violations of DR 6-101(A) and DR 6-101(B).

Sanction

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 Standards require that the Accused's conduct be analyzed by considering the following four factors: the ethical duty violated; the attorney's mental state; the actual or potential injury; and the existence of aggravating and mitigating circumstances.

- a. The Accused violated his duty to his client to preserve the client's property, and his duty to render diligent and competent services. Standards § 4.1, 4.4 and 4.5.
- b. With regard to mental state, the Accused acted negligently in failing to deposit his client's retainer into trust, in failing to attend diligently to the client's legal matter, and by not being as thorough or prepared as the litigation required.
- c. The extent of the client's injury is difficult to assess. The client may have been subject to a lesser judgment, or been able to negotiate a reduced settlement, if the Accused had used the letter from the former employee of IDM or if the Accused had attempted to discuss settlement with opposing counsel. On the other hand, injury as a result of the Accused foregoing a third party claim against the transport company or the lack of more timely communication with the client, opposing counsel and the court, is speculative. In the end, the court granted summary judgment against the Accused's client on the basis of the client not returning the unsold merchandise to IDM in a timely manner, something that happened long before the Accused began to represent ADS.
- d. Aggravating factors include:
 - § 9.22(d). Multiple offenses.
 - § 9.22(i). Substantial experience in the practice of law.
- e. Mitigating factors:
 - § 9.32(a). Absence of prior disciplinary record.
 - § 9.32(b). Absence of dishonest or selfish motive.
 - § 9.32 (e). Full and free disclosure; cooperation during the disciplinary inquiry.
 - § 9.32 (g). Good character and reputation.
 - § 9.32 (l). The Accused is remorseful for his conduct.

11.

The ABA Standards provide that a reprimand is appropriate when a lawyer is negligent

when dealing with client money, or does not act with reasonable diligence or competence, and causes injury or potential injury to a client. Standards 4.13, 4.43, 4.53. Oregon case law is in accord. In re Mannis, 295 Or 594, 668 P2d 1224 (1983); In re Hall, 10 DB Rptr 19 (1996); In re Neil Jackson, 11 DB Rptr __ (No. 96-35, 1997).

12.

Consistent with the ABA Standards and Oregon case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of DR 6-101(A), DR 6-101(B) and DR 9-101(A).

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 4th day of December, 1997.

/s/

Vincent A. Deguc

EXECUTED this 9th day of December, 1997.

/s/

Jeffrey D. Sapiro
Disciplinary Counsel
Oregon State Bar

Disciplinary Board Reporter

Volume 11

January 1, 1997 to December 31, 1997

Supplement

*Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Supreme Court for 1997*

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IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re)	Case No. 94-189
)	
Complaint as to the Conduct of)	
)	
LISA BRETT EGAN,)	
)	
Accused.)	
<hr/>		

Bar Counsel: Paul Silver, Esq., Jane Angus, Esq.

Counsel for the Accused: B. Ericsson, Esq.

Disciplinary Board: Norman Wapnick, Chair; Stephen Brischetto;
Gordon G. Davis, Public Member

Disposition: Dismissal

Effective Date of Order: 1-14-97

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. 94-189
)	
Complaint as to the Conduct of	)	OPINION OF THE TRIAL PANEL
)	
LISA BRETT EGAN,)	
)	
Accused.)	
)	

This matter came regularly before a Trial Panel of the Disciplinary Board consisting of Norman Wapnick, Gordon G. Davis and Stephen Brischetto on December 12, 1996. The Oregon State Bar was represented by Paul Silver, Bar Counsel and Jane Angus, Assistant Disciplinary Counsel. The Accused was represented By B. Ericsson. The Trial Panel has considered the pleadings, trial memoranda, evidence, testimony and arguments of counsel.

