DISCIPLINARY BOARD REPORTER

VOLUME 13

January 1, 1999, to December 31, 1999

Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 1999

5200 SW Meadows Road
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PREFACE

This Disciplinary Board Reporter (DB Reporter) contains final decisions of the Oregon Disciplinary Board, stipulations for discipline between accused attorneys and the OSB, and summaries of 1999 decisions of the Oregon Supreme Court involving the discipline of attorneys. Cases in this DB Reporter should be cited as 13 DB Rptr __ (1999).

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 six months, and neither the Bar nor the accused has sought review by the Oregon Supreme Court. See Title 10 of the Bar Rules of Procedure (page 351 of the OSB 2000 Membership Directory) and ORS 9.536.

The decisions printed in this DB Reporter have been reformatted and corrected for typographical errors, but no substantive changes have been made to them. Due to space restrictions, exhibits are not included but may be obtained by calling the Oregon State Bar. Those interested in a verbatim copy of an opinion should contact Barbara Buehler at extension 370, (503) 620-0222 or (800) 452-8260 (toll-free in Oregon). Final decisions of the Disciplinary Board issued on or after January 1, 2000, are also available from Barbara Buehler at the Oregon State Bar on request. Please note that the statutes, disciplinary rules, and rules of procedure cited in the opinions are those in existence when the opinions were issued. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

General questions concerning the Bar's disciplinary process may be directed to me at extension 319.

JEFFREY D. SAPIRO
Disciplinary Counsel
Oregon State Bar

TABLE OF CONTENTS

Justices of the Supreme Court

Wallace P. Carson, Jr., Chief Justice
W. Michael Gillette
George Van Hoomissen
Robert D. Durham
Theodore Kulongoski
Susan M. Leeson
R. William Riggs

Oregon State Bar Board of Governors
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LIST OF CASES REPORTED

Volume 13
DB Reporter

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

TABLE OF CASES

(References are to the page numbers of the text where the citation appears)

TABLE OF DISCIPLINARY RULES AND STATUTES

(References are to the page numbers of the text where the citation appears)

TABLE OF BAR RULES OF PROCEDURE

(References are to the page numbers of the text where the citation appears)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-215
	)	
	)	
JAMES F. WHITENER,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-101(A)(2), and DR 1-103(C). Stipulation for discipline. 120-day suspension.
Effective Date of Order:	January 29, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline between James F. Whitener and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation entered into between the parties is approved. James F. Whitener shall be suspended from the practice of law for 120 days, effective January 29, 1999, or two days after the date of this Order, whichever is later, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-101(A)(2), and DR 1-103(C) of the Code of Professional Responsibility.

DATED this 12th day of January 1999.

/s/ Arminda J. Brown
Arminda J. Brown
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

James F. Whitener, 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 F. Whitener, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Polk County, Oregon.

3.

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

4.

On June 18, 1998, the State Professional Responsibility Board directed that a formal disciplinary proceeding be filed against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), and DR 7-101(A)(2) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In or about March 1996, Richard Ropp, Jr. (hereinafter "Ropp Jr."), filed a petition to establish custody of his minor child. Richard and Carol Ropp (hereinafter "Ropps Sr."), the parents of Ropp Jr. and grandparents of the minor child, filed a motion to intervene and petition for custody of the minor child. In or about May 1996, the court entered a Stipulated Order granting temporary custody of the child to Ropps Sr. (hereinafter "Custody Case"). In or about March 1997, Ropps Sr. retained the Accused to represent them in the Custody Case and to obtain an order granting them physical and legal custody of the minor child. A hearing was scheduled for June 17, 1997.

6.

About June 12, 1997, the Accused informed the Ropps Sr. that it was unlikely that they would prevail in the Custody Case and recommended that they agree to return the child to the custody of her mother, and other terms. The Accused told the Ropps Sr. that he would prepare a stipulated judgment for them to sign. Prior to the June 17, 1997, hearing, the Ropps Sr. informed the Accused that they would not agree to return custody of the child to her mother; that they would not sign an agreement or stipulated judgment changing custody; and that they wanted to proceed with the hearing. Contrary to the Ropps Sr.'s instructions, the Accused decided not to proceed with the hearing and instructed staff to cease work on the matter.

7.

About June 17, 1997, the Accused instructed the Ropps Sr. not to appear at the June 17, 1997, hearing, and they did not appear. The Accused suggested to the Ropps Sr. that he would have the hearing date rescheduled.

8.

The Accused appeared at the June 17, 1997, hearing. He presented no evidence or witnesses on behalf of the Ropps Sr. Without the knowledge or consent of the Ropps Sr., the Accused represented to the court, opposing counsel, and other parties in the Custody Case that they agreed to settle the case and return custody of the child to her mother, and other terms. The Accused presented an unsigned stipulated judgment to the court, the terms of which were read into the record. The court, other parties, and their counsel relied on the Accused's representations. The Accused's representations were false and he knew they were false at the time he made them.

9.

On or about July 16, 1997, the Ropps Sr. filed a complaint with the Oregon State Bar concerning the Accused's conduct. Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response. The Accused represented to the Disciplinary Counsel's Office that the Ropps Sr. agreed to the terms of the stipulated judgment and the return of the child to the custody of the child's mother. Thereafter, the Accused represented to the Local Professional Responsibility Committee (hereinafter "LPRC") that he believed that the Ropps Sr. had agreed to return custody of the child to her mother and the other terms. The Accused's representations to the Disciplinary Counsel's Office and the LPRC were false and he knew they were false at the time he made them.

Violations

10.

Based on the foregoing, the Accused admits that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaged in conduct

prejudicial to the administration of justice; intentionally failed to carry out a contract of employment; and failed to respond fully and truthfully to the inquiries of Disciplinary Counsel's Office and the LPRC in violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-101(A)(2), and DR 1-103(C) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed utilizing 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 Violated.* In violating DR 1-102(A)(3), DR 1-102(A)(4), DR 7-101(A)(2), and DR 1-103(C), the Accused violated his duties to his clients, the legal system, and the profession. *Standards* §§4.4, 6.12, 7.0.

B. *Mental State.* The Accused's conduct demonstrates knowledge. "Knowledge" 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*, at 7. The Accused's clients told him that they wanted to proceed with the hearing and did not want to agree to return the child to her mother. Other staff members also told the Accused that his clients wanted to proceed with the hearing. The Accused's conduct also demonstrates "intent" in that he exercised his will over the wishes of his clients and instructed staff to cease work on the case, and then represented to the court and opposing counsel that his clients agreed to terms to resolve the case that had not been authorized by his clients.

C. *Injury.* Injury may be either actual or potential. *Standards,* at 7; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this case, the Accused caused actual and potential injury to his clients, the court, and opposing counsel. Although the court may have decided the case adversely to the Accused's clients, they were denied their day in court and the opportunity to present their case. The Accused's conduct also resulted in actual injury to the court and to opposing counsel in that they relied on the Accused's representations that his clients agreed to the terms set forth in the unsigned stipulated judgment, which was read into the record. The Accused's conduct also caused actual injury to the profession by his failure to uphold the ethical standards.

D. *Aggravating Factors.* Aggravating factors include:

1. This stipulation involves four rule violations. *Standards* §9.22(d).

2. The clients, the court, and opposing counsel were vulnerable in that each relied upon the Accused to perform his duties consistent with the ethical standards of the legal profession. *Standards* §9.22(h).

3. The Accused's conduct reflects aspects of dishonest and selfish motives. He placed his view of the case and desire not to proceed with the hearing over the wishes of his clients. He also instructed the clients to stay away from the courthouse at the time of the hearing, which suggests an effort to hide his actions from the clients. *Standards* §9.22(b).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused does not have a prior record of discipline. *Standards* §9.32(a).

2. The Accused reports that during times relevant to the complaint, he was emotionally upset. He and his wife were in the process of divorce. He has been and continues to be in counseling and has not consumed alcohol or other intoxicants since October 1997. *Standards* §9.32(c).

3. The Accused cooperated with the Disciplinary Counsel's Office in resolving this disciplinary proceeding. *Standards* §9.32(e).

4. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(*l*).

12.

The *Standards* provide that the suspension is generally appropriate when a lawyer knowingly fails to perform the services for a client and causes serious or potentially serious injury to a client. *Standards* §4.42(a). Suspension is also appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to a legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* §6.12. Suspension is also 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. *Standards* §7.2.

13.

Oregon case law provides guidance in determining the appropriate sanction in this case. In *In re Greene*, 290 Or 291, 620 P2d 1379 (1980), the lawyer violated DR 1-102(A)(4) (current DR 1-102(A)(3)) and ORS 9.460(4) and was suspended for 60 days for failing to advise the court in a petition by the guardian for permission to sell estate property, and to use the proceeds to purchase real estate for the benefit of the wards, that the property being purchased was owned by the guardian. In *In re Hiller,* 298 Or 526, 694 P2d 540 (1985), the lawyers violated DR 1-102(A)(4)

(current DR 1-102(A)(3)) and ORS 9.527(4) and were suspended for four months when they submitted an affidavit to the court, which failed to disclose a material fact regarding a sham sale. The lawyers had no prior record of discipline. In *In re Shaw*, 9 DB Rptr 189 (1995), the lawyer was suspended for four months for violating DR 1-102(A)(3) and DR 5-101(A) when she filed an affidavit with the court in support of a motion for a temporary restraining order against a client that misrepresented the number of calls he made to the client and that immediate and irreparable harm would occur if the relief sought was not granted. In *In re McKee*, 316 Or 114, 849 P2d 509 (1993), the lawyer was suspended for 18 months when he misrepresented the existence of a settlement to the court even though he genuinely believed his client would settle the case. The lawyer was charged with multiple violations of the disciplinary rules involving more than one client matter and had a prior record of discipline.

14.

In light of the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 120 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-101(A)(2), and DR 1-103(C).

15.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board (SPRB), 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 January 29, 1999, or two days after such approval, whichever is later.

DATED this 2nd day of January 1999.

/s/ James F. Whitener
James F. Whitener
OSB No. 92501

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 73014
Assistant Disciplinary Counsel

Cite as 328 Or 211 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
JOHN G. MEYER,	)
	)
Accused.	)

(OSB 94-196; SC S43286)

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

Argued and submitted January 16, 1997. Decided January 22, 1999.

Mary A. Cooper, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, argued the cause and filed a brief on behalf of the Oregon State Bar.

John G. Meyer, Astoria, pro se, argued the cause and filed a brief on behalf of the accused.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., resigned March 31, 1998, and did not participate in this decision.)

PER CURIAM

The Accused is suspended from the practice of law for a period of 90 days, commencing 60 days from the date of this decision.

SUMMARY OF SUPREME COURT OPINION

The Accused appeared on behalf of a client at a Driver and Motor Vehicles Division hearing while under the influence of intoxicants. Because of the Accused's condition and behavior, the hearings officer became convinced that the Accused was in no condition to represent his client, and she therefore terminated the hearing. The Oregon State Bar charged the Accused with violating Code of Professional Responsibility Disciplinary Rules (DR) 1-102(A)(4) (engaging in conduct prejudicial to the administration of justice) and DR 7-106(C)(6) (engaging in undignified or discourteous conduct degrading to a tribunal). A trial panel found that the Accused violated both those rules and imposed a 90-day suspension. On review, the Accused argued that his conduct violated neither of the charged rules, that the 90-day suspension was excessive and therefore inappropriate, and that DR 1-102(A)(4) is

unconstitutionally vague and therefore void and that no sanction can be imposed for violation of that rule. The Supreme Court concluded that the Accused violated both DR 1-102(A)(4) and DR 7-106(C)(6). The court also concluded that DR 1-102(A)(4) is not unconstitutionally vague. Finally, the court concluded that the 90-day suspension was appropriate. *Held:* The Accused is suspended for 90 days.

Cite as 328 Or 220 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
JOHN G. MEYER,	)
	)
Accused.	)

(OSB 96-82; SC S43286)

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

Submitted on the record and brief September 11, 1998. Decided January 22, 1999.

Mary A. Cooper, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, filed a brief on behalf of the Oregon State Bar.

No appearance contra.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, Kulongoski, and Leeson, Justices. (Riggs, J., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for a period of one year, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Meyer,* 328 Or 211, 970 P2d 652 (1999) (*Meyer I*).

SUMMARY OF SUPREME COURT OPINION

On or before January 3, 1998, the Accused was retained by a client regarding a marital dissolution matter and related temporary spousal and child support. Over the next two months, the Accused repeatedly failed to take any constructive action to advance or protect his client's legal position. The Oregon State Bar charged the Accused with violating Code of Professional Responsibility Disciplinary Rule (DR) 6-101(B) (neglect of a legal matter entrusted to a lawyer). A trial panel found that the Accused did not violate that disciplinary rule and the Bar petitioned for review. On review, the Supreme Court found that the Accused violated DR 6-101(B). *Held:* The Accused is suspended for one year.

Cite as 328 Or 230 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
JOHN J. DEVERS,	)
	)
Accused.	)

(OSB 93-175, 94-96; SC S39997)

En Banc

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

Argued and submitted September 11, 1998. Decided January 22, 1999.

John J. Devers, Portland, argued the cause and filed the briefs in propria persona.

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

PER CURIAM

The Accused is disbarred, commencing 60 days from the date of filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with multiple violations of the Code of Professional Responsibility, namely, DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 3-101(B) (unlawful practice of law). A trial panel of the Disciplinary Board concluded that the Accused had committed those disciplinary violations and suspended him from the practice of law for 15 months. *Held:* The Accused committed multiple violations of DR 1-102(A)(3) and DR 3-101(B). The Accused is disbarred, commencing 60 days from the date of filing of this decision.

Cite as 328 Or 289 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
TERRY G. SUNDKVIST,	)
	)
Accused.	)

(OSB 96-95, 96-96; SC S44566)

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

Submitted on the record and brief December 3, 1997. Decided February 11, 1999.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, filed a brief on behalf of the Oregon State Bar.

No appearance contra.

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in the decision of this case; Graber, J., resigned March 31, 1998, and did not participate in the decision of this case.)

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with multiple violations of the Code of Professional Responsibility and related statutes. After finding the Accused guilty of those violations, a trial panel of the Disciplinary Board disbarred the Accused. *Held:* The Accused is guilty of multiple violations of the disciplinary rules. The Accused is disbarred.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-135
	)	
WYOMING V. McKENZIE,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Stipulation for discipline. Public reprimand.
Effective Date of Order:	March 15, 1999

ORDER APPROVING STIPULATION FOR 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 6-101(B).

DATED this 15th day of March 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Stephen M. Bloom
Stephen M. Bloom, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Wyoming V. McKenzie, 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, Wyoming V. McKenzie, was admitted by the Oregon Supreme Court to the practice of law in Oregon on June 13, 1990, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Deschutes County, Oregon.

3.

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

4.

On October 16, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In 1996, Debbie Harris (hereinafter "Harris") retained the Accused to pursue a contempt action against her former husband for failing to comply with the terms of the parties' dissolution decree. The Accused obtained a judgment that included a requirement that Harris' ex-husband pay Harris' attorney fees and costs in connection with the contempt proceeding. The amount of the fees and costs were to be determined after the Accused submitted to the court a statement of fees and costs pursuant to ORCP 68. In April 1996, the Accused advised Harris by letter that the Accused would submit an attorney fee petition to the court "at the end of the week."

6.

Between April 1996 and October 1997, the Accused took no further action on the Harris attorney fee matter. In October 1997, after conferring with court personnel and learning that no petition had been filed, Harris wrote the Accused, told her that she had checked with the courthouse and learned that no petition had been filed, reminded her that the matter had been outstanding for approximately 18 months, and expressed her lack of understanding as to why the Accused had failed to follow through. Harris received no response to her letter.

7.

In late January 1998, Harris conferred with another lawyer (Steven Herron) who, on Harris's behalf, wrote the Accused and requested that she complete the legal matter entrusted to her. As of mid-March 1998, the Accused had not completed the legal matter nor responded to Harris or Herron.

8.

On May 22, 1998, with the legal matter still unresolved and receiving no response from the Accused, Harris contacted the Oregon State Bar for assistance.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, she neglected a legal matter entrusted to her in violation of DR 6-101(B).

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated her duty to diligently represent her client. *Standards* §4.4.

B. *Mental State.* The Accused acted with knowledge, in that she was aware of both Harris' and Herron's requests for completion of the legal matter.

C. *Injury.* Injury may be either actual or potential. In this case, although the Accused ultimately compensated Harris for the attorney fees expended, Harris was denied reimbursement of those fees for over two years.

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

1. None

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused had no dishonest or selfish motive for failing to complete the legal matter entrusted to her. *Standard*s §9.32(b).

3. The Accused displayed a cooperative attitude toward the proceeding. *Standards* §9.32(e).

4. The Accused has expressed remorse. *Standard*s §9.32(*l*).

11.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards* §4.42. The *Standards* also provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* §4.43.

12.

Oregon case law suggests that, regardless of the fact that the Accused acted knowingly, a public reprimand is appropriate in this case. In *In re Brownlee,* 9 DB Rptr 85 (1995), a lawyer was appointed to represent a criminal defendant in a post-conviction proceeding. The lawyer failed to communicate with his client regarding the client's appeal, failed to respond to the client's attempts to communicate with the lawyer, and failed to promptly return trial court transcripts and other documents to the client in violation of DR 6-101(B) and DR 9-101(C)(4). The lawyer was reprimanded. Similarly, in *In re Hall,* 10 DB Rptr 19 (1996), a lawyer who failed to timely prepare a QDRO and respond to the client's numerous inquiries concerning the status of the legal matter was reprimanded for violating DR 6-101(B). *See also In re Reid,* 10 DB Rptr 45 (1996); *In re Jennings,* 12 DB Rptr 190 (1998).

13.

The Accused agrees to accept a public reprimand for the violation described in this stipulation.

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 10th day of February 1999.

/s/ Wyoming V. McKenzie
Wyoming V. McKenzie
OSB No. 90175

EXECUTED this 22nd day of February 1999.

OREGON STATE BAR

By: /s/ Lia Saroyan
Lia Saroyan
OSB No. 83314
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. S46237
	)	
KAREN M. WERNER,	)	
	)	
Accused.	)	

Bar Counsel:	Michael J. Gentry, Esq.
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), DR 7-101(A)(2), DR 7-102(A)(5), and ORS 9.460(2). No contest plea. Four-year suspension.
Effective Date of Order:	March 23, 1999

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Karen M. Werner have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Karen M. Werner is suspended from the practice of law for a period of four years. The Stipulation for Discipline is effective the date of this order.

DATED this 23rd day of March 1999.

/s/ Wallace P. Carson, Jr.
Chief Justice

NO CONTEST PLEA

Karen M. Werner, attorney at law (hereinafter "the Accused"), hereby enters a No Contest Plea with the Oregon State Bar (hereinafter "the Bar"), the terms of which are set forth below, pursuant to Oregon State Bar Rule of Procedure 3.6(b).

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, Karen M. Werner, 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 Oregon on September 20, 1985, and a member of the Oregon State Bar.

3.

The Accused enters into this No Contest Plea freely, voluntarily, and with the advice of counsel. This plea is made under the restrictions of Rule of Procedure 3.6(h).

4.

The State Professional Responsibility Board (hereinafter "SPRB") directed that formal disciplinary proceedings be filed against the Accused for multiple violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(A)(2), DR 6-101(B), DR 7-101(A)(2), DR 7-102(A)(5), and ORS 9.460(2); and a charge of DR 1-103(C) of the Code of Professional Responsibility.

5.

The Bar filed a Formal Complaint against the Accused, a copy of which is attached hereto as Exhibit 1 and by this reference made a part hereof. The Accused does not wish to contest or defend against the allegations of the Formal Complaint and enters a plea of no contest. The Accused acknowledges that her plea will result in a finding that the allegations of the Bar's Formal Complaint are true and that she has violated the provisions of the Code of Professional Responsibility and ORS Chapter 9 as set forth in the Bar's Formal Complaint.

Sanction

6.

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 by 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)(3), DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), DR 7-101(A)(2), and DR 7-102(A)(5) of the Code of

Professional Responsibility and ORS 9.460(2), the Accused violated her duties to her clients, the profession, and the legal system. *Standards* §§4.4, 4.6, 6.1, 7.2.

B. *State of Mind.* The Accused's conduct demonstrates knowledge. "Knowledge" 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,* at 7. The Accused knew that she had not performed certain work, rationalized that she would get the work done within a few hours, and made misrepresentations to the court and others that the work had been performed. The Accused also knew that she was experiencing mental illness, but chose to deal with the illness herself rather than seek the help of a mental health professional.

C. *Injury*. As a result of the Accused's conduct, there existed actual and potential injury to her clients, the legal system, and the profession. *Standards*, at 7. Some of the clients were injured because their appeals were dismissed and could not be reinstated. They were denied the opportunity for appellate review. In other cases, the Accused was able to obtain orders reinstating the cases and completed the work that she had been hired to perform. The court and the attorneys who retained the Accused to handle the client matters were injured because they relied on the Accused's representations. The Accused caused harm to the legal profession because she failed to respond to the inquiries of the Bar and therefore delayed the investigation and the resolution of this proceeding.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused was admitted to practice in 1985 and has substantial experience in the practice of law. *Standards* §9.22(i).

2. The Accused's conduct involves multiple rule violations and demonstrates a pattern of misconduct occurring over a period in excess of a year. *Standards* §9.22(c), (d).

3. The Accused initially failed to respond to the Bar's inquiries concerning the complaint and the matter was referred to the Local Professional Responsibility Committee for investigation. Late in the investigation, with the assistance of a friend, the Accused provided some information. Later still, the Accused provided additional information through her attorney. *Standards* §9.22(e).

4. The Accused's conduct demonstrates a dishonest motive in that her representations to the court concerning the filing and service of motions and briefs were not correct, the result being that the court and others were misled and additional time was obtained to comply with court rules. *Standards* §9.22(b).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards* §9.32(a).

2. There is evidence of personal or emotional problems and mental disability and impairment. *Standards* §9.32(c), (h), (j). The Accused has been diagnosed as being affected by major depression, recurrent type. Medical evidence

has been presented that the Accused's mental illness contributed to the misconduct in this case. Unfortunately, at the time of the misconduct, the Accused did not seek help from mental health professionals and others. The medical evidence is that the Accused has recovered but, given her history of depressive episodes, she is at risk for recurrence of the illness. The Accused does, however, have a new understanding of the illness and the need to seek psychiatric help in the future if symptoms of clinical depression reoccur. According to the evaluating psychiatrist, he does not believe that the Accused will develop the severe and prolonged symptoms that contributed to the misconduct in this case.

3. Prior to the events which are the subject of this proceeding, the Accused's reputation with the court and counsel was good. *Standards* §9.32(g). The Accused had mainly an appellate practice in workers' compensation matters. She was hired by other lawyers to handle their appellate work. According to the lawyers who retained the Accused to handle such matters, prior to the time relevant to this disciplinary proceeding, the Accused was conscientious, dependable, and performed all tasks in a prompt and professional manner.

4. The Accused acknowledges the wrongfulness of her conduct and is remorseful. *Standards* §9.32(*l*).

5. The Accused reports that she has not practiced law since January 1995. The Accused moved to Texas, where members of her family reside. After a period of several months, she sought employment, eventually securing a position as a legal assistant with an attorney, who has provided a report concerning the Accused's performance. The Accused does not plan to return to Oregon at this time, but will remain in Texas.

7.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect, or knowingly deceives a client, and causes injury or potential injury to the client. *Standards* §§4.42, 4.62. Suspension is also appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards* §6.12. Suspension is also appropriate when the 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.

8.

There are no Oregon cases that describe the exact conduct and circumstances detailed in this no contest plea. However, there are several cases that provide some guidance. In *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996), the lawyer's failure

to communicate with a client, which denied the client the opportunity to appeal his conviction, misrepresentations to court regarding his representation of the client, and failure to cooperate with the Bar's investigation warranted the imposition of a three-year suspension from the practice of law. The lawyer had a prior record of discipline. In *In re Hedrick*, 312 Or 442, 822 P2d 1187 (1991), the lawyer was suspended for two years when he made misrepresentations in a probate petition that the will was the testator's last will. The lawyer's long disciplinary history was an aggravating factor in the case. In *In re Staar*, 324 Or 283, 924 P2d 308 (1996), the lawyer was suspended for two years for making false statements under oath. Mental disability or impairment was considered as a mitigating factor.

In this case, there is evidence of mental illness that contributed to the misconduct, which is considered in mitigation. However, the misconduct occurred over a long period of time and involved numerous clients, other lawyers, and the court. The Accused also knew that she was not acting appropriately.

9.

The Bar and the Accused agree that she should be suspended from the practice of law for a period of four years, effective the date the Accused's No Contest Plea is approved by the court.

10.

This No Contest Plea has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the sanction was approved by the State Professional Responsibility Board, and the matter shall be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

DATED this 24th day of February 1999.

/s/ Karen M. Werner
Karen M. Werner
OSB No. 85363

OREGON STATE BAR

By: /s/ Jane E. Angus
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 Nos. 95-192; 95-207; 95-208;
	)	95-209; 95-210; 95-211
JAY HUESTON SAFLEY,	)	
	)	
Accused.	)	

Bar Counsel:	Randolph Garrison, Esq.
Counsel for the Accused:	Michael Jewett, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 2-106(A), DR 6-101(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), DR 9-102(E), and ORS 9.527(2). Stipulation for discipline. Five-year suspension.
Effective Date of Order:	April 6, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Jay Hueston Safley have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Jay Hueston Safley is suspended from the practice of law for a period of five years. The Stipulation for Discipline is effective the date of this order.

Dated this 6th day of April 1999.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.
Chief Justice

STIPULATION FOR DISCIPLINE

Jay Hueston Safley, 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, Jay Hueston Safley, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, and, with the following exception, has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson County, Oregon. Pursuant to BR 3.4(d), on August 20, 1996, the Supreme Court suspended the Accused until further order of the court as a result of his conviction of the felony, possession of a controlled substance (heroin).

3.

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

4.

On January 18, 1997, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein. 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.

5.

At all relevant times, the Accused was addicted to numerous illegal drugs, including marijuana, heroin, and methamphetamine. The Accused was also addicted to alcohol and affected by the mental disease, bipolar disorder.

Facts

Criminal Conviction

Case No. 95-192

6.

The Accused admits that on June 19, 1996, he was convicted of a felony, possession of a controlled substance (heroin), in Case No. 96-1203-C-2, Circuit Court, Jackson County.

Violations

7.

The Accused admits that, by engaging in the conduct described in paragraph 6 herein, he committed a criminal act that reflects adversely on his trustworthiness or fitness to practice law in violation of DR 1-102(A)(2) of the Code of Professional Responsibility and was convicted of a felony in violation of ORS 9.527(2).

Facts

Kinyon Matter

Case No. 95-207

8.

The Accused admits that between April 12, 1995, and April 19, 1995, he wrote three checks to Pear Tree Texaco from his law office general account. There were not sufficient funds in this account to cover these checks, and they were returned for nonsufficient funds. The Accused had reason to know that these checks would not be covered by funds in his account and had received regular notice of the balance of this account, but, because of the circumstances described in paragraph 27(e) herein, he did not attend to the information he received.

Violations

9.

The Accused admits that by engaging in the conduct described in paragraph 8 herein, he engaged in conduct involving misrepresentation in violation of DR 1-102(A)(3) of the Code of Professional Responsibility in that he represented to the payees that there were sufficient funds in his account to cover the checks.

Facts

Roberts Matter

Case No. 95-208

10.

The Accused admits that in March 1994, he left his employment with the law firm of Grantland, Grensky & Blodgett, where he had been employed as an associate attorney since 1993. One of the cases the Accused took with him when he left the law firm was will contest litigation in which he represented Joe Roberts. After March 1994, Mr. Roberts paid the Accused $1,500 for legal services.

11.

The Accused further admits that he lacked the legal knowledge, skill, thoroughness, and preparation to represent Mr. Roberts in a will contest, failed to take significant action on behalf of Mr. Roberts or to communicate adequately with

him, did not complete the will contest litigation, and did not refund any portion of the fees he had received.

12.