CAUSE OF WRONGFUL CONDUCT

The Bar charges the Accused with violation of DR 1-102(A)(3), dishonesty or misrepresentation and DR 7-102(A)(5) making a false statement of fact. The conduct complained of is based upon a statement made by the Accused to Judge Gernant at a hearing to consider pre-trial discovery issues. The statement is reported in a transcript of proceedings of February 10, 1994 (Bar exhibit 2 in these proceedings) as follows:

"I'm open to suggestion. I need the Court's help, I don't know what to do. I obviously can't go in alone with Mr. Donahue when we need to talk to the judge. The court reporter after the first break, and this was an hour and 20 minutes, expressed to me in the bathroom that she was afraid for her physical safety and did not want to go back to the deposition without me. And she was bigger than I was. I don't, I don't know what alternative I have."(emphasis added).

SUMMARY OF FACTS

The Accused was attorney for plaintiffs in a civil action filed in March 1993 and pending in Multnomah County Circuit Court. Sean Donahue (Donahue) was attorney for the defendants. The litigation generated a great deal of animosity among the parties and their counsel. The Bar and the Accused agree that the Accused's dealings with Donahue were acrimonious, unpleasant and stressful. This difficult and stressful atmosphere had been evident throughout much of the litigation. On February 10, 1995, during a deposition of one of the defendants, the attorneys adjourned to Donahue's private office to call Judge Anna Brown for a ruling on pending discovery issues. The Accused testified that they were alone in the office. Donahue placed the call to Judge Brown and proceeded to talk. The Accused could hear Judge Brown but because the phone was not a "speaker phone" Judge Brown could not hear the Accused. When the Accused attempted to get the handset from Donahue, she testified that Donahue shoved her across the room. The court reporter Shelvedine Griffith (Griffith) testified that she believed she was in the room with Donahue and the Accused during the call to Judge

Brown. Griffith testified that she did not see Donahue shove the Accused across the room, but did see him physically touch the Accused going into the room and saw him grab the phone out of the Accused's hand. Griffith recalled two different occasions that day when the Accused and Donahue went into a separate room to call a judge. Griffith recalled being in that room on only one of those occasions. The Trial Panel finds and accepts as a fact, the testimony of the Accused with respect to the foregoing.

At a subsequent recess, Griffith and the Accused went to the ladies' room together and briefly discussed the hostility and animosity that was evident. Although neither Griffith or the Accused recalls the exact words used, they both recall words to the effect that there was a hostile environment and that Griffith said that she would not go back to the deposition without the Accused, to which the Accused replied that she would protect her (Griffith). Both agree that they did not see each other's face at the time the comments were made. Both agree that Griffith did not say that she "was afraid for her physical safety." Griffith testified that at the end of the day, she remarked to her husband and to the Accused in the elevator that it was "an armed camp up there."

The statements made by the Accused to Judge Gernant (and which form the basis of the Bar's complaint) were made the following morning and prior to the time that the Accused was made aware (she was told by Donahue) that Griffith was not in fear of her safety, that she denied making the comments reported to Judge Gernant and that the comments were a joke. (see Bar ex. 3 pgs 2 and 3).

Judge Gernant testified that the Accused, at the hearing of February 11, 1994 appeared to be emotional and upset. At this hearing, the Accused reported the prior day's incidents to Judge Gernant and requested the appointment of a special master to complete discovery. The parties agreed to resume depositions at the Accused's office and a special master was not appointed.

After the hearing before Judge Gernant, the parties resumed the deposition at the Accused's office. It was then that the Accused was told by Donahue (apparently in the presence of Griffith who was transcribing the proceedings) that Griffith's comments in the ladies room were a "joke".

The Accused admits that she did not personally report to Judge Gernant that her references to Griffith's statements were based on a misunderstanding. In a deposition by the Bar, submitted as an exhibit in these proceedings the Accused testified that the issue (of misunderstanding) was raised in a telephone call by Donahue to Judge Gernant the day after the hearing. The Accused was present at that telephone call. (see Bar exhibit 5 pg. 84)

In these disciplinary proceedings, the Bar does not contend that the Accused failed to correct her statements to Judge Gernant. The parties agreed that "failure to correct" was not a pending charge in these proceedings and did not address that issue. The Trial Panel makes no findings thereon.

ISSUE

The issue before the Trial Board is whether the Bar has established by clear and convincing evidence that at the time of the statement, the Accused knew that the statement made was not true. It is clear that Griffith did say she "did not want to go back to the deposition without (the Accused)." It is also clear that Griffith did not say "she was afraid for her physical safety."

DISCUSSION

DR 1-102(A)3 provides that it is professional misconduct for a lawyer to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation". DR 7-102(A)5 provides that in representing a client or in representing the lawyer's own interests, the lawyer shall not "knowingly make a false statement of law or fact."

The Bar has charged the Accused with dishonesty or misrepresentation and making a false statement of fact by her statement to Judge Gernant quoted above. The Bar does not assert that the Accused's conduct constitutes fraud or deceit.

The Bar must establish by clear and convincing evidence that the Accused knowingly made a statement to the judge that was false or misrepresented the facts to the judge.

The Accused contends that at the time she made the statement to Judge Gernant she believed it to be an accurate, if not verbatim, representation of what she understood the court reporter (Griffith) to have said.

The evidence presented (to which both sides agree) establishes that at the time of the statement, the Accused was visibly upset. She had been involved in a lengthy difficult legal proceeding in which her relationship with opposing counsel and the defendants was continually hostile and acrimonious. The day prior to her statement was particularly stressful, in that she was treated roughly, if not assaulted. The atmosphere during the deposition was hostile and was felt even by Griffith who testified that she could feel it and knew that opposing counsel did not like the Accused. Although Griffith felt that the Accused kept her cool and was not emotionally or physically distraught, the Trial Panel believes that the Accused was in fact emotionally upset and that her mental condition at the time could easily have led her to the honest conclusion that Griffith was in fear of her safety.

In considering whether the evidence presented shows clearly and convincingly (that it is highly probable) that the Accused knowingly made a false statement or misrepresented, the Trial Panel looks to the definition of "knowledge". We are asked to probe the Accused's mental state at the time of the conduct. The ABA Standards for Imposing Lawyer Sanctions (Standards) defines "knowledge" as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

The Accused is presumed innocent until proven otherwise. In re Jordan, 295 Or 142, 665 P2d 341 (1983). The issue is determined by a subjective analysis of the recollections of the witnesses of a situation that occurred almost three years ago.

CONCLUSION

The Trial Panel is of the opinion that the Accused believed that she was correctly reporting the feelings of the court reporter (Griffith) and that the Accused was not attempting to quote verbatim what Griffith said.

The Trial Panel is further of the opinion that at the time and under the circumstances obtaining, the Accused did not "knowingly" misrepresent a "fact". She was not consciously aware of any misstatement of a fact. It is in the realm or nature of reasonable human reactions under the circumstances that the Accused's statement, while not a verbatim quote of what Griffith said, honestly reflected what the Accused believed Griffith felt at the time.

The Accused's statement to the court was made during an emotional dispute. The Accused felt threatened and believed that Griffith shared those feelings. In using the word

"expressed", the Accused communicated to the court her own impressions of Griffith's state of mind.

As to whether the Accused honestly believed that Griffith felt threatened, there is conflicting evidence in the record. However, we find the Accused's contemporaneous statement in the restroom that she would "protect" Griffith most persuasive. The Accused's belief that Griffith wanted protection is consistent with the Accused's belief that Griffith expressed a concern for her personal safety.

Having observed the demeanor and testimony of the witnesses, we find the testimony of the Accused more credible than that of Griffith.

The Trial Panel does not believe that the Accused willfully, intentionally or knowingly mislead the court about a fact.

The statement was made during an emotional argument. In using the word "expressed", the Accused was merely reporting her impressions of a state of mind and of an attitude reflecting the feelings of Griffith, as well as of herself, that existed at the particular time. The Trial Panel does not believe that the Accused willfully, intentionally or knowingly used the phrase to mislead the Court.

The Trial Panel finds that the Bar has failed to prove by clear and convincing evidence that the Accused violated the disciplinary rules alleged. The Trial Panel finds the Accused not guilty of all charges.