The Bar does not contend that the Accused converted any of Mr. Roberts' funds in this matter.

Violations

13.

The Accused admits that by engaging in the conduct described in paragraphs 10 and 11 herein, he charged or collected an excessive fee, failed to provide competent representation to a client, and neglected a legal matter entrusted to him in violation of DR 2-106(A), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility.

Facts

Greene Matter

Case No. 95-209

14.

The Accused admits that in the fall of 1994, he undertook to represent Carole S. Green in the probate of her husband's estate and in a related claim against Ms. Green for damages to property. An arbitration hearing on the property damage claim was set for April 27, 1995.

15.

The Accused further admits that he failed to appear at the arbitration hearing because he had been arrested on the criminal charges described in paragraph 6 herein. The Accused did not notify Ms. Green or the arbitrator that he would be unable to appear for the arbitration hearing and made no arrangements to protect her interests at the hearing. The Accused withdrew from representing Ms. Green before the damage claim was resolved or the probate was completed.

16.

The Accused further admits that he paid the arbitrator's fee with a check from an account that he had reason to know would have insufficient funds to cover the check, but, because of the circumstances described in paragraph 27(e) herein, the Accused did not attend to notices from his bank that this account had been closed.

Violations

17.

The Accused admits that by engaging in the conduct described in paragraphs 13 through 15 herein, he engaged in conduct involving misrepresentation in that he represented to the payee that there were sufficient funds in his account to cover the check, he failed to provide competent representation to a client, and he neglected a legal matter entrusted to him in violation of DR 1-102(A)(3), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility.

18.

Upon further discovery and review of the evidence, the Bar dismisses its allegation in the Formal Complaint that the Accused converted $150 paid to him by Green, the dismissal of this allegation to be effective upon the approval of this stipulation by the Supreme Court. The violation of DR 1-102(A)(3) still present in this stipulation is based on the Accused's admission of writing a check on an account with insufficient funds.

Facts

Moore Matter

Case No. 95-210

19.

The Accused admits that on April 23, 1995, he undertook to represent Everett Moore in a criminal matter. Mr. Moore paid the Accused $250 as a partial retainer. To secure payment of the balance of his retainer, the Accused accepted a wedding ring set from Mr. Moore's wife.

20.

The Accused further admits that he performed no legal services for Mr. Moore and failed to return Mrs. Moore's rings until August 17, 1995. The Accused did not refund Mr. Moore's retainer until December 1995.

Violations

21.

The Accused admits that by engaging in the conduct described in paragraphs 19 and 20 herein, he charged or collected an excessive fee, neglected a legal matter entrusted to him, and failed to promptly deliver to a client funds and property of the client that the client was entitled to receive, in violation of DR 2-106(A), DR 6-101(B), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Facts

Denney Matter

Case No. 95-211

22.

The Accused admits that on May 13, 1995, he wrote a check for $55 on his client trust account for his own personal expenses. There were not sufficient funds in this account to cover the check and it was returned for nonsufficient funds. The Accused had reason to know that this check would not be covered by funds in his trust account and had received regular notice of the balance of this account, but did not attend to the information he received.

23.

The Accused's trust account was closed by his bank on March 17, 1995, and notice of the closure was sent to the Accused on March 17, 1995. On March 21, 1995, the Accused wrote a check for $16 on his client trust account for personal expenses. Since the account had been closed and there were not sufficient funds in it to cover this check, the bank returned the check unpaid. When he wrote the May 21, 1995, check, the Accused had reason to know that the bank had closed his trust account and that the check would not be honored by the bank. The Accused did not attend to the notice that his trust account had been closed.

24.

In that the two checks were returned due to insufficient funds, no client funds were drawn upon by the Accused in payment of the two checks.

25.

The Accused further admits that he did not maintain complete trust account records and, from time to time, deposited his own funds into his client trust account. When the above-described checks were dishonored by his bank, the Accused did not notify Disciplinary Counsel of the overdrafts to his trust account.

Violations

26.

The Accused admits that, by engaging in the conduct described in paragraphs 22 through 25 herein, he attempted to use funds in his trust account for personal expenses, maintained his own funds in his client trust account, failed to maintain complete trust account records, and failed to notify Disciplinary Counsel of overdrafts on his trust account in violation of DR 1-102(A)(3), DR 9-101(A), DR 9-101(C)(3), and DR 9-102(E).

Sanction

27.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Supreme Court should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") 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. *Duty Violated.* The Accused violated his duties to his clients to preserve their property and to promptly return it to them and to diligently and competently represent them. *Standards* §§4.1, 4.4, 4.5. A lawyer's most important ethical duties are those he owes to his clients. *Standards,* at 5. The Accused also violated the most important duties he owes to the public: to maintain his personal integrity and to abide by the law. *Standards* §§5.0, 5.1. Finally, the Accused violated his duty as a professional to avoid charging or collecting excessive fees. *Standards* §7.0.

B. *Mental State.* With regard to mental state, because the Accused was affected by an undiagnosed bipolar disorder and was at all relevant times intoxicated from his use of alcohol, marijuana, methamphetamine, and heroin, he was impaired to the point where he did not pay adequate attention to his accounting responsibilities and bank balances or to the records and notices he received from his bank that advised him of low or negative bank balances. Although the Accused was able to distinguish the difference between right and wrong, he did not act or fail to act with the conscious purpose to achieve a particular result. Rather, with respect to the Greene, Moore, and Roberts matters, he acted with the conscious awareness of his duty to represent them competently and diligently, to charge reasonable fees, and to return their property, but without the conscious purpose to accomplish a particular result. With respect to the nonsufficient checks described in the Greene, Denney, and Kinyon matters above, because of his substance abuse and mental disorder, the Accused failed to heed the substantial risk that the checks he wrote would not be covered by funds in the accounts upon which they were written.

C. *Injury.* Injury may be either actual or potential. The merchants and the arbitrator to whom the Accused wrote nonsufficient checks were actually injured in that their payment for the goods and services they supplied to the Accused was delayed. Joe Roberts was actually injured in that he paid for competent legal services that he did not receive. Everett Moore and his wife were actually injured in that they also paid for legal services they did not receive and their retainer, along with Mrs. Moore's rings, were not promptly returned to them. Carole Greene was not actually injured by the Accused's failure to attend her arbitration hearing because the arbitrator rescheduled it so she could obtain other counsel. There was, however, a potential for injury to Ms. Greene in that the arbitrator could have required her to proceed on the day of the hearing without counsel.

D. *Aggravating Factors.*

1. The Accused engaged in a pattern of misconduct that involved multiple disciplinary offenses over a period of approximately two years. *Standards* §9.22(c), (d).

2. The Accused engaged in illegal conduct. *Standards* §9.22(k).

E. *Mitigating Factors.*

1. The Accused has no prior disciplinary record. When he undertook the first client matter involved in this proceeding—the Roberts will contest—he had only three years' experience in the practice of law, having been admitted to the Bar in 1991. *Standards* §9.32(a), (f).

2. The Accused promptly made good the nonsufficient checks he had written and repaid unearned legal fees or costs to Joe Roberts and Carole Green when he was able. *Standards* §9.32(d).

3. The Accused has made full and free disclosure to the Disciplinary Counsel's Office and to the Local Professional Responsibility Committee and has displayed a cooperative attitude toward the formal proceedings. The Accused has, moreover, displayed remorse for his conduct. *Standards* §9.32(e), (*l*).

4. Other sanctions have been imposed upon the Accused for his conduct. *Standards* §9.32(k). He served 10 days in jail, paid a fine of $94, and successfully completed an 18-month probation that included random blood, breath, and urine testing.

5. The Accused's medical records and psychological evaluation establish a many-year history of alcohol and illegal drug use, abuse, and dependency and that he was affected by bipolar disorder which was not diagnosed until after the conduct involved in these proceedings. The Accused's chemical dependency and the intoxication brought on by his use of alcohol and illegal drugs were substantial contributing causes of his inattention to client matters and his own banking and accounting responsibilities. The Accused's chemical dependency culminated in an attempted suicide by overdose that resulted in the criminal conviction described in paragraph 6 herein. The Accused has completed in-patient treatment for his drug and alcohol dependency and has completed a half-way house program. He has been abstinent from alcohol and illegal drugs since September 1995, is taking medication for bipolar disorder, and currently attends Alcoholics Anonymous groups four to six times per week. The Accused's recovery has arrested any misconduct to which intoxication and mental disabilities contributed, such as the misconduct that is the subject of this stipulation for discipline. *Standards* §9.32(i).

28.

The ABA *Standards* suggest that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* §4.42. The

Standards suggest that suspension is, likewise, appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury. This includes cases where the lawyer commingles client funds with his own or fails to remit client funds or property promptly. *Standards* §4.12. Finally, suspension is appropriate when a lawyer knowingly engages in conduct that involves dishonesty, fraud, deceit, or misrepresentation that adversely reflects on his fitness to practice law. *Standards* §5.13.

29.

Oregon law suggests that, although the Accused should receive a significant period of suspension for his conduct, disbarment is not appropriate. The Accused's conduct is less egregious than that in *In re Taylor*, 316 Or 431, 851 P2d 1138 (1993). In *Taylor*, the lawyer was convicted of three felonies: possession with intent to distribute marijuana, conspiracy to manufacture, possess, and distribute marijuana, and attempting to evade or defeat a tax by not filing an income tax return. The lawyer also misappropriated funds from several decedents' estates and failed to cooperate in the Bar's investigation. The court in *Taylor* found only one mitigating factor: the absence of a prior disciplinary record.

As distinguished from *Taylor*, the Accused has been charged in this case with one conviction of a drug-related felony, the sole victim of which was himself. His financial defalcations consist of writing a number of bad checks, but the evidence does not establish that he has misappropriated client funds. Moreover, the number and significance of the mitigating factors properly attributable to the Accused, especially his substantial and successful effort to rehabilitate himself from the chemical dependency and mental condition that contributed substantially to his conduct, suggest that a long suspension, not disbarment, is appropriate for his conduct.

30.

Consistent with the ABA *Standards* and Oregon case law, the Bar and the Accused agree that, commencing on the date this stipulation is approved by the Supreme Court, the Accused shall be suspended from the practice of law for a period of five years for violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 2-106(A), DR 6-101(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), DR 9-102(E), and ORS 9.527(2). The Accused understands that he will be required to comply with the requirements of BR 8.1 prior to reinstatement.

31.

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 this stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 3rd day of March 1998.

/s/ Jay Hueston Safley
Jay Hueston Safley
OSB No. 91095

EXECUTED this 16th day of March 1998.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-16
	)	
MICHAEL PATRICK LEVI,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Christopher Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Stipulation for discipline. 61-day suspension.
Effective Date of Order:	April 3, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come before the Disciplinary Board upon the Stipulation of Michael Patrick Levi and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation entered into between the parties is approved. Michael Patrick Levi shall be suspended from the practice of law for a period of 61 days, effective April 3, 1999, for violation of DR 6-101(B) of the Code of Professional Responsibility.

DATED this 9th day of April 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Michael Patrick Levi, is, at all times mentioned herein was, an attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Oregon State Bar, having his office and place of business in Yamhill 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 Bar Rule of Procedure 3.6(h).

4.

On February 19, 1999, the State Professional Responsibility Board directed that a formal complaint be filed against the Accused alleging violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Sylvia McAdams (hereinafter "McAdams") and her husband obtained a decree of dissolution of their marriage. Pursuant to the decree, the court awarded sole custody of the parties' two children to McAdams' husband. McAdams was ordered to pay $300 per month to her ex-husband for child support. Subsequently, the parties established a shared custody arrangement, with each party having physical custody of one of the children. McAdams and her husband attempted to work out an agreement for modification of the custody and child support issues. The Accused did not represent McAdams during the foregoing proceedings.

In or about September 1995, McAdams retained the Accused for advice concerning the child custody and child support modification issues. Between 1995 and 1997, McAdams had periodic contact with the Accused concerning a possible stipulated order to resolve these issues, but did not maintain regular communication

with him. A significant portion of the time, McAdams attempted to work directly with her ex-husband rather than with the Accused's assistance. McAdams efforts were not successful.

By December 1996, the Accused realized that a stipulation between the parties was not realistic and advised his client that the only way to achieve the modification would be to pursue the matter in court. The Accused requested that McAdams provide him with funds for a filing fee. McAdams paid the filing fee to the Accused in January 1997.

Between January and July 1997, the Accused took no action on McAdams' case. In July 1997, McAdams again contacted the Accused. The Accused drafted a letter to opposing counsel and advised McAdams that the letter would be sent the following day and a copy would be sent to her. The Accused failed to send the letter and McAdams received no communication from the Accused. Between July 1997 and September 1998, McAdams did not contact the Accused, nor did the Accused contact McAdams or take action in the case. In or about September 1998, McAdams terminated the attorney-client relationship with the Accused.

Violations

6.

The Accused admits that he neglected a legal matter entrusted to him by a client and that his conduct violated DR 6-101(B) of the Code of Professional Responsibility.

Sanction

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to render diligent services. *Standards* §4.4.

B. *Mental State.* In failing to diligently attend to his client's case, the Accused acted with knowledge. "Knowledge" 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. The Accused promised to take action and knew that his client required assistance to resolve the custody and child support issues.

C. *Injury.* The Accused's conduct resulted in potential and actual injury to his client. In failing to actively pursue the case, resolution of the custody and

child support issues was delayed. McAdams had physical but not legal custody of her child and remained obligated to pay child support to her ex-husband.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused was admitted to practice in 1982 and has substantial experience in the practice of law. *Standards* §9.22(i).

2. The Accused has a prior disciplinary record. In September 1987, the Accused accepted a letter of admonition for two violations of DR 1-103(C). In 1991, the Accused was suspended for 60 days for violation of DR 6-101(B) and DR 1-103(C). *In re Levi*, 5 DB Rptr 27 (1991). In 1997, the Accused accepted a letter of admonition for violation of DR 6-101(B). Finally, in December 1998, the Accused was suspended for 120 days for two violations of DR 1-103(C). *In re Levi*, 12 DB Rptr 258 (1998) (Case No. 97-213). *Standards* §9.22(a).

3. The Accused's conduct demonstrates a pattern of misconduct. *Standards* §9.22(c).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(*l*).

2. The Accused cooperated with the Disciplinary Counsel's Office in resolving this disciplinary proceeding. *Standards* §9.32(e).

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

4. During times relevant to the McAdams complaint and the complaint resulting in his most recent suspension, the Accused asserts that his consumption of alcohol contributed to his failure to diligently attend to his client's case and to fulfill other professional responsibilities. He reports that he has not consumed alcohol since June 1998, and is participating and intends to continue in an alcohol counseling program.

5. The McAdams complaint was filed with the Disciplinary Counsel's Office in September 1998. At that time, the Accused was in the process of negotiating the Stipulation for Discipline in Case No. 97-213. The Accused determined not to delay resolution of that case and to accept responsibility for his actions, at the time knowing that he had also neglected the McAdams' matter. The Accused's conduct in Case No. 97-213 and his conduct in the McAdams case occurred in part during the same period of time. If the cases had been consolidated for disposition, the sanction would have been greater than 120 days, but not significantly so.

8.

The *Standards* provide that suspension is appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect

and causes injury or potential injury to a client, the public, the legal system, or the profession. *Standards* §8.2. Oregon case law is in accord. In *In re Purvis,* 306 Or 522, 760 P2d 254 (1988), the court concluded that neglecting a client's case and failing to cooperate in a disciplinary investigation warranted a six-month suspension. The court imposed an additional requirement that any application for readmission by the lawyer be subject to the formal application requirements of BR 8.1.

9.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree, particularly in light of his prior disciplinary record for similar offenses, that the Accused shall be suspended from the practice of law for a period of 61 days, consecutive to the suspension in Case No. 97-213, which is currently in effect. In addition, the Accused agrees that when his term of suspension expires (120 days for Case No. 97-213 and 61 days for Case No. 99-16), he shall be subject to formal application requirements for reinstatement pursuant to the terms of BR 8.1, and shall be required to show that he possesses good moral character and general fitness to practice law before he is reinstated.

10.

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

DATED this 6th day of April 1999.

/s/ Michael Patrick Levi
Michael Patrick Levi
OSB No. 82319

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 73104
Assistant Disciplinary Counsel

Cite as 328 Or 409 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
PAUL BLAYLOCK,	)
	)
Accused.	)

(OSB 94-91; SC S43713)

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

Argued and submitted November 3, 1997. Decided April 15, 1999.

Paul Blaylock, Portland, argued the cause and filed the briefs in propria persona.

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

Before Carson, Chief Justice, and Gillette, Van Hoomissen, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in the decision of this case. Graber, J., resigned March 31, 1998, and did not participate in the decision of this case.)

PER CURIAM

Complaint dismissed.

SUMMARY OF SUPREME COURT OPINION

The Accused, a lawyer licensed to practice in Oregon and a physician licensed to practice in Oregon and Washington, while working as an emergency room doctor, approached the family of a car accident victim, identified himself as a lawyer, gave the family a business card from his law practice, and informed the family that they could contact him if they needed legal advice. The Accused asserted that he made this contact with the family after receiving a telephone call from a person that he believed was a nurse, asking him to talk to the family about their legal situation. The Oregon State Bar ("Bar") did not contest that assertion. The Bar charged the Accused with violating Code of Professional Responsibility Disciplinary Rule (DR) 2-104(A) (permitting lawyer to initiate personal contact with prospective client for purposes of obtaining professional employment only under specified circumstances). A trial panel of the Disciplinary Board found that the Accused had violated DR 2-

104(A) and determined that the Accused should receive a public reprimand. On review, the Supreme Court concluded that the Bar failed to prove by clear and convincing evidence that the Accused violated DR 2-104(A). *Held:* Complaint dismissed.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 96-76
	)	
DANIEL F. KELLINGTON,	)	
	)	
Accused.	)	

Bar Counsel:	John R. Barker, Esq.
Counsel for the Accused:	Norman Sepenuk, Esq.
Disciplinary Board:	John B. Trew, Esq., Chair; Donald R. Crane, Esq.; Alfred Willstatter, Public Member
Disposition:	Complaint dismissed.
Effective Date of Opinion:	April 27, 1999

TRIAL PANEL OPINION

This is a lawyer disciplinary proceeding instituted by the Oregon State Bar (hereinafter "Bar") against Daniel F. Kellington (hereinafter "Accused"). The Bar's formal complaint alleges one cause of complaint against the Accused. The matter came before the trial panel for hearing on January 5, 1999. The Oregon State Bar appeared by and through Martha Hicks, Assistant Disciplinary Counsel, and John R. Barker, Bar Counsel. The Accused appeared personally and was represented by attorney Norman Sepunuk. Witnesses testified at the hearing. The Oregon State Bar Exhibits Nos. 1 through 26 and the Accused Exhibits Nos. 101 through 106 were received into evidence. The Oregon State Bar Exhibit No. 27 was admitted as an offer of proof (in sealed envelope) and the Accused Exhibit Nos. 107 and 108 were admitted as offers of proof (in sealed envelopes).

Cause of Action

The Bar alleged conduct by the Accused which constituted conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct prejudicial to the administration of justice in violation of DR 1-102(A)(3) and DR 1-102(A)(4) of the Code of Professional Responsibility. The Accused denied these violations.

Statement of Facts

The Accused has been a member of the Oregon State Bar since 1965 and, with a few exceptions, has been a sole practitioner in Medford, Oregon, for approximately 34 years. The Accused's practice consists of personal injury and probate law and no criminal work except for some minor traffic offenses.

The Bar's allegations against the Accused arose from the Accused's representation of a client he knew as Richard Parker. Richard Parker owned a drift-boat manufacturing business. The Accused had negotiated a labor claim, drafted an employment agreement, and advised Parker about a lease for his business.

In fact, Parker was Peter MacFarlane, who had been convicted in September of 1984 in Vermont of federal drug-trafficking offenses and sentenced to 15 years in prison. MacFarlane had been released pending the outcome of his appeal and, when the sentence was affirmed on appeal, he did not appear to commence his sentence. As a result of MacFarlane's failure to appear in court, an arrest warrant for criminal contempt was issued in May 1984. When he failed to commence his sentence in June 1984, he was indicted for failure to appear and a second arrest warrant was issued. MacFarlane had been in hiding in Southern Oregon and assumed a new identity as Richard Parker. A force of U.S. Marshalls arrested MacFarlane in Applegate, Oregon, on March 19, 1994. Richard Parker was positively identified as Peter MacFarlane.

The Accused was in his office on Saturday, March 19, 1994, when Deputy U.S. Marshall Jack Smoot telephoned. The authorities had refused to allow MacFarlane to place calls except to an attorney. Deputy Smoot's investigative report stated that he informed the Accused that his client, Richard Parker, had been arrested on a warrant originating in Vermont and positively identified as MacFarlane by fingerprint experts. (Transcript, *U.S. v. Kellington,* at 156.) The Accused spoke to MacFarlane on the phone and, at MacFarlane's request, went to the Jackson County Jail, where MacFarlane was being held. MacFarlane admitted that Richard Parker was an alias and advised the Accused that he did owe time on the East Coast for a drug-related matter and would be returning to serve his sentence. MacFarlane asked the Accused to contact an employee of his boat-manufacturing business by the name of Norman Young (hereinafter "Young") and instruct him to do a number of tasks. The list of tasks MacFarlane wanted Young to perform included retrieving certain assets from MacFarlane's home and the destruction of an envelope. MacFarlane wrote a list of tasks and delivered it to the Accused.

The Accused returned to his office and telephoned Young. The list was reviewed with Young, including the destruction of an envelope and removal from the premises of electronic equipment, a boat, a briefcase, and stereo equipment. Young asked why the man he knew as Parker did not contact him directly and the Accused informed Young that Parker was in jail. The Accused did not tell Young that the man he knew as Richard Parker was actually Peter MacFarlane. The Accused did not tell Young about the Vermont drug conviction. Young knew the

Accused was a lawyer and asked if he could get into trouble for carrying out the wishes of his employer, Parker. The Accused told Young he could not get in trouble but if he was confronted by authorities or anyone challenging him at the Parker residence, he was to stop what he was doing and withdraw. The Accused testified that he was concerned that Young might be considered a trespasser.

The Bar alleges that by withholding from Young the fact that Parker's true name was MacFarlane and had been arrested for a drug offense, the Accused engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Accused testified that he felt he had an ethical obligation to his client Parker to not reveal any more information to Young. The Accused further testified that it was his general practice to not discuss the affairs of his clients with other persons. Young testified that had he known those facts, he would not have carried out his employer's request. The Bar alleges that the Accused made an affirmative misrepresentation by repeatedly referring to his client as Parker during his conversation with Norman Young. The Accused testified that in addition to his concern about revealing information about a client that Young knew his employer as Parker.

Young testified that he was concerned about the request but proceeded to Parker's residence. Young collected a briefcase and a computer and found the envelope hidden in a chair and began to burn it in the woodstove. Young removed the contents from the envelope and found bank statements, a check register, and a checkbook with an account in the name of Martin Branon. He then came across a wallet insert that contained numerous pieces of identification, all in the name of Martin Branon. A driver's license and I.D. card with the name Branon on them had his employer's (Parker's) picture on them. Young kept the documents he had not yet burned and continued to gather the other items on his employer's list. Young put the briefcase, the computer, and other records into Parker's truck along with smaller electronic equipment.

Young contacted a friend by the name of J.D. Rogers (hereinafter "Rogers") to help him in removing some of the equipment. Young told Rogers about Parker's problems as he knew them and discussed the list with Rogers. After hearing about the Martin Branon I.D., Rogers advised that he did not want to participate further. Young returned to his home and called his wife, who was in California. She suggested that he look in the briefcase and when he did, he found approximately $20,000 in cash. He and his wife decided he should return everything to Parker's house.

MacFarlane had been arrested early in the day on March 19, 1994. The marshalls transported MacFarlane to the Jackson County Jail and two of the marshalls remained to secure the house while other officers sought a search warrant. By approximately 4:00 p.m. on March 19, the marshalls had not been successful in obtaining a warrant. The marshalls who had remained at MacFarlane's house left the area unsecured around 4:00 p.m. on the 19th. A search warrant was eventually obtained and the officers returned to MacFarlane's at approximately 6:30 p.m. on

the 19th. It was during the period of time between the marshalls' leaving the house and obtaining the search warrant that Young had arrived at the MacFarlane residence to begin his activities.

When Young returned to Parker's house for the second time, he was confronted at gunpoint by U.S. Marshalls. Young immediately surrendered the false identification to the marshalls along with approximately one-half of the cash from the briefcase. Young testified that he removed the $9,575 from the briefcase to protect himself regarding money he felt was owed to him by his employer. Marshall Dale Ortmann testified in the criminal proceeding that he became suspicious about the money and confronted Young with the possibility that money was being withheld. At that point, Young admitted he had withheld the $9,575. (Transcript, *U.S. v. Kellington,* at 37–38.) Young testified that he called U.S. Marshall Dale Ortmann on Sunday, March 20, on his own initiative and admitted that he had retained approximately $9,575 of money found in the case. Young also testified that the maximum amount of money he was owed by his employer was $1,500.

Young was interviewed for several hours by the U.S. Marshalls on March 19, 1994. Young testified that he was frightened and intimidated by his situation. Young explained to the marshalls that he had been contacted by the Accused and was attempting to carry out the instructions given to him by the Accused from his employer, Parker.

Young, the U.S. Marshalls, the FBI, and the U.S. Attorney decided to place a consensually recorded phone call to the Accused. The testimony differed as to who came up with the idea of recording the phone conversation between Young and the Accused. On March 20, 1994, Young spent the day at his home with a marshall and an FBI agent and recorded two telephone conversations with the Accused. Audio recordings of both conversations were played at the hearing and transcripts of both conversations were admitted into evidence.[1]

During the first telephone conversation, the Accused acknowledged that he had seen a newspaper article in the March 20th *Mail Tribune* newspaper that described MacFarlane as an international drug smuggler. The article also stated that MacFarlane was on a list of the 15 most wanted fugitives as prepared by the U.S. Marshalls. Testimony in *U.S. v. Kellington* revealed that MacFarlane had been placed on the Marshall's 15 most wanted list several days prior to his arrest. Young informed the Accused that the briefcase contained a lot of cash and that he had burned what appeared to be false identification. The Accused and Young testified extensively at the hearing regarding these recorded conversations. Young told the

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[1] Both the U.S. Attorney and, to a lesser degree, the Bar suggest that during these two conversations, the Accused revealed his duplicity based upon his laughter. Listening to the live testimony and the audiotapes convinces the panel that what was recorded was nothing more than the Accused's "nervous laughter" as the Accused testified.

Accused that he was very uncomfortable with the situation and did not want to continue to be involved. The Accused suggested that the Accused take possession of the smaller items, including the briefcase and cash, and that Young continue to hold the larger items. Young denied that he was provided with any kind of script to follow from the U.S. Marshalls or the FBI. He did state that he was told to ask the Accused whether or not he should contact the police. The Accused responded by saying that he did not believe that Young should notify the police. The Accused testified that he continued to believe that all of the items, including the cash, were from his client Parker's legitimate business activities. He testified that if there had been evidence that the money was counterfeit or in some way illegal, he would have turned it over to the authorities himself. Much conversation concerned how to remove Young from the situation. At first, the Accused suggested that Young meet him at his law office on Monday, March 21, 1994. After Young stated that he did not have insurance on his vehicle, the Accused agreed to travel to Young's house to retrieve the items.

When the Accused arrived at Young's house, he inspected the cash. The Accused testified that he thought he could determine whether or not it was counterfeit. He then took the cash, briefcase, computer, and MacFarlane's address list and began to leave Young's house when he was detained by Deputy U.S. Marshall Dale Ortmann and FBI agent Jeffrey Gray. The Accused told the officers that Parker had told him that he had been arrested, had used an alias, and was returning to the East Coat to do his time. He also advised that MacFarlane had given him a list of items that he wanted taken out of his home and that the list instructed Young to destroy an envelope that was hidden in a chair in the bedroom. The agents testified that the Accused answered their questions and was cooperative.