DISPOSITION

The Oregon State Bar's formal complaint in this matter is dismissed.
IT IS SO ORDERED.

DATED this 14th day of January 1997.

/s/
Norman Wapnick
Trial Panel Chair

/s/
Gordon G. Davis
Trial Panel Member

/s/
Stephen L. Brischetto
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
	)	Case No. 94-226
Complaint as to the Conduct of)	
)	
JAMES A. PALMER,)	
)	
Accused.)	
_____)	

Bar Counsel: Stephen R. Blixseth, Esq.

Counsel for the Accused: William G. Wheatley, Esq.

Disciplinary Board: Robert A. Ford, Chair; Mary Jane Mori;
Ruby Brockett, Public Member

Disposition: Dismissal

Effective Date of Opinion: 5-2-97

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. 94-226
Complaint as to the Conduct of)	
	)	OPINION OF THE TRIAL PANEL
JAMES A. PALMER,)	
)	
Accused.)	
_____)	

THIS MATTER came regularly before the duly appointed and constituted Oregon State Bar Disciplinary Board Trial Panel on the 8th day of March, 1997. The Oregon State Bar was represented by Bar Counsel Stephen R. Blixseth and Assistant Disciplinary Counsel Mary A. Cooper, and the Accused was represented by William G. Wheatley and Maureen A. DeFrank, Attorneys at Law. Memoranda of the parties were received and reviewed; Oregon State Bar Exhibits 1-5 and Accused Exhibits 101-128 were offered without objection and received; the testimony of the Accused was received; and the Trial Panel heard the arguments of the parties, before taking this matter under advisement.

THE TRIAL PANEL having now had an opportunity to review the exhibits, testimony and argument, and now being fully advised, makes the following Findings of Fact, Conclusions of Law and decisions with respect to Sanctions in this matter:

FINDINGS OF FACT

1. Allegations contained in the Formal Complaint of the Oregon State Bar as Paragraphs 1-7 are true, such Paragraphs having been admitted in Paragraph 1 of the Accused's Answer.

2. On August 13, 1992, a telephone conversation occurred between the Accused, as counsel for Seattle First National Bank, and Attorney Barry Taub, as counsel for Debtors Keith and Carla Edwards, with respect to the return of a particular motor vehicle then in possession of Seattle First, though subject to the then pending bankruptcy proceedings in The United States Bankruptcy Court for the District of Oregon, Case No. 692-63348R-13, In re Edwards, Keith N. and Carla A., Debtors. The Accused's contemporaneous notes of this telephone conversation indicated:

"8/13/ Will provide ins.--now? Or how about 19th" (Exhibit 1, Page 223, appended to the January 9, 1997, deposition of James A. Palmer, received in these proceedings as Exhibit 1). The tape recording¹ of that same conversation provided in pertinent part as follows:

¹ Exhibit 5, the tape recording prepared by Attorney Taub with neither notice to, nor consent of, the Accused, was received into evidence without objection in this proceeding. As such, the Trial Panel has fully reviewed and appropriately weighed the evidentiary value of such tape.

"Mr. Taub: Okay. I'm not--I'm--let me cut this short so we don't have to go through this. She's got insurance on it now. I've got an insurance binder right in my hand, okay? If you guys want to bring the car over I'll show the insurance binder. We're willing to return the vehicle on that basis. I'm not willing to make it conditioned on any kind of value or payment plan, or something like that.

Mr. Palmer: Um-hum.

Mr. Taub: Are you guys willing to give us the vehicle if we--I give you the binder?

Mr. Palmer: I have no authority to say that at this point." (Exhibit 5).