MacFarlane was arraigned on March 21, 1994, on the Vermont failure-to-appear charges and waived extradition. He and the Accused were tried later and convicted on federal charges of obstruction of justice and conspiracy to obstruct justice. Eventually the Accused's motion for a new trial was granted by Federal District Court Judge Hogan. That order is on appeal to the 9th Circuit Court of Appeals at the time of this proceeding.[2]

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[2] The panel is aware that the 9th Circuit Court of Appeals could reverse the granting of a new trial by Judge Hogan or that a jury might find the Accused guilty of criminal conduct. However, the Bar opposed a postponement of this disciplinary hearing pending the outcome of the criminal proceedings. The panel chairperson ruled that the Bar was correct and that the disciplinary hearing should not be delayed.

Conclusion

The formal complaint charges the Accused with violation of DR 1-102(A)(3) and DR 1-102(A)(4). DR 1-102 provides, in part, as follows:

"Misconduct; Responsibility for Acts of Others.

(A) It is professional misconduct for a lawyer to:

(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

Dishonesty

DR 1-102(A)(3) prohibits a lawyer from acting dishonestly. The Bar cites *In re Hockett,* 303 Or 150, 158, 734 P3d 877 (1987), and argues that the Accused's entire course of conduct in this case displayed a lack of trustworthiness and integrity and was thus dishonest under the *Hockett* definition. The *Hockett* case resulted in the discipline of an attorney due to his course of action in a dissolution action in the circuit court. The court pointed out that the attorney assisted a client in an effort to cheat creditors and assisted the client in fraudulent transfers to avoid lawful debts. The attorney went so far as to inform the court that a divorce decree should be granted prior to the standard 90-day waiting period because of emotional stress and strain upon the parties when the actual desire for immediate action was to avoid claims of creditors. It was noted that the attorney engaged in conduct known to be illegal.

The Accused received instructions from a client who he learned had been a fugitive from justice. The Accused learned during the telephone conversation or at the jail that MacFarlane intended to return to Vermont and do his time. MacFarlane requested that the Accused call his employee Young and request Young to remove certain items from MacFarlane's home and take them into Young's possession. The instructions were to take control of the items. The Accused communicated to Young MacFarlane's request that the envelope be destroyed. MacFarlane did not tell the Accused and the Accused did not tell Young to inventory the envelope or to not look in the envelope. Nothing to be removed from MacFarlane's home was inconsistent with wanting to protect his property and keep control of his business. There was clear testimony that MacFarlane had for several years operated a boat-manufacturing business.

More troubling is the destruction of the envelope. The Accused testified that he assumed the envelope contained matters of a "personal nature." The Accused was aware that MacFarlane had had difficulty with a former employee and felt the envelope might have some connection to that problem. Young testified that when he first heard MacFarlane was in jail, he assumed it had something to do with MacFarlane's ex-wife. Young testified that he was aware of several issues between Parker and his ex-wife that might encourage Parker to remove assets and perhaps to even destroy paperwork.

The Accused testified that he had no idea that anything in the envelope or in the house might be considered evidence against MacFarlane in a criminal case. As far as the Accused knew, MacFarlane had admitted he was a fugitive and was returning to Vermont to face the music. The Accused testified that he would not have instructed anyone to destroy or conceal evidence.

The Accused's situation is distinguishable from *In re Benson*, 317 Or 164, 854 P2d 466 (1993), in which a lawyer used a false trust deed in an attempt to provide his client with an opportunity to avoid seizure of personal property possibly subject to forfeiture as a result of drug charges. The Accused testified that he had no reason to believe that the items at MacFarlane's home were the result of illegal activities. The Accused had known his client Parker as a legitimate businessman.

Fraud, Deceit, or Misrepresentation

In re Hiller, 298 Or 526, 694 P2d 540 (1985), involved attorneys making misleading representations in support of a motion for summary judgment which included an affidavit that omitted material facts. The court in *Hiller* at page 543 noted, "We do not 'interpret fraud, deceit or misrepresentation' to be three words for the same thing. A misrepresentation becomes fraud or deceit when it is intended to be acted upon without being discovered." The court went on to point out that the absence of an intent to deceive or commit a fraud does not relieve an attorney from the responsibility to avoid misrepresentation.

The Bar contends that the Accused made a misrepresentation by nondisclosure when he did not tell Young that his employer was actually MacFarlane, had been convicted on drug-trafficking charges, and had been a fugitive for 10 years. Young testified that had these facts been disclosed to him, he would not have carried out MacFarlane's instructions. The supreme court has made clear in *In re Gustafson,* 327 Or 636, 968 P2d 367 (1998), that a violation of DR 1-102(A)(3) requires that a lawyer knowingly engage in misrepresentation and that the misrepresentation include a knowing failure by a lawyer to disclose a material fact that the lawyer had in mind. The Accused, as in *Gustafson*, contends that he did not knowingly fail to disclose information that was material. The court in *In re Greene,* 290 Or 291, 298, 620 P2d 1379 (1980), stated:

> We find that Greene intentionally failed to advise the court that the property being purchased was then owned by the conservator. The more difficult question is whether such intentional failure to inform the probate court of the nature of the real estate investment arose because of Greene's ignorance of the necessity for such disclosure or was deliberate. We further find that the failure to properly advise the court was deliberate. Greene had worked as a probate clerk in this very court and he was aware of the need for disclosure to the court when the conservator was using conservatorship funds to deal with herself in her personal capacity.

The Accused must know both that he was failing to disclose information that he has in mind and that the information is material. The Trial Panel finds that the Accused did not violate DR 1-102(A)(3).

The Administration of Justice

DR 1-102 provides, in part, as follows:

"Misconduct; Responsibility for Acts of Others.

(A) It is professional misconduct for a lawyer to:

(4) Engage in conduct that is prejudicial to the administration of justice."

The court in *In re Haws,* 310 Or 741, 801 P2d 818 (1990), established a three-part test:

(1) Whether an accused lawyer engaged in "conduct," by doing something that the lawyer should not have done or by failing to do something that the lawyer was supposed to do;

(2) Whether that conduct occurred in the course of a judicial proceeding or another proceeding that contains the trappings of a judicial proceeding; and

(3) The "prejudice" arising from the lawyer's conduct.

In *Gustafson*, *supra*, a deputy district attorney unjustifiably threatened a criminal defense attorney with criminal or ethical prosecution to secure his favorable testimony and made misrepresentations to a court by nondisclosure of material information.

The first consideration is whether the Accused engaged in *inappropriate conduct* by doing something that he should not have done or by failing to do something that he was supposed to do. During his initial conversation with Young, the Accused referred to Young's employer as Parker and only revealed that Parker was incarcerated. The Accused's testimony that he felt he had an ethical as well as a moral obligation to not reveal additional information was sincere and credible. Additionally, Young knew his employer as Parker and not MacFarlane. Since the Accused believed that he was doing nothing more than requesting an employee to conduct a legitimate undertaking, there was no reason to reveal more information. Young's testimony that he would not have agreed to carry out the instructions had he known that MacFarlane was actually Parker and had been convicted of drug charges must be viewed in context. Young found himself confronted with armed marshalls and was clearly told that it was possible that he too could be charged with criminal activity.

The consensually recorded conversations confirm that even after learning that MacFarlane had been identified as an "international drug smuggler" by a newspaper article, the Accused continued to believe that he was doing nothing more than assisting a client in a legitimate manner. The Accused testified that he was not

attempting to help MacFarlane hide anything from law enforcement officials. The Accused understood that MacFarlane had been positively identified and would be returning to Vermont to serve his sentence.

The second part of the test requires that the Accused's conduct occur during the administration of justice. This part of the test as discussed in both *Haws* and *Gustafson*, *supra,* require that the conduct take place during the course of a judicial proceeding or another proceeding that contains the elements of a judicial proceeding. The supreme court noted in *In re Haws,* [*supra*, 310 Or at 746,] 801 P2d 822:

> "*Administration of Justice*." The reach of this term is not well defined in our case law or elsewhere. Our previous opinions have assumed that judicial proceedings and matters directly related thereto are within the ambit of the term. This court has found that the rule encompasses conduct such as: The failure to appear at trial, *In re Bridges*, 302 Or 250, 728 P2d 863 (1986); the failure to appear at depositions, *In re Dixon, supra*, 305 Or 89–90, 750 P2d 157; harassing court personnel, *In re Rochat,* 295 Or 533, 668 P2d 376 (1983); filing an appeal without the consent of the clients, *In re Paauwe, supra*, 294 Or 177, 654 P2d 1117; repeated appearances in court while intoxicated, *In re Dan Dibble*, 257 Or 120, 478 P2d 384 (1970); and permitting a nonlawyer to use a lawyer's name on pleadings, *In re Jones*, 308 Or 306, 779 P2d 1016 (1989).

The activities of the federal agents in arresting MacFarlane and eventually searching his home do not meet the definition of a judicial proceeding nor does such activity have the elements of a judicial proceeding.

Third, it must be determined whether the Accused's conduct was prejudicial to the administration of justice. Previous cases reveal that substantial prejudice has occurred when an attorney: threatens witnesses, *In re Smith*, 316 Or 55, 848 P2d 612 (1993); knowingly misrepresents a material fact to the court, *In re Hiller,* 298 Or 526, 694 P2d 540 (1985); repeated failure to appear at depositions, *In re Dixson*, 305 Or 83, 750 P2d 157 (1988); subjects clients to liability for costs on an unauthorized appeal, *In re Paauwe*, 294 Or 171, 654 P2d 1117 (1982); repeatedly appears in court while intoxicated, *In re Dibble*, 257 Or 120, 478 P2d 384 (1970); witness tampering, *In re Boothe*, 303 Or 643, 740 P2d 785 (1987); unjustifiably threatens a criminal defense attorney with criminal or ethical prosecution to secure his favorable testimony and makes representation to a court by nondisclosure of material information, *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998); and by appearing at a driving and motor vehicles hearing on behalf of a client while under the influence of intoxicates, *In re Meyer*, 328 Or 211, 970 P2d 652 (1999).

The Bar has not convinced the panel by clear and convincing evidence that the Accused's conduct occurred during the "administration of justice," that is, during the course of a judicial proceeding or a matter related directly to a judicial proceeding. Moreover, the panel finds that even if the alleged conduct occurred during the administration of justice, the Accused's conduct did not have a prejudicial

effect on the functioning of a proceeding or upon a party's substantive interest in the proceeding.

Credibility

The panel feels that it is important to comment upon the credibility of the Accused, Daniel F. Kellington. The live testimony of witnesses, including the Accused, afforded the panel an opportunity to observe each witness and to form an opinion as to the veracity of each. The Accused appeared credible and believable although somewhat naive. Persons of a more suspicious and perhaps cynical nature, including many attorneys, would have avoided involvement with MacFarlane. The Accused's entanglement with MacFarlane was encouraged by his lack of experience in criminal matters and his trusting nature.

For these reasons, it is the opinion of the panel that all disciplinary action against the Accused, Daniel F. Kellington, be dismissed.

DATED this 24th day of March 1999.

/s/ John B. Trew
John B. Trew

/s/ Alfred Willstatter
Alfred Willstatter

/s/ Donald R. Crane
Donald R. Crane

Cite as 328 Or 448 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
GEORGE WITTEMYER,	)
	)
Accused.	)

(OSB 95-190; SC S45376)

En Banc

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

Argued and submitted January 7, 1999. Decided April 29, 1999.

George Wittemyer, Portland, argued the cause and filed a brief in propria persona.

Jane E. Angus, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, argued the cause and filed a brief on behalf of the Oregon State Bar.

PER CURIAM

The Accused is suspended from the practice of law for a period of four months, commencing 60 days from the date of filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Accused was charged with violating DR 5-101(A), 5-104(A), and 5-105(E), which govern lawyer conflicts of interest. The charges stemmed from a loan transaction and collection in which the Accused was charged with representing both the debtor and the creditor while simultaneously holding an undisclosed half-interest as creditor on the loan. *Held:* The Accused violated DR 5-101(A) (three counts), 5-104(A), and 5-105(E). The Accused is suspended from the practice of law for four months.

Cite as 328 Or 567 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
BRUCE E. HUFFMAN,	)
	)
Accused.	)

(OSB 94-187; SC S43743)

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

Argued and submitted January 5, 1998. Decided May 27, 1999.

Bruce E. Huffman, Nevada, argued the cause and filed the briefs in propria persona.

Mary A. 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, Durham, and Kulongoski, Justices. (Fadeley, J., retired January 31, 1998, and did not participate in this decision; Graber, J., resigned March 31, 1998, and did not participate in this decision.)

PER CURIAM

The Accused is suspended from the practice of law for a period of two years, commencing 60 days from the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

Lawyer filed claims to recover unpaid fees against client and client's cousin after client had declared bankruptcy. Lawyer wrote a letter to client's new lawyer, stating that, unless client dismissed his bankruptcy proceeding, lawyer would contact law enforcement officials to inform them of asserted criminal wrongdoing by client. *Held:* By sending the letter, lawyer violated DR 7-105(A), prohibiting threatening to present criminal charges to obtain an advantage in a civil matter, and DR 4-101(B), prohibiting revealing or misusing client confidences or secrets. By pursuing his claims against client and client's cousin despite bankruptcy proceedings, lawyer did not violate DR 7-102(A)(2), 7-102(A)(1), or 1-102(A)(4) because lawyer made colorable legal argument that pursuing those claims was justified under bankruptcy laws.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-122
	)	
BRUCE C. MOORE,	)	
	)	
Accused.	)	

Bar Counsel:	Stephen Blixseth, Esq.
Counsel for the Accused:	William Wheatley, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E) (two counts). Stipulation for discipline. Public reprimand.
Effective Date of Order:	June 14, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused shall receive a public reprimand for violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E) (two counts).

DATED this 14th day of June 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Derek Johnson
Derek Johnson, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Bruce C. Moore, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On February 19, 1998, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A), DR 5-104(A), and DR 5-105(E) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

On August 28, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the SPRB. A copy of the Formal Complaint is attached hereto and by this reference incorporated herein.

Facts

Sterling Loan

5.

On or before September 10, 1993, the Accused represented Hope and John McKinley (hereinafter "the McKinleys") in litigation alleging habitability violations by their landlord, Gary Pritchard (hereinafter "Pritchard"). On or about June 14, 1994, a default judgment in the amount of $205,774.15 was entered in favor of the McKinleys and against Pritchard in this litigation. By written agreement with the

McKinleys, the Accused was entitled to a contingent fee based upon the amount of this judgment.

6.

At the time the above-described judgment was entered, Pritchard owned two parcels of real property to which a lien in favor of the McKinleys attached by virtue of the judgment. The two parcels were adjacent to each other and the house that was the subject of the McKinleys' suit against Pritchard was located on a 17-acre parcel. At the time the McKinleys' judgment was entered against Pritchard, one parcel of Pritchard's property was also encumbered by a trust deed in favor of the Schultz family trust in the amount of $75,000. A judgment of foreclosure in favor of the beneficiaries of this trust deed had been entered at the time the McKinleys' judgment against Pritchard was entered.

7.

In order to avoid the sale of some or all of Pritchard's property in execution of the foreclosure judgment rendered on behalf of the Schultz family trust and to give first priority to the McKinleys' judgment lien on Pritchard's property, the Accused arranged for the McKinleys to borrow from Sterling Furniture, Inc., an amount sufficient to satisfy the Schultz family trust judgment of foreclosure. The Accused represented the McKinleys but did not represent Sterling Furniture, Inc., in this loan transaction.

8.

At the same time that the Accused represented the McKinleys in borrowing funds from Sterling Furniture, Inc., the Accused also represented Sterling Furniture, Inc., in other matters, including similar loans to other borrowers. The Accused admits that the interests of the McKinleys and Sterling Furniture, Inc., as borrowers and lender in the same transaction, were or were likely to be adverse. Insofar as it was possible for either the McKinleys or Sterling Furniture, Inc., to consent to the Accused representing them at the same time, the Accused failed to obtain written consent to do so from either the McKinleys or Sterling Furniture, Inc., after full disclosure.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 8 herein, he violated DR 5-105(E).

Facts

Sale to Mart and Privette

10.

To secure the above-described loan from Sterling Furniture, Inc., the McKinleys and the Accused assigned their interests in their judgment against Pritchard and the interest they had acquired in the Schultz family trust's judgment against Pritchard to Sterling Furniture, Inc. The Accused represented the McKinleys in this transaction.

11.

On or about December 20, 1995, before the McKinleys foreclosed their own judgment against Pritchard, they sold their interest in the 17-acre parcel of Pritchard's property described in paragraph 6 to Brad Mart and Charles Privette (hereinafter "Mart" and "Privette"). Simultaneously with this sale, Pritchard paid off the McKinleys' debt to Sterling Furniture and the delinquent taxes on the 17-acre parcel that was to be sold to Mart and Privette. The McKinleys thereupon received title to the 17-acre parcel in exchange for full satisfaction of their judgment against Pritchard. Pritchard retained the remaining parcel of property and the McKinleys sold the 17-acre parcel to Mart and Privette.

12.

The Accused represented the McKinleys in the assignment of their judgments to Sterling Furniture and in the sale of their interest in the 17-acre parcel to Mart and Privette. Prior to and at the time of these transactions, the Accused also represented Mart in other matters.

13.

The Accused admits that the interests of the McKinleys and Mart as sellers and buyer in the same transaction were or were likely to be adverse. Insofar as it was possible for either the McKinleys or Mart to consent to the Accused representing them at the same time, the Accused failed to obtain written consent to do so from either the McKinleys or Mart after full disclosure.

Violations

14.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 13 herein, he violated DR 5-105(E).

Facts

The Accused's Self-Interest

15.

As part of the sale by the McKinleys to Mart and Privette, Sterling Furniture, Inc., reassigned to the McKinleys and the Accused its interest in the judgments it had received as security for its loan to the McKinleys. (See paragraph 10 herein.) In order to facilitate the sale of property by the McKinleys to Mart and Privette, Mart and Privette agreed to pay the attorney fee the McKinleys owed to the Accused. This fee was to be paid by Mart and Privette when they resold the property.

16.

Mart and Privette paid the McKinleys $34,495 as a down payment on the purchase of the property. They also signed a promissory note payable to the McKinleys for the balance of the purchase price. The Accused signed this promissory note along with Mart and Privette and acquired an interest in the property.

17.

The Accused represented the McKinleys in the sale of the property to Mart and Privette, and the McKinleys expected the Accused to exercise his professional judgment for their protection. When he signed the note for the balance of the purchase price of the property and acquired an interest in that property, the Accused's interests as a buyer differed from the interests of the McKinleys as sellers.

18.

The Accused's interest in the property and his interest as an obligor on the note to the McKinleys were such that they could or reasonably might have affected the exercise of his professional judgment on behalf of the McKinleys in the transactions to which he was a party. The Accused participated in these transactions without first having obtained the McKinleys' written consent after full disclosure.

Violations

19.

The Accused admits that by engaging in the conduct described in paragraphs 15 through 18 herein, he violated DR 5-101(A) and DR 5-104(A).

Sanction

20.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing*

Lawyer Sanctions (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards* §4.33.

B. *Mental State.* The Accused was negligent in determining whether current client conflicts of interest existed and whether his own interests might materially affect his representation of the McKinleys.

C. *Injury.* No client suffered actual injury, but there was the potential for harm to the Accused's clients when he represented both sides of the same transactions and became financially obligated to the McKinleys.

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

1. Multiple offenses; and

2. Substantial experience in the practice of law.

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record;

2. Absence of a dishonest or selfish motive;

3. Full and free disclosure to Disciplinary Counsel's Office and a cooperative attitude toward the disciplinary proceedings;

4. Remorse; and

5. Good character or reputation.

The Accused achieved an excellent result for the McKinleys and intended at all times to act for his clients' benefit. None of the clients was harmed by the Accused's conduct, the Accused received no fee for his services to the McKinleys, and he demonstrated a clear intent to protect his clients' interests ahead of his own.

ABA *Standards* §4.33 suggests that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

Oregon case law is in accord. *See In re Carey*, 307 Or 315, 767 P2d 438 (1989) (reprimand for violation of DR 5-101(A), *former* DR 5-105(A) [current DR 5-105(E)], and *former* DR 9-102(B)(3) [current DR 9-101(C)(3)]); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (reprimand for violation of DR 5-101(A), DR 5-104(A), and *former* DR 5-105(A) and (B) [current DR 5-105(E)]).

21.

Consistent with the *ABA Standards* and Oregon case law, the parties agree that the Accused shall receive a public reprimand for violation of DR 5-105(E) (two counts), DR 5-101(A), and DR 5-104(A).

22.

The State Professional Responsibility Board has approved the sanction in this stipulation, and the parties agree that it is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 1st day of June 1999.

/s/ Bruce C. Moore
Bruce C. Moore
OSB No. 80315

EXECUTED this 7th day of June 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

APPROVED AS TO
FORM AND CONTENT:

/s/ William Wheatley
William Wheatley
Attorney for Accused

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-27
	)	
DAVID A. CAMERON,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Christopher Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(1). Stipulation for discipline. 180-day suspension.
Effective Date of Order:	July 24, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is suspended for 180-days, effective 30 days from the date of this order, for violation of DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(1).

DATED this 23rd day of June 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ William G. Carter
William G. Carter, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, David A. Cameron, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Coos County, Oregon.

3.

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

4.

On March 13, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility and ORS 9.527(1). A formal complaint has not yet been filed in this matter. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On or about February 18, 1998, the Accused signed his name to a Department of Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF) firearms transaction record, purporting to be the purchaser of two firearms on January 14, 1998. The firearms transaction record is attached hereto as Exhibit 1 and incorporated herein.

6.

On or about February 18, 1998, the Accused signed his name to a second ATF firearms transaction record, purporting to be the purchaser of two additional firearms on February 18, 1998. The firearms transaction record is attached hereto as Exhibit 2 and incorporated herein.

7.

The Accused was not the purchaser of the four firearms, his representations in the ATF firearms transaction records that he was the purchaser were false, and the Accused knew the representations were false when he made them.

8.

The Accused was asked to sign the ATF firearms transaction records by the manager of a retail firearms store who was a long-time friend of the Accused. The Accused knew the manager would maintain the ATF forms as part of the store's firearms transaction records.

9.

It is a state or federal crime to provide false information in connection with a firearms purchase. ORS 166.416(1); 18 USC §922(a)(6), (m); 18 USC §924(a)(1)–(3).

10.

In or about May 1998, the Accused was questioned by law enforcement agents about the ATF firearms transaction records. At first, the Accused represented to the agents that he was, in fact, the purchaser of the four firearms listed on the ATF forms. Later in the same interview, the Accused admitted that he was not the purchaser and that his representations to the contrary on the ATF firearms transaction records were false.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility and ORS 9.527(1).

Sanction

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty owed to the public to maintain personal integrity, *Standards* §5.1, and his duty to the legal system not to make false statements of fact, *Standards* §6.1.

B. *Mental State.* When he engaged in the misconduct described herein, the Accused acted with "knowledge," defined 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. *Standards*, at 7. The Accused had been asked by a close personal friend who managed the retail firearms store to sign the ATF transaction records. The Accused was advised by the store manager that the gun transactions were legitimate sales to other purchasers and that the store manager merely had misplaced the actual transaction records. The Accused was aware that he was making false statements when he signed the ATF forms, but did not act with the conscious intent to mislead or deceive firearms regulators or undercut the purpose of firearms regulation.

C. *Injury.* There was no actual injury in this matter. Law enforcement officials already were conducting an investigation of the retail store manager on a variety of allegations at the time the matter of the ATF firearms transaction records was uncovered. Although the Accused initially denied making false statements on the ATF forms when questioned by law enforcement agents, he promptly recanted and cooperated with law enforcement officials thereafter. However, the Accused acknowledges that there is great potential for injury when false representations are made in connection with firearms transactions and the record-keeping of those transactions as required by law.

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

1. The Accused violated multiple disciplinary rules, although the misconduct arises from one incident. *Standards* §9.22(d);

2. The Accused has substantial experience in the practice of law and in law enforcement, having worked both as a governmental lawyer and, prior to his admission to the Bar, as a police officer. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused's conduct did not involve any element of personal profit or gain. *Standards* §9.32(b).

3. Subsequent to his initial denial of misconduct, the Accused fully cooperated with law enforcement officials in their investigation of the retail store manager in an attempt to rectify the consequences of his misconduct. *Standards* §9.32(d).

4. The Accused fully cooperated with Disciplinary Counsel in connection with the investigation of the Accused's conduct. *Standards* §9.32(e).

5. The Accused has experienced other adverse consequences as a result of his conduct, including loss of his employment. *Standards* §9.32(k).

6. The Accused has acknowledged the wrongfulness of his misconduct and is remorseful. *Standards* §9.32*(l).*

13.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in conduct that constitutes a failure to maintain personal integrity or when a lawyer knows that false statements or documents are submitted to a court or governmental agency, causing injury or potential injury. *Standards* §§5.12, 6.12.

Although the length of suspension varies with the facts of each case, Oregon case law reveals that a suspension is the appropriate sanction for the type of misconduct described herein. *See In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998) (two-year suspension for false entries on MCLE compliance report, when lawyer had prior disciplinary history); *In re Staar*, 324 Or 283, 924 P2d 308 (1996) (two-year suspension for false statements in family abuse prevention petition filed in court); *In re Peters*, 12 DB Rptr 40 (1998) (four-month suspension for illegal drug use by deputy district attorney who made initial, false statements to the police); *In re Melmon*, 322 Or 380, 908 P2d 822 (1995) (90-day suspension, in part for assisting a client in creating a bill of sale that falsely identified the parties).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 180 days for violation of DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(1). The suspension shall be effective 30 days after this Stipulation for Discipline is approved 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 2nd day of June 1999.

/s/ David A. Cameron
David A. Cameron, OSB No. 86163

EXECUTED this 11th day of June 1999.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
OSB No. 78362, Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-154
	)	
PEGGY A. BOND,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Allen E. Gardner, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C). Stipulation for discipline. Public reprimand.
Effective Date of Order:	July 21, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is publicly reprimanded for violation of DR 5-105(C).

DATED this 21st day of July 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Derek C. Johnson
Derek C. Johnson, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Peggy A. Bond, 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, Peggy A. Bond, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1990, 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. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On February 15, 1999, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 5-105(C) and DR 5-105(E) of the Code of Professional Responsibility. 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.

On or about March 20, 1997, the Accused undertook to represent Pamela Soine (hereinafter "Soine") and her husband (hereinafter "Husband") in a stepparent adoption of Soine's child from a prior relationship.

6.

On May 12, 1997, Soine and Husband again met with the Accused. During this meeting, Soine and Husband expressed certain concerns about the adoption process and no further action was undertaken by the Accused to process the adoption.

7.

Prior to any further contact with the parties or any further activity by the Accused with respect to the adoption, Soine left a message for the Accused indicating that she and Husband had issues to resolve before they were ready to proceed with the adoption. The Accused did nothing further regarding the proposed adoption.

8.

In or about November 1997, the Accused learned from Husband that Soine and Husband had separated and that Soine was denying Husband access to the child. The Accused undertook to represent Husband to obtain visitation with Soine's child by addressing this matter in a letter to Soine. The Accused did not first obtain Soine's consent to the representation after full disclosure. The Accused's representation of Husband in the visitation matter was significantly related to her representation of Soine in the step-parent adoption in that both matters involved Husband's rights with respect to Soine's child.

Violations

9.

The Accused admits that by engaging in the conduct described in this stipulation, she violated DR 5-105(C) (former client conflict of interest) of the Code of Professional Responsibility. The Accused and the Bar agree that after further discovery, the charge of DR 5-105(E) (current client conflict of interest) shall be and hereby is dismissed.

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated her duty to her clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* With regard to mental state, the Accused did not act intentionally or knowingly. Rather, the Accused was negligent in failing to obtain the informed consent of her former client to the continued representation of Husband. *Standards,* at 7.

C. *Injury.* Injury may be either actual or potential. *Standards,* at 7. In this case, no actual injury occurred. Soine felt a sense of betrayal when the Accused began to represent Husband. When Soine's attorney called the conflict of interest to the Accused's attention, she ceased representation of Husband.

D. *Aggravating Factors.* Aggravating factors to be considered 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 has no prior disciplinary record. *Standards* §9.32(a).

2. The Accused's conduct did not involve any dishonest or selfish motive. *Standards* §9.32(b).

3. The Accused fully cooperated with the Bar during disciplinary proceedings. *Standards* §9.32(e).

4. The Accused has acknowledged remorse for her conduct and regrets any inconvenience it has caused her clients. *Standards* §9.32(*l*).

11.

The ABA *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent in determining that there is a conflict of interest and causes injury or potential injury to a client. *Standards* §4.33. Oregon case law is in accord. *In re Cohen*, 316 Or 657, 853 P2d 286 (1993); *In re Kelly*, 12 DB Rptr 58 (1998); *In re Alway*, 11 DB Rptr 153 (1997).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall receive a public reprimand for violation of DR 5-105(C), the sanction to be effective upon the approval of this stipulation by the Disciplinary Board.

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the Chairperson of the State Professional Responsibility Board on June 23, 1999. 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 2nd day of July 1999.

/s/ Peggy A. Bond
Peggy A. Bond
OSB No. 90213

EXECUTED this 12th day of July 1999.

OREGON STATE BAR

By: /s/ Chris L. Mullmann
Chris L. Mullmann
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. 97-54
	)	
DAVID L. RICH,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Jeffrey Bowersox, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(E). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 16, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 5-105(E).

DATED this 16th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ William B. Kirby
William B. Kirby, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, David L. Rich, 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 Washington County, Oregon.

3.

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

4.

On June 18, 1998, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 2-110(B)(2) and DR 5-105(E) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In January 1996, the Accused represented James Walsh (hereinafter "Walsh") in a claim for damage to personal property resulting from a fire at a business owned by a third person. In January 1996, the Accused also undertook to represent Eugene Nice (hereinafter "Nice"), who was the creditor under the terms of a retail installment contract executed by Walsh and his wife, Loretta, in 1993. At the time the Accused undertook to represent Nice, James and Loretta Walsh were in default of the retail installment contract.

6.

On behalf of Eugene Nice, in January 1996, the Accused made demand under the above-described retail installment contract upon Loretta Walsh, but not James Walsh, and later filed suit only against Loretta Walsh for breach of the contract. The Accused did not name James Walsh as a defendant. However, James and Loretta Walsh were both obligors under the contract and had rights of contribution against each other on the underlying debt.

7.

James Walsh's and Nice's objective personal, business, or property interests were adverse when the Accused represented Nice against Loretta Walsh, because they were debtor and creditor and because a judgment against Loretta Walsh could have affected James Walsh's objective personal, business, or property interests. The Accused obtained oral consent after disclosure to Nice and James Walsh, to represent both of them in the unrelated matters, but did not confirm the consent in a contemporaneous writing.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he had a "likely conflict of interest," in violation of DR 5-105(E) of the Code of Professional Responsibility, and that he failed to contemporaneously confirm in writing the oral consent he had received from James Walsh and Nice to represent Nice in the above-described transaction. Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 2-110(B)(2) should be and, upon approval of this stipulation, shall be dismissed, with prejudice.

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* The Accused was negligent in determining whether his representation of both Nice and Walsh would adversely affect the interests of either client.

C. *Injury.* The Accused's conduct had the potential to compromise his loyalty to both Nice and Walsh, but no actual injury to either client's interests occurred.

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

1. The Accused has a prior record of discipline: a letter of admonition issued in August 1996 for violation of DR 2-106(A). *Standards* §9.22(a).

2. The Accused had substantial experience in the practice of law at the time of the conduct, having been admitted to the Bar in 1979. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused had no dishonest or selfish motive for his conduct. *Standards* §9.32(b).

2. The Accused made full and free disclosure to Disciplinary Counsel's Office and displayed a cooperative attitude toward the disciplinary proceedings. *Standards* §9.32(e).

3. The Accused attempted to determine whether a conflict of interest was present in his representation of Nice and Walsh by consulting with other lawyers about the matter.

10.

ABA *Standards* §4.33 suggests that a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client will adversely affect another client and causes injury or potential injury to a client.

Oregon case law is in accord. *See In re Kelly,* 12 DB Rptr 58 (1998) (public reprimand for representing competing trust deed beneficiaries in foreclosure actions in violation of DR 5-105(C) and (E)); *In re Schmeits,* 12 DB Rptr 195 (1998) (public reprimand for lawyer whose firm represented both parties in a tax-free exchange of real property in violation of DR 5-105(E)).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-105(E).

12.

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

EXECUTED this 3rd day of September 1999.

/s/ David L. Rich
David L. Rich
OSB No. 79357

EXECUTED this 9th day of September 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-141
	)	
CHARLES Z. EDELSON,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 16, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused shall be publicly reprimanded for violation of DR 1-103(C).

DATED this 16th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ William B. Kirby
William B. Kirby, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Charles Z. Edelson, 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, Charles Z. Edelson, 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 Washington County, Oregon.

3.

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

4.

On May 15, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 1-103(C) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On April 15, 1998, the Oregon State Bar received a complaint concerning the Accused's conduct from Kenneth and Lisa Harings. On May 4, 1998, the Disciplinary Counsel's Office forwarded a copy of Mr. and Ms. Harings' complaint to the Accused and requested his response to that complaint by May 25, 1998. The Accused made no response.

6.

On July 1, 1998, the Disciplinary Counsel's Office again requested the Accused's response to the complaint by July 8, 1998. The Accused made no response, and the Disciplinary Counsel's Office was required to refer the Harings' complaint to the Washington/Yamhill County Local Professional Responsibility Committee for investigation. Ultimately, the substantive complaints made by the Harings were dismissed after investigation.

7.

The Disciplinary Counsel's Office is empowered to investigate and act upon the conduct of lawyers.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-103(C).

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to the legal profession to cooperate with the Bar's investigation of his conduct. *In re Miles,* 324 Or 218, 221, 923 P2d 1219 (1996).

B. *Mental State.* The Accused negligently failed to respond to Disciplinary Counsel's inquiries, but cooperated with the Local Professional Responsibility Committee's investigation.

C. *Injury.* The Bar and the public suffered actual injury in that the resolution of the Harings' complaint was delayed and the Bar was required to call upon the LPRC to resolve a matter.

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

1. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1983. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

10.

ABA *Standards* §7.3 suggests that a public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the legal profession and causes injury or potential injury to a client, the public, or the legal system. Oregon case law is in accord. *See In re Van Zeipel,* 6 DB Rptr 71 (1992); *In re Klemp,* 11 DB Rptr 1 (1997).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-103(C).

12.

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 provided for herein on May 15, 1999. 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 10th day of September 1999.

/s/ Charles Z. Edelson
Charles Z. Edelson
OSB No. 83188

EXECUTED this 10th day of September 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-58
	)	
SUSAN D. EBNER,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Lewis B. Hampton, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(1), DR 1-102(A)(3), and DR 7-102(A)(5). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 16, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is publicly reprimanded for violation of DR 1-102(A)(1), DR 1-102(A)(3), and DR 7-102(A)(5).

DATED this 16th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ William B. Kirby
William B. Kirby, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Susan D. Ebner, 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, Susan D. Ebner, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1982, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Washington County, Oregon.

3.

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

4.

On February 9, 1999, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(1), DR 1-102(A)(3), DR 7-102(A)(5), and DR 1-103(C) of the Code of Professional Responsibility. 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.

From February 1993 through November 1995, the Accused was employed by a law firm. The Bar and the Accused agree that from May to October 1994, the Accused repeatedly took part in an office procedure involving the execution of estate planning documents. Under the procedure, the Accused presented to an office notary a form of affidavit already signed by witnesses to the estate planning documents. The notary would complete a notarial certificate to the effect that the witnesses had signed in the presence of the notary. Although the witnesses had been informed by the Accused that the witnesses, in signing their names, were under oath, the complete notarial act was an untrue statement in that the witnesses had not signed in the presence of the notary as required by law.

Violations

6.

The conduct described in paragraph 5 violated DR 1-102(A)(1), DR 1-102(A)(3), and DR 7-102(A)(5). Upon further factual inquiry, the parties agree that the charge(s) of alleged violation(s) of DR 1-103(C) should be and, upon the approval of this stipulation, are dismissed.

Sanction

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* In this case, the Accused violated her duty to the public to refrain from misrepresentations. *Standards* §5.2.

B. *Mental State.* The Accused's mental state was "knowing" in that the misrepresentations were made despite the Accused's awareness of the true circumstances, but without any conscious objective or purpose by her to accomplish a particular result. *Standards*, at 7.

C. *Injury.* The clients suffered no actual injury by the Accused's misconduct. To the extent that there were consequences from any flaw under the law regarding the validity of documents improperly notarized, there was potential injury to clients.

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

1. Substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. No prior disciplinary record. *Standards* §9.32(a).

2. Absence of a selfish or dishonest motive. *Standards* §9.32(b).

3. Full and free disclosure to disciplinary authorities. *Standards* §9.32(e).

4. Remorse. *Standards* §9.32(*l*).

The *Standards* provide that public reprimand is generally appropriate when a lawyer knowingly engages in a misrepresentation that adversely reflects on the lawyer's fitness to practice law. *Standards* §5.13. Under the *Standards*, a public reprimand is appropriate in this case, particularly in the absence of client injury.

8.

Oregon case law is in accord. *In re Walter*, 247 Or 13, 427 P2d 96 (1967); *In re Shilling*, 9 DB Rptr 53 (1995); *In re Cornilles*, 9 DB Rptr 101 (1995). These cases imposed a public reprimand on lawyers who violated their notarial duties by blindly acknowledging signatures or causing their staff to do so. In this case, the Accused did not misuse her own notarial commission.

9.

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

10.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and approval by the SPRB. 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 1st day of September 1999.

/s/ Susan D. Ebner
Susan D. Ebner
OSB No. 82046

EXECUTED this 3rd day of September 1999.

OREGON STATE BAR

By: /s/ Chris L. Mullmann
Chris L. Mullmann
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. 98-46
	)	
CARLYLE F. STOUT III,	)	
	)	
Accused.	)	

Bar Counsel:	James A. Wallan, Esq.
Counsel for the Accused:	Thomas H. Tongue, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	September 22, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused, Carlyle F. Stout III, and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is approved. The Accused shall be suspended for 30 days for violation of DR 1-102(A)(3), effective September 22, 1999.

DATED this 21st day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler, Esq.
State Disciplinary Board Chairperson

/s/ William G. Carter
William G. Carter, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Carlyle F. Stout III, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Oregon Supreme Court to practice law in this state on October 12, 1979, 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, voluntarily, and with the advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

Facts

4.

In 1991, Rough & Ready Lumber Co., Inc., an Oregon corporation (hereinafter "Rough & Ready"), loaned $375,000 to Andy R, Inc., a Washington corporation (hereinafter "Andy R"), to enable it to buy a 1,080-acre tract of land in Southern Oregon (hereinafter "the Property"). The transaction was evidenced by a Memorandum of Agreement, and a trust deed and UCC financing statement (hereinafter "Rough & Ready Loan Documents"), which were recorded. Pursuant to the Rough & Ready Loan Documents, Andy R was obligated to pay $50 per 1,000 board feet of harvested non-pine timber to Rough & Ready until the loan was repaid. Subsequently, the Alvin D. Bounds Trust (hereinafter "Bounds Trust") acquired the Property from Andy R, subject to the obligations of the Rough & Ready Loan Documents.

5.

Between about 1992 and 1997, the Accused represented William Hartnell (hereinafter "Hartnell") in a variety of matters. About December 1992, Hartnell acquired the Property from the Bounds Trust. The Accused represented Hartnell in the transaction. The Accused signed most of the documents on behalf of Hartnell as his attorney-in-fact. Hartnell's purchase was subject to a second deed of trust to the Bounds Trust (hereinafter "Bounds Trust Deed") and the obligations of the Rough & Ready Loan Documents. The Accused knew that Rough & Ready had a security interest in the Property, including timber, and that there was an outstanding balance owing on the obligation to Rough & Ready, secured by the Rough & Ready Loan Documents. The Accused also knew that if the Property was logged, Hartnell was

required to pay Rough & Ready $50 per 1,000 board feet for harvested non-pine timber.

6.

In or about May 1993, the Rough & Ready loan was in default and a judicial foreclosure was filed against Hartnell, the Bounds Trust, and others (hereinafter "Foreclosure Litigation"). Lawyers other than the Accused represented Hartnell in the Foreclosure Litigation ("Foreclosure Litigation Attorney"). However, the Accused maintained a contemporaneous attorney-client relationship with Hartnell concerning related and other matters and was aware of the Foreclosure Litigation. Prior to and during the litigation, Hartnell logged non-pine timber from the Property.

7.

Hartnell directed that proceeds from the sale of non-pine timber, approximately $32,809, be deposited into a trust account maintained and controlled by the Accused (hereinafter "Rough & Ready Funds"). The Accused was aware and represented to Hartnell's Foreclosure Litigation Attorney that the funds were proceeds of harvested non-pine timber and were identified as funds owed to Rough & Ready pursuant to the Rough & Ready Loan Documents. The Accused also knew that Rough & Ready had a security interest in the funds.

8.

In February 1994, Hartnell's Foreclosure Litigation Attorney asked the Accused to confirm the amount of funds he held in his lawyer trust account from harvested non-pine timber for a report to Rough & Ready. The Accused reported that he held approximately $32,809. In turn, Hartnell's Foreclosure Litigation Attorney reported to Rough & Ready's attorneys that the Accused held that amount and that the funds had been set aside and held in a trust account controlled by the Accused.

9.

In July 1994, the Accused asked Hartnell's Foreclosure Litigation Attorney if he could disburse the Rough & Ready Funds held in his trust account to pay attorney fees owed by Hartnell to the Accused. Hartnell's Foreclosure Litigation Attorney told the Accused that he had discussed the Accused's request with Hartnell and that Hartnell instructed the Accused not to do so because that action would violate a transaction being negotiated with the Bounds Trust.

10.

On several occasions, Hartnell's Foreclosure Litigation Attorney made representations to Rough & Ready's attorneys that the Rough & Ready Funds were being held by the Accused. These representations were made after receiving assurances from the Accused that he was holding the funds in trust. The Accused

was aware that Hartnell's Foreclosure Litigation Attorney would, under the circumstances, make these representations. Rough & Ready relied on the representations and did not pursue prejudgment remedies to secure the Rough & Ready Funds that the Accused held in his lawyer trust account pending resolution of the parties' disputes.

11.

Between about April 12 and May 11, 1995, Hartnell provided written instructions to the Accused to disburse the Rough & Ready Funds to the Accused for legal fees and to others. Approximately $17,000 was paid to the Accused. Prior to and after making the disbursements, the Accused did not notify Rough & Ready's attorney, Rough & Ready, or Hartnell's Foreclosure Litigation Attorney that he intended to make or had made the disbursements. In or about February 1996, Rough & Ready's attorney asked the Accused to provide a current report of the amount of Rough & Ready Funds he held in trust. The Accused did not disclose to Rough & Ready's attorney or other interested parties that Hartnell had instructed him to disburse and that he had disbursed the Rough & Ready Funds to himself and others. The Accused contends that he could not disclose that he had disbursed the funds without Hartnell's consent.

Violations

12.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(3) of the Code of Professional Responsibility by disbursing the Rough & Ready Funds to himself and others and failing to disclose to Hartnell's Foreclosure Litigation Attorney, Rough & Ready's attorney, and Rough & Ready that he intended to disburse and had disbursed the Rough & Ready Funds to himself and others from his lawyer trust account, contrary to their understandings and the Accused's representations.

Sanction

13.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* In violating DR 1-102(A)(3), the Accused violated his duties to the public and the profession. *Standards* §§5.1, 7.0.

B. *Mental State.* The Accused's conduct demonstrates knowledge. "Knowledge" 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,* at 7. The Accused knew the terms of Hartnell's obligations to Rough & Ready pursuant to the Rough & Ready Loan Documents and the Bounds Trust Deed; that Rough & Ready was owed money and had a security interest in the Property, including the proceeds of harvested timber; and that the funds held in his trust account represented proceeds from the harvest of non-pine timber. The Accused also knew that he had made representations to Hartnell's Foreclosure Litigation Attorney concerning the Rough & Ready Funds held in his lawyer trust account and, relying on the Accused's representations, Hartnell's Foreclosure Litigation Attorney had made representations about those funds to Rough & Ready's attorney. The Accused also knew that Rough & Ready claimed the Rough & Ready Funds pursuant to the Rough & Ready Loan Documents. Rough & Ready did not take other action to secure possession of the funds based on representations that the Accused held the funds in his trust account.

C. *Injury.* The Accused caused potential serious injury to Rough & Ready, which did not receive the funds that it was entitled to receive. Rough & Ready did not seek prejudgment remedies because of the Accused's representations. If the funds had not been diverted to the Accused and others, the unpaid balance of the Rough & Ready loan would have been reduced. Rough & Ready also incurred additional expenses to recover amounts due under the terms of the parties' agreements. Rough & Ready eventually foreclosed its trust deed and obtained a judgment of foreclosure against Hartnell and others. The Accused also caused injury to the profession. Rough & Ready and others accepted the Accused's word, only to later find that the Accused failed to act in accordance with the parties' understandings and failed to disclose the facts.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused's conduct reflects selfish motives. *Standards* §9.22(b).

2. The Accused has substantial experience in the practice of law, having been admitted to practice in 1979. *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 cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and in resolving this disciplinary proceeding. *Standards* §9.32(e).

14.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously reflects on the lawyer's fitness to practice. *Standards* §5.12. Suspension is also 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. The Accused knew that he had made representations that he held funds in his lawyer trust account. Further, the Accused was aware, under the circumstances, that Rough & Ready, its attorneys, and others would rely on those representations. The Accused had an affirmative duty to disclose the true facts. *In re Leonard*, 308 Or 560, 784 P2d 95 (1989); *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

15.

Oregon case law provides guidance in determining the appropriate sanction in this case. In *In re Williams, supra,* the lawyer was suspended for 63 days for violating DR 1-102(A)(3), DR 7-104(A)(1), and DR 1-103(C). Other cases where underlying facts and aggravating factors led to suspension include *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (lawyers were suspended for four months for violating DR 1-102(A)(4) [current DR 1-102(A)(3)] and ORS 9.460(2)). In *In re Porter*, 320 Or 692, 890 P2d 1377 (1995), the lawyer was suspended for 63 days for violating DR 1-102(A)(3). In *In re Hockett,* 303 Or 150, 734 P2d 877 (1987), the lawyer was suspended for 63 days for assisting clients in sheltering assets from creditors.

16.

In light of the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 30 days for violation of DR 1-102(A)(3).

17.

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 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 September 17, 1999, or three days after such approval, whichever is later.

DATED this 7th day of September 1999.

/s/ Carlyle F. Stout
Carlyle F. Stout III
OSB No. 79490

OREGON STATE BAR

By: /s/ Jane E. Angus
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. 99-61
	)	
RICHARD P. SCHULZE,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A) and DR 5-105(E). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 24, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is publicly reprimanded for violation of DR 5-101(A) and DR 5-105(E).

DATED this 24th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Julie R. Vacura
Julie R. Vacura, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Richard P. Schulze, 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, Richard P. Schulze, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1994, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in the State of Nevada.

3.

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

4.

On May 15, 1999, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A) and DR 5-105(E) of the Code of Professional Responsibility. A formal complaint has not yet been filed in this matter. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Upon graduation from law school and admission to practice law in Oregon, the Accused was hired as in-house counsel to The National Estate Plan, Inc., and other related entities (hereinafter "TNEP"). TNEP was in the business of marketing revocable living trusts and other estate planning options to members of the public. The Accused was employed by TNEP from February 1995 to December 1996. During this period, TNEP's marketing efforts were not directed at members of the public in Oregon, although some Oregon citizens contacted TNEP as discussed below.

6.

During the time he was employed by TNEP, the Accused also represented a number of Oregon clients in their estate planning matters. Six of these clients contacted the Accused for representation after reviewing living trust material authored by the owner of TNEP, calling a toll-free number for further information, and being referred to the Accused. The Accused then met personally with these

clients and discussed with them his simultaneous employment by TNEP and his representation of the individual clients.

7.

The Accused prepared estate planning documents for the six Oregon clients using, in at least four cases, material and forms purchased from TNEP. The Accused modified the TNEP documents according to the specific circumstances, interests, and desires of his clients. The Accused formed an attorney-client relationship with these individual clients while at the same time being employed by TNEP.

8.

The Accused's own financial, business, property, or personal interests as an employee of TNEP affected or reasonably could have affected the exercise of his professional judgment on behalf of the individual clients. In addition, by representing both TNEP and the individual clients simultaneously, the Accused represented multiple current clients in matters where such representation resulted in an actual or likely conflict of interest.

9.

The Accused disclosed to his individual clients in writing that he was in-house counsel for TNEP, but advised that he intended to represent only the interests of the individual clients regarding their estate plans. To the extent that consent was available to cure the conflicts of interest, the Accused's disclosure was insufficient under DR 10-101(B) and, accordingly, he did not obtain informed consent from his individual clients prior to his representation of them.

Violations

10.

The Accused admits that his conduct as described in this stipulation violated DR 5-101(A) and DR 5-105(E) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* In violating DR 5-101(A) and DR 5-105(E), the Accused violated the duty to his clients to avoid conflicts of interest. *Standards* §4.3.

B. *Mental State.* The Accused acted with a negligent state of mind, defined as the failure to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in this situation. *Standards,* at 7. The Accused recognized that there was a potential for a conflict of interest when he represented the individual clients while employed by TNEP, and made an effort to make disclosures to his individual clients. However, the Accused's disclosures were insufficient to cure any conflict of interest.

C. *Injury.* No actual injury occurred. The Accused's conduct had the potential to result in injury to the clients in that they were not permitted the opportunity to determine, with full knowledge of all circumstances of the potential conflict and its effect, whether the Accused should represent them or provide legal advice in regard to their individual interests. The Accused's conduct also had the potential to result in injury to the clients because the interests of his individual clients and TNEP were objectively adverse.

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

1. The Accused has committed more than one disciplinary offense. *Standards* §9.22(d).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards* §9.32(a).

2. The Accused did not act with a dishonest or selfish motive. *Standards* §9.32(b).

3. The Accused has made full and free disclosure to Disciplinary Counsel's Office. *Standards* §9.32(e).

4. At the time the Accused committed the above-mentioned offenses, he was inexperienced in the practice of law. *Standards* §9.32(f).

5. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32*(l).*

6. In December 1996, the Accused was no longer comfortable with his arrangement with TNEP and came to realize more fully that a conflict of interest existed between TNEP and the individual clients. The Accused terminated his employment with TNEP and no longer accepts referrals from its representatives or similar entities.

12.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or the interests of another client, and causes injury or potential injury to a client. *Standards* §4.33. Oregon case law is in accord. *See In re Durbin,* 9 DB Rptr 71 (1995).

Other Oregon cases regarding conflicts of interest in the living trust area have resulted in suspensions. See, for example, *In re Lofton*, 11 DB Rptr 129 (1997), *In re Muir,* 10 DB Rptr 37 (1996), and *In re Toner*, 8 DB Rptr 63 (1994). However, the parties agree that the conduct by the Accused in this case is less aggravated and that greater weight should be given to the mitigating factors present in this matter.

13.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded effective upon the approval of this Stipulation for Discipline by the Disciplinary Board.

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 1999.

/s/ Richard P. Schulze
Richard P. Schulze
OSB No. 94433

EXECUTED this 2nd day of September 1999.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
OSB No. 78362
Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-40
	)	
ROBERT A. SCANLON,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(8). Stipulation for discipline. 90-day suspension.
Effective Date of Order:	October 4, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is suspended for 90 days for violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(8), effective on the 10th day following the date of this order.

DATED this 24th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Julie R. Vacura
Julie R. Vacura, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Robert A. Scanlon, 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 A. Scanlon, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 17, 1971, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On June 18, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(8) of the Code of Professional Responsibility. No formal complaint has been filed at this time, and the parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In 1992, the Accused represented Safeco Insurance Company in a subrogation claim against Jeffrey Lyski (hereinafter "Lyski") on behalf of Safeco's insured, Virginia Creger (hereinafter "Creger"). The Accused obtained a judgment in Creger's name for Creger's property damage claim paid by Safeco ($2,500). The judgment also included Creger's deductible ($100) and claim of damages for loss of use of her vehicle ($219.02).

6.

By court order, Lyski was permitted to pay the above-described judgment in small installments. In February 1998, Lyski offered to satisfy the judgment (remaining principal and interest) in full for the sum of $2,500.

7.

The Accused prepared a satisfaction of judgment for Creger's signature. He did not contact Creger to sign the satisfaction of judgment. Rather, without Creger's knowledge and consent, the Accused signed Creger's name to the satisfaction, notarized it himself, and filed it with the court. A copy of the satisfaction of judgment is attached hereto and incorporated by reference herein.

8.

ORS 194.515(1) requires a notary to determine from personal knowledge or from satisfactory evidence that the person signing a document to be notarized is, in fact, that person. Violation of ORS 194.515 is a Class B misdemeanor under ORS 194.990(1)(a).

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(8).

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to the public to maintain his personal integrity. *Standards* §5.1. The Accused also violated his duty to the legal system to refrain from making false statements and misrepresentations to the court. *Standards* §6.1.

B. *Mental State.* The Accused acted knowingly when he signed Creger's name to the satisfaction of judgment without her authority and notarized the signature as that of Creger.

C. *Injury.* There was no injury to Safeco, Lyski, or Creger. There was, however, potential injury to Creger and to the court in accepting a satisfaction of judgment to which the named judgment creditor had not consented in that Creger may not have been made whole by the settlement but would be foreclosed by the satisfaction from objecting to the terms of the settlement.

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

1. Multiple offenses. *Standards* §9.22(d).

2. Substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused did not act with a dishonest or selfish motive. He believed, in good faith, that his conduct would benefit Safeco, Lyski, and Creger in that payment was received substantially in advance of the payment schedule set for Lyski by the court. *Standards* §9.32(b).

3. The Accused made full, free, and immediate disclosure to Disciplinary Counsel's Office and has displayed a cooperative attitude toward these proceedings. *Standards* §9.32(e).

4. The Accused has good character and reputation. *Standards* §9.32(g).

5. Remorse. *Standards* §9.32(*l*).

11.

The ABA *Standards* suggest that suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court and causes injury or potential injury to a party or an adverse or potentially adverse effect on the legal proceeding. Oregon case law is in accord. *See In re Kraus*, 289 Or 661, 616 P2d 1173 (1980).

12.

Consistent with the ABA *Standards* and Oregon case law, and in light of the significant mitigating factors in this case, the parties agree that the Accused shall be suspended for a period of 90 days for violation of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), and DR 7-102(A)(8), the sanction to be effective beginning on the 10th day following approval of this Stipulation for Discipline by the Disciplinary Board.

13.

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

EXECUTED this 30th day of August 1999.

/s/ Robert A. Scanlon
Robert A. Scanlon
OSB No. 71152

EXECUTED this 30th day of August 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-50
	)	
LISA B. EGAN,	)	
	)	
Accused.	)	

Bar Counsel:	Michael J. Gentry, Esq.
Counsel for the Accused:	Peter R. Jarvis, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 7-102(A)(2), and DR 7-106(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 24, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused accepts a public reprimand for violations of DR 1-102(A)(4), DR 7-102(A)(2), and DR 7-106(A).

DATED this 24th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Julie R. Vacura
Julie R. Vacura, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Lisa B. Egan, 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, Lisa B. Egan, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1988, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On February 17, 1999, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(4), DR 7-102(A)(1), DR 7-102(A)(2) (two counts), and DR 7-106(A) of the Code of Professional Responsibility, and ORS 9.527(3). A copy of the Formal Complaint is attached as Exhibit A. 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.

The Accused represented Jo Ann Adolphues in the Multnomah County Circuit Court case of *Jo Ann Adolphues v. Coast Industries, Inc, et al.,* Case No. 9407-049143.

6.

At a hearing on or about January 24, 1995, Circuit Court Judge Janice R. Wilson granted the motion of defendant Melvin Mark, Jr., for summary judgment against all of plaintiff's claims as to that defendant. Counsel for defendant Melvin Mark, Jr., submitted a proposed order concerning the court's ruling.