Prior to January 19, 1993, the Accused drafted an "Affidavit of James A. Palmer" (Exhibit 118) wherein he stated:

"During the trial, to my surprise, testimony was given by one Mary Hanson, a secretary of Barry L. Taub, counsel for the Plaintiffs/Debtors, that I had been advised on August 13, 1992 that insurance had been obtained and was in place on the vehicle and that the banks' position was still to refuse to return the vehicle in light of such insurance. *I do not believe, at any time, that I was told that debtors had insurance, but only that they would be able to obtain insurance.* My response was that the Debtors had just advised Ken Lane that they could not get insurance. *My file notes and recollection of the conversation were to the effect that discussions between Mr. Taub and myself involved reassurance that coverage for the vehicle could be and would be obtained but did not include statements that the vehicle was, in fact, insured.* On August 13, 1992, Mr. Taub's office faxed a letter to me indicating their position with respect to the demand for the vehicle. That letter indicates their willingness to provide an insurance binder, but does not reflect that one had been obtained. Indeed, no insurance document was faxed to indicate that insurance was in place until after the hearing on the Motion for Relief from Stay." (Emphasis supplied).

This document was never filed nor executed by the Accused.

4.

On January 19, 1993, the Accused executed an "Affidavit of James A. Palmer" (Exhibit 119) in which he made the following statements:

"4. On 8-13-92, Mr. Taub called me to advise that the debtors' could get insurance. I told him that I had heard from Mr. Lane that Carla Edwards had called Mr. Lane to advise him that she could not obtain insurance until after 8-19-92. Mr. Taub asked whether Seafirst would return the vehicle if coverage was obtained. Since I had not discussed this matter with Seafirst, I told Mr. Taub that I would have to talk to my client. Had Mr. Taub advised me insurance coverage was in place, I would have advised Seafirst to immediately return the car to the debtors. I am absolutely certain Mr. Taub did not advise me insurance coverage was obtained on 8-13-92." (Emphasis supplied).

This document was filed in the United States Bankruptcy Court for the District of Oregon, Case No. 692-63348-R13, In Re: Edwards, Keith N. and Edwards, Carla A., Debtors and Plaintiffs v. Seattle First National Bank, Defendant, on January 21, 1993.

5.

The January 19, 1993, Affidavit executed and filed by the Accused did not materially differ from the draft Affidavit previously prepared by him, his contemporaneous phone conference note of the August 13, 1992, conversation, or his then present recollection of such conversation. It did materially differ from the testimony of Barry Taub, Mary Hansen and the tape-recording of the August 13, 1992, conversation.

6.

At the time of executing his January 19, 1993, Affidavit, the Accused believed that the Affidavit not only accurately stated his then present recollection of the August 13, 1992, conversation with Attorney Taub, but also that it accurately reflected the Accused's contemporaneous notes of that same conversation; the August 13, 1992, letter from Attorney Taub to the Accused (Exhibits 3, 108) in which the former indicated that he "will provide you with an insurance binder at the time of surrender" and nowhere copies or indicates the then present existence of such insurance binder; the Response of Debtors to Motion for Relief from Automatic Stay executed August 25, 1992, by Attorney Taub (Exhibits 3, 112) in which it is noted that: "...debtor has offered to provide proof of insurance at the time of turnover. Debtors should not have to purchase insurance before the vehicle is turned over to the Debtor while the vehicle is presently in the custody and control of the Creditor ..."; and the Accused's prior draft Affidavit.

7.

The testimony of the Accused was in all respects credible.

8.

The Accused did not knowingly, intentionally or recklessly misrepresent any fact to the Court in executing the January 19, 1993, Affidavit.

9.

The United States Bankruptcy Court concluded "that Mr. Palmer's Affidavit in support of the Motion for Relief from Judgment was either intentionally false or made with reckless disregard of its truthfulness." (Exhibit 4, Summary of Proceedings and Record of Hearing filed January 6, 1994).

The evidence submitted in the present disciplinary proceeding does not support this conclusion of the Bankruptcy Court.

10.

The United States Bankruptcy Court's ruling on the Defendant's Motion for Relief from Judgment was adverse to the position expressed in the Accused's January 19, 1993, Affidavit; was not injurious or harmful to the substantive interests of the parties; and resulted in sanctions only to the Accused.

CONCLUSIONS OF LAW

11.