7.

Multnomah County Supplemental Local Rule (SLR) 5.045 prohibits the filing of motions for reconsideration, and Judge Wilson so informed an associate in the Accused's office, who passed that information on to the Accused. In objection to defendant Melvin Mark, Jr.'s proposed order, the Accused filed a document that was primarily a motion for reconsideration, although part of it was entitled as an objection to the form of the proposed order. On or about February 9, 1995, Judge Wilson issued an order admonishing the Accused for violating SLR 5.045.

8.

Counsel for defendant Melvin Mark, Jr., thereafter filed a motion to request entry of a partial final judgment on behalf of her client, pursuant to ORCP 67 B.

9.

On February 15, 1995, in response to that motion, the Accused filed an objection to entry of the ORCP 67 B judgment. Part of the Accused's brief argued why an ORCP 67 B judgment was inappropriate and part of it reargued the underlying merits of the summary judgment motion. On February 17, 1995, Judge Wilson issued an order denying the ORCP 67 B judgment, but striking a portion of the Accused's brief, finding it was filed in violation of SLR 5.045.

Violations

10.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 1-102(A)(4), DR 7-102(A)(2) (one count), and DR 7-106(A).

Upon further factual inquiry, the parties agree that the alleged violations of DR 7-102(A)(1) and ORS 9.527(3) in the First Cause of Complaint, and DR 7-102(A)(2) in the Second Cause of Complaint should be and, upon the approval of this stipulation, are dismissed.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated her duty to the legal system and to the profession to avoid conduct prejudicial to the administration of justice.

Standards §§6.3, 7.3. The Accused also violated the duty she owed to the legal system to abide by the legal rules of substance and procedure and refrain from asserting frivolous arguments or otherwise interfering with the legal process. *Standards* §6.0.

B. *Mental State.* The Accused acted with knowledge in that she was aware of Multnomah County Rule SLR 5.045. Knowledge is defined in the ABA *Standards* 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.

C. *Injury.* Injury may be either actual or potential. In this case, the Accused's conduct placed an additional and unnecessary burden on the state courts, as well as on the opposing party and his counsel.

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

1. The Accused engaged in a pattern of misconduct. *Standards* §9.22(c).

2. The Accused violated multiple disciplinary rules. *Standards* §9.22(d).

3. The Accused has substantial experience in the practice of law, having been admitted to practice in Oregon in 1988. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused did not act with a dishonest or selfish motive and did not intend to burden the court, but instead acted with a desire to serve her client in difficult and contentious litigation. *Standards* §9.32(b).

12.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards* §6.22. The *Standards* also provide that a reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of the duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.3.

13.

Oregon case law suggests that, regardless of the fact that the Accused acted knowingly, a public reprimand is appropriate in this case. In *In re Zumwalt*, 296 Or 631, 678 P2d 1207 (1984), the lawyer received a public reprimand for violating DR 1-102(A)(3) and DR 7-102(A)(2) when she retained, for several months, double payment pursuant to a settlement agreement. In that case, the lawyer did not act with a dishonest or selfish motive, but instead with a desire to serve her client and as a result of frustration and anger she had toward the lawyer representing the defendant

in the underlying litigation. In *In re Huffman*, 289 Or 515, 614 P2d 586 (1980), the lawyer received a public reprimand for violating DR 7-102(A)(1) when he refused to release a security interest in property awarded to his client's former husband unless his fees were paid. Imposition of a public reprimand was based upon the fact that the lawyer's acts were an isolated incident arising out of an extremely bitter divorce dispute. In *In re Rook*, 276 Or 695, 556 P2d 1351 (1976), the lawyer received a public reprimand for violating DR 1-102(A)(5) (current DR 1-102(A)(4)) and DR 7-102(A)(1) when, motivated by animosity toward defense counsel, he refused to extend plea offers to defendants represented by two particular lawyers even though offers had been made to similarly situated defendants. The court reduced the sanction imposed by the trial panel from a six-month suspension to a public reprimand, finding that the lawyer's conduct arose out of overzealousness in carrying out his duties and not from any motive of personal gain or profit.

14.

The Accused agrees to accept a public reprimand for the violations described in this stipulation.

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 20th day of August 1999.

/s/ Lisa B. Egan
Lisa B. Egan
OSB No. 88201

EXECUTED this 24th day of August 1999.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
OSB No. 78362
Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-67
	)	
GEOFFREY G. WREN,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Thomas E. Cooney, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and DR 2-106(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 24, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is hereby publicly reprimanded for violations of DR 1-102(A)(3) and DR 2-106(A).

DATED this 24th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler, Esq.
State Disciplinary Board Chairperson

/s/ Julie R. Vacura
Julie R. Vacura, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Geoffrey G. Wren, 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, Geoffrey G. Wren, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 15, 1988, 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On May 15, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 2-106(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

The Accused represented Colleen Hammer in an action arising out of a motor vehicle accident. Ms. Hammer was insured by Farmers Insurance Company, which paid Ms. Hammer collision damages and PIP benefits.

6.

These payments created a right of subrogation in Farmers. Farmers made a demand on the adverse carrier, Infinity Group, for reimbursement of both the collision damages and the PIP benefits. Farmers notified the Accused that it intended to assert its subrogation rights.

7.

Subsequently, Ms. Hammer settled with Infinity, which sent the Accused two checks that included amounts representing collision damages and PIP benefits. These checks were made out to Ms. Hammer, Mr. Wren, and Farmers Insurance. The Accused had his client endorse these checks and attempted to deposit them into his trust account, but the bank rejected them because Farmers' endorsement was needed.

8.

The Accused thereupon contacted Farmers and asked it to endorse the checks. He informed Farmers that once he received the funds, he would reimburse Farmers and distribute the balance. The Accused asked, however, in view of his own efforts in securing reimbursement for Farmers, that Farmers pay him one-third of its recovery.

9.

Farmers refused to agree to any reductions and asked the Accused to confirm in writing that he intended to reimburse Farmers the entire amount of its PIP and collision payments. Farmers indicated that until it received such assurance, it was unwilling to endorse the settlement checks and return them to the Accused.

10.

On May 20, 1998, Accused wrote back to Farmers and assured it that if Farmers would endorse and return the checks to him, he would "reimburse Farmers at 100% of its lien."

11.

In reliance on this promise, Farmers endorsed the checks and returned them to the Accused. On June 17, 1998, the Accused sent Farmers two checks written on his general business account. The first check represented 100% of Farmers' PIP payments; the second represented Farmers' collision reimbursement less a one-third attorney fee retained by the Accused.

12.

Farmers objected to the Accused's withholding a portion of its reimbursement for attorney fees. The Accused initially refused Farmers' demand that he turn over the withheld amount, but ultimately did so (*before* Farmers filed its complaint with the Bar).

Violations

13.

The Accused admits that his letter of May 20, 1998, misrepresented his true intentions regarding reimbursement, that this misrepresentation was intended to

induce Farmers to endorse and return the settlement checks, and that this conduct violated DR 1-102(A)(3). The Accused also admits that by charging Farmers attorney fees for recovering collision damages without any fee agreement with Farmers in place, he charged an illegal or clearly excessive fee in violation of DR 2-106(A). At the time, however, the Accused mistakenly believed he had a legitimate claim against Farmers for fees.

Sanction

14.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to maintain his personal integrity by refraining from conduct involving dishonesty, fraud, deceit, or misrepresentation. *Standards* §5.1. He also violated a duty to the profession to refrain from charging a clearly excessive fee. *See Standards* §7.0.

B. *Mental State.* The Accused acted intentionally in leading Farmers to believe that he intended to reimburse the company in full upon execution of the settlement checks. The Accused acted negligently in claiming a fee from Farmers that the Accused should have known was improper under the circumstances. *See Standards,* at 17.

C. *Injury.* Injury may be either actual or potential. In this case, the Accused's misrepresentation caused Farmers to act to its detriment. Although the Accused ultimately reimbursed Farmers the full amount it was entitled to receive, his conduct forced Farmers to make significant efforts to collect it from him.

D. *Aggravating Factors.* There are no aggravating factors in this case. *See Standards* §9.2.

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused made a timely good-faith effort to rectify the consequences of his misconduct. *Standards* §9.32(d).

3. The Accused manifested a cooperative attitude toward disciplinary proceedings. *Standards* §9.32(e).

4. The Accused was inexperienced in this area of the law. *Standards* §9.32(f).

5. The Accused has manifested remorse at his misconduct. *Standards* §9.32(*l*).

15.

The *Standards* provide that a reprimand is generally appropriate when a lawyer knowingly engages in conduct (other than criminal conduct) that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. *Standards* §5.13. The *Standards* also provide that a reprimand is generally appropriate when the lawyer negligently engages in conduct that is a violation of the duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards* §7.3.

16.

The following Oregon cases support the conclusion that a public reprimand is a sufficient sanction in this case. In *In re Zumwalt*, 296 Or 631, 678 P2d 1207 (1984), an attorney was found guilty of dishonest conduct when she retained a duplicate settlement check from the opposing party which she knew had been submitted to her in error. Zumwalt, an inexperienced lawyer, initially refused to refund the money on request. She was publicly reprimanded.

In *In re Taylor*, 5 DB Rptr 1 (1991), a lawyer charged a client $5,600 to recover PIP benefits for which there was no genuine dispute. This fee was held to be clearly excessive and the lawyer was publicly reprimanded.

In *In re White*, 1 DB Rptr 174 (1986), a lawyer accepted 10 monthly payments for legal fees totaling almost $1,800 for less than two hours of legal services performed two years earlier, for which the lawyer had already been paid. The trial panel determined that White had accepted the payments without realizing that they were not owed, and that he was therefore not guilty of dishonesty. However, the fee was clearly excessive within the meaning of DR 2-106(A) and White was therefore publicly reprimanded.

17.

The Accused agrees to accept a public reprimand for the violation described in this stipulation.

18.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). 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 13th day of July 1999.

/s/ Geoffrey G. Wren
Geoffrey G. Wren
OSB No. 88115

EXECUTED this 10th day of August 1999.

OREGON STATE BAR

By: /s/ Mary A. Cooper
Mary A. Cooper
OSB No. 91001
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-9
	)	
HANK McCURDY,	)	
	)	
Accused.	)	

Bar Counsel:	Gregory Chaimov, Esq.
Counsel for the Accused:	Bradley F. Tellam, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4) and DR 5-101(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 24, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused, Hank McCurdy, and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is approved. The Accused shall receive a public reprimand for violation of DR 1-102(A)(4) and DR 5-101(A) of the Code of Professional Responsibility.

DATED this 24th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler, Esq.
State Disciplinary Board Chairperson

/s/ Julie R. Vacura
Julie R. Vacura, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Hank McCurdy, 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 Oregon in 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On June 1, 1998, a formal complaint was filed against the Accused as authorized by the State Professional Responsibility Board for violation of DR 5-101(A), DR 1-102(A)(4), and DR 1-102(A)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In about November 1993, Judy Teske (hereinafter "Teske") retained the Accused to pursue claims for personal injury allegedly suffered as a result of eating a chicken sandwich purchased at a McDonald's restaurant (hereinafter "Restaurant") in Pendleton, Oregon. On October 19, 1995, the Accused filed a civil complaint naming McDonald's Corporation (hereinafter "McDonald's") as defendant (hereinafter "Court Action"). About November 13, 1995, the Accused filed an amended complaint in the Court Action and added Donald Armstrong (hereinafter "Armstrong"), the owner of the Restaurant, as a defendant.

6.

Prior to filing the Court Action, the Accused obtained Teske's medical records. The records reflected that Teske was admitted to the hospital for medical

treatment on October 25, 1993, and that she was diagnosed with salmonella poisoning and informed of the diagnosis at the time of her discharge on October 28, 1993.

7.

In December 1995, the Accused associated with Richard Weil as attorneys for Teske in the Court Action. Weil participated in the Court Action. On January 4, 1996, Armstrong filed a motion for summary judgment on the basis that Teske's claims against him for negligence and strict products liability were barred by the two-year statute of limitations applicable to those claims (hereinafter "First Motion for Summary Judgment"). Teske's ability to pursue the claims against Armstrong was dependent on Teske having learned of the diagnosis of her illness on or after October 30, 1993.

8.

In early February 1996, the Accused prepared an affidavit for Teske's signature in opposition to Armstrong's First Motion for Summary Judgment. The affidavit was filed with the court on February 5, 1996, and contained the following statement: "I was hospitalized for the first time on October 25, 1993. After I was hospitalized for four or five days, I was told that I had food poisoning." The statement identifying the date Teske was discharged and told of the diagnosis was not accurate. Teske was discharged and told of the diagnosis on October 28, 1993. The Accused, without reviewing the file, relied solely on his client's recollection of events that occurred over two years earlier.

9.

The court held a hearing on Armstrong's First Motion for Summary Judgment on February 6, 1996. The Accused prepared memoranda and was present at oral argument on Armstrong's First Motion for Summary Judgment. The court relied on the statement contained in Teske's affidavit and denied Armstrong's First Motion for Summary Judgment. The Accused had a duty to review records in his possession, including Teske's medical records, as part of determining whether statements in the affidavit and of counsel at oral argument on Armstrong's First Motion for Summary Judgment were accurate.

10.

About February 29, 1996, Armstrong's attorneys took Teske's deposition. Armstrong's and McDonald's attorneys presented Teske with her medical records, which disclosed that she was admitted to the hospital on October 25, and discharged on October 28, 1993, at which time she was informed that she had been diagnosed with salmonella poisoning. Teske acknowledged these facts. Thereafter, on about March 14, 1996, Armstrong filed a second motion for summary judgment on the basis that Teske's claims against him were barred by the statute of limitations

(hereinafter "Second Motion for Summary Judgment"), and a Motion for Sanctions against the Accused, Weil, and Teske, concerning the statements contained in Teske's affidavit and argument that caused the court to deny Armstrong's First Motion for Summary Judgment (hereinafter "Motion for Sanctions").

11.

The Accused recommended to Teske that she concede the Second Motion for Summary Judgment and not pursue her claims against Armstrong because her case was weak and because it was expensive to do so. Although the Accused has no specific recollection as to when he did so, he believes that he told her there was a risk of having costs and sanctions assessed against her if she was not successful. The Accused failed to tell Teske that she may have a potential malpractice claim against him, and failed to provide Teske with full disclosure and obtain her consent to his continued representation as defined by DR 10-101(B). Following the Accused's discussion with Teske, Armstrong's attorneys were advised that Teske would concede the Second Motion for Summary Judgment. A stipulated order granting the motion was filed with the court on April 12, 1996. About April 23, 1996, the court entered a judgment dismissing Teske's claims against Armstrong, with prejudice, and awarded Armstrong judgment against Teske for his costs and disbursements in the Court Action.

12.

On April 19, 1996, the court held a hearing on Armstrong's Motion for Sanctions and entered an order awarding sanctions in favor of Armstrong and against the Accused and Weil. The court deferred its decision concerning Teske until she had the opportunity to appear before the court. The Accused recommended to Teske that she not pursue her claims against McDonald's because her case was weak and because she faced the risk of having defense costs assessed against her if she was not successful. The Accused failed to tell Teske that she may have a potential malpractice claim against him, and failed to provide Teske with full disclosure and obtain her consent to his continued representation as defined by DR 10-101(B). The Accused suggested to Teske that she obtain a second opinion and arranged for her to speak with Weil. Weil also recommended to Teske that she not pursue her claims for substantially the same reasons. In or about June 1996, the Accused and Weil, on Teske's behalf, agreed to enter into a stipulated judgment dismissing the Court Action against McDonald's, with prejudice and without costs against Teske. The judgment was filed with the court on July 1, 1996.

13.

An investigation was conducted by the Local Professional Responsibility Committee. Teske thereafter retained the services of a new attorney and asserted a malpractice claim against the Accused, which was ultimately settled by the Professional Liability Fund for more than a nominal amount.

Violations

14.

Based on the foregoing, the Accused admits that he engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4) when he prepared and filed the affidavit in opposition to the First Motion for Summary Judgment without reasonable inquiry as to the facts, and that he continued employment as Teske's attorney without first obtaining Teske's consent after full disclosure when the exercise of his professional judgment could have been or reasonably may have been affected by his personal or financial interests in violation of DR 5-101(A) of the Code of Professional Responsibility. The Accused and the Bar agree that after further discovery, the alleged violations of DR 1-102(A)(3) should be and, upon approval of this stipulation, are dismissed.

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*") are considered. The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* In violating DR 1-102(A)(4) and DR 5-101(A), the Accused violated his duties to his client and the legal system. *Standards* §§4.3, 6.1.

B. *Mental State.* The Accused's conduct demonstrates that he was negligent. "Negligence" is defined as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation. The Accused failed to review his file, including Teske's medical records, which would have disclosed the date on which she was informed of the diagnosis. If the Accused had done so, he would not have included incorrect or inaccurate information in Teske's affidavit in opposition to Armstrong's First Motion for Summary Judgment.

C. *Injury.* The Accused caused actual and potential injury to the court and Teske. The court relied on Teske's affidavit, which caused the court to deny Armstrong's First Motion for Summary Judgment. The Accused also caused potential injury to Teske in that she may not have fully understood aspects of the legal proceeding or that she may have had a potential malpractice claim against the Accused.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of discipline, consisting of letters of admonition in 1994 for violating DR 9-101(C)(4) and DR 7-104(A) of the Code of Professional Responsibility. *Standards* §9.22(a).

2. There are multiple offenses. *Standards* §9.22(d).

3. Teske was vulnerable in that she may not have fully understood aspects of the legal proceeding. *Standards* §9.22(h).

4. The Accused has substantial experience in the practice of law, having been admitted to practice in 1977. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused cooperated with the Disciplinary Counsel's Office and the Local Professional Responsibility Committee in responding to the complaint and in resolving this disciplinary proceeding.

2. The Accused is remorseful. *Standards* §9.32(*l*).

3. The court granted Armstrong's Motion for Sanctions against the Accused and Weil and ordered the Accused and Weil to pay $4,513.98 to Armstrong. *Standards* §9.32(k).

16.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be affected by the lawyer's own interests and causes injury or potential injury to a client. *Standards* §4.33. The *Standards* also provide that reprimand is generally appropriate when a lawyer is negligent in determining whether statements are false 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* §6.13. The Accused had a duty to include in the affidavit only such representations as were based on reasonable knowledge, information, and belief, formed after making such inquiry as is reasonable under the circumstances. The Accused was negligent in determining the accuracy of Teske's statement concerning the date she learned that she had been diagnosed with salmonella poisoning and submitting that statement to the court without first reviewing Teske's medical records that were contained in his file.

17.

Oregon case law provides guidance in determining the appropriate sanction in this case. In *In re Moore*, 13 DB Rptr 51 (1999), the lawyer admitted that he violated DR 5-101(A), DR 5-104(A), and DR 5-105(E) and received a public reprimand. See also *In re Carey,* 307 Or 315, 767 P2d 438 (1989), where a lawyer violated DR 5-101(A), DR 5-105, and *former* DR 9-102; and *In re Harrington*, 301

Or 18, 718 P2d 725 (1986), where a lawyer violated DR 5-101(A), DR 5-104, and *former* DR 5-105.

18.

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 1-102(A)(4) and DR 5-101(A) of the Code of Professional Responsibility.

19.

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 is subject to the approval of the Disciplinary Board pursuant to BR 3.6.

DATED this 10th day of September 1999.

/s/ Hank McCurdy
Hank McCurdy
OSB No. 77272

OREGON STATE BAR

By: /s/ Jane E. Angus
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. 97-128
	)	
KEVIN T. LAFKY,	)	
	)	
Accused.	)	

Bar Counsel:	Jeffrey M. Edelson, Esq.
Counsel for the Accused:	Bradley F. Tellam, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 2-110(A)(2) and DR 5-101(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 27, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Kevin T. Lafky (hereinafter "Accused") and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is approved. The Accused shall receive a public reprimand for violation of DR 2-110(A)(2) and DR 5-101(A) of the Code of Professional Responsibility.

DATED this 27th day of September 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused is, and at all times mentioned herein was, an attorney at law duly admitted by the Supreme Court of the State of Oregon to the practice of law in this state on September 20, 1985, 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On March 18, 1998, a Formal Complaint was filed against the Accused after authorization of the State Professional Responsibility Board alleging violations of DR 1-102(A)(3), DR 2-110(A)(2), and DR 5-101(A) of the Code of Professional Responsibility. The parties intend this stipulation to set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In about May 1994, Eduardo Solario (hereinafter "Solario") retained the Accused to pursue a medical malpractice claim, which arose out of surgery Solario had on October 2, 1992. The statute of limitations on this claim expired October 2, 1994. With Solario's authorization, the Accused presented a settlement demand to the treating physician's insurance carrier. The insurance carrier rejected the demand and advised that its review panel found that Solario's treating physician had not deviated from the standard of care.

6.

On September 13, 1994, the Accused filed a civil complaint in the Circuit Court of the State of Oregon for the County of Marion against Solario's treating

physician and the hospital at which the medical services were performed (hereinafter "Court Action"). The Accused had the hospital served with a copy of the summons and complaint by certified mail to the hospital's registered agent and by office service. The Accused had the physician served by leaving a copy of the summons and complaint with the "lead person" at the physician's office.

7.

On September 30, 1994, the defendants' attorney notified the Accused of her representation. The Accused was out of town during October 1994. On November 3, 1994, the parties agreed that the defendants would file a responsive pleading by November 21, 1994. The defendants filed an answer, dated November 21, 1994, which included, among other affirmative defenses, insufficient service. Although the Accused noted the issue was raised in the answer, he did not speak with Solario about the service issue after receiving the answer. On several occasions, the Accused and Solario discussed the need for an expert witness to testify that the defendant doctor had failed to meet the standard of care.

8.

In early March 1995, the defendants filed a motion for summary judgment. The motion was based on two alternative grounds: as a matter of law, (1) defendants met the standard of care and (2) the complaint was not properly served and therefore the claim had not been properly commenced within the applicable statute of limitations.

9.

The Accused took no immediate steps to investigate or research the statute of limitations issue. At the time, neither the Accused nor Solario had located an expert witness. Without an expert witness, the case could not proceed. In late March 1995, the Accused obtained a 30-day extension, up to and including April 25, 1995, to respond to the defendants' motion for summary judgment. The Accused continued his efforts to locate an expert, without success.

10.

On April 27, 1995, the Accused advised Solario of his failed attempts to locate an expert witness and sought Solario's direction. That same day, the Accused spoke with Solario and recommended that he dismiss the case. At the time, Solario agreed. The Accused did not tell Solario that he may have a potential malpractice claim against the Accused on the service and statute of limitations issue and that that potential claim created a self-interest conflict of interest for the Accused. The Accused also did not provide Solario with full disclosure as defined by DR 10-101(B), including a recommendation that Solario seek independent legal advice, and

obtain Solario's consent to the Accused's continued representation in light of the conflict of interest. The following day, the Accused spoke with the defendants' attorney, who agreed to stipulate to a dismissal of the Court Action without costs awarded to any party.

11.

On May 1, 1995, the Accused received a message that Solario did not want to dismiss the case and was looking for a "second opinion." On May 4, 1995, the Accused sent a letter to Solario telling him why he needed an expert witness. Although the time to respond to the defendants' motion for summary judgment had passed, the Accused also requested additional time to respond from the court. On May 11, 1995, the Accused sent a letter to Solario, which acknowledged that Solario was attempting to consult with another lawyer. On May 21, 1995, a friend of Solario's again contacted the Accused and advised that Solario did not want to dismiss his case or to hire another lawyer because no other lawyer would take the case. In response, the Accused advised that he could not find an expert to testify that Solario's physician's treatment was negligent. The Accused notified Solario that he had two choices: the Accused could withdraw as Solario's attorney or he could dismiss the case.

12.

The Accused met with Solario and his friend on May 25, 1995. He told Solario that he would withdraw as his attorney unless Solario agreed to dismiss the case. Solario would not agree to dismiss the case and on May 26, 1995, the Accused filed a motion to allow his withdrawal as Solario's attorney. The Accused also requested that the hearing on the defendants' motion for summary judgment be rescheduled. Although the defendants opposed the request, the hearing date ultimately was rescheduled until July 14, 1995. The court granted the Accused's motion. On his withdrawal, the Accused did not deliver a statement he obtained from the process server concerning service of the summons and complaint on the defendant physician, although he offered to provide the file to Solario and his new lawyer. On July 14, 1995, the court granted the defendants' motion for summary judgment on the ground that there was insufficient service of process.

Violations

13.

Based on the foregoing, the Accused admits that he violated DR 5-101(A) when he continued employment as Solario's attorney after the defendants filed their motion for summary judgment, without having first obtained Solario's consent after full disclosure when the exercise of the Accused's professional judgment was likely or may reasonably have been effected by his own financial, business, property, or personal interests; and DR 2-110(A)(2) when he failed to take reasonable steps to avoid foreseeable prejudice to his client by failing to deliver his entire file to

Solario. Upon further factual inquiry, the Accused and the Bar agree that the charge of alleged violation of DR 1-102(A)(3) should be and, upon the approval of this stipulation, is dismissed.

Sanction

14.

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 by 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 Violated.* In violating DR 5-101(A) and DR 2-110(A)(2), the Accused violated his duty to his client and the profession. *Standards* §§4.3, 7.0.

B. *Mental State.* The Accused's conduct demonstrates negligence. Negligence is defined as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation." The Accused was focused on the need for an expert witness rather than on the sufficiency of service on the defendant physician and the statute of limitations, thus failing to fully recognize the conflict of interest, which required that he make full disclosure and obtain the client's consent to continue the representation.

C. *Injury.* The Accused caused potential injury to his client by the timing of his withdrawal and by failing to deliver his complete file. There was no actual injury because the Accused and Solario, and, later, Solario's new attorney, could not locate an expert witness to testify that the defendant physician's conduct fell below the standard of care.

D. *Aggravating Factors.* Aggravating factors include:

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

2. There are multiple charges. *Standards* §9.22(d).

3. The Accused has a prior record of discipline. In March 1997, the Accused was publicly reprimanded for violating DR 7-109(C). *In re Lafky*, 11 DB Rptr 9 (1997).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The client's complaint was not filed with the Disciplinary Counsel's Office until approximately one year after the conduct at issue. *Standards* §9.32(i).

3. The Accused is remorseful. *Standards* §9.32(*l*).

15.

The *Standards* provide that a 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. The *Standards* also 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* §7.3.

16.

Oregon case law is in accord and provides guidance in determining the appropriate sanction in this case. *See, e.g., In re Moore*, 13 DB Rptr 51 (1999) (public reprimand for DR 5-101(A), DR 5-104(A), and DR 5-105(E)); *In re Carey*, 307 Or 315, 767 P2d 438 (1989) (public reprimand for violating DR 5-101(A), DR 5-105, and *former* DR 9-102); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (public reprimand for violation of DR 5-101(A), DR 5-104(A), and *former* DR 5-105).

17.

In light of the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for violation of DR 5-101(A) and DR 2-110(A)(2).

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 is subject to the approval of the Disciplinary Board pursuant to BR 3.6.

DATED this 22nd day of September 1999.

/s/ Kevin T. Lafky
Kevin T. Lafky, OSB No. 85263

OREGON STATE BAR

By: /s/ Jane E. Angus
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. 97-131
	)	
DAVID N. HOBSON, SR.,	)	
	)	
Accused.	)	

Bar Counsel:	John Adlard
Counsel for the Accused:	Marvin Nepom, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	October 12, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is suspended for 30 days, effective five days after approval of the stipulation for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B).

DATED this 7th day of October 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ William B. Kirby
William B. Kirby, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, David N. Hobson, Sr., was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1959, 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 after consultation with and advice of counsel. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On September 23, 1999, a Third Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B) of the Code of Professional Responsibility. 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.

Beginning in approximately 1995, the Accused represented the plaintiff in personal injury litigation, *Miller v. Pixton,* filed in Multnomah County against Karen Pixton (hereinafter "Pixton"), who was represented in the litigation by Jeffrey Eden (hereinafter "Eden"). Prior to and during the trial in this litigation, Pixton advised the Accused that if the damages awarded by the court to the Accused's client exceeded her insurance coverage, she would file a petition for bankruptcy.

6.

A verdict that exceeded Pixton's insurance coverage was rendered by a jury on July 11, 1996. On July 12, 1996, the Accused prepared a form of judgment on the verdict and personally took it to the courthouse for delivery to the trial judge's

office. The Accused had not yet served his form of judgment on opposing counsel. By chance, the Accused encountered the trial judge as he was entering the courthouse. A conversation ensued during which the trial judge signed the form of judgment in the *Miller v. Pixton* litigation. After the judge signed the judgment, the judge advised the Accused to file the judgment with the Clerk of the Court.

7.

After the Accused filed the above-described judgment on July 12, 1996, he immediately and personally delivered a copy of the form of judgment to Eden's office. The Accused did not conform this form of judgment with the trial judge's signature or otherwise advise Eden that the judgment had already been signed by the court and filed with the Clerk of the Court. The fact that the judgment had already been signed by the court and filed with the clerk was a material fact the Accused had in mind.

8.

On July 12, 1996, Uniform Trial Court Rule 5.100(1) required the Accused to serve opposing counsel with his form of judgment in the Pixton litigation not less than three days before he submitted it to the court. The Accused was unaware of this rule.

9.

The above-described judgment was docketed by the court in the morning of July 15, 1996, and a lien was thereby automatically imposed upon property Pixton owned in Multnomah County. Pixton's debt to the Accused's client thereby became secured by an interest in her Multnomah County real property. Pixton filed a bankruptcy petition on the afternoon of July 15, 1996.

Violations

10.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to the public to maintain the standards of personal integrity upon which the community relies and to avoid interference with the administration of justice, as well as his duty to the legal system to avoid ex parte contact with the court. *Standards* §§5.0, 6.0.

B. *Mental State.* The Accused was negligent in determining whether it was appropriate to present the judgment to the judge for signature without first advising Eden of his intent to do so. The Accused also knew that the fact that the court had signed and entered the judgment would be important to Eden.

C. *Injury.* Pixton was actually injured by the Accused's ex parte communication with the court in that judgment was entered against her without her knowledge and earlier than was contemplated by UTCR 5.100(1). As a result, a lien attached to Pixton's Multnomah County real property. This made the Accused's client a secured creditor in Pixton's bankruptcy proceedings when he would have been an unsecured creditor had Eden received prior notice of the Accused's intent to submit the judgment to the court for signature. Pixton was also injured by the Accused's failure to disclose to Eden that the judgment had been signed and filed in that she was thereby prevented from taking steps to avoid the imposition of a lien on Pixton's real property before the judgment was docketed by the Clerk of the Court.

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

1. The Accused has committed multiple disciplinary offenses and has substantial experience in the practice of law. *Standards* §9.22(c), (i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has been practicing law for 40 years and has no prior disciplinary record. *Standards* §9.32(a).

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

3. The Accused has made full and free disclosure to Disciplinary Counsel's Office and has displayed a cooperative attitude toward these proceedings. *Standards* §9.32(e).

4. The Accused possesses good character and reputation. *Standards* §9.32(g).

5. The Accused did not intend to personally appear before the trial judge on July 12, 1996. The Accused, moreover, believed that signing a judgment after a jury verdict was not an ex parte communication with the court on the merits of the case.

13.

Oregon case law suggests that a 30-day suspension is appropriate for the Accused's conduct. See *In re Bell*, 294 Or 202, 655 P2d 569 (1982), where a lawyer was suspended for 30 days for presenting a decree to a judge for signature during

a chance encounter in the courthouse and for being less than candid with the court about opposing counsel's objections to the form of the decree.

14.

Consistent with Oregon case law and in consideration of the relevant aggravating and mitigating circumstances, the parties agree that the Accused shall be suspended for a period of 30 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-110(B), and the sanction shall be effective five days after approval of this stipulation by the Disciplinary Board.

15.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar, and the sanction provided for herein has been 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 27th day of September 1999.

/s/ David N. Hobson, Sr.
David N. Hobson, Sr.
OSB No. 59045

EXECUTED this 4th day of October 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

Cite as 329 Or 404 (1999)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)
	)
Complaint as to the Conduct of	)
	)
THOMAS C. HOWSER,	)
	)
Accused.	)

(OSB 95-252; SC S37691)

En Banc

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

Argued and submitted May 7, 1999. Decided October 7, 1999.

Michael Jewett, of Jacobson, Jewett, Thierolf & Dickey, Medford, argued the cause and filed the briefs for the Accused.

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

PER CURIAM

The Accused is reprimanded.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 5-105(C) and DR 2-110(B)(2), based on his representation of a client in a matter adverse to the interests of a former client of his partner, and on his failure to withdraw from the representation in a timely manner once he learned of the conflict. A trial panel of the Disciplinary Board found the Accused guilty of both violations and determined that he should receive a public reprimand. *Held:* The Accused is guilty of violating DR 5-105(C) and DR 2-110(B)(2). The Accused is reprimanded.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-53, 98-54,
	)	98-55, 98-56, 98-57
DAVID R. BARROW,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 2-106(A), DR 6-101(B), DR 7-101(A)(2), DR 7-106(A), DR 9-101(A), and DR 9-101(C)(4). Stipulation for discipline. Two-year suspension.
Effective Date of Order:	October 26, 1999

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

The Oregon State Bar and David R. Barrow have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. David R. Barrow 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 26th day of October 1999.

/s/ Wallace P. Carson, Jr.
Wallace P. Carson, Jr.,
Chief Justice

STIPULATION FOR DISCIPLINE

David R. Barrow, 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 19, 1985, and was a member of the Oregon State Bar continuously until April 20, 1999. While in private practice, the Accused had his office and place of business in Multnomah County, Oregon. He is currently suspended from active Bar membership for failure to pay his PLF assessment, his Bar dues, and failure to comply with MCLE requirements.

3.

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

4.

The State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for a number of violations of the Code of Professional Responsibility as follows:

Case No.	Matter	Authorized	Prosecution Charges
No. 98-53	LeChevalier-Litvin matter	06/18/99	DR 6-101(B)
No. 98-54	Weber matter	06/18/99	DR 1-102(A)(4) DR 2-106(A) DR 6-101(B) DR 7-101(A)(2) DR 7-106(A) DR 9-101(A)
No. 98-55	Wright matter	06/18/99	DR 6-101(B) DR 7-101(A)(2) DR 9-101(C)(4)
No. 98-56	Scheminski matter	01/16/99	DR 2-106(A) DR 6-101(B) DR 9-101(A)
No. 98-57	Ryan matter	01/16/99	DR 6-101(B) DR 9-101(C)(4)

The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

98-53 LeChevalier-Litvin

5.

The Accused was retained by Laurie LeChevalier-Litvin in September 1996, after the client suffered injuries from being bitten by her neighbor's dog. Thereafter, the Accused failed to undertake any significant action in his client's behalf and he was terminated by the client in February 1997.

6.

The Accused admits that, by engaging in the conduct described above, he violated DR 6-101(B) of the Code of Professional Responsibility.

No. 98-54 Weber Probate

7.

In or about January 1995, the Accused undertook to represent the personal representative in the estate of Maude J. Weber. Although the Accused performed a number of legal services and moved the probate estate toward closure, he did not complete the legal services necessary to close the estate. The Accused ceased performing services in this matter in or about September 1996. Thereafter, the Accused failed to appear at various status hearings scheduled by the court. Ultimately, the personal representative retained new counsel to conclude the probate.

8.

In or about April 1996, the Accused collected $7,549.90 as attorney fees in the probate prior to the fees being approved by the probate court in violation of ORS 116.183.

9.

In or about January 1998, the probate court issued an order requiring that the Accused pay, from the fees he previously collected, the additional attorney fees incurred by successor counsel. The Accused did not pay these attorney fees, although his former law partner subsequently did and, after the matter was brought to the attention of the Oregon State Bar, the Accused reimbursed his former law partner.

10.

The Accused admits that, by engaging in the conduct described above, he violated DR 1-102(A)(4), DR 2-106(A), DR 6-101(B), DR 7-101(A)(2), DR 7-106(A), and DR 9-101(A) of the Code of Professional Responsibility.

No. 98-55 Wright Matter

11.

The Accused was retained in December 1996 by Sandi Wright to defend her in a civil lawsuit. Thereafter, the Accused took no significant action on behalf of his client and a default judgment was entered against her in March 1997. The client requested that the Accused return her retainer, but the retainer was not returned until July 1997. The retainer did remain on deposit in the Accused's trust account until returned to the client.

12.

The Accused admits that, by engaging in the conduct described above, he violated DR 6-101(B), DR 7-101(A)(2), and DR 9-101(C)(4) of the Code of Professional Responsibility.

No. 98-56 Scheminske Matter

13.

The Accused was retained in August 1996 to represent Kent Scheminske in a dissolution-of-marriage proceeding. The Accused was paid a retainer of $2,000. The Accused considered the retainer to be nonrefundable and he deposited it in his general office account. No written retainer agreement establishing the retainer as non-refundable was entered into between the Accused and his client. The Accused failed to take significant action on behalf of his client or to communicate adequately with the client regarding the status of the matter. The Accused was terminated by the client in August 1997. After the matter was brought to the attention of the Oregon State Bar, the Accused reimbursed the client for the retainer.

14.

The Accused admits that, by engaging in the conduct described above, he violated DR 2-106(A), DR 6-101(B), and DR 9-101(A) of the Code of Professional Responsibility.

No. 98-57 Ryan Matter

15.

Prior to October 1993, the Accused was retained to assist Audrey Ryan in a probate estate. In concluding estate matters, the Accused inadvertently recorded real property deeds in a wrong county. Thereafter, the client repeatedly sought the Accused's assistance in correcting the error so that title to the property was shown of record in the correct title owner's name. The Accused failed to respond to the client's requests and failed to return promptly to her the original deeds, thereby preventing her from retaining other counsel to assist in having the deeds properly recorded. Ultimately, the Accused provided the client with the original deeds in October 1998.

16.

The Accused admits that, by engaging in the conduct described above, he violated DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

17.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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. *Duties Violated.* The Accused violated his duties to his clients regarding the proper deposit of client money (*Standards* §4.1) and his duty to act with reasonable diligence and promptness (*Standards* §4.4). The Accused also violated his duty owed to the legal system not to engage in conduct burdensome to the courts (*Standards* §6.2) and his duty to the profession not to charge or collect improper fees (*Standards* §7.0).

B. *Mental State.* Throughout these various client matters, the Accused acted with a negligent state of mind, defined in the *Standards* as a failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation. During the period in which these various client matters arose, the Accused was experiencing bouts of depression and consumed alcohol excessively. He did not intend any client injury.

C. *Injury.* Injury may be either actual or potential under the ABA *Standards*. All five clients incurred actual injury to the extent that their legal matters

were neglected and they were frustrated by the Accused's lack of attention to their matters and failure to respond timely to their inquiries made of him. The probate court also was injured in the Weber matter to the extent that the probate was not promptly closed and a number of hearings were scheduled by the court before it was able to conclude the matter. Ms. LeChevalier-Litvin was able to settle her client matter without the Accused's assistance. The successor attorney in the Weber estate ultimately was paid for his work. The default judgment against Ms. Wright was paid off by the Professional Liability Fund and the Accused returned Ms. Wright's retainer to her. Mr. Scheminske retained new counsel and was able to conclude his dissolution proceeding. He also received a refund of his retainer. Ms. Ryan was able to obtain the real property deeds from the Accused.

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

1. The Accused engaged in a pattern of misconduct. *Standards* §9.22(c).

2. The Accused committed multiple disciplinary offenses. *Standards* §9.22(d).

3. Some of the Accused's clients were vulnerable. *Standards* §9.22(h).

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

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused did not have a dishonest or selfish motive. *Standards* §9.32(b).

3. The Accused made a good-faith effort at restitution or to rectify the consequences of his misconduct. *Standards* §9.32(d).

4. The Accused experienced a mental disability or chemical dependency during the period of his representation of these clients. *Standards* §9.32(i).

5. The Accused is remorseful for his conduct. *Standards* §9.32(*l*).

18.

The ABA Standards provide that, for the misconduct described in this Stipulation, a suspension from the practice of law should be imposed. See *Standards* §§4.12, 4.42, 6.22, 7.2.

19.

Although disciplinary cases are fact-specific, Oregon case law appears to dictate that a suspension be imposed for the Accused's misconduct. See *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997); *In re Stauffer*, 327 Or 44, 956 P2d 967 (1998); *In re Arbuckle*, 308 Or

135, 775 P2d 832 (1989); *In re Stasack*, 12 DB Rptr 92 (1998); *In re Whitewolf*, 12 DB Rptr 231 (1998); *In re Gastineau*, 317 Or 545, 857 P2d 136 (1993).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of two years for the violations of Disciplinary Rules described above. The suspension shall be effective immediately upon the approval of this stipulation by the Oregon Supreme Court.

21.

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

EXECUTED this 20th day of September 1999.

/s/ David R. Barrow
David R. Barrow
OSB No. 85025

EXECUTED this 23rd day of September 1999.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
OSB No. 78362
Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-100
	)	
JEFFREY M. JONES,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 7-106(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	November 5, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused Jeffrey M. Jones and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is approved. The Accused shall be publicly reprimanded for violation of DR 7-106(A) of the Code of Professional Responsibility.

DATED this 5th day of November 1999.

/s/ Richard S. Yugler
Richard S. Yugler, Esq.
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused 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 Oregon on September 15, 1989, 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. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On August 22, 1999, the State Professional Responsibility Board directed that a formal complaint be filed against the Accused for violation of DR 7-106(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On May 13, 1996, the Accused entered a plea of guilty to the charge of Driving Under the Influence of Intoxicants, in the matter of *State of Oregon v. Jeffrey M. Jones*, Case No. 961039, in the District Court of the State of Oregon for the County of Lincoln. The court suspended imposition of sentence and placed the Accused on three years' bench probation, with conditions. Among other conditions imposed by the court, the Accused was ordered not to consume or possess alcohol, and not to enter any bar or tavern.

6.

On March 11, 1999, the Accused entered a bar and consumed alcohol in violation of the conditions of his probation. On June 14, 1999, the court held a probation violation hearing. The Accused admitted violating the terms of his probation. The court revoked and reinstated the Accused's probation on the same terms as in effect prior to the revocation and added new conditions.

Violations

7.

Based on the foregoing, the Accused admits that he violated DR 7-106(A), disregarding an order of the court.

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*") are considered. The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* In violating DR 7-106(A), the Accused violated his duties to the legal system and the profession. *Standards* §§6.0, 7.0.

B. *Mental State.* The Accused's conduct demonstrates that he acted with knowledge. "Knowledge" is defined as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards,* at 7. The Accused knew the conditions of his probation, although he gave little thought to them when he entered a bar and consumed alcohol.

C. *Injury.* The Accused caused actual and potential injury to the legal system and the profession. The Accused's disregard of the court's order demonstrates disrespect for the court. The court was required to devote valuable time to the Accused's case, which could have been avoided if he had complied with the court's order. The Accused also caused potential injury to the profession. As a member of the Bar, the Accused is expected to comply with the law. When lawyers fail to obey the law or a court order, the public has reason to question the judicial process and the need to comport their own conduct to societal norms.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of discipline, consisting of a letter of admonition in 1995 for violating DR 6-101(B) of the Code of Professional Responsibility. *Standards* §9.22(a).

2. The Accused has substantial experience in the practice of law, having been admitted to practice in 1989. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. Other penalties and sanctions have been imposed by the court. *Standards* §9.32(k).

4. The Accused is remorseful. *Standards* §9.32(*l*).

9.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards* §6.22. The *Standards* also provide that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards* §6.23. Cases applying DR 7-106(A) are few. See, however, *In re Egan,* 13 DB Rptr 96 (1999), a recent stipulation in which the lawyer was reprimanded for violation of DR 7-106(A), among other rules.

10.

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 7-106(A) of the Code of Professional Responsibility.

11.

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

DATED this 27th day of October 1999.

/s/ Jeffrey M. Jones
Jeffrey M. Jones
OSB No. 89274

OREGON STATE BAR

By: /s/ Jane E. Angus
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. 97-9
	)	
RICHARD L. WEIL,	)	
	)	
Accused.	)	

Bar Counsel:	Gregory A. Chaimov, Esq.
Counsel for the Accused:	Gerald M. Chase, Esq.
Disciplinary Board:	Andrew P. Kerr, Esq., Chair; Mark McCulloch, Esq.; Bette Worcester, Public Member
Disposition:	Complaint dismissed.
Effective Date of Opinion:	November 10, 1999

OPINION OF TRIAL PANEL

Introduction

On June 1, 1998, the Oregon State Bar brought its complaint against the accused Hank McCurdy ("McCurdy") and Richard L. Weil ("Weil"). On September 1, 1998, the Oregon State Bar filed an amended formal complaint against the accused McCurdy and Weil.

McCurdy settled the charges against him by stipulation. The Disciplinary Board heard only the charges against the accused Weil.

The Bar charged Weil with conduct constituting a conflict of interest, alleging he had interests differing from his client and he proceeded without his client's full consent after full disclosure. The Bar also claimed Weil was guilty of conduct constituting dishonesty, fraud, deceit, or misrepresentation.

The Oregon State Bar called as witnesses the accused Weil and Jane Angus. The Bar also offered various deposition testimony and numerous exhibits.

The accused Weil offered himself as a witness, as well as McCurdy and Michael J. Sweeney. He also offered several exhibits.

Findings of Fact

The Disciplinary Board found the following facts:

1. Judy Teske ("Teske") retained McCurdy to pursue a claim for personal injury she allegedly suffered as a result of eating a chicken sandwich purchased at a McDonald's restaurant. McCurdy associated Weil to assist in the representation of Teske.

2. McCurdy timely filed a claim against defendant McDonald's Corp. within the applicable statute of limitations, but failed to name the actual owner of the restaurant, Armstrong, within the applicable statute of limitations. Weil had not been associated with McCurdy at the time the potential malpractice claim arose.

2a. In opposing a motion to dismiss based on the statute of limitations filed by Armstrong, McCurdy and Weil prepared an affidavit for Teske to the effect that she had been diagnosed with and became aware of the nature of her injury within the applicable statute of limitations with respect to the date the claim was filed against Armstrong. McCurdy and Weil prepared the affidavit based upon Teske's recollection of the dates, notwithstanding the fact that the medical records in the possession of McCurdy and Weil indicated a contrary date. At a deposition taken of Teske, she freely admitted the date contained in her affidavit was incorrect.

3. A motion for sanctions was filed against both McCurdy and Weil by counsel for defendant in the litigation filed by McCurdy based upon the contention that McCurdy and Weil had participated in obtaining Teske's signature to a false affidavit which was used to successfully defeat a summary judgment motion based upon the running of the statute of limitations.

4. An order for sanctions against both McCurdy and Weil was entered as a result of the motion for sanctions.

5. Weil did not tell Teske that she may have a malpractice claim against McCurdy for failing to properly name Armstrong within the statute of limitations, because he reasonably believed that McCurdy had so informed Teske and because McCurdy had the responsibility for all relevant client contact.

6. Weil did not inform Teske of either the motion for sanctions or the order against McCurdy and Weil for sanctions, reasonably believing that McCurdy would pay the order of sanctions and Teske would be unaffected because of such payment.

7. Weil reasonably believed Teske's claim for injuries allegedly suffered by consuming the McDonald's sandwich would fail, and reasonably advised Teske not to pursue that claim. Weil's advice was consistent with advice given by McCurdy to Teske to not pursue the claim.

8. Teske asserted a legal malpractice claim against McCurdy, and settled the claim for a significant amount.

Conclusions of Law

The conduct of Weil in failing to advise Teske of a potential malpractice claim against McCurdy, failing to advise Teske of the pending motion for sanctions, and failing to advise Teske of the order for sanctions did not constitute a conflict of interest by DR 5-101(A) because Weil's continued employment by Teske following such nondisclosures would not reasonably be affected by Weil's own financial, business, property, or personal interests.

Weil's conduct did not involve dishonesty, fraud, deceit, or misrepresentation under DR 1-102(A)(3) because Weil did not knowingly engage in dishonesty or misrepresentation as that element of intent is defined in *In re Hiller,* 298 Or 526, 533, 694 P2d 540 (1985), and more recently in *In re Gustafson,* 327 Or 636, 648–649, 968 P2d 367 (1998).

Conclusion

Based on rule, interpretation, and facts, the accused Richard L. Weil did not violate Disciplinary Rules 5-101(A) and 1-102(A)(3) of the Code of Professional Responsibility.

IT IS SO ORDERED.

DATED this 29th day of September 1999.

/s/ Andrew Kerr
Andrew Kerr
Trial Panel Chair

/s/ Mark McCulloch
Mark McCulloch
Trial Panel Member

/s/ Bette Worcester
Bette Worcester
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-32
	)	
MARC L. MEIGS,	)	
	)	
Accused.	)	

Bar Counsel:	Eric J. Neiman, Esq.
Counsel for the Accused:	John F. "Jack" Folliard, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and DR 7-102(A)(2). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	December 1, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is suspended for 30 days, effective December 1, 1999, for violation of DR 1-102(A)(3) and DR 7-102(A)(2).

DATED this 29th day of November 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Julie R. Vacura
Julie R. Vacura, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Marc L. Meigs, 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, Marc L. Meigs, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1989, 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. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On November 10, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(3) and DR 7-102(A)(2). 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.

The Accused was retained to represent Michelle Youngman (hereinafter "Youngman") as an owner and passenger in an automobile for injuries sustained in an automobile accident. Youngman's vehicle was driven by Naomi Castaneda (hereinafter "Castaneda") at the time of the accident. Youngman was insured by State Farm, and the driver of the other car (hereinafter "the defendant") was insured by Safeco.

6.

The Accused negotiated settlement of Youngman's claim against Safeco's insured, which included payment by Safeco of $9,600.23 to reimburse State Farm because State Farm had already paid Youngman that sum (hereinafter "PIP reimbursement"). The Accused requested that the PIP reimbursement check be made payable to State Farm and his client. On June 13, 1996, Safeco delivered a check to the Accused payable to the Accused, Youngman, and State Farm. The letter

transmitting the check from State Farm to the Accused stated: "It is further understood that out of the funds enclosed you will satisfy State Farm's PIP Lien." The check itself contained the designation "Full and final settlement of PIP lien."

7.

Upon receipt of the check, the Accused and Youngman endorsed it and, on June 19, 1996, the Accused deposited the check into his lawyer trust account without State Farm's endorsement. The Accused did not then notify State Farm that he had received the check and did not receive authorization from State Farm to deposit the proceeds of the check into his trust account.

8.

On June 25, 1996, the Accused advised State Farm that he had settled Youngman's claims with Safeco, and the Accused also proposed to settle Youngman's then unfiled claim against Castaneda if State Farm would waive its PIP reimbursement. On June 27, 1996, State Farm rejected the settlement offer and demanded full reimbursement of its PIP payments, which the Accused refused to pay. State Farm made a further demand on July 31, 1996.

9.

On March 4, 1997, State Farm again demanded reimbursement of the PIP lien, plus interest. On that same date, the Accused invited negotiation regarding the PIP money but declined to pay State Farm. Thereafter, the Accused refused to pay State Farm until July 10, 1997.

10.

At no time did the Accused or his client have any claim of right to the PIP reimbursement money.

Violations

11.

The Accused admits that, by depositing the check and retaining the proceeds as described above without any claim of right, he engaged in a misrepresentation in violation DR 1-102(A)(3) and knowingly advanced an unwarranted claim in violation of DR 7-102(A)(2) of the Code of Professional Responsibility.

Sanction

12.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") 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. *Duty Violated.* The Accused violated his duty to the public and to the profession. *Standards* §§5.1, 7.2.

B. *Mental State.* With regard to mental state, the Accused's conduct in depositing the PIP reimbursement check into his trust account without notifying State Farm of its receipt and by refusing to refund the PIP reimbursement payment to State Farm for more than 12 months, demonstrates intent, which is the conscious awareness to accomplish a particular result. *Standards*, at 7.

C. *Injury*. Injury may be either actual or potential. In this case, there was actual injury in that State Farm was denied payment of the PIP reimbursement which it had previously paid to Youngman. State Farm initiated a lawsuit against the Accused to recover the funds, which ultimately was settled. Although State Farm ultimately received interest on the money, it did not have use of the money for more than 12 months. *Standards*, at 7.

D. *Aggravating Factors.* The Accused was admitted to the practice of law in 1989 and has substantial experience in the practice of law. *Standards* §9.22(i).

E. *Mitigating Factors.*

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

2. The Accused did not have a dishonest or selfish motive. *Standards* §9.32(b).

3. The Accused fully cooperated during the investigation. *Standards* §9.32(e).

4. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards* §9.32(*l*).

13.

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 engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law, 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.

14.

Oregon case law is in accord that a suspension is appropriate in this case. For instance, in *In re Magar,* 312 Or 139, 817 P2d 289 (1991), the accused was suspended for 60 days when he endorsed a draft made out to the attorney and a land contract vendor with the vendor's name despite knowing that the vendor did not want him to do so. Additional examples where mishandling of a check by a lawyer resulted in a term of suspension (of varying lengths due to other charges present) include *In re Sassor*, 299 Or 570, 704 P2d 506 (1985); *In re Boothe*, 303 Or 643, 740 P2d 785 (1987); *In re Bowersox*, 11 DB Rptr 91 (1987). Compare *In re Zumwalt*, 296 Or 631, 678 P2d 1207 (1984), where a lawyer was disciplined who refused to refund the amount of a duplicate settlement check submitted to her in error and was found to have violated DR 7-102(A)(2) and DR 1-102(A)(3). A reprimand was imposed, in part, because the lawyer was in her first year of practice at the time of the relevant events resulting in discipline.

15.

In light of the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused will be suspended from the practice of law for 30 days for violation of DR 1-102(A)(3) and DR 7-102(A)(2) of the Code of Professional Responsibility.

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and was approved by the State Professional Responsibility Board on September 17, 1999, and is subject to approval of the Disciplinary Board pursuant to the terms of BR 3.6. If approved by the Disciplinary Board, the Accused shall be suspended from the practice of law on December 1, 1999, or on the day of such approval, whichever is later.

EXECUTED this 23rd day of November 1999.

/s/ Marc L. Meigs
Marc L. Meigs
OSB No. 89309

EXECUTED this 23rd day of November 1999.

OREGON STATE BAR

By: /s/ Chris L. Mullmann
Chris L. Mullmann
OSB No. 72311
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 96-102; 96-116
	)	
ROBERT S. SIMON,	)	
	)	
Accused.	)	

Bar Counsel:	Conrad E. Yunker, Esq.
Counsel for the Accused:	Bradley Tellam, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(A), DR 7-102(A)(8), and DR 7-110(B). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	December 10, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is suspended for 60 days, effective December 10, 1999, or the first day following the date of this order, whichever is later, for violation of DR 6-101(A) and DR 7-102(A)(8) in Case No. 96-102, and DR 6-101(A) and DR 7-110(B) in Case No. 96-116.

DATED this 7th day of December 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Robert M. Johnstone
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Robert S. Simon, 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 S. Simon, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 27, 1990, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On February 8, 1999, as authorized by the State Professional Responsibility Board (hereinafter "SPRB"), a Third Amended Formal Complaint was filed against the Accused alleging violation of DR 1-102(A)(3), DR 1-103(C), DR 7-102(A)(5), and DR 7-102(A)(8) of the Code of Professional Responsibility in Case No. 96-102 (the "Armstrong Matter") and DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), and DR 7-110(B) of the Code of Professional Responsibility in Case No. 96-116 (the "Rosas Matter"). A copy of the Third Amended Formal Complaint is attached hereto as Exhibit 1 and incorporated by reference herein. 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

The Armstrong Matter

Case No. 96-102

5.

On or about June 22, 1995, the Accused undertook to represent Dan Armstrong to obtain a land use permit for Yamhill County real property that was owned by Mr. Armstrong's wife, Patricia Armstrong, and his mother, Milly Armstrong.

6.