The Oregon State Bar has failed to prove by clear and convincing evidence that:

(A) The Accused intentionally, knowingly or recklessly misrepresented those facts contained in his January 19, 1993, Affidavit;

- (B) That the Accused violated DR 1-102(A)(3), DR 7-102 (A)(5) or DR 7-102 (A)(6);
- (C) The Accused's January 19, 1993, Affidavit constituted a single act causing substantial harm to the administration of justice or represented repeated conduct causing some harm to the administration of justice; or
- (D) The Accused violated DR 1-102(A)(4).

SANCTIONS

12.

As the Oregon State Bar has failed to sustain its burden of proof with respect to the alleged disciplinary violations, there are no appropriate sanctions to be imposed against the Accused.

DATED this 7th day of April, 1997.

_____/s/_____
Robert A. Ford, Chair

_____/s/_____
Mary Jane Mori

_____/s/_____
Ruby Brockett

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
	)	Case No. 95-130
Complaint as to the Conduct of)	
)	
COREY B. SMITH,)	
)	
Accused.)	
<hr/>		

Bar Counsel:	Michael F. Conroyd, Esq.
Counsel for the Accused:	n/a
Disciplinary Board:	Walter A. Barnes, Chair; Miles A. Ward; Lillis L. Larson, Public Member
Disposition:	Dismissal
Effective Date of Opinion:	6-25-97

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

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:)	
	)	Case No. 95-130
Complaint as to the Conduct of)	
	)	OPINION OF THE TRIAL PANEL
COREY B. SMITH,)	
)	
Accused.)	

This matter came before a trial panel of the Oregon State Bar Disciplinary Board on the 7th day of February, 1997. Trial panel members were: Walter A. Barnes, Chairperson, Lillis L. Larson, and Miles A. Ward. The Oregon State Bar was represented by Michael F. Conroyd, Bar Counsel, and Mary A. Cooper, Assistant Disciplinary Counsel. The Accused appeared personally. Proceedings were reported by Judy F. Ross, court reporter.

Prior to hearing the Bar filed a Trial Memorandum. Bar Exhibits 1 through 26 were offered and received. Accused's Exhibit 101 was also offered and received.

FINDINGS

The accused, Corey B. Smith, is an attorney admitted to practice in the State of Oregon since 1982. He maintains his principal office in Salem, Marion County, Oregon, and now concentrates on personal injury and workers' compensation claims.

The present disciplinary proceeding involves a workers' compensation claim filed by Georgiana May (now Murray) in 1982 for injuries to her wrist. A Determination Order was issued in April 1985. (Tr. 34). The claimant received vocational training, but subsequently sought an Order entitling her to a second round of vocational training. That claim was denied by a referee, and the denial was upheld by the Workers' Compensation Board in 1989. A request for review was filed. (Tr. 37). In August 1990 the attorneys who were representing the claimant notified her by letter that they were withdrawing. They stated that the question of a second vocational training had already been decided against her, and that the "workers' compensation law has been exhausted on this issue for your claim". (Ex. 2). The attorneys suggested in their letter of resignation that Mrs. May had nothing left to pursue, and that proceeding on this claim could impair their credibility in the workers' compensation forum.

Mrs. May took her case to the accused, who met with her to discuss it. He reviewed the papers she brought in, and agreed with her former attorneys that it did not appear that she was entitled to anything further. The only issue that either the client or the accused recalls being discussed was the possibility of gaining a second vocational training program. (Tr. 32, 42 and 88). The accused realized, however, that the WCB wanted a response about an issue in the case. He contacted the Vocational Consultant who was seeking that response and told him that her claim was still open, and that it would be improper to make a final decision until the claim had been closed. (Tr. 87). He wrote a letter confirming this. (Ex. 4). The accused asked Mrs. May to sign a fee agreement. (Ex. 3). He also sent her a "form" letter containing the following statements: "Please be advised that I will get in touch with you if I hear anything significant

about your claim. Just because you do not hear anything from me for several weeks or months does not mean that I am ignoring your file. I have a very tight docket system. Much of my work is behind the scenes, and occasionally there is simply nothing to be done legally on your claim while waiting for the next event. If there is something I need to talk to you about, please trust me that I will contact you. However, if you think there is something imperative which I need to know or if I have asked you to contact me concerning certain information, please do so." (Ex. 6).

The accused wrote to Mrs. May on December 14, 1990 asking her to let him know if she received a Determination Order in her case so that he could evaluate it. (Ex. 9). Other than this, the accused did nothing on this file. He believed that she understood from the resignation of her previous lawyers, and her conference with him, that she had "had her shot" in the workers' compensation system and wasn't entitled to anything more. (Tr. 96). He told her that it would take a fairly significant change in her physical condition to enable her to get additional benefits or vocational training, but if there was such a change it could be considered. (Tr. 97).

Mrs. May had no contact from the accused after his December 14, 1990 letter. (Ex. 9). In December 1993 she received a telephone call from AIMS, the self-insured administrator for her workers' compensation claim. They proposed a settlement. Mrs. May turned this matter over to attorney G. Joseph Gorciak III. On April 30, 1994 she wrote a letter of complaint against the accused to the Bar. (Ex. 15). In it she mentioned only that attorney Gorciak was experiencing difficulties in getting a copy of her file from the accused. Curiously, she does not accuse Smith of neglecting any portion of her case. In her testimony to the trial panel she admits that she didn't mention anything about continuing her disability payments when she met with Smith (Tr. 42), and that she knew those payments had stopped because her doctor had declared her condition to be stationary. (Tr. 47).

The issue raised by AIMS involved the peculiar legal question of whether Mrs. May was entitled to time loss payments - even after being declared medically stationary until a Determination Order was issued. In her case there was a delay in issuing a Determination Order of nearly 4 years. Her potential claim for \$40,000 was settled for \$10,000. (Tr. 67-79). Mrs. May's previous attorney acknowledged during his testimony that this narrow legal issue was one that he missed during that portion of this 4 years of delay when he was representing her. (Tr. 67-8). He also states that a chance at a second vocational rehabilitation program was the primary concern of Mrs. May for the last several years he represented her. (Tr. 61).

On November 18, 1994 Mrs. May wrote to the PLF and asserted a damage claim against the accused for failing to obtain continued temporary disability payments, the subject of her settlement with AIMS. (Ex. 20). The PLF denied the claim. (Ex. 24).

In September 1994 the accused wrote to OSB Disciplinary Counsel and gave a description of his efforts for Mrs. May. (Ex. 19). It is essentially the same as his position during his testimony to the trial panel. He states that he saw this client in 1990 in connection with her attempt to get further vocational services after having been repeatedly denied. He told her that her case was doubtful, but that it could be reviewed in the future if there were additional partial disability or an aggravation, and he asked her to contact him if she received a new closure order. (Ex. 19). The accused provided a similar, but more complete explanation to the PLF. (Ex. 21). In December 1995 the accused wrote to the LPRC investigator in response to a request for information. (Ex. 22). On January 8, 1996 the LPRC investigator wrote to the accused asking him to answer several questions about why he had not pursued time loss

payments for Mrs. May. On January 15 the accused wrote back, asking for more time to respond due to several upcoming trials. (Ex. 24). However, the accused never did so. In his testimony to the trial panel he explained that he believed that he only had to respond if he had further information to provide, and since he had none, he didn't. (Tr.104).

CONCLUSIONS

This panel finds that the Accused did not neglect a legal matter that was entrusted to him. In reaching this decision the trial panel has made a number of factual determinations, and in so doing has assessed the credibility of witnesses, primarily the accused and Mrs. May. Those credibility assessments are largely responsible for the trial panel's decision. The Bar has the burden of establishing a disciplinary violation by clear and convincing evidence. BR 5.2 In re Dineman, 314 Or 308, 311; 840 P2d 50 (1992). While there is evidence in this case, we do not find it to be either clear or convincing.

It is impossible to believe much of what Mrs. May contends. All indications are that when she consulted the accused the only thing that was on her mind, and the only significant legal issue still in her case, was the possibility of a second vocational training program. She had been told by her previous lawyer that her claim simply had no merit, and that the system had already given her all to which she was entitled. The accused echoed this, but held out a slim hope that if a Determination Order were to be issued in the future indicating that she had an increased finding of disability, then her case could be reviewed to see if she had a new basis with which to seek additional benefits and training.

Mrs. May indicates in general terms that she expected the accused to do "everything" that was necessary on her case, and would have called him to express her concern that nothing was happening except that she felt her previous lawyer had withdrawn because she called him too often. (Tr. 31). The trial panel does not find that testimony credible. We do find the accused's statements credible, and note that he has told essentially the same version of what he did since 1994. The accused made a tactical decision about how Mrs. May's case should be handled. He explained it to her, and she agreed. While she heard nothing from the accused for several years, she also made no attempt to contact him to either inquire or complain about her case. We believe that is consistent with the accused's description of a mutual understanding that the workers' compensation claim had ended, and could only be revitalized with a finding in the future of additional disability.

As to the matter of continued disability payments we also believe that the accused is not guilty of neglect. We do not conclude that this matter was ever clearly or directly entrusted to him. It surely was never discussed with him by Mrs. May. Every indication in the evidence before this trial panel is that this issue was unknown to everyone, including the attorney who had been representing her for the 8 previous years. There is a significant difference between a lawyer overlooking a rare legal issue in a case on the one hand, and neglecting a case on the other. This difference is especially important in the context of an alleged violation of the disciplinary rules. We find no evidence on which to find the accused guilty of neglect with respect to the question of continued disability payments.

At the same time, we feel compelled to point out the very real potential for serious misunderstandings created by the inappropriate use of form letters, such as the one in this case. The accused very carelessly sent Mrs. May a form letter designed for active claims. It had no application whatsoever to her case, and by sending it the accused unnecessarily created uncertainty which eventually festered into a Bar complaint. The accused should carefully

review his office procedures in this regard or expect more disputes of this kind with his clients. However, we do not believe there is sufficient evidence of neglect, and find the accused innocent on the First Cause of Complaint for violation of DR 6-101(3).

The Second Cause of Complaint alleges that the accused failed to cooperate with the LPRC investigator by failing to turn over his client's file, and by failing to respond fully and truthfully to inquiries. No evidence has been presented that the accused failed to turn over all file materials that were in his possession. His letter to the LPRC investigator of December 6, 1995 contained a number of enclosures. The Bar has failed to prove that the accused had any other file materials pertaining to Mrs. May which he failed to disclose. On the matter of responding to inquiries, the accused did respond in writing and provided his position on what he had done and why he did so. The LPRC investigator was very diligent and conscientious, and asked the accused to explain some of the legal intricacies pertaining to continued time loss payments, and to state why he had not done more to obtain them for this client. The accused was careless and even thoughtless in the way he responded, and asked for additional time to reply then never did so. DR 1-103(C) requires every accused lawyer to respond fully and truthfully and to comply with reasonable requests. We believe that the accused's letters to the Bar prior to January 8, 1996, gave his full and truthful explanation of what he had done for this client and why he had done so. While they did not directly address the issue of continued disability benefits, they do make clear that the accused had agreed to represent Mrs. May only on matter of a second vocational training program. Accordingly, the trial panel is not convinced that the accused has violated DR 1-103(C). But we do feel compelled to point out that the accused did not help himself by failing to make a further response to the LPRC investigator after asking for an extension of time in which to do so. That kind of cavalier attitude should be discouraged in the strongest possible terms, and we would take this opportunity to do so.

SUMMARY

The trial panel finds the accused not guilty on the First Cause of Complaint, violation of DR 6-101(B) of the Code of Professional Responsibility, and further finds the accused not guilty on the Second Cause of Complaint, violation of DR 1-103(C) of the Code of Professional Responsibility.

DATED this 28th day of May, 1997.

/s/

Walter A. Barnes
Trial Panel Chairperson

/s/

Lillis L. Larson
Trial Panel Member

/s/

Miles A. Ward
Trial Panel Member