After discussions with Yamhill County land use planning personnel, the Accused determined that the above-described real property would be eligible for a land use permit if Milly and Patricia Armstrong transferred title to the property to a previous owner before an application for a land use permit was filed. Accordingly, the Accused prepared deeds by which Patricia and Milly Armstrong transferred title to the real property to Clifford Hacker, a previous owner of the property. Because the Armstrongs intended that the property revert to them after the application was filed, the Accused also prepared deeds by which Mr. Hacker transferred title back to Patricia and Milly Armstrong.

7.

The deeds described in paragraph 6 herein were executed on or about January 8, 1996, outside the Accused's presence and delivered to the Accused. The Accused executed the notarial jurat on the deeds after speaking to Mr. Hacker, Patricia Armstrong, and Milly Armstrong on the telephone and without witnessing their signatures. The Accused noted on the notarial jurat that the notary was performed telephonically.

8.

At all relevant times, the Accused was a notary public for the State of Oregon. At all relevant times, ORS 194.515(1) required the Accused, as a notarial officer taking an acknowledgment, to determine, either from personal knowledge or from satisfactory evidence, that persons making acknowledgements before him were the persons whose true signatures were on the instruments they acknowledged. The Accused was familiar with the requirements of ORS 194.515(1).

9.

On February 14, 1996, the Accused recorded the deeds by which Patricia and Milly Armstrong had transferred title to the real property to Clifford Hacker. Immediately thereafter, on behalf of Dan Armstrong and Clifford Hacker, the Accused filed an application for a land use permit for the property. Immediately after he filed the land use permit application, the Accused recorded the deeds by which Clifford Hacker transferred title to the real property back to Patricia and Milly Armstrong.

10.

The county ultimately gave initial approval to Dan Armstrong's land use permit application. However, interested citizens questioned whether the permit was properly granted in light of the fact that Mr. Hacker had transferred title back to the Armstrongs before the county had approved the application for the permit. The

county subsequently decided to review the basis for Mr. Armstrong's application for a land use permit, and Mr. Armstrong withdrew it.

11.

Throughout the transaction described in paragraphs 5 through 10 herein, the Accused did not possess or acquire the legal knowledge, thoroughness, or preparation reasonably necessary to assist the Armstrongs in obtaining a land use permit.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11 of this stipulation, he violated DR 6-101(A) and DR 7-102(A)(8) of the Code of Professional Responsibility.

Facts

The Rosas Matter

Case No. 96-116

13.

On or about April 4, 1996, the Accused undertook to represent George Rosas to remove a lien on Mr. Rosas' home that had resulted from a 1984 judgment of approximately $18,000 against Mr. Rosas in favor of his former wife, Debra Munday. In 1989, Mr. Rosas discharged the judgment debt in bankruptcy, but when Mr. Rosas attempted to refinance his home, the lien showed as an encumbrance on his property.

14.

On April 5, 1995, the Accused spoke to a lawyer who appeared in Mr. Rosas' bankruptcy schedules as a lawyer for Debra Munday. On April 6, 1995, without having first acquired the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent Mr. Rosas, the Accused appeared in the Circuit Court, Clackamas County, and presented to the court a Motion and Order to Vacate Debra Munday's judgment lien. The Accused filed this motion without adequate legal research into whether it was well-taken, and appeared before the court to present it without first giving Ms. Munday adequate notice of his intent to appear before the court.

15.

In response to the Accused's motion, the court signed an order which vacated Ms. Munday's judgment lien. The effect of the court's order was to extinguish Ms.

Munday's right to foreclose her lien as a means to collect some or all of the judgment debt that Mr. Rosas had discharged in bankruptcy.

16.

After the court vacated Ms. Munday's lien, Mr. Rosas refinanced his home and secured the resulting loan with a mortgage or trust deed. The court later reinstated Ms. Munday's judgment lien retroactively. However, the instrument that secured Mr. Rosas' refinancing may have taken priority over the reinstated lien.

Violations

17.

The Accused admits that, by engaging in the conduct described in paragraphs 13 through 16 of this stipulation, he violated DR 6-101(A) and DR 7-110(B) of the Code of Professional Responsibility.

18.

Upon further factual inquiry, the parties agree that the charges of alleged violations of DR 1-102(A)(3), DR 1-103(C), DR 7-102(A)(5), and DR 7-102(A)(8) in Case No. 96-102 (the Armstrong Matter) and the charges of alleged violations of DR 1-102(A)(3) and DR 1-102(A)(4) in Case No. 96-116 (the Rosas Matter) should be and, upon the approval of this stipulation, are dismissed.

Sanction

19.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duty to his clients to provide competent representation. *Standards* §4.5. The Accused also violated his duties to the legal system to operate within the bounds of the law and to avoid improperly communicating with the court. *Standards* §6.0.

B. *Mental State.* In the Armstrong matter, the Accused was negligent in determining whether he was competent to handle the land use application. He also knew the requirements of the notary statutes, but was negligent in failing to comply with them. In the Rosas matter, the Accused undertook the representation knowing that he was not competent in bankruptcy matters and had ex parte communication with the court knowing that such communication was improper. *Standards* §6.0.

C. *Injury*. The Armstrongs were potentially injured by the Accused's lack of competence in that the transfers of title to and from Clifford Hacker might have been legally ineffective and Yamhill County could have denied their application for a land use permit when it discovered that the Armstrongs were actually in title to the property while the application was pending. Debra Munday was actually injured in that she did not have the opportunity to contest the Accused's motion. Ms. Munday was potentially injured in that her lien may have been subordinated to a mortgage or trust deed of a later date. *Standards,* at 6.

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

1. The Accused has displayed a pattern of misconduct in that he committed violations in two separate matters. *Standards* §9.22(c).

2. Multiple offenses. *Standards* §9.22(d).

3. Debra Munday was a particularly vulnerable victim in that she was incapacitated by a stroke, although the Accused was unaware of Ms. Munday's condition. *Standards* §9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused had no selfish motive. *Standards* §9.32(b).

3. The Accused displayed a cooperative attitude toward the proceedings against him. *Standards* §9.32(e).

4. There has been a delay in the disciplinary proceedings. *Standards* §9.32(i).

20.

The ABA *Standards* suggest 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. Suspension is also 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* §6.32.

21.

Oregon case law and ORS 9.527(4) suggest that a suspension from the practice of law is the appropriate sanction for the Accused's conduct described herein. *See In re Gresham*, 318 Or 162, 864 P2d 360 (1993) (91-day suspension for incompetent handling of lawyer's first probate administration which violated DR 1-102(A)(4), DR 6-101(A), and DR 6-101(B)). *See also In re Bell,* 294 Or 202, 655 P2d 569 (1982) (30-day suspension for one violation of DR 7-110(B)); *In re Rudie*,

294 Or 740, 662 P2d 321 (1983) (seven-month suspension for two violations of *former* DR 6-101(A)(2) [current DR 6-101(A)] and two violations of DR 6-101(A)(3) [current DR 6-101(B)]).

22.

Consistent with the *Standards* and Oregon case law and after consideration of the aggravating and mitigating circumstances properly attributable to the Accused, the parties agree that the Accused shall be suspended from the practice of law for a period of 60 days for violation of DR 6-101(A) and DR 7-102(A)(8) in Case No. 96-102 and DR 6-101(A) and DR 7-110(B) in Case No. 96-116, the sanction to be effective beginning December 10, 1999, or the first day following the date this Stipulation for Discipline is approved by the Disciplinary Board, whichever is later.

23.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. On November 20, 1999, the State Professional Responsibility Board (SPRB) approved the sanction provided for herein. The parties agree this Stipulation for Discipline is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 3rd day of December 1999.

/s/ Robert S. Simon
Robert S. Simon
OSB No. 72033

EXECUTED this 3rd day of December 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-147
	)	
ERIC W. OLSEN,	)	
	)	
Accused.	)	

Bar Counsel:	David B. Mills
Counsel for the Accused:	John Fisher, Esq.
Disciplinary Board:	Robert M. Johnstone, Chair; Walter A. Barnes; Robert W. Wilson, Public Member
Disposition:	Violation of DR 1-102(A)(3) and DR 1-103(C). 63-day suspension.
Effective Date of Opinion:	December 18, 1999

OPINION OF TRIAL PANEL

This matter came on regularly for trial on September 21, 1999, in Salem, Marion County, Oregon, before Robert M. Johnstone, Chair, Walter A. Barnes, Esq., and Robert W. Wilson, the duly appointed and constituted trial panel of the Disciplinary Board.

The Accused appeared personally and by John C. Fisher, Esq., his attorney. The Oregon State Bar appeared through David B. Mills, Esq., and Jane E. Angus, Esq., its attorneys. Witnesses were sworn and did testify, and exhibits were offered and introduced into evidence.

The trial panel kept a complete record of all proceedings, including the evidence offered and received; and the trial panel transmits herewith its written memorandum opinion and its findings of fact, conclusions, and order, and the complete record of all proceedings to be forwarded in this matter, with the original pleadings filed with it herein. To the extent that any of the findings of fact may be construed as conclusions of law or that any of the conclusions of law may be construed as findings of fact, they are deemed to be such.

The trial panel, having taken this matter under advisement, and having considered all the evidence and exhibits, and being fully advised in the premises, hereby makes the following:

Findings of Fact

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

2. *Accused*. The Accused is a 1978 admittee to the Oregon State Bar and, at all times herein mentioned, was an attorney at law duly admitted by the Supreme Court of the State of Oregon to practice law in the state and a member of the Oregon State Bar. The Accused's principal office and principal place of business is in Marion County, Oregon. The Accused has no prior disciplinary record with the Oregon State Bar.

3. *Summary of Facts*. A summary of the facts is as follows:

a. In 1992, Robert and Catherine Bowers, husband and wife, each withdrew funds from their respective retirement accounts, for which $30,000 in taxes needed to be paid. Robert Bowers lost his job and, instead of paying the taxes, spent the money intended for the tax payments.

b. On March 8, 1993, Robert and Catherine Bowers retained the Accused to provide bankruptcy advice and to prepare and file a Chapter 13 bankruptcy plan to deal with the $30,000 tax liability. The Bowers informed the Accused that the tax returns showing the tax liability would be filed by them as a married couple filing jointly. Based on the representation, the Accused prepared and filed a joint Chapter 13 plan for the Bowers on March 31, 1993. The court confirmed the Chapter 13 plan by order dated June 14, 1993.

c. When the Bowers retained the Accused, they provided him with their address at 10397 S.W. Eastridge St., Portland, Oregon.

d. On April 18, 1995, Catherine Bowers moved from the Eastridge Street home, and she and Robert Bowers separated. On April 19, 1995, Catherine Bowers called the Accused's office and advised the Accused's staff of a new phone number for her. She repeated that phone call a week later.

e. Robert and Catherine Bowers, each representing themselves, and without attorneys, filed a joint petition to dissolve their marriage in mid-1995. By a stipulated judgment, they were divorced on December 13, 1995, and each was ordered to pay one-half of the Chapter 13 monthly payments. On November 21, 1995, Robert Bowers notified the Accused in writing that he and Catherine Bowers were in the process of divorce. Robert Bowers requested that the Accused seek a postconfirmation modification of the Chapter 13 plan. On or about November 27, 1995, the Accused provided Robert Bowers with copies of bankruptcy schedules filed with the previous plan and forms for preparing new schedules to support the Bowers' request for a modification of the Chapter 13 plan. The Accused's letter was directed to Robert Bowers at the Eastridge Street address in Portland.

f. Between May 1995 and January 1997, Catherine Bowers paid her one-half of the Chapter 13 monthly plan payments to Robert Bowers, who was supposed to forward the entire monthly payment to the bankruptcy trustee. Robert Bowers did not pay the Chapter 13 monthly payments. Instead he converted $13,350 of Catherine Bowers' monthly payments to his own use. The payment arrangements between Catherine and Robert Bowers were not discussed with nor disclosed to the Accused by either of the Bowers.

g. Robert Bowers filled out the bankruptcy schedules given to him by the Accused, and those schedules reflected the expenses for the separate households of Robert and Catherine Bowers. Robert Bowers showed the schedules to Catherine Bowers, who objected to an entry for $200 per month for legal fees for the divorce for each of them. With the understanding that Robert Bowers would delete that entry, Catherine Bowers signed a declaration under penalty of perjury that she had read the schedules and that they were true and correct. That declaration was dated December 12, 1995. Robert Bowers did change the entry from "legal expense (divorce)" to "taxes" and forwarded the schedules and the declaration to the Accused. The Accused advised Robert Bowers that taxes were the subject of the earlier bankruptcy schedules filed and could not be claimed now on the modification schedules. Robert Bowers was given the schedules back to again revise, and he did revise them, changing the entry back to "legal expense (divorce)" and resubmitted the schedules to the Accused. In addition, Robert Bowers made other changes on the schedules in minor dollar amounts, and represented to the Accused that Catherine Bowers agreed with the changes. The Accused then put the revised schedules together with the Declaration that had been signed earlier by both Robert and Catherine Bowers, and submitted the whole package to the Bankruptcy Court. Robert Bowers' representation to the Accused that Catherine Bowers agreed with the schedule revisions was false. The requested modification to the Chapter 13 bankruptcy plan was denied by the Bankruptcy Court after the trustee objected to the plan. On or about January 29, 1996, the Accused filed a response to the trustee's objections and mailed a copy to the Bowers at the Eastridge St. address. On or about March 7, 1996, the court entered an order denying confirmation of the postconfirmation plan.

h. On or about October 10, 1996, the bankruptcy trustee filed a motion to dismiss the Bowers' Chapter 13 plan. The court entered an order dismissing the Chapter 13 plan on November 21, 1996.

i. On or about December 10, 1996, the bankruptcy trustee forwarded a check made payable to Robert Bowers and Catherine Bowers in the amount of $478.46 to the Accused, as a refund of Chapter 13 payments. The Accused had previously petitioned the Bankruptcy Court for and had received approval of attorney fees to be paid from the Chapter 13 plan, which fees were unpaid at the time that the Accused received the trustee's check. The Accused endorsed the check "endorsement guaranteed" and deposited the same to his client's trust account on December 10, 1996. On the same day, the Accused wrote to the Bowers at the

Eastridge Street address notifying them of his receipt of the funds and his intent to apply the funds to his fees unless the Bowers contacted the Accused within 10 days. In spite of that letter, however, the Accused withdrew the funds from his trust account and applied them to his fees on the same day as their deposit to the trust account.

j. When the Accused was contacted by the Oregon State Bar concerning the Bowers matter, he directed his staff to redeposit the $478.46 into his client's trust account. The Accused then represented to the Oregon State Bar that the funds had been redeposited to the trust account. The Accused's staff, however, failed to redeposit the funds. When the matter was later drawn to the Accused's attention, he immediately redeposited the $478.46 to his client's trust account.

k. Following the commencement of these proceedings, and after learning of Robert Bowers' conversion of Catherine Bowers' funds, the Accused refunded the $478.46 to Catherine Bowers.

Legal Conclusions

1. *Charges*. The Bar has charged the Accused with the following violations of the Code of Professional Responsibility:

a. In connection with the Accused's representation of the Bowers in the Chapter 13 bankruptcy plan, the Bar has alleged one violation of DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); one violation of DR 1-102(A)(4) (engaging in conduct that is prejudicial to the administration of justice); one violation of DR 5-105(E) (current client conflict of interest); and one violation of DR 6-101(B) (neglect of a legal matter).

b. In connection with the bankruptcy trustee's refund, the Bar has charged one violation of DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation) and one violation of DR 9-101(C)(1) (failure to promptly notify a client of the receipt of client's funds).

c. In connection with the Accused's representation to the Oregon State Bar concerning the redeposit of the bankruptcy trustee's refund, the Oregon State Bar has charged one violation of DR 1-103(C) (failure to respond fully and truthfully to inquiries)

2. *Findings*. The following are the trial panel's findings as to each violation:

a. Representation of the Bowers in the Chapter 13 Bankruptcy Plan

(1) DR 1-102(A)(3). A lawyer violates this rule when the lawyer engages in conduct that is inconsistent with the lawyer's obligation to be candid and fair, or engages in conduct that indicates a disposition to lie, cheat, or defraud. *In re Hockett*, 303 Or 150, 734 P2d 877 (1987). The disciplinary rule requires that a lawyer knowingly engage in dishonesty or misrepresentation. *In re Gustafson*, 327 Or 636, 648, 968 P2d 367 (1998). The Bar alleges that the Accused engaged in

dishonesty and misrepresentation when he attached Catherine Bowers' declaration to a document she had not seen or authorized and when he withheld information from her. In addition, the Bar alleges that DR 1-102(A)(3) was also violated when the Accused knowingly submitted a false document to the court. The Bar has failed to prove any of these charges by clear and convincing evidence. The Accused was provided an address with which to communicate with his clients, and the bulk of the Accused's written communications were addressed to both Robert and Catherine Bowers at the address provided him. Robert Bowers affirmatively represented to the Accused that Catherine Bowers approved the changes to the bankruptcy schedules. That being the case, the Accused had a right to believe that he was following his clients' wishes when he attached the declaration of both Catherine and Robert Bowers to the changed bankruptcy schedules and submitted them to the Bankruptcy Court. Catherine Bowers testified that she called the Accused's office in April of 1995 and informed the Accused's staff not only of her new phone numbers but also of her new address. The Accused testified that no such phone calls were placed to him and that the Accused had interviewed his staff and that, while the staff recalled Catherine Bowers' telephone calls to them, the only information passed to them by Catherine Bowers at the time were new phone numbers for her. Finding both Catherine Bowers and the Accused to be credible witnesses, Catherine Bowers' testimony, however, is not as clear, definite, and certain as is the testimony of the Accused. In addition, Exhibit #4 is the Accused's file folder which indicates a new phone number written thereon for Catherine Bowers but no new address for her. The Accused specializes in bankruptcy law. The bankruptcy rules require that the Bankruptcy Court always be currently apprised of a bankruptcy client's current address, and this fact was well known to the Accused's staff. We are satisfied that if Catherine Bowers had provided a new address to the Accused's staff, it would have been disclosed on her file folder and in addition would have been the subject of a letter to the Bankruptcy Court. In addition, we are satisfied that mail and telephone communications directed to Catherine Bowers in care of Robert Bowers at the Eastridge Street address were providing communication to Catherine Bowers, at least as far as the Accused was concerned. The Accused provided Robert Bowers with new bankruptcy schedules and a declaration, and those were returned to him by Robert Bowers filled out, completed, and signed by Catherine Bowers. That conduct reasonably led the Accused to believe that contact with Catherine Bowers could continue to be had through communication with Robert Bowers. The Accused did not knowingly submit a false document to the court. The Accused had a right to rely on the representation of Robert Bowers that the schedules were true and correct as attested by Robert Bowers' signature on the declaration and that Catherine Bowers had reviewed the changes to the schedules and approved of them. The Accused had no reason to know that Robert Bowers' representation was false, and no reason to be suspicious that the representation might not be true.

The trial panel finds that the Accused is not guilty of the alleged violations.

(2) DR 1-102(A)(4) (conduct prejudicial to the administration of justice). A lawyer violates DR 1-102(A)(4) when the lawyer engages in conduct during the course of a judicial proceeding and the conduct causes, or has the potential to cause, harm or injury to either the procedural function of that proceeding or the substantive interests of a party to that proceeding. *In re Altstatt*, 321 Or 324, 334, 897 P2d 1164, 1169 (1995). Misrepresentations to a court or to an administrative body violate the rule. *In re Haws*, 310 Or 741, 801 P2d 818 (1990). In the *Haws* case, the court held that a single act substantially harming the administration of justice, or repeated conduct causing some harm to a judicial proceeding or to the substantive interest of a party to the proceeding, are sufficient to violate the rule. It is not required that the lawyer act knowingly. *In re Claussen*, 322 Or 466, 482, 909 P2d 862 (1996).

The Bar charges that the Accused violated the rule by submitting Catherine Bowers' declaration to the Bankruptcy Court with a document she had not seen and approved. The representation made to the Accused by Robert Bowers was that Catherine Bowers had seen the changed schedules, and approved of them. Those changed schedules contained a false allegation that each of Catherine and Robert Bowers were currently spending the sum of $200 per month for legal services for their divorce. That false allegation was placed in the schedules by Robert Bowers, not the Accused. The Accused merely passed on Robert Bowers' misrepresentation to the Bankruptcy Court. In passing on that misrepresentation of his client, the Accused did not act either knowingly or with any intent to deceive the Bankruptcy Court. Since the Accused had no knowledge of any information that would call into question the veracity of Robert Bowers, the Accused did not act negligently in passing on Robert Bowers' misrepresentation to the Bankruptcy Court. The trial panel finds that the Accused is not guilty of the alleged violation.

(3) DR 5-105(E) (current client conflict of interest). An actual conflict of interest exists when a lawyer has the duty to contend something for one client that the lawyer has a duty to oppose on behalf of another client. A likely conflict of interest exists in all other situations in which the objective personal, business, or property interests of the clients are adverse. The rule requires the attribution to the lawyer of all facts that the lawyer knew or by the exercise of reasonable care should have known for purposes of determining the existence of a conflict of interest. The case of *In re Johnson*, 300 Or 52, 707 P2d 573 (1985), requires proof of the lawyer's knowledge of some factual predicate suggesting a conflict of interest before he will be held accountable for a violation of the rule. Neither the Accused nor his staff were informed of any facts suggesting a conflict of interest from the time of the inception of the representation in March of 1993 to and until November 21, 1995, when the Accused was informed by Robert Bowers' letter that the parties were divorcing. We find the Accused's testimony to be credible to the effect that the Accused then reanalyzed the situation for conflicts and concluded that both Robert and Catherine Bowers continued to be liable to the Internal Revenue Service for the $30,000 in taxes based upon their jointly filed tax return, and that both parties were being provided benefit in dealing with that liability by the ongoing Chapter 13

bankruptcy plan. The Accused satisfied himself that the best interests of both of his clients were served by the continuation of the Chapter 13 plan for their joint benefit. The Accused had not been made aware by either Catherine or Robert Bowers that Catherine Bowers was paying her one-half of the Chapter 13 monthly payments to Robert Bowers in the expectation that Robert would make the payments on to the bankruptcy trustee. The Accused had no knowledge of the conversion of Catherine Bowers' funds by Robert Bowers occurring since May of 1995. We believe this case to be very similar factually to the case of *In re Johnson*, *supra,* where the attorney represented two individuals sharing a number of business interests. During the course of that representation, one of the clients always acted as the liaison between the parties and the Accused attorney. The other party brought an ethical complaint against the Accused and the Oregon court held that an attorney jointly representing two clients is not required to suspect deceit on the part of one of the clients in order to anticipate a conflict. Based upon the information available to the Accused, he had no reason to suspect that he needed to change his pattern of representing the couple in order to accommodate their changed circumstances. The Accused did not have any factual basis to suspect that the Bowers were not continuing to pursue their mutual goal of discharging the debts that they had incurred during their marriage. If Catherine Bowers did not want to continue to rely upon Robert Bowers to act as her liaison with the Accused, she did not contact the Accused to let him know that. In fact, Catherine Bowers continued to make payments under the plan through Robert Bowers for nearly two years after the couple separated. Clearly the parties intended to continue with their Chapter 13 plan because their stipulated judgment of dissolution of marriage orders that they each shall contribute 50% to the monthly Chapter 13 plan payments. The evidence is clear that the parties were copetitioners in the dissolution of their marriage, and that they were sharing financial information and making joint agreements concerning both the dissolution of their marriage and also the Chapter 13 plan. If the Accused had made a further inquiry, what he would have found was the parties' dissolution judgment, which provided that they would each pay 50% of the Chapter 13 plan payments. That would lead the Accused to believe that the parties chose to continue with their joint Chapter 13 plan. The Bar argues that Catherine Bowers would have been better served had she severed herself from the joint Chapter 13 plan and instituted a Chapter 13 plan of her own. The Bar reasons that she could then avoid having to pay half of the monthly payments on the parties' Toyota automobile which was being awarded to Robert Bowers in the parties' dissolution. Catherine Bowers chose to represent herself in the dissolution proceedings and stipulated to the entry of a judgment that gave Robert Bowers the automobile and obligated her to make one-half of the Chapter 13 payments, including the payments on that automobile. The Accused did not represent either of the Bowers in the dissolution proceedings. Clearly the interests of Robert and Catherine Bowers were adverse in the dissolution proceedings. From all the information provided to the Accused, however, it appears that the interests of Robert and Catherine Bowers were not adverse concerning the ongoing Chapter 13 plan, and that both parties intended to continue on with the plan making the plan

payments. The Accused simply had no reason to suspect that Robert Bowers was not making the plan payments and was converting Catherine Bowers' half of those payments.

The trial panel finds, by clear and convincing evidence, that the interests of Robert and Catherine Bowers were not adverse concerning the Chapter 13 plan and that the Accused is not guilty of the alleged violation.

(4) DR 6-101(B) (neglect of a legal matter). A lawyer violates DR 6-101(B) when the lawyer engages in a course of negligent conduct or fails to keep a client informed of the status or progress of their case. *In re McKee*, 316 Or 114, 849 P2d 509 (1993); *In re Sousa*, 323 Or 137, 915 P2d 408 (1996). Isolated instances of ordinary negligence do not violate the rule. *In re Collier*, 295 Or 320, 667 P2d 481 (1983).

The Bar alleges that the Accused knew his clients were divorcing and he made no effort to determine the whereabouts of Catherine Bowers or to confirm that she was receiving information concerning the case. It alleges that Catherine Bowers provided the Accused with information to contact her, that is, her new phone numbers, but the Accused did not communicate with her, and did not send copies of pleadings or other documents to her.

The evidence is clear and convincing that the parties advised the Accused in 1993 of their Eastridge Street address, and that the parties thereafter dealt with the Accused through Robert Bowers. The evidence is also clear that the Accused regularly corresponded with both Bowers at the only address that he had for them. That correspondence with his clients was continual, as required, throughout the entire course of the protracted Chapter 13 proceedings. The Accused did not avoid contact with his clients. The Accused did not miss appointments. The Accused did not miss court deadlines or court appearances concerning his clients. When the Accused did correspond with Catherine Bowers, through Robert Bowers, the feedback which he received gave him reason to believe that the communications were received by her. When the Accused provided the bankruptcy schedules to Robert Bowers in late 1995, the schedules and the attached declaration came back to the Accused bearing the signature of Catherine Bowers. Robert Bowers affirmatively represented to the Accused that Catherine Bowers had reviewed and agreed with the changes to the bankruptcy schedules. Indeed, the Accused had every reason to believe that Catherine Bowers was receiving information concerning the case.

The panel finds, by clear and convincing evidence, that the Accused is not guilty of the alleged violation.

b. Receipt of the Trustee's Refund Check

(1) DR 1-102(A)(3) (conduct involving dishonesty, fraud, or misrepresentation). The prior discussion of the law applicable to a violation of DR 1-102(A)(3) is applicable here. The Bar alleges a second violation of this

disciplinary rule for the Accused's deposit of the trustee's refund check to the Accused's client's trust account and subsequent application of those funds on the Accused's attorney fees. The trustee's refund check was made payable to Robert and Catherine Bowers. The refund check was not made payable to the Accused or his law firm. We are satisfied that the Accused knows the difference between a check made payable to his clients and a check made payable to him or his law firm. Unlike other similar cases, the Accused did not endorse his clients' names on the check; rather, he stamped the check "endorsement guaranteed." We do not find that the Accused made any false representation to the bank, or banks, by the making of that endorsement on the check. We are satisfied that the Accused endorsed that check and deposited the same without the authorization of his clients and certainly without their knowledge.

The Accused argues that he had previously received authorization for the payment of attorney fees from the Chapter 13 plan and that at the time of the receipt of the trustee's check, those fees were not paid. The argument misses the mark. It was the client's choice whether or not to apply these particular funds to the payment of the Accused's attorney fees. By his actions herein in transferring the funds from his trust account, the Accused deprived his clients of that choice. The intent of the Accused to apply those funds to the payment of his attorney fees is clearly evidenced by the Accused's conduct in withdrawing those funds from his client's trust account on the same day of their deposit and applying them on his attorney fees. It is clear that the Accused did not intend to deceive anyone because the Accused wrote to his clients on the same day as he received the trustee's check informing them that he had received the funds. That lack of intent to deceive, however, does not alter the fact that the Accused lacked his client's authority to endorse and deposit their check, and to apply the resulting funds on his attorney fees, and that those were acts of dishonesty and misrepresentation. The Accused testified that he believed he had his clients' authority to endorse and deposit that check. By the same token, the Accused did not detail how he felt he had that authority and did not testify that he specifically contacted his clients to gain their authority to endorse their check. The Accused certainly could have contacted his clients to gain their authority to endorse and deposit that check, but he didn't do so, and his endorsement and deposit of that check without that authority violates the rule, as does his application of the funds on his attorney fees without his clients' consent.

The trial panel finds, by clear and convincing evidence, that the Accused is guilty of the alleged violation.

(2) DR 9-101(C)(1) (failure to promptly notify the clients of the Accused's receipt of their funds). The rule requires a lawyer to promptly notify a client of the lawyer's receipt of a client's funds. On the same date that the Accused received the bankruptcy trustee's refund check, he wrote a letter addressed to both Robert and Catherine Bowers and directed to them at the Eastridge Street address. That letter notified the clients of the receipt of the funds by the attorney, of his intent to deposit

them to his trust account and leave them there unless the clients contacted him within 10 days, and at the end of that time to apply them to his attorney fees. At the time of writing that letter, the attorney had no reason to believe that the letter or its contents would not reach Catherine Bowers.

The trial panel finds, by clear and convincing evidence, that the Accused is not guilty of the alleged violation.

(3) DR 1-103(C) (failure to respond truthfully and fully to inquiries from the Oregon State Bar). The Accused, when contacted by the Oregon State Bar concerning the Bowers matter, directed his staff to redeposit the trustee's refund to the client's trust account and thereafter represented to the Oregon State Bar that those funds had been redeposited. The Accused failed to confirm the truth of that representation before making that representation to the Bar, and, in fact, the Accused's staff had not redeposited the sum to his client's trust account. The Accused did not intend to make an untrue response to the Bar, but he did so negligently in failing to confirm the truth of his representation before it was made. Such conduct has previously been found to violate the disciplinary rule. *In re Mendez*, 10 DB Rptr 129 (1996).

The trial panel is satisfied that the requirements imposed by DR 1-103(C) are of sufficient importance to the operation and regulation of the Bar that the disciplinary rule must be viewed as a strict liability issue. The trial panel is satisfied that the Accused had an obligation to confirm the facts before making the representation to the Bar, and that even though the representation was made negligently, as opposed to knowingly or intentionally, the Accused has violated DR 1-103(C).

Sanctions

The trial panel has found the accused guilty of two violations: one violation of DR 1-102(A)(3) (conduct involving misrepresentation), and one violation of DR 1-103(C) (failure to respond truthfully and fully during investigation).

In determining the appropriate sanction for multiple violations of the disciplinary rules, the trial panel looks to the American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991) (hereinafter "*Standards*") and Oregon case law. These authorities require consideration of the ethical duties violated, the lawyer's mental state, the actual or potential injury, and the existence of aggravating and mitigating circumstances.

1. *Ethical Duties.* The ethical duties the Accused violated are the following.

a. DR 1-102(A)(3). This rule prohibits a lawyer's conduct involving fraud, deceit, or misrepresentation. The duty involved is to the client and to the legal system.

b. DR 1-103(C). This rule requires a lawyer to respond fully and truthfully to a Bar investigation. Failure to so respond violates a lawyer's duty to the legal profession and the profession's legitimate need to supervise and regulate the practice of law.

2. *Mental State.* The *Standards*, at 7, establish three mental states. Intent exists when a lawyer acts with the conscious objective or purpose to accomplish a particular result. Knowledge is defined as a conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. Negligence is the failure of the lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard care that a reasonable lawyer would exercise in this situation.

The trial panel cannot say by clear and convincing evidence, with regard to either of the violations involved in this case, that the Accused acted with a conscious objective or purpose to violate the rules. The panel does conclude that the Accused acted with a conscious objective or purpose to apply his client's funds to his own attorney fees, and that the Accused acted negligently in assuming that he had his client's permission to endorse their check. We are therefore satisfied that the Accused acted with intent with regard to the violation of DR 1-102(A)(3).

The evidence is clear and convincing that the Accused acted negligently with regard to his violation of DR 1-103(C) when the Accused failed to check with his staff to make certain that his instructions had been carried out, and that the funds representing the trustee's check had been redeposited to his clients' trust account.

3. *Injury*. The *Standards*, at 25, recommend that the trial panel consider the actual or potential injury caused by a lawyer's misconduct.

The violation of DR 1-102(A)(3) caused actual injury to the clients in that the clients were deprived of their choice of whether or not to apply the trustee's refund to the payment of the attorney fees or to pay the attorney fees from some other source.

The violation of DR 1-103(C) caused actual damage to the Bar and to the profession in that it caused the Bar to incur additional investigative costs in order to find the true state of affairs.

4. *Aggravation and Mitigation.* Aggravation may justify an increase in the degree of discipline; mitigation may justify a reduction in the degree of discipline. *Standards* §§9.21, 9.31. In this case, aggravating circumstances include:

a. Multiple offenses. *Standards* §9.22(d).

b. Vulnerability of the victim. *Standards* §9.22(h).

c. Substantial experience in the practice of law. *Standards* §9.22(i).

Mitigating circumstances include:

a. Absence of a prior disciplinary record. *Standards* §9.32(a).

b. Timely good-faith effort to make restitution or rectify consequences of misconduct. *Standards* §9.32(d).

c. Remorse. *Standards* §9.32(*l*).

5. *Analysis*. Generally, the *Standards* provide that suspension is the appropriate remedy when a lawyer knowingly violates the disciplinary rule such as the disciplinary rule violated in this case, even when a lawyer does not intentionally abuse the professional relationship by engaging in deceptive conduct. *See Standards* §7.2.

The *Standards* recommend that, where suspension is imposed, it should be for a period of at least six months but no more than three years. *Standards* §2.3. We have weighed carefully the aggravating and mitigating factors applicable to this case and we believe those factors are in equipoise. *Standards* §4.12 indicates that suspension is generally 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. In this case, the lack of an intent to deceive his clients and the attorney's good-faith belief that his attorney fees were payable from the funds received, and the attorney's restitution of the funds all mitigate against an extensive or lengthy suspension. The commentary to *Standards* §2.3 indicates that short-term suspensions with automatic reinstatement are not an effective means of protecting the public. The trial panel is satisfied, however, that these proceedings have served the function of ensuring that the public's interest will be satisfactorily protected and that the Accused will not again engage in similar conduct. The same commentary indicates that a short-term suspension functions merely as a fine on the lawyer. We find that to be an appropriate remedy in this case. Weighing all the foregoing factors, including the aggravating and mitigating circumstances, the trial panel concludes that the Accused should be suspended from the practice of law for a period of 63 days, and it is so ordered.

/s/ Robert M. Johnstone
Robert M. Johnstone
Chairperson

/s/ Robert W. Wilson
Robert W. Wilson

/s/ Walter A. Barnes
Walter A. Barnes

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-62
	)	
JAY R. JACKSON,	)	
	)	
Accused.	)	

Bar Counsel:	J. Michael Dwyer, Esq.
Counsel for the Accused:	None
Disciplinary Board:	Robert M. Johnstone, Chair; Susan M. Tripp; Charles W. Hester, Public Member
Disposition:	Violation of DR 9-101(C)(3) and DR 9-101(C)(4). 30-day suspension.
Effective Date of Opinion:	December 18, 1999

OPINION OF TRIAL PANEL

The above-captioned matter came before the Trial Panel of the Disciplinary Board on September 15, 1999, on a two-count formal complaint which charged the Accused with failure to account for client funds in violation of DR 9-101(C)(4) and failure to promptly deliver to a client, the client's property in the possession of the lawyer.

The Oregon State Bar appeared through its counsel, J. Michael Dwyer. The Accused appeared in person representing himself. Jane E. Angus, Assistant Disciplinary Counsel for the Oregon State Bar, was also in attendance.

Findings of Fact and Conclusions

The Trial Panel's findings of fact and conclusions are as follows: The Accused, Jay R. Jackson, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar. His office and place of business are in the County of Marion, State of Oregon.

In 1978, William Dyer fathered two children while he was in the service in Germany. Subsequently, some legal proceedings occurred in Germany regarding the parentage of the two children. Dyer, while in Germany and later when he returned

to the United States, received a number of documents regarding the German legal proceedings.

In July of 1996, a paternity and support proceeding was filed against Dyer in Marion County Circuit Court. Shortly thereafter, Dyer was served with a petition to establish paternity, for support, maintenance, and other expenses regarding the two children born in Germany in 1978.

Dyer retained the Accused to represent him on the paternity matter in early August of 1996 and paid $1,000 to the Accused as a partial payment on a $1,500 retainer. At that time, the Accused told his client that he would bill him at $90 per hour for services performed. Further, the Accused told his client that he would send the client periodic statements regarding the time spent and money owed. At that meeting, Dyer also delivered certain documents to the Accused. There is conflicting testimony about the number and description of the documents delivered. However, it is clear that Dyer delivered a number of legal documents regarding the parentage of the two children born in Germany to the Accused in early August 1996. Additionally, Dyer provided the Accused with four payroll stubs to verify proof of earnings in the child support matter.

In November 1996, Dyer's deposition was taken in the Marion County support action. During the deposition, the parties agreed to a settlement. After the conclusion of the deposition and settlement, Dyer or Dyer's wife requested both a statement of his account and the return of his documents from the Accused. However, neither an accounting nor the documents were provided to the client at that time.

In January 1997, the Dyers met with the Accused to sign a Stipulated Judgment that would settle the Marion County action. At the time of that meeting, Dyer again asked for a statement of his account. At that time, the Accused told Dyer that he would forgive any balance over the $1,000 retainer previously paid and that he would get the billing done. Dyer again requested that the Accused return his original documents. The Accused then told Dyer that the Accused needed to retain the original documents until the Settlement Order was signed by a judge. The Stipulated Order for Support Judgment was filed on January 14, 1997. It was signed by Judge Norblad, Marion County Circuit Court, on the same day and entered on January 21, 1997.

On March 4, 1997, Dyer, through his wife, delivered to the Accused a written request for an accounting of the $1,000 retainer and another request for return of his documents. The Dyers notified the Accused that they would come to his office the following Thursday to pick up the documents. The letter states:

"Jay, these are the items we still need.

1. German documents for both boys (2 papers)
2. Letter from U.S. Army

3. Copy of tapes from deposition (Approx. 6)

4. Copy of German papers read at deposition that were not in your file. (Not sure which exhibit #'s, possible 2 or 3 of them)

5. Month by month statement billing for $1,000 retainer.

One of us will be in Thursday to pick them up. Bill & Sharon Dyer 3/4/97"

The Accused acknowledges receipt of the letter. He states that he did not read the Dyers' letter to suggest that they had needed the items and still needed them, or place any significance in the phrase "we still need." The Accused states that in response to the letter, he asked a receptionist to copy the file and deliver it to the Dyers when they returned. The receptionist originally, when interviewed by the Bar, did not recall copying the file. However, later at the hearing she did recall copying the file. However, she did not recall giving a copy of the file to Dyer in response to the March letter. Regardless of whether or not the receptionist did or did not copy the file, the Accused did not provide a copy of the file. Mrs. Dyer arrived at the Accused's office as scheduled, but did not receive the documents or a statement accounting for the retainer. Additionally, in the months that followed, the Accused did not at any time send the documents or a statement accounting for the retainer to the Dyers.

On July 10, 1997, Dyer sent the Accused another letter. In that letter, Dyer again requested that the original documents be returned. Further, he requested a copy of the Uniform Support Affidavit of Respondent, final paperwork of their case after it was signed by the judge, and tapes of the depositions. The Accused acknowledged receiving that letter and further acknowledged that he did not provide the client any of the items requested. The Accused states that he did not return the client's property at that time because he believed that the client's property had previously been returned. Having heard all the evidence on this issue, the Trial Panel finds that the Accused never did return to the client the documents or pay stubs that Dyer gave to the Accused in early August 1996. The Accused failed to promptly deliver to his client the client's property in his possession.

On December 12, 1997, the Dyers filed a complaint with the Bar concerning the Accused's conduct. The Bar then forwarded a copy of the complaint to the Accused.

The Accused then sent a response to the Bar's inquiry by letter. With his response, the Accused provided the Bar with what the Accused alleged were monthly billing statements for the Dyer account. The billing statements were dated for August through December 1996. The Dyers were subsequently shown the billing statements. The Dyers had never before seen the billing statements. Based on the testimony of the Accused and the Dyers, the Trial Panel finds that the monthly billing statements provided by the Accused were never sent to the Dyers. The Accused did not at any time render an accounting to his client in violation of DR 9-101(C)(3).

Disciplinary Rules Violated

1. DR 9-101(C)(3) of the Code of Professional Responsibility. The Accused failed to maintain complete records of the client funds provided by client Dyer and failed to render appropriate accounts to the lawyer's client regarding them.

2. DR 9-101(C)(4) of the Code of Professional Responsibility. The Accused failed to promptly deliver to client Dyer property in the possession of the lawyer that the client was entitled to receive.

Sanction

In fashioning the sanction in this case, it is appropriate to consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. The *Standards* require 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 Violated.* The most important ethical duties are those that the lawyer owes to his or her clients. *Standards*, at 5. The Accused violated his duty to his client by failing to promptly return client property and failing to account for the client's funds.

B. *Mental State.* The *Standards* utilize three mental states: intent, knowledge, and negligence. "Knowledge" is defined 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 evidence established that the Accused acted with knowledge. He knew what the client asked him to do. The client and his wife made several requests for the documents and the accounting. Requests were made both in person and in writing. The Accused acknowledges receiving the client's letters. However, he failed to respond to his client's requests.

C. *Injury*. In this case, the Accused caused actual and potential injury to his client. The client was denied his documents and an accounting of the funds he delivered to the Accused. Although the client now has copies, the Accused has never returned the original German documents to the client. The client and his wife expended valuable time in making repeated requests to obtain information that the Accused could and should have promptly provided.

The Accused also caused injury to the profession. The Dyers had to file a complaint with the Bar in order to have their property returned. The Bar devoted time to the matter, which could have been avoided if the Accused had provided the information that he should have provided to the client over a year before.

D. *Aggravating/Mitigating Factors.* "Aggravating and mitigating factors" are any considerations or factors that may justify an increase or decrease in the degree of discipline to be imposed. *Standards* §§9.21, 9.31. The Accused has a prior

disciplinary record. In 1996, the Accused received a public reprimand for violating DR 6-101(B), neglect. *In re Jackson,* 10 DB Rptr 199 (1996). The Accused was also admonished concerning two separate matters in 1986 for DR 6-101(B), neglect, and DR 1-103(C), failure to cooperate with the disciplinary authority. *Standards* §9.22(a). The Accused's prior record of discipline and his conduct in the current case demonstrate a pattern of misconduct. *Standards* §9.22(c). He has repeatedly failed to attend to his clients and his professional obligations. The Accused has also failed to acknowledge the wrongfulness of his conduct. *Standards* §9.22(g). Instead, the Accused has made excuses and statements, which are clearly inconsistent with the client's repeated requests for the return of his documents and requests for an accounting.

The *Standards* also recognize mitigating factors. *Standards* §9.32. In the case presented, the Accused did not act with selfish motives. *Standards* §9.32(b).

The *Standards* provide that suspension is generally 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. *Standards* §4.12. Additionally, suspension is generally appropriate when the lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that causes injury or potential injury to a client, the public, the legal system, or the profession. *Standards* §8.2.

The Accused's prior record of discipline and his conduct in the current case demonstrate a pattern of misconduct. He has been admonished on two matters for failing to attend to his professional obligations to his client and to his profession. He has recently been reprimanded for violating DR 6-101(B).

Disposition

The purpose of lawyer discipline is to protect the public in the administration of justice from lawyers who have not discharged, or are unlikely to properly discharge, their professional duties. In this case, the Accused clearly failed to account to his client for client funds in a timely manner and failed to promptly deliver the client's property as requested by the client. Drawing together the *Standards* and aggravating and mitigating circumstances, the Trial Panel finds it appropriate that the Accused be suspended from the practice of law for 30 days.

DATED this 15th day of November 1999.

OREGON STATE BAR

/s/ Robert M. Johnstone
Robert M. Johnstone, Esq.
Trial Panel Chair

/s/ Susan M. Tripp
Susan M. Tripp, Esq.
Trial Panel Member

/s/ Charles W. Hester
Charles W. Hester
Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-39
	)	
TERRANCE P. GOUGH,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and DR 6-101(B). Stipulation for discipline. Public reprimand.
Effective Date of Order:	December 27, 1999

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is publicly reprimanded, effective December 27, 1999, for violation of DR 1-102(A)(3) and DR 6-101(B).

DATED this 17th day of December 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Derek C. Johnson
Derek C. Johnson, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Terrance P. Gough, 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, Terrance P. Gough, 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 Lane County, Oregon.

3.

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

4.

On September 17, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On or about February 3, 1997, the Accused undertook to represent Suzanne D. Kennedy in a dissolution of marriage proceeding. Thereafter, the Accused prepared, filed, and served on Ms. Kennedy's husband a petition for dissolution of marriage.

6.

The parties agreed upon the terms of the dissolution of marriage, but the Accused failed to prepare and file with the court a judgment of dissolution of marriage, despite notice from the court that it intended to dismiss the proceeding for want of prosecution. The court, accordingly, entered a judgment of dismissal on or about July 24, 1997.

7.

Between July 24, 1997, and December 22, 1997, the Accused failed to take any further significant action on Ms. Kennedy's behalf and failed to disclose to her that her dissolution of marriage proceeding had been dismissed by the court, despite her inquiries about the status of the matter.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3) and DR 6-101(B).

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated his duties of diligence and candor to his client. *Standards* §§4.4, 4.6.

B. *Mental State.* The Accused acted with negligence in failing to diligently represent his client and knowingly failed to fully advise her of the status of her proceeding.

C. *Injury*. Ms. Kennedy suffered injury in that her dissolution of marriage proceeding was dismissed and the dissolution of her marriage was delayed.

D. *Aggravating Factors.* Aggravating factors to be considered 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 has no prior disciplinary record. *Standards* §9.32(a).

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

3. Between February 1997 and December 1997, the Accused was experiencing personal and emotional problems. During this time, the Accused's wife was his only office support but was unable to attend to her duties at the Accused's office because her time was substantially occupied in attending to the couple's son. The son had begun to use illegal drugs, had run away from home and was living on the streets, was violent toward the Accused, and had legal difficulties which resulted in his incarceration at a juvenile detention facility. These circumstances occupied a

significant portion of the Accused's time and attention as well, put a strain on his marriage, and affected his ability to attend to his professional responsibilities. *Standards* §9.32(c).

4. The Accused made a good-faith effort to make restitution or rectify the consequences of his misconduct by offering to complete Ms. Kennedy's dissolution of marriage or refund her entire retainer. The Accused promptly refunded Ms. Kennedy's retainer when she requested that he do so. *Standards* §9.32(d).

5. The Accused made full and free disclosure to Disciplinary Counsel's Office and displayed a cooperative attitude toward the proceedings. *Standards* §9.32(e).

6. The Accused has a good reputation. *Standards* §9.32(g).

7. The Accused is remorseful for his conduct. *Standards* §9.32(*l*).

10.

Standards §4.43 suggests that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* §4.63 suggests that a reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client. *Standards* §4.62 provides that suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client.

Oregon authority suggests that a public reprimand is an appropriate sanction for the Accused's conduct here. *See In re Jacobson*, 12 DB Rptr 99 (1998); *In re Ebner*, 13 DB Rptr 76 (1999); *In re Wren*, 13 DB Rptr 101 (1999).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(3) and DR 6-101(B), the sanction to be effective upon approval of this Stipulation for Discipline by the Disciplinary Board.

12.

The State Professional Responsibility Board approved the sanction provided for herein on September 17, 1999. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the Disciplinary Board. The parties agree that this stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 7th day of December 1999.

/s/ Terrance P. Gough
Terrance P. Gough
OSB No. 79243

EXECUTED this 9th day of December 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In Re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-72
	)	
A. SUE GUTHRIE,	)	
	)	
Accused.	)	

Bar Counsel:	James Pippin, Esq.
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 7-102(A)(7), DR 7-104(A)(2), and DR 7-106(A). Stipulation for discipline. Six-month suspension.
Effective Date of Order:	January 8, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused and the Oregon State Bar, and good cause appearing, it is hereby

ORDERED that the stipulation between the parties is accepted and the Accused is suspended for six months, effective January 8, 2000, for violation of DR 7-102(A)(7), DR 7-104(A)(2), and DR 7-106(A).

DATED this 20th day of December 1999.

/s/ Richard S. Yugler
Richard S. Yugler
State Disciplinary Board Chairperson

/s/ Robert M. Johnston
Robert M. Johnstone, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

A. Sue Guthrie, 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, A. Sue Guthrie, was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 1, 1984, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion County, Oregon.

3.

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

4.

On August 13, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(5), DR 7-102(A)(7), DR 7-104(A)(2), and DR 7-106(A). A copy of the formal complaint is attached hereto and incorporated by reference herein. 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.

On June 7, 1997, the Accused was appointed by the court to represent Juan Arreguin-Rico, who had been criminally charged with Assault IV and Harassment in Marion County Case No. 96 D104751. Mr. Arreguin-Rico was released from custody on that day under an order that prohibited him from having contact with Angelita Ortega, the alleged victim of the assault and harassment. The Accused had actual knowledge of this "no contact" order.

6.

On or about June 15, 1997, the Accused spoke to Ms. Ortega after attempting twice to contact her. In the June 15, 1997, conversation, the Accused advised Ms.

Ortega that she could obtain a court order to waive the above-described "no contact" order. She also advised Ms. Ortega how to obtain the waiver. In this conversation, the Accused did not advise Ms. Ortega to secure counsel.

7.

Mr. Arreguin-Rico's trial was set for September 18, 1997. The Accused made an appointment for Mr. Arreguin-Rico and Ms. Ortega to meet with her and prepare for trial at the Accused's office at 7:00 p.m. on September 17, 1997. On September 17, 1997, Mr. Arreguin-Rico and Ms. Ortega arrived at the Accused's office together and entered together. Unbeknownst to the Accused, law enforcement officials anticipated the meeting and, upon his arrival, Mr. Arreguin-Rico was arrested in the Accused's office for violation of the "no contact" order.

8.

Immediately after Mr. Arreguin-Rico was arrested on February 17, 1997, the Accused advised Ms. Ortega of her rights with respect to speaking to the police and with respect to whether she was required to remain in the presence of the police officers. At this time, the Accused did not advise Ms. Ortega to secure counsel.

9.

On September 17, 1997, it was illegal for Mr. Arreguin-Rico to have contact with Ms. Ortega by virtue of the "no contact" order described in paragraph 5 herein.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9 herein, she violated DR 7-102(A)(7), DR 7-104(A)(2), and DR 7-106(A).

Facts

11.

On August 5, 1994, the Accused was appointed by the court to represent Jaime Vargas who had been criminally charged with Assault IV and Harassment in Marion County Case No. 94 D104186. Mr. Vargas had been released from custody on August 2, 1994, under an order that prohibited him from having contact with Lucia Pastrana, the alleged victim of the assault and harassment. The Accused had actual knowledge of this "no contact" order.

12.

On August 5, 1994, immediately after the Accused was appointed to represent Mr. Vargas, she approached Ms. Pastrana and advised her that Ms. Pastrana could

meet Mr. Vargas by walking away from the courthouse with her children. At this time, the Accused did not advise Ms. Pastrana to secure counsel.

13.

Upon the Accused's advice, Ms. Pastrana walked away from the courthouse with her children, and Mr. Vargas followed her. Several blocks away from the courthouse, the Accused picked up Mr. Vargas, Ms. Pastrana, and her children in the Accused's automobile and then drove them to her office. At this time, the Accused knew that Mr. Vargas had removed Ms. Pastrana's children from her home and had not established his paternity of the children, but was preventing Ms. Pastrana from having contact with the children because of the "no contact" order.

14.

At her office on August 5, 1994, the Accused advised Ms. Pastrana that if she did not obtain a waiver of the "no contact" order, this order would prohibit her from having contact with her children because they were then in the physical custody of Mr. Vargas. The Accused also advised Ms. Pastrana that she could obtain a waiver of the "no contact" order, how to do so, and actually placed a telephone call to the Salem Women's Crisis Center so Ms. Pastrana could take the steps necessary to waive the "no contact" order. At this time, the Accused did not advise Ms. Pastrana to secure counsel.

15.

On August 5, 1994, it was illegal for Mr. Vargas to have contact with Ms. Pastrana by virtue of the "no contact" order described in paragraph 11 herein. On August 5, 1994, the Accused had actual knowledge that the court had prohibited Mr. Vargas from having contact with Ms. Pastrana.

Violations

16.

The Accused admits that, by engaging in the conduct described in paragraphs 11 through 15 herein, she violated DR 7-102(A)(7), DR 7-104(A)(2), and DR 7-106(A).

17.

Upon further factual inquiry, the parties agree that the charges of alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) in the First Cause of Complaint of the Formal Complaint and DR 1-102(A)(3) and DR 1-102(A)(4) in the Second Cause of Complaint of the Formal Complaint should be and, upon the approval of this stipulation, are dismissed.

Sanction

18.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by 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 Violated.* The Accused violated her duties to the legal system to operate within the bounds of the law, to refrain from improperly communicating with an unrepresented person, and to refrain from interfering with the legal process. *Standards* §6.0.

B. *Mental State.* The Accused acted knowingly, that is, with the conscious awareness of the nature or attendant circumstances of her conduct, but without the conscious objective or purpose to accomplish a particular result.

C. *Injury*. Mr. Arreguin-Rico was actually harmed by the Accused's conduct in that he was arrested and incarcerated for violation of the "no contact" order. Mr. Vargas was potentially injured by the Accused's conduct in that he was exposed to the likelihood of arrest and incarceration. Ms. Ortega and Ms. Pastrana were potentially injured by the Accused's conduct in that they were put into contact with the men who had assaulted them and against whom they were going to testify. They were also deprived of the protection of the "no contact" orders without the benefit of disinterested advice.

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

1. The Accused engaged in a pattern of misconduct that involved multiple offenses. *Standards* §9.22(c), (d).

2. The Accused's victims were vulnerable in that they were indigent, did not speak English, were not familiar with the American system of justice, and had had significant disruptions to their families. *Standards* §9.22(h).

3. The Accused had substantial experience in the practice of criminal law and in the representation of Spanish-speaking clients. *Standards* §9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused does not have a prior disciplinary record. *Standards* §9.32(a).

2. The Accused did not act with a selfish motive. *Standards* §9.32(b).

3. The Accused suffered from depression, which contributed to her exercise of poor judgment on behalf of her clients and her difficulty in functioning. *Standards* §9.32(c). The Accused is currently taking medication and is undergoing mental health therapy which has ameliorated her depression.

4. The Accused has suffered other sanctions for her conduct in that she has been removed by the court from the list of Marion County lawyers who are eligible for appointment to represent indigent defendants. *Standards* §9.32(k).

19.

Standards §6.22 suggests that suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Oregon case law is in accord. See *In re Jeffery,* 321 Or 360, 898 P2d 752 (1995), where the lawyer was suspended for nine months for violation of DR 7-104(A)(2) among other rules; and *In re MacMurray,* 12 DB Rptr 115 (1998), where a six-month suspension was imposed, in part, for a lawyer assisting a client in a legally prohibited transaction in violation of DR 7-102(A)(7).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of six months for violation of DR 7-102(A)(7), DR 7-104(A)(2), and DR 7-106(A), the suspension to be effective 30 days following the approval by the Disciplinary Board of this Stipulation for Discipline.

21.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the Disciplinary Board pursuant to the terms of BR 3.6. The sanction provided for herein was approved by the Chairman of the State Professional Responsibility Board on October 25, 1999.

EXECUTED this 9th day of December 1999.

/s/ A. Sue Guthrie
A. Sue Guthrie
OSB No. 84422

EXECUTED this 9th day of December 1999.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel