DISCIPLINARY BOARD REPORTER

VOLUME 14

January 1, 2000, to December 31, 2000

Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2000

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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 2000 decisions of the Oregon Supreme Court involving the discipline of attorneys. Cases in this DB Reporter should be cited as 14 DB Rptr ___ (2000).

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 the practice of law 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 73 of the OSB *2001 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. Because of 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, 2001, 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

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IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-133
	)	
BURTON H. BENNETT,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Thomas E. Cooney, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	January 7, 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 publicly reprimanded, for violation of DR 9-101(A).

DATED this 7th day of January 2000.

/s/ Derek C. Johnson
~~Richard S. Yugler~~
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Burton H. Bennett, 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, Burton H. Bennett, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1958, 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 November 20, 1999, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation of DR 9-101(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.

At all relevant times, the Accused maintained a lawyer trust account with Wells Fargo Bank. Prior to July 26, 1999, the Accused received from an insurer a settlement check on behalf of a client for whom he had rendered legal services. Prior to depositing the settlement check into his lawyer trust account, the Accused issued and delivered to the client a check drawn on the trust account representing the client's share of the settlement proceeds.

The Accused deposited the settlement check and two other checks into his lawyer trust account on July 26, 1999, at 4:10 p.m. Wells Fargo did not post the deposit until July 27, 1999.

Sometime on July 26, 1999, the client presented the Accused's trust account check for payment. Wells Fargo honored the payment. As the underlying deposit had not yet been made or posted, funds in the Accused's trust account belonging to other clients were drawn upon to cover the check the Accused issued to his client prematurely.

Violations

6.

The Accused admits that by engaging in the conduct described in this stipulation, he violated DR 9-101(A) 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*"). 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 preserve client property. *Standards,* § 4.0(b).

B. *State of Mind.* The Accused acted knowingly in issuing and delivering to his client a check representing settlement proceeds prior to depositing those proceeds into his lawyer trust account. However, the Accused intended that the funds be on deposit when the client presented his check for payment, but was negligent in determining whether funds deposited on July 26, 1999, would be available for distribution on that same date.

C. *Injury*. There was no actual injury to any client as the deposit was posted to the Accused's lawyer trust account on July 27, 1999. There was potential injury to the extent that on July 26, 1999, some client funds were drawn upon when they should not have been, and those funds were not maintained as required by DR 9-101(A), nor afforded, for a brief period of time, the protection that the trust account provides.

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

1. The Accused has been disciplined on three previous occasions. *Standards,* § 9.22(a). In 1983, the Accused was admonished for violating DR 7-102(A)(2) when, after agreeing to represent a client in a criminal case, he failed to attend a scheduled hearing.

Thereafter, in 1985, the Accused was reprimanded for violating current DR 6-101(B), DR 7-101(A)(2), and DR 2-110(A)(1) and (A)(2) for neglecting a legal matter entrusted to him, intentionally failing to carry out a contract of employment, and improperly withdrawing from the representation. *In re Bennett,* 1 DB Rptr 54 (1985). In December 1998, the Accused was suspended for 30 days for violating DR 5-105(C), DR 5-105(E), and DR 2-110(B)(2) for representing a husband and wife in a personal injury matter when the interests on the two were in conflict, and later continuing to represent one spouse against the other without complying with the

consent and disclosure requirements contained in DR 10-101(B). *In re Bennett,* 12 DB Rptr 281 (1998).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused did not have a dishonest or selfish motive. *Standards*, § 9.33(b).

8.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property resulting in potential injury to a client. *Standards,* § 4.13. Oregon case law is in accord. *In re Mannis,* 295 Or 594, 668 P2d 1224 (1983).

9.

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

10.

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

EXECUTED this 15th day of December 1999.

/s/ Burton H. Bennett
Burton H. Bennett
OSB No. 58006

EXECUTED this 20th day of December 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 Nos. 98-165, 99-148
	)	
	)	
RUSSELL S. BARNETT,	)	
	)	
Accused.	)	

Bar Counsel:	Carolyn G. Wade, Esq.
Counsel for the Accused:	John C. Fisher, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 2-106(A), DR 5-105(C), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	January 21, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

ORDERED that the stipulation between the parties is approved and the Accused is suspended for 60 days, effective three days after the date of this order, for violation of DR 2-106(A), DR 5-105(C), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4).

DATED this 18th day of January 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Russell S. Barnett, 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, Russell S. Barnett, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon on April 24, 1996, to practice law in this state, and a member of the Oregon State Bar, having his office and place of business in Lane County, Oregon.

3.

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

4.

On May 15, 1999, the State Professional Responsibility Board (hereinafter "SPRB") authorized a formal disciplinary proceeding against the Accused for alleged violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility in Case No. 98-165. On December 17, 1999, the SPRB authorized a formal disciplinary proceeding against the Accused for alleged violation of DR 5-105(C) of the Code of Professional Responsibility in Case No. 99-148. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of these proceedings.

Facts and Violations

Case No. 98-165

5.

On or about October 14, 1997, Charles Arney (hereinafter "Arney") was served with a Petition for Dissolution of Marriage, Summons, Motion for Ex Parte and Pre-Decree Relief, Notice to Appear, and other documents in *In the Matter of the Marriage of Geraldine Mae Arney and Leon Charles Arney*, Case No. 97DO1796DS (hereinafter "Court Action"). On or about October 16, 1997, Arney retained the Accused to represent him in the Court Action. Arney paid the Accused $4,000 for legal services, plus filing fees. The funds were initially deposited in the

Accused's law firm's lawyer trust account, but withdrawn the next day. The Accused's fee agreement did not provide that the fee was "earned on receipt" or that the Accused was otherwise immediately entitled to the entire fee.

6.

Pursuant to the Notice to Appear and Motion for Ex Parte and Pre-Judgment Relief described above, Arney was required to file with the court and serve upon opposing counsel a counter-affidavit and any supporting documents not later than fourteen (14) days after service. The Accused failed to prepare or file any documents or to take other action to oppose the motion. On November 12, 1997, the court signed an Order Pendente Lite and Money Judgment, granting Arney's wife's motion for temporary support. Pursuant to the terms of the order, Arney was ordered to pay monthly spousal support of $1,200 and to remove himself from the parties' home. On or about November 21, 1997, the Accused received a copy of the Order Pendente Lite and Money Judgment and Notice of Entry of Judgment.

7.

Between October 1997 and March 1998, the Accused (a) failed to prepare and file Arney's Uniform Support Affidavit; (b) failed to prepare and file Arney's response to the Motion for Ex Parte and Pre-Judgment Relief; (c) failed to request an extension of time for Arney to respond to the Motion for Ex Parte Relief; (d) failed to adequately consider or discuss with Arney the options to modify the temporary support order; and (e) failed to actively pursue his client's interests.

8.

About March 31, 1998, the attorney-client relationship was terminated and Arney retained new counsel. Arney requested that the Accused account for and return his retainer. The Accused failed to render an accounting to Arney for the funds he received, failed to promptly refund the unearned portion of such funds as Arney requested, and otherwise failed to respond to Arney's communications concerning the subject.

9.

The Accused admits that the aforesaid conduct constituted charging or collecting an excessive fee; neglect of a legal matter entrusted to the lawyer; failure to maintain client funds in a trust account; failure to account for client funds; and failure to promptly pay or deliver client's funds as requested by the client in violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Case No. 99-148

10.

Clarence Hawelu retained the Accused to pursue a dissolution of his marriage from his estranged wife, Cheryl Hawelu, and for custody of his minor children. He also retained the Accused to defend a Family Abuse Prevention Act restraining order and an assault charge in which Hawelu's wife was the alleged victim. About three weeks before the decree of dissolution was final, Hawelu reconciled with his wife and asked the Accused if he could stop the divorce. The Accused advised against doing so. Approximately two months after the decree of dissolution was final, the Accused was retained by Cheryl Hawelu's first ex-husband to initiate proceedings to obtain custody of his minor children. The change of custody was based, in part, on allegations of the Hawelus' abusive relationship and other issues relating to their separation and divorce, information that the Accused learned in representing his former client. Clarence Hawelu objected to the Accused's representation of his wife's former husband in the proceeding and Cheryl Hawelu's attorney advised the Accused that there was a conflict of interest between the current and former clients. The Accused disregarded the objection and warning of conflict and continued the representation without full disclosure and the consent of his former client, Clarence Hawelu.

11.

The Accused admits that the aforesaid conduct constituted a former client conflict of interest in violation of DR 5-105(C) of the Code of Professional Responsibility.

Sanction

12.

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

A. *Duty Violated.* In violating DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) as alleged in Case No. 98-165, the Accused violated his duties to his client to preserve client property and to exercise diligence in the representation. *Standards*, §§ 4.1, 4.4. In violating DR 5-105(C) in Case No. 99-148, the Accused violated his duty to his client to avoid conflicts of interests. *Standards*, § 4.3.

B. *Mental State.* The Accused acted with knowledge and negligence. "Knowledge" is the 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 a failure to heed a substantial risk that circumstances existed or the result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. In Case No. 98-165, the Accused knew that Arney had retained him to perform legal services in the dissolution case. The Accused knew that Arney was required to file a response to the motion for temporary support, but took no action. The Accused also knew that he had neither completed the services nor accounted for or refunded the unearned portion of the fee Arney paid for legal services. The Accused's conduct also demonstrates negligence in Case No. 99-148. He failed to evaluate the respective interests of his former and current clients to determine the existence of a conflict of interest and disregarded the warning given to him by the opposing attorney.

C. *Injury*. The Accused's conduct resulted in actual injury to Arney. Because the Accused took no action on the motion for temporary support, Arney's wife was awarded $1,200 per month in temporary support. Arney was also injured when the Accused failed to respond to Arney's request for an accounting and a refund of the unearned portion of the fees paid for legal services that were not performed.

Although Accused eventually returned $2,953 in June 1999, Arney was denied funds that he was entitled to receive for over a year. In Case No. 99-158, there was potential injury to his former and current clients. Clarence Hawelu testified for Cheryl Hawelu in the proceeding brought by her first ex-husband. The Accused was in a position of failing to zealously represent his current client or disclosing and/or using confidential or secret information from his former client.

D. *Aggravating Factors.* "Aggravating factors" include:

1. There is a pattern of misconduct. *Standards*, § 9.22(c).

2. This stipulation involves six rule violations involving two client matters. *Standards,* § 9.22(d).

3. Arney was vulnerable. He relied on the Accused to protect his interests. *Standards,* § 9.22(h).

4. The Accused's conduct in the Arney matter demonstrated that he was indifferent to making restitution. *Standards,* § 9.22(j).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has displayed a cooperative attitude in resolving this formal proceeding. *Standards*, § 9.32(e).

2. The Accused was admitted to practice in 1996 and was inexperienced in the practice of law. *Standards*, § 9.32(f).

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

13.

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 and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also appropriate when a lawyer knows that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards,* § 4.12. Oregon case law is in accord. *See In re Hedges*, 313 Or 618, 836 P2d 119 (1992) (63-day suspension for violation of DR 6-101(B), DR 9-101(B)(3) [current DR 9-101(C)(3)], DR 9-101(B)(4) [current DR 9-101(C)(4)], and DR 1-103(C)); *In re Sohl,* 8 DB Rptr 87 (1994) (30-day suspension for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Borneman*, 10 DB Rptr 151 (1996) (30-day suspension for violation of DR 6-101(B)); *In re Wetteland*, 12 DB Rptr 246 (1998) (60-day suspension for violation of DR 2-106(A), DR 6-101(B) [2 counts], DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)). *See also In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (one-year suspension for violation of DR 6-101(B)).

14.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 60 days, commencing three days after the date the Order Approving Stipulation for Discipline is signed by the Disciplinary Board. The Accused also agrees to pay the Bar's costs and disbursements incurred in this disciplinary proceeding in the amount of $535. A judgment for the Bar's costs shall be entered against the Accused.

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, and shall be submitted to the Disciplinary Board for consideration pursuant to BR 3.6.

DATED this 7th day of January 2000.

/s/ Russell S. Barnett
Russell S. Barnett
OSB No. 96038

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. 99-32
	)	
SUSAN C. STEVES,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Maureen A. DeFrank, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B) and DR 9-101(C)(3). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	January 18, 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 60 days, effective the date of this order, for violation of DR 6-101(B) and DR 9-101(C)(3).

DATED this 18th day of January 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Susan C. Steves, 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 C. Steves, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon on September 22, 1995, to practice law in this state, and a member of the Oregon State Bar, having her office and place of business in Lane County, Oregon.

3.

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

4.

On October 16, 1999, the State Professional Responsibility Board (hereinafter "SPRB") authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 6-101(B) and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that the stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

On or about March 5, 1996, Deborah Baelz (hereinafter "Baelz") retained the Accused to pursue a dissolution of her marriage, and a property damage claim resulting from a motor vehicle accident that occurred on February 3, 1996. Between early March and June 1996, the Accused performed legal services for Baelz on the dissolution and property damage matters. Thereafter, the Accused took no substantive action on the client's matters and did not communicate with Balez until the summer of 1997.

6.

During the course of the representation, Baelz delivered funds to the Accused for legal services. The Accused failed to prepare and maintain records and to render appropriate account of the client's funds coming into her possession.

7.

The Accused admits she neglected a legal matter entrusted to her and failed to prepare and maintain records and to render appropriate account of the client's funds coming into her possession in violation of DR 6-101(B) and DR 9-101(C)(3) of the Code of Professional Responsibility.

Sanction

8.

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

A. *Duty Violated.* In violating DR 6-101(B) and DR 9-101(C)(3), the Accused violated her duties to her client to preserve client property and to exercise diligence in the representation *Standards*, §§ 4.1, 4.4.

B. *Mental State.* The Accused acted with knowledge and negligence. "Knowledge" is the 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 a failure to heed a substantial risk that circumstances existed or the result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused knew that she had been retained to perform legal services for Baelz and that she had neither completed the services nor communicated with her client. The Accused's conduct also demonstrates negligence. The Accused delegated the responsibility to prepare and maintain records of client funds to a nonlawyer and failed to oversee the activity.

C. *Injury*. The Accused's conduct resulted in actual and potential injury to Baelz. The Accused delayed the dissolution of Baelz's marriage and placed her property damage claim at risk. Because the Accused did not take any significant action on Baelz's cases, Baelz was required to retain new counsel. Baelz's payments to the Accused for legal services were eventually accounted for, but not before a Bar complaint was filed and the complaint referred to the Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. When the Accused closed her office, she failed to notify her clients of an address and phone number at which she could be reached. Baelz was frustrated when she could not locate or communicate with the Accused.

D. *Aggravating Factors.* "Aggravating factors" include:

1. The Accused has a prior record of discipline for violation of DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4). *In re Steves*, 12 DB Rptr 185 (1998). The conduct at issue in the Baelz case occurred, in part, during the investigation of the complaints that lead to the prior stipulation for discipline. The Accused was on notice that she needed to attend to client matters, and to prepare and maintain records and account for client funds. *Standards*, § 9.22 (a); *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997); *In re Meyer,* 328 Or 220, 970 P2d 647 (1999).

2. The Stipulation involves two rule violations and reflects a pattern of misconduct. *Standards*, § 9.22(c)–(d).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has displayed a cooperative attitude in resolving this formal proceeding. *Standards*, § 9.32(e).

2. The Accused was admitted to practice in 1995 and was inexperienced in the practice of law. *Standards*, § 9.32(f).

3. The Accused acknowledges the wrongfulness of her conduct. *Standards*, § 9.32(*l*).

9.

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 and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also appropriate when a lawyer knows that she is dealing improperly with client property and causes injury or potential injury to a client. *Standards,* § 4.12. *See In re Purvis*, 306 Or 522, 760 P2d 254 (1988) (60-day suspension)*; In re Sohl,* 8 DB Rptr 87 (1994) (30-day suspension for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Borneman*, 10 DB Rptr 151 (1996) (30-day suspension for violation of DR 6-101(B)); *In re Meyer,* 328 Or 220, 328 P2d 220 (1999) (one-year suspension for violation of DR 6-101(B), where lawyer had prior record of neglect).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period of 60 days, commencing on the date the Order Approving Stipulation for Discipline is signed by the Disciplinary Board.

11.

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

DATED this 29th day of December 1999.

/s/ Susan C. Steves
Susan C. Steves
OSB No. 95428

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. 97-227, 98-139
	)	
TIMOTHY J. VANAGAS,	)	
	)	
Accused.	)	

Bar Counsel:	Richard A. Weill
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2). Stipulation for discipline. 120-day suspension.
Effective Date of Order:	February 5, 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 120 days, effective February 5, 2000, for violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2).

DATED this 4th day of February 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Amy R. Alpern
Amy R. Alpern, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Timothy J. Vanagas, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1976, 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 October 8, 1998, a Formal Complaint was filed against the Accused and on May 11, 1999, an 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), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(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.

The Donna Schell Matter

Case No. 97-227

Facts

5.

In the spring of 1996, Donna M. Schell ("Schell") retained the Accused to represent her to recover damages for injuries sustained from a fall on ice when she was a guest at a third party's home. In June 1996, the Accused filed a complaint alleging that Schell was an invitee. Defense counsel filed an answer and advised the Accused by letter that Schell was a licensee, not an invitee, and that he intended to move for summary judgment and seek enhanced prevailing party fees because the Accused had filed a meritless case.

6.

A pretrial conference was set for July 9, 1997, and trial was set for July 22, 1997. Depositions of Schell and the defendant were taken on February 10, 1997. The Accused did not attend the depositions and had another lawyer attend on his behalf. No notes of the depositions were taken and transcripts were never ordered. Schell had failed to advance costs to cover the expense of depositions despite the Accused's request that she do so.

7.

In March 1997, one of Schell's two treating physicians advised, on more than one occasion, that he would not appear for trial but offered a perpetuation deposition. The Accused did not contact the physician or schedule his deposition. The Accused had arranged for Schell's chiropractic physician to attend the trial.

8.

On May 8, 1997, the Accused advised Schell of the pretrial and trial dates but failed to advise her that he had a pretrial matter set in another county on the same day as the trial of her case. On July 21, 1997, the Accused's office advised Schell that her trial would not take place on July 22, 1997. On the afternoon of July 21, 1997, the Accused signed and faxed a motion for a continuance of the trial to the circuit court, without advising Schell and obtaining her consent. The motion was denied, and the case was assigned for trial beginning July 22, 1997.

9.

On the day of trial, the Accused had another lawyer appear and request a continuance of the case. The court refused to reset the trial, and Schell's case was dismissed by stipulated order without prejudice leaving Schell an opportunity to refile the lawsuit.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9 of this stipulation, he engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4) and neglected a legal matter entrusted to him in violation of DR 6-101(B).

The Jennie Bell Matter

Case No. 98-139

Facts

11.

On or about July 31, 1996, Jennie Bell ("Bell") retained the Accused to represent her to recover damages for injuries sustained after she spilled hot tea,

which she had purchased at a McDonald's franchise, on her lap. The Accused obtained medical records and met with Bell. In November 1996, the Accused filed a negligence action against McDonald's.

12.

The case was set for trial and reset five times, and Bell contends she was never advised of any of the trial settings or requests for any setovers. The case was last set for trial on November 13, 1997. Prior to that date, defense counsel advised the Accused that McDonald's refused to consider settlement.

13.

On November 7, 1997, the Accused filed a notice of dismissal, without prejudice, of Bell's case without notice to or the consent of Bell but leaving her with an opportunity to refile the lawsuit. Defense counsel filed a cost bill in the amount of $380.50, and a judgment of dismissal was entered.

14.

On February 3, 1998, the Accused wrote Bell a letter asking to meet with her to discuss the case because he did not believe Bell would be successful in obtaining recovery against McDonald's. On March 22, 1998, the Accused wrote Bell advising he was no longer her attorney and was returning her file. The Accused did not keep a copy of Bell's file.

15.

On May 22, 1998, Bell filed a complaint with the Oregon State Bar regarding the conduct of the Accused. In response to this complaint, and without looking at his file, because he had earlier returned it to Bell, the Accused advised Disciplinary Counsel's Office that after corresponding with his client on February 3, 1998, he dismissed the case without prejudice and without costs. The Accused also represented that he had attempted to contact Bell before he dismissed the case. The Accused later acknowledged that his statements to the Bar were based on his best recollection, the accuracy of which he did not confirm before responding to the Bar. In all other respects, the Accused cooperated with the Bar investigation of his conduct.

Violations

16.

The Accused admits that, by engaging in the conduct described in paragraphs 11 through 14, he neglected a legal matter entrusted to him in violation of DR 6-101(B); intentionally failed to carry out a contract of employment in violation of DR 7-101(A)(2); and improperly withdrew from employment in violation of DR 2-110(A)(2).

The Accused also admits that without confirming the accuracy of assumptions upon which he based his response to Disciplinary Counsel's Office concerning Bell's complaint, he failed to respond fully and truthfully to inquiries from an authority empowered to investigate or act upon his conduct in violation of DR 1-103(C).

17.

Upon further factual inquiry, the parties agree that the Second Cause of Complaint and the alleged violation of DR 1-102(A)(3) in the Fourth Cause of 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.* By failing to act with reasonable diligence and promptness, by failing to carry out a contract of employment, and by improperly withdrawing from representation of a client, the Accused violated his duty to his clients. *Standards,* § 4.4. By making statements to the Bar without verifying them by review of his file, Accused violated his duty to the public and the legal system. *Standards,* § 6.0. By improperly withdrawing from representation of a client, the Accused also violated his duty to the profession. *Standards,* § 7.0.

B. *Mental State.* By intentionally failing to carry out a contract of employment with his client, by making statements to the Bar without verifying them by review of his file or making incomplete responses to reasonable inquires, by engaging in conduct prejudicial to the administration of justice, and by improperly withdrawing from representation of a client, the Accused acted with intent, that is, the conscious objective or purpose to accomplish a particular result. By neglecting a legal matter, the Accused acted with knowledge, that is, the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

C. *Injury*. "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. In this case, the Accused's misconduct caused actual injury to Schell and Bell in that their cases, regardless of their merit, were not heard and the clients were unable to obtain other representation to refile the cases and their claims were ultimately barred because of the statute of limitations. The merits of the matters were such that the plaintiffs ultimately may not have obtained a recovery. There was injury to the legal system in that cases had to be reset at the cost of a loss of limited judicial resources. *Standards,* p. 7.

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

1. Prior disciplinary record. The Accused was publicly reprimanded in 1994 for failing to deposit and maintain client funds in trust in violation of DR 9-101(A); for entering into an agreement restricting his right to practice law in connection with the settlement of a lawsuit in violation of DR 2-108(B); and for engaging in a conflict of interest when his own financial interest could reasonably have affected his professional judgment on behalf of his clients without giving them full disclosure and obtaining consent to his continued employment in violation of DR 5-101(A). *In re Vanagas*, 8 DB Rptr 185 (1994). *Standards,* § 9.22(a);

2. A pattern of misconduct. *Standards,* § 9.22(c);

3. Multiple offenses. *Standards,* § 9.22(d);

4. Submission of unsubstantiated statements during the disciplinary process. *Standards,* § 9.22(f); and

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

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has a good reputation in the community. *Standards,* § 9.32(g); and

2. The Accused has acknowledged the wrongful nature of his conduct and is remorseful. *Standards,* § 9.32(*l*).

19.

Under all of the circumstances of this case, the *Standards* suggest suspension is an appropriate sanction. *Standards,* §§ 4.42, 6.12, 7.2.

20.

Oregon case law is in accord. In *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996), an accused lawyer was suspended for a period of 120 days for neglect of a case undertaken on behalf of two clients and failure to cooperate with the Bar's investigation. In *In re Purvis,* 306 Or 522, 760 P2d 254 (1988), the accused was suspended from the practice of law for six months based on his neglect of the client's case over four months (DR 6-101(B)) and his false representations to the client that he was attending to the matter (DR 1-102(A)(3)). The sanction also included a finding that the accused had failed to cooperate in the Bar's investigation in violation of DR 1-103(C) by failing to respond to the Bar's initial inquiries about his conduct and failing to respond to requests for information from the local professional responsibility committee investigator.

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 120 days for violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2).

The Bar and the Accused further agree that the sanction will be effective on February 5, 2000, which shall be the first day of the suspension.

22.

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

EXECUTED this 21st day of December 1999.

/s/ Timothy J. Vanagas
Timothy J. Vanagas
OSB No. 76366

EXECUTED this 21st day of December 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. 98-108
	)	
JAMES PATRICK McHUGH,	)	
	)	
Accused.	)	

Bar Counsel:	Paul Silver, Esq.
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 5-101(A), and DR 5-110(A). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	February 17, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the James Patrick McHugh (hereinafter "the 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 be suspended from the practice of law for 60 days, effective three days after the date of this order, for violation of DR 1-102(A)(4), DR 5-101(A), and DR 5-110(A) of the Code of Professional Responsibility.

DATED this 14th day of February 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

James P. McHugh, 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 P. McHugh, 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 his office and place of business in Clackamas 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.

Pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), the Bar filed a Formal Complaint against the Accused on May 26, 1999, alleging violation of DR 1-102(A)(4), DR 5-101(A), and DR 5-110(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 and Violations

5.

In or about December 1995, Sherry Ellis (hereinafter "Ellis") was arrested for driving under the influence of intoxicants (hereinafter "DUII"). In early January 1996, Ellis entered a DUII diversion program, which included among its conditions that Ellis attend a diagnostic assessment for drug and alcohol abuse and participate in a treatment program as may be recommended.

6.

About April 14, 1996, Ellis was arrested for violating a restraining order and Possession of Controlled Substance II (hereinafter "PCS II"). Ellis retained the Accused to represent her. Ellis entered a plea and was sentenced on the PCS II charge on June 14, 1996. On or about July 13, 1996, the court entered an order to show cause why Ellis's DUII diversion agreement should not be terminated because

she failed to comply with her abstinence agreement with the treatment program, failed to attend group meetings, and continued to use alcohol and marijuana. The court ordered that Ellis be placed on probation with conditions, which required that she not use or possess alcoholic beverages, illegal drugs, or narcotics, and that she undergo alcohol and substance abuse evaluation and enter a recommended treatment program. At that point, the Accused and Ellis considered the legal representation concluded.

7.

In or about August 1996, Ellis advised the Accused that she was going to be terminated from the DUII diversion program because she had violated the terms of her agreement. The Accused agreed to represent Ellis on this matter. Thereafter, and about September 3, 1996, the Accused supplied Ellis with alcohol, which she consumed, in violation of the terms of her probation on the PCS II charge and the DUII diversion agreement. The Accused also engaged in sexual relations with Ellis, a current client. After Ellis left the Accused's office, she consumed additional alcohol and was again arrested for DUII. Thereafter, the Accused provided Ellis with legal advice and represented Ellis in the diversion revocation hearing, and submitted a request for hearing with the Department of Motor Vehicles concerning Ellis's most recent arrest for DUII, before he withdrew as her counsel.

8.

The Accused admits that the aforesaid conduct constitutes conduct prejudicial to the administration of justice, lawyer self-interest conflict, and improper sexual relations with a client, in violation of DR 1-102(A)(4), DR 5-101(A), and DR 5-110(A) of the Code of Professional Liability.

Sanction

9.

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

A. *Duty Violated.* In violating DR 1-102(A)(4), DR 5-101(A), and DR 5-110(A), the Accused violated his duties to his client to avoid conflicts of interest. *Standards*, § 4.3. The Accused also violated his duty to the legal system by assisting his client to violate a court order. *Standards*, § 6.2.

B. *Mental State.* The Accused acted with knowledge. "Knowledge" is the conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result.

Standards, p. 7. The Accused knew that his client was on probation and a participant in a diversion program, both of which prohibited her from consuming alcohol. Nevertheless, the Accused provided alcohol to his client. The Accused also knew that he was currently representing the client when he engaged in sexual relations with her.

C. *Injury*. Ellis had already violated the conditions of her diversion agreement and the court's probation order when the Accused provided her with alcohol. Nevertheless, the Accused's conduct resulted in potential injury to his client and actual injury to the court in that she disregarded the court's order prohibiting the consumption of alcohol. While the Accused's professional judgment on the client's behalf does not appear to have been compromised, there was the potential that the Accused would act in his own interest to the detriment of the client.

D. *Aggravating Factors.* "Aggravating factors" include:

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

2. The Accused's conduct demonstrates a selfish motive. *Standards,* § 9.22(b).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused displayed a cooperative attitude in resolving this formal proceeding. *Standards*, § 9.32(e).

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

10.

The *Standards* provide that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards,* § 4.32. Suspension is also appropriate when a lawyer knowingly violates a court order or rule and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards*, § 6.22. Oregon case law is in accord. *See, e.g., In re Ofelt,* 1 DB Rptr 22 (1985); *In re Hubbard*, 12 DB Rptr 53 (1998).

11.

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 60 days, commencing February 15, 2000, or three days after the Disciplinary Board approves this stipulation, whichever is later.

12.

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

DATED this 8th day of February 2000.

/s/ James Patrick McHugh
James Patrick McHugh
OSB No. 90337

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. 98-1
	)	
ELIZABETH A. CLARK,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Gregory P. Oliveros, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3). Stipulation for discipline. Public reprimand.
Effective Date of Order:	February 28, 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 reprimanded for violation of DR 1-102(A)(3), effective the date this Order is signed.

DATED this 28th day of February 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Elizabeth A. Clark, 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 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 June 1, 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)(3) of the Code of Professional Responsibility. A copy of the complaint is attached hereto as Exhibit 1. 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.

Prior to July 23, 1997, the Accused maintained a general office bank account in which funds to operate her law office were deposited. Also prior to July 23, 1997, the Accused was a debtor under a Chapter 13 bankruptcy plan.

6.

In early July 1997, the Accused received notice from the Bankruptcy Court that her bankruptcy would be dismissed because the Accused had missed payments under the plan. A dismissal order was signed by the Bankruptcy Court on or about July 22, 1997.

7.

On or about July 23, 1997, the Accused withdrew all or nearly all of the funds in her general office bank account. On or about July 25, 1997, the Accused deposited these funds in another lawyer's trust account. The Accused reached an understanding with the other lawyer that the Accused could draw upon her funds in the trust account as and when the Accused saw fit.

8.

The Accused deposited her funds in the other lawyer's trust account in order to shelter her funds from the possible claims of creditors. Some years earlier, the Accused's business account had been garnished by one of the Accused's creditors, and this experience was on her mind when she deposited her funds into the other lawyer's trust account.

9.

The Accused's funds remained in the other lawyer's trust account for approximately one month, after which time the balance was transferred back to the Accused's possession. During the time the Accused's funds were in the other lawyer's trust account, they were used principally for paying the Accused's bills in operating her law practice. During this period, no creditor of the Accused was actively pursuing collection action against the Accused.

Violations

10.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 1-102(A)(3) 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 her duty to the public to maintain personal integrity. *Standards*, § 5.1.

B. *Mental State.* The Accused acted with "knowledge," 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. The Accused was aware that she was placing her funds out of the reach of creditors, but did not intend to engage in any act of fraud as to any particular creditor.

C. *Injury*. Injury may be either actual or potential under the sanctioning analysis. *In re Williams*, 314 Or 530, 840 P2d 50 (1992). In this case, there was no actual injury. The Accused used her funds while on deposit with the other lawyer to pay some of her bills, and some months later she filed another Chapter 13 plan

listing all her creditors and the amounts owed to them. No creditor was deterred or mislead during the time the Accused's money was on deposit with the other lawyer.

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

1. The Accused was admitted in 1990 and had some years 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 was experiencing personal or emotional difficulties at the time. *Standards,* § 9.32(c); and

3. The Accused made full and free disclosure, and was fully cooperative in this disciplinary proceeding. *Standards,* § 9.32(e).

12.

The ABA *Standards* provide that a reprimand is generally appropriate when a lawyer engages in noncriminal conduct that involves some aspect of dishonesty or misrepresentation and that reflects adversely on the lawyer's fitness to practice law. *Standards,* § 5.13. On two prior occasions, Oregon lawyers have been suspended for conduct similar to that of the Accused. *See In re Whipple,* 1 DB Rptr 205 (1986); *In re Bassett,* 12 DB Rptr 14 (1998). However, in those cases, the lawyers had prior disciplinary records, sheltered assets for an extended period of time, did so to circumvent ongoing creditor-collection efforts, and also violated DR 9-101(A) in addition to DR 1-102(A)(3). The short period of time involved and the absence of any injury to a creditor suggest that a less severe sanction is appropriate for the Accused in this case.

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of DR 1-102(A)(3), the sanction to be effective upon the approval of this stipulation 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 11th day of February 2000.

/s/ Elizabeth A. Clark
Elizabeth A. Clark
OSB No. 90230

EXECUTED this 15th day of February 2000.

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. 98-60
	)	
JEFFREY A. LONG,	)	
	)	
Accused.	)	

Bar Counsel:	Marvin D. Fjordbeck, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(A), DR 9-101(C)(3), and DR 5-105(E). Stipulation for discipline. Public reprimand.
Effective Date of Order:	February 28, 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 shall be publicly reprimanded for violation of DR 9-101(A), DR 9-101(C)(3), and DR 5-105(E).

DATED this 28th day of February 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Amy R. Alpern
Amy Rebecca Alpern, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Jeffrey A. Long, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1986, 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 July 1, 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 9-101(A), DR 9-101(C)(3), and DR 5-105(E). 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.

Pursuant to an oral fee agreement, on December 7, 1996, the Accused undertook to represent Sheilah Horman (hereinafter "Horman") and Brian Napp (hereinafter "Napp") in connection with a federal criminal investigation of alleged computer fraud and theft of trade secrets. Horman and Napp were scheduled to appear before a grand jury on December 17, 1996. Napp paid the Accused a retainer of $10,000 pursuant to an oral fee agreement. The Accused failed to deposit and maintain those funds in a trust account. The Accused did not maintain complete records of the money paid to him and failed to render an appropriate accounting of the money to Napp.

6.

By agreeing to represent both Horman and Napp as codefendants in a criminal matter, the Accused represented multiple current clients in a matter when such representation would result in an actual or likely conflict of interest.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 9-101(A), DR 9-101(C)(3), and DR 5-105(E) of the Code of Professional Responsibility.

Sanction

8.

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 client to preserve client property and to avoid conflicts of interest. *Standards,* §§ 4.1, 4.3.

B. *Mental State.* With regard to mental state and the conduct of the Accused in failing to deposit and maintain the $10,000 retainer in trust and properly account to his client for the retainer, the Accused acted negligently in that he considered the retainer to be earned upon receipt even though he did not have a written contract so indicating. *Standards,* p. 7. By agreeing to represent codefendants in a criminal matter, the Accused acted negligently in determining if his clients had a conflict of interest. *Standards,* p. 7.

C. *Injury.* Although the Accused ultimately earned the $10,000, by failing to deposit and maintain the money in trust, there was potential injury in that had he not earned the entire retainer, the funds may not have been available for repayment to the client. In respect to the conflict of interest, there was potential injury to the clients in that the Accused may have not been in a position to give each client independent legal advice and adequately represent the interests of each client. No actual injury resulted because the Accused's representation of the clients terminated and the clients obtained separate new counsel.

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

1. The Accused has a prior disciplinary record, including a letter of admonition in 1996 for violating DR 9-101(A) when he issued a check prematurely prior to depositing the funds into his trust account and a second letter of admonition

in 1997 for a six-month delay in returning client funds in violation of DR 9-101(C)(4). *Standards,* § 9.22(a); and

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

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a dishonest or selfish motive. *Standards,* § 9.32(b);

2. Full and free disclosure and a cooperative attitude in the investigation. *Standards,* § 9.32(e); and

3. Remorse. *Standards,* § 9.32(i).

The *Standards* note that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client or, 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. *Standards,* §§ 4.13, 4.33.

9.

Oregon case law is in accord. In *In re Cohen*, 316 Or 657, 853 P2d 286 (1993), the court reprimanded a lawyer for failing to avoid conflict of interest by representing codefendants in a criminal case, by negligently failing to provide full disclosure of the conflict at the outset of the representation, and in continuing to represent both parties after notice of the actual conflict of interest. In *In re O'Neal*, 297 Or 258, 683 P2d 1352 (1984), the court concluded that a reprimand was appropriate where the accused simultaneously represented two defendants, one of whom was indicted for delivery of a controlled substance and possession of a controlled substance, and the other was indicted for delivery of a controlled substance and criminal conspiracy with the other defendant even when the representation was limited to negotiating guilty pleas.

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 9-101(A), DR 9-101(C)(3), and DR 5-105(E), with the sanction to be effective upon the date this Stipulation for Discipline is approved by the Disciplinary Board.

11.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the substance was approved by the State Professional Responsibility Board (SPRB) on November 20, 1999. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 4th day of February 2000.

/s/ Jeffery A. Long
Jeffrey A. Long
OSB No. 86235

EXECUTED this 9th day of February 2000.

OREGON STATE BAR

By: /s/ Chris 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. 99-74
	)	
TONI DeFRIEZ SKINNER,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 2-106(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	March 9, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

ORDERED that the stipulation between the parties is approved and the Accused shall be publicly reprimanded for violation of DR 2-106(A) of the Code of Professional Responsibility.

DATED this 9th day of March 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich
Timothy J. Helfrich, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Toni DeFriez Skinner (hereinafter "the Accused") and the Oregon State Bar (hereinafter "the Bar") hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1993, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Umatilla County, Oregon.

3.

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

4.

On January 15, 2000, the State Professional Responsibility Board (hereinafter "SPRB") authorized a formal disciplinary proceeding against the Accused for alleged violation of DR 2-106(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, the violation, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

The Accused represented two clients between June 1997 and June 1998 on a variety of matters relating to a loan that they made to a relative. The clients signed a fee agreement with the Accused, which stated that interest may be charged on the unpaid account balances at 12% APR (1% per month). In May 1998, the Accused notified her clients in writing that she intended to increase the interest rate on unpaid account balances from 12% to 19%. In July 1998, the Accused increased the interest rate to 18% rather than 19%. In July 1998, the clients complained to the Bar that the Accused was overcharging them. They did not consent to the increased interest rate.

6.

The Accused also increased the interest rate charged to a number of other clients during or about the same time period, without the clients' consent.

7.

The Accused admits her conduct constitutes a violation of DR 2-106(A) of the Code of Professional Responsibility. The Accused was not permitted to modify the fee agreement in her favor without the clients' consent, after providing an explanation of the reason for the change and its effect on the clients. Oregon Formal Ethics Opinion No. 1991-97.

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") should be considered. The *Standards* establish a framework to analyze the Accused's conduct, including: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

A. *Duty.* The Accused violated a duty to the profession by overcharging or collecting an excessive fee. *Standards,* § 7.0.

B. *Mental State.* The Accused acted with negligence. "Negligence" is a failure to heed a substantial risk that circumstances existed or the result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused mistakenly believed that she was allowed to increase the interest rate by merely notifying her clients in advance.

C. *Injury.* As a result of the Accused's conduct, there existed the potential for injury to the profession. When the Accused was notified that she may not unilaterally increase the interest rate, she adjusted all affected client accounts either by refunding clients' payments for the additional interest or by crediting the clients' unpaid account balances.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of discipline, having been publicly reprimanded in 1997 for violation of DR 1-102(A)(4). *In re Skinner*, 11 DB Rptr 189 (1997). *Standards*, § 9.22(a).

E. *Mitigating Factors.* Mitigating factors include:

1. There is an absence of dishonest motive. *Standards*, § 9.22(b).

2. The Accused promptly made restitution to her clients. *Standards*, § 9.32(d).

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

4. Although the Accused was admitted to practice in 1993, she has limited experience in the business of the practice of law. *Standards*, § 9.32(f).

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

9.

The *Standards* provide that reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3. Case law is in accord. *See, e.g., In re Gruber*, 12 DB Rptr 81 (1998); *In re Mackin*, 12 DB Rptr 87 (1998); *In re Parker*, 11 DB Rptr 81 (1997).

10.

Consistent with the *Standards* and case precedent, the Bar and the Accused agree that the Accused shall be reprimanded for violation of DR 2-106(A).

11.

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

DATED this 28th day of February 2000.

/s/ Toni D. Skinner
Toni DeFriez Skinner
OSB No. 93105

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. 98-178
	)	
PATRICK J. STIMAC,	)	
	)	
Accused.	)	

Bar Counsel:	Peter L. Barnhisel, Esq.
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B) and DR 9-101(C)(4). Stipulation for discipline. Public reprimand.
Effective Date of Order:	March 27, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by the Accused, Patrick J. Stimac, 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 6-101(B) and DR 9-101(C)(4) of the Code of Professional al Responsibility.

DATED this 27th day of March 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Patrick J. Stimac, 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, Patrick J. Stimac, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This stipulation is made under the restrictions of 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 1-103(C), DR 6-101(A), DR 6-101(B), and DR 9-101(C)(4) of the Code of Professional Responsibility. The Bar filed its Formal Complaint against the Accused on June 29, 1999. Pursuant to the authorization of the State Professional Responsibility Board, 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

5.

On February 9, 1996, Eva Clayton (hereinafter "Clayton") and Helen Cooper (hereinafter "Cooper") were injured in a motor vehicle accident. In or about February 1996, Clayton and Cooper retained the Accused to represent them in connection with personal injuries sustained in the accident. Thereafter, the Accused neglected Clayton's and Cooper's legal matters entrusted to him in the following particulars: (a) failing to obtain all documents necessary for settlement negotiation; (b) failing to prepare a settlement proposal; (c) failing to make a settlement demand or to attempt settlement of the clients' claims; (d) failing to respond to the insurance carrier's attempts to communicate with him; (e) failing to prepare, file, and serve a civil complaint within the statute of limitations; (f) failing to request an agreement

from the insurance carrier to toll or extend the statute of limitations; and (g) failing to notice that he had missed the statute of limitations.

6.

In or about March 1998, Clayton and Cooper retained another attorney to represent their interests regarding their personal injury claims. Between early April and May 1998, Clayton's and Cooper's new attorney made multiple requests for information concerning the status of their claims, and for a copy of the client files. The Accused failed to respond and failed to promptly deliver the clients' files, which the clients were entitled to receive. On or about June 3, 1998, the Accused delivered the clients' files to Clayton's and Cooper's new attorney.

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the remaining charges alleged in the Formal Complaint shall be, upon approval of this stipulation by the Disciplinary Board, dismissed.

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) 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 6-101(B) and DR 9-101(C)(4), the Accused violated his duties to his clients to preserve client property and to exercise diligence in the representation. *Standards*, §§ 4.1, 4.4.

B. *Mental State.* The Accused acted with knowledge and negligence. "Knowledge" is the conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. The Accused knew that the clients' new attorney had requested the clients' file, but then failed to promptly respond. "Negligence" is a failure to heed a substantial risk that circumstances existed or the result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused was negligent in his identification of the date the statute of limitations expired and in his handling of the clients' claims.

C. *Injury.* The Accused's conduct resulted in actual injury to his clients. Because the Accused failed to either settle their claims or file a civil complaint and serve the defendant before the statute of limitations expired, the clients' claims

against the defendant were time barred. The clients have been required to pursue a legal malpractice claim against the Accused.

D. *Aggravating Factors.* "Aggravating factors" include:

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

2. The clients were vulnerable. They relied on the Accused to protect their interests. *Standards,* § 9.22(h).

3. The Accused has substantial experience in the practice of law having been admitted to practice in 1981. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused has displayed a cooperative attitude in resolving this formal proceeding. *Standards*, § 9.32(e).

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

9.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, or in dealing with client property, and causes injury or potential injury to a client. *Standards*, §§ 4.4, 4.13. Case law is in accord. *See, e.g., In re Holden*, 12 DB Rptr 49 (1998) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Brownlee*, 9 DB Rptr 85 (1995) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded. The Accused also agrees to pay the Bar's costs and disbursements incurred in this disciplinary proceeding in the amount of $555.70. A judgment for the Bar's costs shall be entered against the Accused.

11.

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

DATED this 2nd day of March 2000.

/s/ Patrick J. Stimac
Patrick J. Stimac
OSB No. 81388

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. 98-144, 00-11, 00-12
	)	
MICHAEL W. SEIDEL,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Myer Avedovech, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 7-102(A)(1), DR 7-105(A), DR 6-101(B), and DR 9-101(C)(4). Stipulation for discipline. Six-month suspension.
Effective Date of Order:	March 31, 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 immediately upon approval of the Stipulation for Discipline by the Disciplinary Board for violation of DR 7-102(A)(1), DR 7-105(A), DR 6-101(B), and DR 9-101(C)(4).

DATED this 31st day of March 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich
Timothy J. Helfrich, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael W. Seidel, 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 W. Seidel, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 16, 1987, and has been a member of the Oregon State Bar since that time, having his office and place of business in Deschutes County, Oregon.

3.

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

On March 24, 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 7-102(A)(1) and DR 7-105(A) of the Code of Professional Responsibility. On January 15, 2000, the SPRB authorized additional charges against the Accused for alleged violations of DR 6-101(B) and DR 9-101(C)(4). The SPRB authorized these charges to be consolidated with the pending Formal Complaint. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of all matters in the proceeding.

The Clemens Matter

Case No. 98-144

Facts

4.

On or before March 11, 1998, the Accused represented Amy Clemens in a proceeding to dissolve her marriage to William T. Clemens ("Clemens"). On March 11, 1998, the court entered a temporary protective order that prohibited the parties from encumbering or disposing of any property without each party's consent or a court order.

5.

On March 18, 1998, an administrative order was entered that required Clemens to pay child support retroactively to January 1998, and to continue to provide health insurance for Amy Clemens provided such coverage was available at no cost.

6.

On or about April 7, 1998, Amy Clemens learned that Clemens had discontinued her health insurance coverage and had not paid the court-ordered child support. On or about that same date, the Accused wrote a letter to Clemens' counsel that threatened to make public to Clemens' employer, the district attorney, and others that Clemens had sent a sexually explicit picture of himself to a "swingers" magazine and had supplied marijuana to children. The letter also threatened a picket of the courthouse where Clemens was employed and letters to the local newspaper if Clemens did not pay his child support obligation and reinstate Amy Clemens' insurance coverage.

Violations

7.

The Accused admits that, by engaging in the above-described conduct, he took action merely to harass Clemens and threatened to present criminal charges to obtain an advantage in a civil matter in violation of the following standards of professional conduct established by law and the Oregon State Bar:

1. DR 7-102(A)(1) of the Code of Professional Responsibility; and
2. DR 7-105(A) of the Code of Professional Responsibility.

The Meyers/Woofter Matter

Case No. 00-11

Facts

8.

In December 1997, Randy Myers ("Myers") and Judy Woofter ("Woofter") paid the Accused a $1,500 retainer to collect support arrearages from Woofter's ex-husband. The Accused agreed to the representation and placed the $1,500 retainer in his lawyer trust account.

9.

After the Accused was retained, Myers and Woofter made numerous attempts to contact the Accused to see how the case was proceeding. The Accused did not respond to these inquiries. More than six months passed before Myers and Woofter were advised that the Accused was in poor health and could not return their calls. Approximately one month later, Myers and Woofter learned that the state had filed

a lien on Woofter's ex-husband's property and had negotiated a settlement in the amount of $8,500.

10.

On December 23, 1998, Myers and Woofter sent a letter to the Accused terminating his services and demanding return of their retainer. The Accused did not respond.

11.

On June 25, 1999, Myers and Woofter filed a complaint with the Bar concerning the conduct of the Accused. On June 29, 1999, the Bar forwarded the letter of complaint to the Accused requesting his response. On August 2, 1999, Seidel responded, contending that his first notice of the letter of December 23, 1998, was its enclosure in the letter from the Bar. On August 2, 1999, the Accused refunded $1,348.60 to Myers and Woofter as the unearned portion of the previously paid retainer.

12.

During the Accused's professional relationship with Myers and Woofter, he neglected a legal matter entrusted to him and failed to promptly pay to Myers and Woofter funds in his possession which they were entitled to receive.

Violations

13.

By engaging in the above described conduct, the Accused violated the following standards of professional conduct established by law and the Oregon State Bar:

1. DR 6-101(B) of the Code of Professional Responsibility; and
2. DR 9-101(C)(4) of the Code of Professional Responsibility.

The Ensworth Matter

Case No. 00-12

Facts

14.

Prior to September 30, 1998, the Accused had represented John Ensworth ("Ensworth"). On September 30, 1998, Ensworth wrote the Accused requesting that he send Ensworth's entire file to attorney Max Merrill ("Merrill"). The letter indicated that if the Accused did not comply with the request, Ensworth would turn the matter over to Merrill. The Accused did not respond to the letter.

15.

On June 14, 1999, Merrill spoke with the Accused's wife, who acknowledged receipt of the request for Ensworth's file. She promised the file would be delivered to Merrill by June 21, 1999. When the file was not received by June 21, 1999, Merrill filed a complaint with the Bar concerning the conduct of the Accused.

16.

On July 15, 1999, the Bar forwarded Merrill's complaint to the Accused for response. The Accused timely responded, advising that he had closed his law office practice and Ensworth's file had been misplaced. The Accused advised that he had since located the file and had delivered it to Merrill.

Violation

17.

By engaging in the above-described conduct, the Accused failed to promptly deliver to a client, as requested, property in his possession which the client was entitled to receive in violation of the following standard of professional conduct established by law and the Oregon State Bar:

1. DR 9-101(C)(4) of the Code of Professional Responsibility.

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.* In this case, the Accused violated his duty to clients by neglecting one legal matter and failing to promptly return client property in two separate client matters. *Standards,* §§ 4.1, 4.4. By engaging in the conduct in the Clemens matter, the Accused also violated his duty to the legal system. *Standards,* § 6.2.

B. *Mental State.* In the Clemens matter, the Accused acted intentionally, that is, with the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7. In the other two matters, the Accused acted with knowledge, that is, the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

C. *Injury.* In the Clemens matter, there was actual injury to Mr. Clemens in that he was embarrassed by delivery of the sexually explicit picture to his lawyer

and was concerned over the threat to communicate embarrassing material to his employer, the district attorney, and the news media. In the Myers and Woofter matter, there was actual injury in that these clients were deprived of the use of their money for a number of months and Woofter was delayed in obtaining the arrearages which she was seeking. In the Ensworth matter, there was potential injury in that Ensworth needed his file documents and did not receive them for more than 10 months after Ensworth's initial demand for the file.

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

1. A prior disciplinary suspension from the practice of law for 120 days for violation of DR 1-102(A)(2) and ORS 9.460(1). *In re Seidel*, 12 DB Rptr 201 (1998); *Standards,* § 9.22(a);

2. A pattern of misconduct. *Standards,* § 9.22(c);

3. Multiple offenses. *Standards,* § 9.22(d); and

4. The Accused has substantial experience in the law. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of dishonest or selfish motive. *Standards,* § 9.32(b); and

2. Full and free disclosure during the disciplinary process. *Standards,* § 9.32(e).

19.

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards,* § 4.12. The *Standards* also provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards,* § 4.42. Suspension is also generally appropriate when a lawyer violates his duty to the legal system and there is injury or potential injury to a client. *Standards,* § 6.22.

20.

Oregon case law is in accord. In *In re Lewelling*, 296 Or 702, 678 P2d 1229 (1984), the Oregon Supreme Court concluded that an accused's communication with a represented party did not involve dishonesty or a breach of trust, and while a public reprimand would be appropriate if it were the only charge, a 60-day suspension from the practice of law was appropriate in view of the more serious disciplinary violation for threatening to present criminal charges solely to gain an advantage in a civil matter.

In *In re Huffman*, 328 Or 567, 983 P2d 534 (1999), the accused lawyer was suspended from the practice of law for two years for threatening criminal prosecution against his former client and for his own personal gain in violation of

DR 7-105(A), and for revealing client confidences and secrets in violation of DR 4-101(B).

Suspension is also appropriate in cases involving prolonged neglect, *In re Purvis*, 306 Or 522, 760 P2d 254 (1998), and in cases involving neglect and mishandling of client property, *In re Wetteland*, 12 DB Rptr 246 (1998) (also involving charging or collecting a clearly excessive or illegal fee).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for six months for violation of DR 7-102(A(1), DR 7-105(A), DR 6-101(B), and DR 9-101(C)(4), the sanction to be effective immediately upon approval of the stipulation by the Disciplinary Board.

22.

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

EXECUTED this 8th day of March 2000.

/s/ Michael W. Seidel
Michael W. Seidel
OSB No. 87146

EXECUTED this 17th day of March 2000.

OREGON STATE BAR

By: /s/ Chris 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. 98-6
	)	
BRANT M. MEDONICH,	)	
	)	
Accused.	)	

Bar Counsel:	Carl W. Hopp, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	May 1, 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 terms of the stipulation between the parties are approved. The Accused is suspended for 30 days, effective May 1, 2000, for violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3) and shall pay the Oregon State Bar's costs as provided in the stipulation between the parties.

DATED this 31st day of March 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich
Timothy J. Helfrich, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Brant M. Medonich, 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, Brant M. Medonich, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1985, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

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

4.

On May 18, 1999, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation by the Accused of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3). 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.

At all relevant times, the Accused has maintained a lawyer trust account for the funds of his clients.

6.

Between December 1996 and April 1998, the Accused represented Irene Ponce. During his representation of Ms. Ponce, the Accused paid fees or costs he had incurred on behalf of Ms. Ponce from his lawyer trust account.

7.

When he paid the Ponce fees or costs described above, there were insufficient funds in the Accused's lawyer trust account that belonged to Ms. Ponce to cover the payments he made on her behalf. Consequently, some or all of the checks the

Accused wrote to pay Ms. Ponce's fees or costs were drawn on funds deposited into his lawyer trust account on behalf of other clients who had not given him permission to use their funds for Ms. Ponce's benefit.

8.

The Accused's records did not clearly and expressly reflect the source and amount of client funds on deposit in his lawyer trust account at the time of the Ponce disbursals, nor did his records reflect the exact amount of the funds of other clients that were used to cover Ponce's fees or costs.

9.

Between December 1996 and April 1998, the Accused represented Larry Goldsmith. During his representation of Goldsmith, the Accused paid approximately $2,200 from his lawyer trust account in fees or costs he had incurred on behalf of Mr. Goldsmith.

10.

When he paid the Goldsmith fees or costs described in paragraph 9, there were insufficient funds in the Accused's lawyer trust account that belonged to Mr. Goldsmith to cover the payments he made on Mr. Goldsmith's behalf. Consequently, some or all of the checks the Accused wrote to pay Mr. Goldsmith's fees or costs were drawn on funds deposited in his lawyer trust account on behalf of other clients who had not given him permission to use their funds for Mr. Goldsmith's benefit.

11.

The Accused's records did not clearly and expressly reflect the source and amount of client funds on deposit in his lawyer trust account at the time of the Goldsmith disbursals, nor did his records reflect the exact amount of the funds of other clients that were used to cover Mr. Goldsmith's fees or costs.

12.

On June 5, 1997, and October 24, 1997, the Accused wrote two nonsufficient checks from his lawyer trust account in the amounts of $1,908.32 and $63.10, respectively. The Accused's trust account records do not clearly and expressly reflect why the overdrafts occurred, how the Accused covered the overdrafts that resulted from these checks, or the source of the funds that ultimately corrected the overdrafts.

13.

Between December 1996 and April 1998, the Accused did not maintain trust account records that clearly and expressly reflected the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds of his clients that came into his possession.

14.

A subsequent audit of the Accused's lawyer trust account conducted at the direction of the Bar revealed that the Accused's trust account records were in disarray, but did not disclose evidence of conversion or misappropriation of client funds.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 13 herein, he violated DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

Facts

16.

The Oregon State Bar Disciplinary Counsel's Office received notice of the overdrafts described in paragraph 12 herein. Beginning on or about July 21, 1997, Disciplinary Counsel's Office made a number of requests to the Accused for specific information and records concerning the overdrafts. Although the Accused responded to some of Disciplinary Counsel's Office's requests, he did not respond to the substance of the requests and did not produce the requested records. The Disciplinary Counsel's Office is an authority empowered to investigate or act upon the conduct of lawyers.

Violations

17.

The Accused admits that, by engaging in the conduct described in paragraph 15 herein, he violated DR 1-103(C) of the Code of Professional Responsibility.

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 his duty to his clients to preserve their property and his duty as a professional to cooperate with the Bar in its investigation of his conduct. *Standards,* §§ 4.1, 7.0.

B. *Mental State.* The Accused acted negligently in failing to establish proper accounting procedures and knowingly in failing to provide the information

and responses requested during the course of the Bar's investigation of his conduct. *Standards,* p. 7.

C. *Injury.* No client suffered actual harm from the Accused's poor trust accounting practices, but the Accused's conduct involved the potential for harm to his clients. Because he delayed the Bar's investigation, the Accused caused actual harm to the Bar and the public. *In re Miles,* 324 Or 218, 222, 923 P2d 1219 (1996).

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 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 act with a dishonest or selfish motive. *Standards,* § 9.32(b).

3. The Accused has displayed remorse for his conduct. *Standards,* § 9.32(*l*).

4. The Accused has received training from the Professional Liability Fund in trust account management and has employed a bookkeeper.

19.

The ABA *Standards* suggest that a reprimand is generally appropriate when a lawyer is negligent in failing to establish proper accounting procedures. *Standards,* § 4.13. The ABA *Standards* also suggest that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. *Standards,* § 7.2.

Oregon case law suggests that the appropriate sanction in this case is a period of suspension. See *In re Miles, supra,* 324 Or at 223, where the court imposed a 120-day suspension for two violations of DR 1-103(C) and noted that, generally, suspension is an appropriate sanction for a knowing violation of DR 1-103(C). See also *In re Wetteland,* 12 DB Rptr 246 (1998), where a lawyer was suspended for trust accounting violations, among other things.

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 30 days for violation of DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3), effective beginning May 1, 2000, if this Stipulation for Discipline is approved by the Disciplinary Board.

In addition, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $3,407 incurred for the services of a certified public

accountant to audit the Accused's accounting records. The Accused shall pay the sum of $3,407, plus interest thereon at the legal rate, in monthly installments of not less than $100. The Accused shall make the first payment of $100 on or before the 15th day of July 2000, and like payments on or before the 15th day of each month thereafter until paid in full. Should the Accused fail to make any monthly payment required herein, the Bar may, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

21.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the 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 March 2000.

/s/ Brant M. Medonich
Brant M. Medonich
OSB No. 85284

EXECUTED this 22nd day of March 2000.

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. 99-71
	)	
THOMAS W. CRAWFORD,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 5-105(E), and DR 6-101(B). Stipulation for discipline. Public reprimand.
Effective Date of Order:	April 18, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

ORDERED that the stipulation between the parties is approved. The Accused is reprimanded for violation of DR 1-102(A)(4), DR 5-105(E), and DR 6-101(B) of the Code of Professional Responsibility.

DATED this 18th day of April 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Thomas W. Crawford, 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, Thomas W. Crawford, 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 Douglas County, Oregon.a

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 January 15, 2000, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(4), DR 5-105(E), 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.

The Accused represented Lynn Sterchi (hereinafter "Sterchi") as personal representative of the Brumm estate. During the course of the representation, a boundary line dispute arose concerning certain real property that was part of the estate and the adjoining property owned by another of the Accused's clients, Evelyn Machado (hereinafter "Machado"). Sterchi and Machado agreed to resolve the dispute, the terms of which the Accused undertook to memorialize in writing for each of his clients when their interests were in actual conflict.

6.

The annual accounting in the Brumm probate was due on January 9, 1997. During the course of the probate administration of the Brumm estate, the Accused failed to timely file the annual accounting. Between January and May 1998, the court sent the Accused three notices that the annual accounting was due. On each occasion,

the Accused failed to notify Sterchi of the court's notice and failed to file the annual accounting. As a result, the court served Sterchi with an order, which required that she appear and show cause why she should not be removed as the personal representative of the Brumm estate.

Violations

6.

The Accused admits that by engaging in the conduct described in paragraphs 5 and 6 above, he violated DR 1-102(A)(4), conduct prejudicial to the administration of justice; DR 5-105(E), multiple current client conflicts; and DR 6-101(B), neglect of a legal matter entrusted to a lawyer.

Sanction

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") 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 Violated.* In violating DR 1-102(A)(4), DR 5-105(E), and DR 6-101(B), the Accused violated duties to his clients, the legal system, and the profession. *Standards,* §§ 4.3, 4.4, 6.2, 7.0.

B. *Mental State.* The Accused's conduct demonstrates negligence. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation of the standard of care that a reasonable lawyer would exercise in the situation.

C. *Injury.* Injury may be either actual or potential. *Standards,* p. 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 the profession. The client in the probate matter was threatened with removal as the personal representative and called to explain to the court why she had not complied with the court and statutory rules. The Accused failed to keep his client informed and failed to attend to the case. The Accused also caused injury to the court. Because the Accused failed to attend to the probate case, the court was required to devote additional time and resources to obtain required information. The Accused also caused potential injury to each of his clients in the boundary dispute because they were denied independent legal advice. The Accused also caused injury to the profession by failing to satisfy his ethical responsibilities.

D. *Aggravating Factors.* Aggravating factors include:

1. This Stipulation involves three rule violations. *Standards,* § 9.22(d).

2. The clients 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 was admitted to practice in 1979 and has substantial experience in the practice of law. *Standards,* § 9.22(i).

4. The Accused has a prior record of discipline consisting of a letter of admonition in April 1997 for violation of DR 6-101(B).

E. *Mitigating Factors.* Mitigating factors include:

1. There is an absence of dishonesty or selfish motives. *Standards,* § 9.32(b).

2. The Accused cooperated with the disciplinary authorities during the investigation and in resolving this proceeding. *Standards,* § 9.32(e).

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

8.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards,* § 4.43. Reprimand is also appropriate when a lawyer is negligent in determining whether the representation of a client will adversely effect another client, and causes injury or potential injury to a client. *Standards,* § 4.33. Reprimand is also appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or another party, or causes interference or potential interference with a legal proceeding. *Standards,* § 6.33.

9.

Oregon case law is in accord. *See In re James,* 10 DB Rptr 63 (1996) (lawyer reprimanded for violations of DR 6-101(B), DR 2-106(A), and DR 9-101(A)); *In re Jacobson*, 12 DB Rptr 1999 (1998) (lawyer reprimanded for failing to file an annual accounting and failing to timely close an estate in violation of DR 6-101(B); taking interim payments of attorney fees without court approval and charging an illegal fee in violation of DR 2-106(A); and engaging in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4)).

10.

In light of the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(4), DR 5-105(E), and DR 6-101(B) of the Code of Professional Responsibility.

11.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, the sanction approved by the State Professional Responsibility Board, and 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 publicly reprimanded.

DATED this 10th day of April 2000.

/s/ Thomas W. Crawford
Thomas W. Crawford
OSB No. 79198

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. 98-179
	)	
ROBERT G. KLAHN,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Stephen R. Moore, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C) and DR 2-106(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	April 19, 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 approved and the Accused is publicly reprimanded for violation of DR 1-103(C) and DR 2-106(A).

DATED this 19th day of April 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich
Timothy J. Helfrich, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Robert G. Klahn, 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 G. Klahn, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 18, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Umatilla County, Oregon.

3.

The Accused enters into this Stipulation 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. Thereafter, on December 17, 1999, the State Professional Responsibility Board authorized formal proceedings against the Accused for alleged violation of 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.

On August 14, 1998, a former client filed a Bar complaint against the Accused, which was subsequently determined to be unfounded and dismissed except as set forth hereafter. By letter dated October 18, 1998, the Bar wrote the Accused and sought his response to the complaint on or before October 29, 1998. When no response was received, the Bar, on November 2, 1998, sent the Accused a follow-up letter requesting a response to the complaint by November 9, 1998. Both letters reminded the Accused of his obligation, under DR 1-103(C), to respond to inquiries from Disciplinary Counsel's Office.

6.

On November 19, 1998, the Accused spoke by telephone with a member of Disciplinary Counsel's Office regarding the need to respond to his former client's complaint, and the Accused indicated that a response would be forthcoming.

7.

On December 16, 1998, having still not received a response, the Bar wrote a third letter to the Accused seeking a response by December 22, 1998, and reminding the Accused of his ethical obligations. When no response was received by December 31, 1998, the Bar forwarded the client's complaint to the Morrow/Umatilla County LPRC for investigation.

8.

The Accused provided a written explanation (which he had begun drafting in late December) to the Disciplinary Counsel's Office one week later, on January 6, 1998, and thereafter fully cooperated with the LPRC.

9.

The Accused was appointed to represent the client referenced herein pursuant to a contract with the State Court Administrator's Office. The contract provided that the Accused be paid at a rate of $40 per hour. Subsequent to receipt of the Bar complaint, the Accused submitted a bill to the state for all services rendered. The bill included time that the Accused spent responding to the client's complaint filed with the Bar. At the time he submitted his bill, the Accused believed that, because Bar complaints were routinely filed by postconviction clients, attorneys appointed to handle postconviction cases were entitled to claim reimbursement for time spent responding to them. The Accused's bill was reviewed and approved by a circuit court judge and a member of the State Court Administrator's Office, although neither approving body made a conscious decision concerning the propriety of including the time spent responding to the Bar complaint. Thereafter, the Accused received payment.

10.

In fact, the contract with the State Court Administrator's Office did not contemplate payment for time spent by the Accused responding to the Bar complaint, as has since been confirmed, and the Accused ultimately reimbursed the Indigent Defense Fund $220.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-103(C) and DR 2-106(A).

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 to the profession by charging an excessive fee and by failing to timely respond to inquiries from Disciplinary Counsel's Office. *Standards,* § 7.0.

B. *Mental State.* The Accused acted negligently when he billed the state for his time spent in responding to his client's Bar complaint. At the time the Bar complaint at issue in this stipulation was pending, there were several other pending complaints involving the Accused to which he had filed timely responses. The Accused intended to respond to this particular complaint, but knowingly failed to file a timely response or request additional time in which to do so.

C. *Injury.* The Accused's failure to timely respond to the Bar necessitated a referral to the LPRC to conduct an investigation into the client's concerns and the Accused's failure to timely respond. The State of Oregon was injured because it paid the Accused money to which he was not entitled, although, once the Accused realized the overpayment, he refunded the same.

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

1. The Accused was admonished in 1997 for violating DR 1-103(C) when he failed to timely respond to Disciplinary Counsel's request that he address concerns raised by a former client. *Standards,* § 9.22(a).

E. *Mitigating Factors.* Mitigating factors include:

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

2. Once the excessive fee charge was brought to the Accused's attention, he made a timely good-faith effort to make restitution. *Standards,* § 9.32(d).

3. When the Accused tendered a response, he displayed a cooperative attitude toward the investigation and fully and freely disclosed all relevant information. *Standards,* § 9.32(e).

13.

The *Standards* provide that a reprimand or suspension, depending on the circumstances, is appropriate for violations of duties owed to the profession. The Commentary to the *Standards* states that courts typically impose a reprimand in most cases in which there has been a violation of a duty owed to the profession. *Standards*, § 7.3. Oregon case law is in accord. *In re Potts/Trammell/Hannon,* 301 Or 57, 718 P2d 1363 (1986); *In re Edelson,* 13 DB Rptr 72 (1999); *In re Van Zeipel,* 6 DB Rptr 71 (1992); *In re Gruber,* 12 DB Rptr 81 (1998); *In re Mackin,* 12 DB Rptr 87 (1998).

14.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a public reprimand for violations of DR 1-103(C) and DR 2-106(A), and the Bar agrees that such a sanction is appropriate given the facts and circumstances of this case.

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 22nd day of March 2000.

/s/ Robert G. Klahn
Robert G. Klahn
OSB No. 80068

EXECUTED this 29th day of March 2000.

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 Nos. 97-125, 99-135
	)	
DANIEL W. GOFF,	)	
	)	
Accused.	)	

Bar Counsel:	Louis Kurtz, Esq.
Counsel for the Accused:	David Jensen, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B) (two counts). Stipulation for discipline. Public reprimand.
Effective Date of Order:	April 28, 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 approved and the Accused is publicly reprimanded for violation of DR 6-101(B) (two counts).

DATED this 28th day of April 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Daniel W. Goff, 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, Daniel W. Goff, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 October 21, 1999, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 6-101(B) (two counts) and DR 9-101(C)(3). A copy of the 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.

Humphrey Matter

Case No. 97-125

Facts

5.

On or about February 3, 1994, the Accused undertook to evaluate a medical malpractice claim for Kathleen Humphrey (hereinafter "Humphrey") for a fee of $2,000.

6.

Between February 3, 1994, and February 5, 1994, the Accused began his evaluation of Humphrey's claim. After February 5, 1994, and up to about July 18, 1994, the Accused took no significant action on Humphrey's behalf and failed to keep her informed of the status of her case.

7.

Between July 18, 1994, and July 21, 1994, the Accused took some action to further his evaluation of Humphrey's claim, but from July 21, 1994, and up to about

January 26, 1995, he took no significant action on Humphrey's behalf and failed to keep her informed of the status of her case. The Accused completed his evaluation of Humphrey's claim on or about January 26, 1995.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7 of this stipulation, he violated DR 6-101(B).

Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 9-101(C)(3) in Case No. 97-125 should be and, upon the approval of this stipulation, is dismissed.

Gilliland Matter

Case No. 99-135

Facts

9.

On or about December 30, 1996, the Accused undertook to evaluate a medical malpractice claim for Sandra Gilliland (hereinafter "Gilliland").

10.

Between December 30, 1997, and January 7, 1997, the Accused began his evaluation of Gilliland's claim. After January 7, 1997, and up to May 14, 1997, the Accused took no significant action on Gilliland's behalf and failed to keep her informed of the status of her case.

11.

Between May 14, 1997, and July 8, 1997, the Accused took some action to further his evaluation of Gilliland's claim, but from July 8, 1997, to January 27, 1998, the Accused took no significant action on Gilliland's behalf and failed to keep her informed of the status of her case.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 9 through 11 of this stipulation, he violated DR 6-101(B).

Sanction

13.

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 act with reasonable diligence and promptness in representing them. *Standards,* § 4.4.

B. *Mental State.* The Accused acted negligently: he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7.

C. *Injury.* Neither client's substantive interests were actually harmed by the Accused's delays in completing his evaluations of their cases, but there is the potential for injury to clients' interests in such delays. *Standards,* p. 7.

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 1972. *Standards,* § 9.22(i).

2. Humphrey was a vulnerable victim due to her emotional condition. *Standards,* § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards,* § 9.23(a).

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

3. Delay in the disciplinary proceedings. *Standards,* § 9.32(i).

Standards, § 4.33 suggests that 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.

Oregon case law is in accord. See *In re Snyder,* 276 Or 897, 559 P2d 1273 (1976), where the lawyer was reprimanded for neglecting two probates and charging an excessive fee in one. See also *In re Kent,* 9 DB Rptr 175 (1995), where the lawyer was reprimanded for neglecting two litigation matters for the same client. Finally, see *In re Holden,* 12 DB Rptr 49 (1998), where the lawyer was reprimanded for violation of DR 6-101(B) and DR 9-101(C)(4). This was the lawyer's second DR 6-101(B) violation; he had been admonished in a previous case for violation of DR 6-101(A) and (B).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 6-101(B) (two counts).

15.

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

EXECUTED this 17th day of April 2000.

/s/ Daniel W. Goff
Daniel W. Goff
OSB No. 72101

EXECUTED this 21st day of April 2000.

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. 98-116
	)	
WILLIAM COHNSTAEDT,	)	
	)	
Accused.	)	

Bar Counsel:	None
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 7-102(A)(3), and DR 7-102(A)(5). No contest plea. 120-day suspension.
Effective Date of Order:	May 6, 2000

ORDER APPROVING NO CONTEST PLEA

This matter having come on to be heard upon the No Contest Plea of the Accused and the agreement of the Oregon State Bar to accept said No Contest Plea in exchange for a 120-day suspension from the practice of law, and good cause appearing,

IT IS HEREBY ORDERED that the No Contest Plea executed by William Cohnstaedt and the Oregon State Bar on April 28, 2000, shall be, and hereby is, approved, and the Accused is suspended for 120 days, effective immediately upon approval of this Order, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), and DR 7-102(A)(5).

DATED this 6th day of May 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

NO CONTEST PLEA

1.

William Cohnstaedt, attorney at law (hereinafter "the Accused"), hereby enters a No Contest Plea to the allegations of the Formal Complaint attached hereto as Exhibit 1 and incorporated herein by reference on the terms set forth below.

2.

The Accused enters into this No Contest Plea freely and voluntarily. Furthermore, he acknowledges that this plea is made under the restrictions set forth in Bar Rule of Procedure 3.6(h).

Plea to Allegations

3.

At its meeting on November 21, 1998, the State Professional Responsibility Board (hereinafter "SPRB") authorized a formal disciplinary proceeding against the Accused in Case No. 98-116, alleging that the Accused violated DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-102(A)(5), and ORS 9.527(4) in connection with his representation of Barbara Youngdahl Sherman in the probate of her uncle's estate. At its meeting on March 11, 2000, the SBRB voted to reconsider the ORS 9.527(4) charge and dismissed that charge.

4.

By this Plea of No Contest, the Accused does not desire to defend against the Formal Complaint which alleges that, in the handling of the probate of the estate, the Accused represented to the court that a will dated August 25, 1991, was the decedent's last will when the decedent had executed two subsequent wills, and that the Accused failed to disclose to the court that there were more heirs to the estate than named in the probate petition.

5.

The Accused does not desire to defend against the allegations in the Formal Complaint that, by engaging in the conduct described therein, he violated DR 1-102(A)(3) (engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(4) (engaged in conduct prejudicial to the administration of justice); DR 7-102(A)(3) (concealed or knowingly failed to disclose that which he was required by law to reveal); and DR 7-102(A)(5) (knowingly made a false statement of fact or law).

Sanction

6.

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 factors.

A. *Duty Violated.* By engaging in the conduct described herein, the Accused violated his duty to the legal system. *Standards,* §§ 6.1–6.2.

B. *Mental State.* By making the misrepresentation and by failing to disclose other information to the court as described herein, the Accused acted with knowledge, that is, the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

C. *Injury.* "Injury" may be actual or potential and is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "serious" to "little or no" injury. In this case, there was potential injury to heirs of the estate in the event all of the heirs did not receive notice of the probate of the will, even though the Accused mailed notices to potential heirs and interested persons five days after filing the probate petition and the notice was also in the newspaper three times. By making a misrepresentation and by omission of material information to the court, there was actual injury in that the public and the courts expect lawyers to abide by the legal rules of substance and procedure which affect the administration of justice.

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

1. Multiple offenses. *Standards,* § 9.22(d); and

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

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

1. Absence of a prior disciplinary record. *Standards,* § 9.32(a);

2. Absence of a dishonest motive. *Standards,* § 9.32(b);

3. Full and free cooperation in the disciplinary investigation. *Standards,* § 9.32(e); and

4. Remorse. *Standards,* § 9.32(*l*).

7.

The *Standards* provide that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect of the legal proceeding. *Standards,* § 6.12.

8.

Oregon case law is in accord. In *In re Hedrick,* 312 Or 442, 822 P2d 1187 (1991), the accused, who had a long disciplinary history, was suspended from the practice of law for two years for, among other things, violation of DR 1-102(A)(3) and (4) and DR 7-102(A)(3) and (5) for probating a will which he knew had been revoked by a subsequent will and representing the probated will to be the decedent's last will when he knew it was not.

In *In re Greene,* 290 Or 291, 620 P2d 1379 (1980), the court suspended the accused for 60 days when he deliberately failed to advise the court, in a guardianship petition seeking permission to sell securities of the estate and use the proceeds to purchase real estate for the benefit of the wards, that the property being purchased was owned by the guardian, in violation of then DR 1-102(A)(4) (now DR 1-102(A)(3)) and *former* ORS 9.460(4).

9.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 120 days, effective immediately upon the date of the Order approving this No Contest Plea.

10.

This Plea of No Contest is subject to approval as to form by Disciplinary Counsel and to substantive approval by the SPRB. The Chairperson of the SPRB approved this plea on March 22, 2000. The Plea of No Contest shall be submitted to the Disciplinary Board for review by the State Chairperson and the Regional Chairperson pursuant to BR 3.6(e), and if approved, shall be effective immediately upon approval.

EXECUTED this 28th day of April 2000.

/s/ William Cohnstaedt
William Cohnstaedt, Accused

EXECUTED this 28th day of April 2000.

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. 99-141
	)	
OSCAR R. NEALY,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C) and DR 7-104(A)(1). Stipulation for discipline. Public reprimand.
Effective Date of Order:	May 9, 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 approved and the Accused shall be publicly reprimanded for violation of DR 5-105(C) and DR 7-104(A)(1).

DATED this 9th day of May 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Oscar R. Nealy, 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, Oscar R. Nealy, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1968, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

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

4.

On November 20, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(C) and DR 7-104(A)(1) 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 January 29, 1999, Claudia H. Pratt (hereinafter "Pratt") retained attorney Robert Bain (hereinafter "Bain") to represent her in a matter involving grandparent visitation with her granddaughters.

6.

Pratt's daughter (hereinafter "Venus") retained the Accused to represent her in the visitation action. At all times material hereto, the Accused was aware that Pratt was represented by Bain. On April 8, 1999, Nealy sent a letter directly to Pratt with a copy to Bain. (Exhibit 1, attached hereto.) At no time did the Accused have Bain's permission to communicate directly with Pratt nor was he authorized by law to do so.

7.

Prior to being retained by Venus, the Accused had represented Pratt's husband (hereinafter "Harold") in various litigation, including a defense of a charge of sex abuse of Harold's daughter, Diane Pratt, in 1978. Venus informed the Accused he did not want her daughters to have contact with Harold. The former representation of Harold provided the Accused with confidences and secrets the use of which

would, or would likely, inflict injury or damage upon Harold in the course of the representation of Venus. Before undertaking the representation of Venus, the Accused did not get the consent of Harold and Venus after full disclosure.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 7-104(A)(1) by communicating directly with a represented party. The Accused also admits that by having obtained confidences and secrets during the prior representation of Harold, the use of which would, or would likely, inflict injury upon Harold and by failing to obtain the consent of his current and former client after full disclosure before undertaking representation of Venus, he violated DR 5-105(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 system to refrain from improper communications with represented persons. *Standards,* § 6.3. By engaging in a conflict of interest as described above, the Accused violated his duty of loyalty to his current and former client. *Standards,* § 4.3.

B. *Mental State.* The Accused was negligent in failing to determine the existence of the prior representation of Harold and whether there was a current or former client conflict of interest. The Accused was also negligent in contacting a represented party. *Standards,* p. 7.

C. *Injury.* There appears to be little or no injury caused by the letter to Pratt as Bain considered it an oversight and it did not occur again. There also appears to be little or no injury to any party because of the conflict of interest. As soon as the prior representation of Harold was brought to the Accused's attention, he withdrew from representation of Venus. *Standards,* p. 7.

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

1. The Accused has a prior disciplinary record. He was admonished in 1972, and he received admonitions in 1983 and 1984 for neglect of legal matters. *Standards,* § 9.22(a); and

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

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a dishonest or selfish motive. *Standards,* § 9.32(b);

2. Full and free disclosure during the investigation. *Standards,* § 9.32(e); and

3. Remoteness of prior offenses. *Standards,* § 9.32(m).

The *Standards* suggest that 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. *Standards,* § 4.33. The *Standards* suggest that admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client will adversely affect another client, and causes little or no actual or potential injury to a client. *Standards,* § 4.34.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in determining if it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or potential interference with the outcome of the proceeding. *Standards,* § 6.33. The *Standards* provide that admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual injury to a party or the legal proceeding. *Standards,* § 6.34.

10.

Oregon case law is in accord. The Oregon Supreme Court has announced in a number of cases that a communication with a represented party that does not involve dishonesty or a breach of trust and, standing alone, normally warrants only a public reprimand. *In re Lewelling*, 296 Or 702, 678 P2d 1229 (1984). In *In re Mammen*, 9 DB Rptr 203 (1995), the Disciplinary Board accepted a Stipulation for Discipline of a public reprimand for one violation of DR 5-105(C) and two violations of DR 5-105(E). *See also In re Howser*, 329 Or 404, 987 P2d 496 (1999) (a public reprimand was imposed for violation of DR 5-105(C) and improper withdrawal in violation of DR 2-110(B)(2)); *In re Cohen*, 316 Or 657, 664, 853 P2d 286 (1983) (imposing a reprimand in knowing conflict-of-interest case when mitigating factors outweighed aggravating factors).

11.

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) and DR 7-104(A)(1).

12.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and was approved by the State Professional Responsibility

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

EXECUTED this 17th day of April 2000.

/s/ Oscar R. Nealy
Oscar R. Nealy
OSB No. 68115

EXECUTED this 21st day of April 2000.

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. 00-46
	)	
BRAULIO ESCOBAR,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Guy Greco
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	May 18, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline between Braulio Escobar 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 5-101(A) of the Code of Professional Responsibility.

DATED this 18th day of May 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

DATED this 16th date of May 2000.

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Braulio Escobar, 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 September 11, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely and voluntarily, 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 April 15, 2000, the State Professional Responsibility Board directed that a formal disciplinary proceeding be filed against the Accused for alleged violation of DR 5-101(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 and Violations

5.

The Accused was appointed to represent a client on various criminal charges pending in the Circuit Court. Shortly thereafter, the client was cited for additional criminal charges. The Accused was also appointed on these cases. The court revoked the client's release. The client was taken into custody. The client was also under the supervision of the Division of Corrections in another state for a controlled substance conviction. The other state moved to revoke the client's probation. The District Attorney's Office filed a fugitive complaint, which commenced an extradition proceeding against the client. The Accused was also appointed to represent the client on that matter.

6.

During the course of the representation and while the client was incarcerated, the Accused engaged in conversations with the client that were sexually explicit in

content. The discussions focused on sex between inmates while incarcerated, the client's prior sexual behavior while in prison, and the possibility of future intimate contact between the client and the Accused. There was no physical contact between the Accused and the client. During the representation, the Accused also provided funds for the client's jail account so that the client would have funds available for jail commissary during the holidays.

7.

The Accused stipulates that he had a personal interest in the client to an extent that it may have affected the exercise of his professional judgment on behalf of the client, which required that he obtain the client's consent to the further representation after full disclosure. The Accused did not advise the client that he could continue the representation only with consent after full disclosure, or that the client should seek independent legal advice to determine whether his consent should be given.

8.

The Accused admits that the aforesaid conduct constitutes a lawyer self-interest conflict in violation of DR 5-101(A) of the Code of Professional Responsibility.

Sanction

9.

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

A. *Duty Violated.* In violating DR 5-101(A), the Accused violated his duty to his client to avoid conflicts of interest. *Standards*, § 4.3.

B. *Mental State.* The Accused's conduct was negligent. "Negligence" is the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused failed to recognize that his personal interest in the client may conflict with his professional duties to his client.

C. *Injury.* The Accused's professional judgment on the client's behalf does not appear to actually have been compromised. However, there was the potential that the Accused would act in his own interest to the detriment of the client.

D. *Aggravating Factors.* "Aggravating factors" include:

1. The Accused has a prior record of discipline, consisting of a letter of admonition in 1987. *Standards,* § 9.22(a).

2. The Accused's conduct demonstrates a selfish motive. *Standards,* § 9.22 (b).

3. The Accused has substantial experience in the practice of law, having been admitted to practice in 1978. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused displayed a cooperative attitude in the investigation of the complaint and in resolving this proceeding. *Standards*, § 9.32(e).

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

10.

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. Greater sanctions have been imposed in self-interest conflict-of-interest cases involving sexual relationships between lawyers and their clients. *See, e.g*., *In re Hassenstab,* 325 Or 166, 934 P2d 1110 (1997); *In re Wolf,* 312 Or 655, 826 P2d 628 (1992); *In re Ofelt,* 1 DB Rptr 22 (1985). However, the facts in these cases are substantially more aggravated.

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of DR 5-101(A) of the Code of Professional Responsibility.

12.

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

DATED this 5th day of May 2000.

EXECUTED this 5th day of May 2000.

/s/ Braulio Escobar
Braulio Escobar
OSB No. 78192

EXECUTED this 11th day of May 2000.

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. 99-79
	)	
DANIEL SIMCOE,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	William V. Deatherage, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 7-104(A)(2) and DR 9-101(C)(4). Stipulation for discipline. Public reprimand.
Effective Date of Order:	May 23, 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 terms of the stipulation between the parties are approved. The Accused is publicly reprimanded for violation of DR 7-104(A)(2) and DR 9-101(C)(4).

DATED this 23rd day of May 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Daniel Simcoe, 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, Daniel Simcoe, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 13, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

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

4.

On January 15, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 7-104(A)(2) and DR 9-101(C)(4) 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 the owner of a dance studio ("the client"). The Accused's son took lessons from the client's studio in exchange for the Accused's legal services. A dispute arose in the dance studio between the client and a choreographer who worked for her. The latter was fired and threatened to set up a competing business. Concerned about competition, the client drafted contracts to be signed by her student dance teachers that included noncompetition clauses. The father of one of these student teachers was concerned about the implications of the noncompetition clause and called the Accused to ask whether the clause was legal. The father advised the Accused that he had told his daughter she would not sign the contract. The Accused informed the father that he represented the client and could not say anything about the contract itself. However, the Accused then informed the father that any contract signed by a minor is voidable.

6.

The father's interests were, or had a reasonable possibility of being, in conflict with the interests of the Accused's client. The Accused's statement about the voidability of contracts signed by minors constituted advice to an unrepresented person whose interests were, or had a reasonable possibility of being, in conflict with the interests of the client.

7.

The Accused's representation of the client terminated in December 1997 or early 1998. In April 1998, the client asked the Accused to return unexecuted wills he had prepared for her and her husband. The Accused failed to do so promptly.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 7-104(A)(2) and DR 9-101(C)(4).

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 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 a duty owed to his client to properly handle her property. *Standards,* § 4.1. He also violated a duty to his client to refrain from situations involving conflicts of interest. *Standards,* § 4.3.

B. *Mental State.* The Accused's mental state was negligent, in that he failed 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 have exercised under the circumstances. *See Standards,* p. 17.

C. *Injury.* The client was potentially injured when the Accused gave legal advice to someone whose interests were adverse to her own. She was also inconvenienced by the Accused's failure to turn over her documents promptly.

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. Absence of a prior disciplinary record (*Standards,* § 9.32(a));

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

3. Cooperative attitude toward the disciplinary process (*Standards,* § 9.32(e)).

10.

In the following cases, attorneys were publicly reprimanded for failing to return client files promptly: *In re Brownlee,* 9 DB Rptr 85 (1995); *In re Melkonian,* 12 DB Rptr 224 (1998).

11.

There is very little case law applying DR 7-104(A)(2). In *In re Jeffery,* 321 Or 360, 898 P2d 752 (1995), an attorney who violated this rule by giving legal advice to his client's girlfriend (who was also a criminal informant against his client) was held to violate DR 7-104(A)(2). However, Jeffery was also charged with (and found to have violated) several other disciplinary rules, including multiple client conflicts of interest, conflicts of interest involving his own self-interest, and conduct prejudicial to the administration of justice. Jeffery was suspended for nine months.

DR 7-104(A)(2) is analogous, however, to the ethical rule prohibiting multiple client conflicts of interest, in that it is meant to ensure undivided loyalty to the client. Cases involving violations of DR 5-105(E) that resulted in public reprimands include the following: *In re Cohen*, 316 Or 657, 853 P2d 286 (1993); *In re Taub*, 7 DB Rptr 77 (1993); and *In re Vaughn*, 12 DB Rptr 179 (1998).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 7-104(A)(2) and DR 9-101(C)(4).

13.

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

EXECUTED this 11th day of May 2000.

/s/ Daniel Simcoe
Daniel Simcoe
OSB No. 81024

EXECUTED this 15th day of May 2000.

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 Nos. 97-220, 98-112
	)	
JAN PERKINS,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 2-110(A)(2), DR 6-101(B), DR 3-101(B), and ORS 9.160. Stipulation for discipline. 60-day suspension.
Effective Date of Order:	June 29, 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 approved and the Accused is suspended for 60 days, effective immediately upon approval of the Stipulation for violation of DR 2-110(A)(2), DR 6-101(B), DR 3-101(B), and ORS 9.160.

DATED this 29th day of June 2000.

/s Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Jan Perkins, 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, Jan Perkins, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business while in Oregon in Lane County, Oregon. The Accused now resides out of state.

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 10, 2000, a Formal Complaint was filed against the Accused after authorization of the State Professional Responsibility Board alleging violations of DR 2-110(A)(2), DR 6-101(B), and DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160. The parties intend this stipulation to set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

The Laurila Matter

Case No. 97-220

Facts

5.

On or about January 7, 1997, Lois Laurila ("Laurila") consulted the Accused to help her resolve complaints she had against her former and current landlords. Following the meeting, the Accused sent letters to both landlords describing Laurila's concerns. The current landlord called the Accused to advise him of the landlord's position.

6.

In response to the telephone call, the Accused made an appointment with Laurila to visit her current apartment to determine if her complaints were well-founded. The Accused did not keep the appointment and did not advise Laurila that he would not attend the meeting.

7.

After the Accused failed to meet with Laurila, she contacted his office on numerous occasions and left messages for the Accused to call to reschedule the meeting to resolve the dispute. The Accused did not return the telephone calls.

8.

After the initial telephone call with the current landlord, the Accused failed and neglected to take any action on behalf of Laurila, failed to notify her of his intention to withdraw as her lawyer, and failed to take reasonable steps to avoid foreseeable prejudice to Laurila's rights.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 2-110(A)(2) and DR 6-101(B) of the Code of Professional Responsibility.

The Meyers Matter

Case No. 98-112

Facts

10.

Between October 10, 1997, and January 14, 1998, the Accused was suspended from the practice of law for failing to make his Professional Liability Fund payment.

11.

During the period of suspension, the Accused met with his client, Thomas Meyers ("Meyers"), to discuss Meyers's dissolution proceeding. During this meeting, the Accused advised Meyers he was suspended from the practice of law for failure to pay his Professional Liability Fund assessment, but advised Meyers how to complete a Uniform Support Affidavit. After Meyers completed the affidavit, but during his period of suspension, the Accused forwarded a copy of the affidavit to opposing counsel, along with an undated memorandum in which case status and settlement were discussed.

Violations

12.

The Accused admits that, by engaging in the conduct described above, he engaged in the unlawful practice of law in violation of DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160.

Sanction

13.

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 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.* By neglecting a legal matter and improperly withdrawing from representation, the Accused violated his duty to his client. *Standards,* § 4.0. By engaging in the unlawful practice of law, the Accused violated his duty to the profession. *Standards,* § 7.0.

B. *Mental State.* In neglecting the Laurila matter and in improperly withdrawing from representation, the Accused acted with knowledge, that is, the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. In preparing the uniform support affidavit in the Meyers matter, the Accused also acted with knowledge that he was suspended.

C. *Injury.* Injury can be actual or potential. In the Laurila matter, there was some injury in that the client was required to obtain the services of another lawyer to complete the matter the Accused had accepted and resolution of the dispute was delayed for a short period of time. In the Meyers matter, there was serious potential injury in that the Accused had no professional liability insurance coverage during his period of suspension and any potential claim for malpractice would have been denied by the PLF.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a 1995 admonition for neglect of a legal matter. *Standards,* § 9.22(a);

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

E. *Mitigating Factors.* Mitigating factors include:

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

2. During the time of the misconduct, the Accused was experiencing personal and emotional problems. *Standards,* § 9.32(c); and

3. The Accused fully cooperated with the investigation of his conduct. *Standards,* § 9.32(e).

14.

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. 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. *Standards,* § 7.2.

15.

Oregon case law is in accord. In *In re Fitting*, 304 Or 143, 742 P2d 609 (1987), the Oregon Supreme Court concluded that the negligent handling of a legal matter, resulting in court sanctions against the accused and his client, while the accused was financially suspended from the practice of law, warranted a 90-day suspension. However, the court stayed the suspension subject to compliance with the provisions of a two-year probationary period. The evidence also showed that the attorney had emotional difficulties while handling the case.

In *In re Butler*, SC S40533 (1993), the Oregon Supreme Court approved a Stipulation for Discipline suspending the accused lawyer from the practice of law for 90 days for, among other violations, practicing law in a jurisdiction where he was not licensed.

In *In re Bourcier*, 7 DB Rptr 115 (1993), the Bar and the accused entered into a Stipulation for Discipline where the facts showed that the accused had been appointed to represent a client in an appeal of a criminal conviction. The accused concluded that the appeal had no merit, took no further action, and allowed the case to be dismissed. The accused did not respond to inquiries from the court or his client about the status of the appeal and did not familiarize himself with applicable law which required him to file a brief or an applicable letter or withdraw from representing the client. The accused stipulated that in engaging in the conduct, he violated DR 6-101(B) (neglect of a legal matter); DR 7-101(A)(1) (intentionally failed to seek the lawful objectives of a client); and DR 2-110(A)(2) (improper withdrawal from employment). Under these circumstances, the accused was suspended from the practice of law for 60 days.

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 2-110(A)(2), DR 6-101(B), DR 3-101(B), and ORS 9.160, the sanction to be effective immediately upon approval of this Stipulation.

17.

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

EXECUTED this 23rd day of June 2000.

/s/ Jan Perkins
Jan Perkins
OSB No. 74256

EXECUTED this 27th day of June 2000.

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. 99-138
	)	
JOSEPH A. BERG,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(E). Stipulation for discipline. Public reprimand.
Effective Date of Order:	July 13, 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 approved and the Accused is publicly reprimanded for violation of DR 5-105(E).

DATED this 13th day of July 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Joseph A. Berg, 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, Joseph A. Berg, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 16, 1960, 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 April 15, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of 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 1997, the Accused was corporate counsel for Territorial Rock Products, Inc. (hereinafter "Territorial"), and its owner, Leonard Moug (hereinafter "Moug"). In 1997, the Accused also represented Fay Rookard (hereinafter "Rookard") in various ongoing matters.

6.

At all relevant times, Rookard owned logging equipment that had been marooned in a remote area by the collapse of the roads leading to the area.

7.

With Rookard's permission, the Accused contacted Moug to arrange for Moug and Territorial to sell and move the logging equipment. Thereafter, the Accused represented both Rookard and Moug, in his individual and corporate capacities, in the negotiation of an oral contract for these services. The interests of Rookard, as purchaser of the services, and Moug and Territorial, as seller, were likely to be adverse.

8.

To the extent that consent after full disclosure may have been available to the Accused to remedy the conflict of interest between Moug and Territorial and Rookard, the Accused did not obtain the consent of both to the multiple representation after full disclosure.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-105(E) of the Code of Professional Responsibility.

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, they 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 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 he had a conflict of interest and whether his dual representation would adversely affect either client or cause actual or potential injury to the clients.

C. *Injury.* Moug and Rookard were actually injured by the Accused's dual representation in that their agreement was not reduced to writing, and a dispute arose concerning the terms of the contract. Both Moug and Rookard were required to retain separate counsel to resolve this dispute.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1960. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

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

11.

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 Kelly,* 12 DB Rptr 58 (1998) (public reprimand for a single violation of DR 5-105(C) and (E)); *In re Bryant,* 12 DB Rptr 69 (1998) (public reprimand for violation of DR 5-105(E)) .

12.

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).

13.

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

EXECUTED this 26th day of June 2000.

/s/ Joseph A. Berg
Joseph A. Berg
OSB No. 60010

EXECUTED this 29th day of June 2000.

OREGON STATE BAR

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

Cite as 330 Or 402 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
LeANNE L. KOLIHA,	)
	)
Accused.	)

(OSB 96-179; SC S45209)

En Banc

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

Submitted on the record April 14, 2000.

Martha M. Hicks, Assistant Disciplinary Counsel, Lake Oswego, for the Oregon State Bar.

No appearance contra.

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating ORS 9.160, DR 1-102(A)(3), DR 1-102(A)(4), DR 3-101(B), and DR 1-103(C), based on her representation of a client in an Oregon circuit court proceeding while not an active member of the Oregon State Bar and her failure to cooperate with the Bar's disciplinary investigation. The Accused was served personally with a copy of the complaint, but failed to file an answer or make an appearance. As a result, a trial panel of the Disciplinary Board entered an order finding the Accused in default. Thereafter, the trial panel deemed the allegations in the Bar's complaint to be true and found the Accused guilty of the alleged violations. The trial panel imposed a one-year suspension. *Held:* The Accused is guilty of violating ORS 9.160, DR 1-102(A)(3), DR 1-102(A)(4), DR 3-101(B), and DR 1-103(C). The Accused is suspended from the practice of law for a period of one year.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-131
	)	
DAVID A. DORSEY,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Steven L. Wilgers, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and DR 7-104(A)(1). Stipulation for discipline. Public reprimand.
Effective Date of Order:	July 27, 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 approved and the Accused is publicly reprimanded for violation of DR 1-102(A)(3) and DR 7-104(A)(1) of the Code of Professional Responsibility.

DATED this 27th day of July 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

David A. Dorsey, 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. Dorsey, 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 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 January 10, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of DR 1-102(A)(3) and DR 7-104(A)(1). 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 1996, the Accused represented a respondent in connection with modifications to and interpretations of a 1995 dissolution of marriage decree. Petitioner was also represented by a lawyer. In August 1998, the parties resolved all then-pending issues between them.

6.

On January 26, 1999, petitioner wrote a letter to respondent regarding the distribution of severance pay he was to receive in a few days. In that letter, he offered to immediately pay respondent the portion of his severance pay which she was entitled to receive under the 1995 decree, in exchange for her agreeing to eliminate his support obligations to her. On January 29, 1999, the Accused communicated with the petitioner regarding the letter at a time he knew the petitioner was represented by a lawyer on the subject of the severance pay or on

directly related subjects because his file showed that petitioner was still represented by a lawyer.

7.

On February 2, 1999, a hearing was held regarding distribution of the severance pay and on February 12, 1999, an order and judgment regarding that issue was signed. The order did not state the amount respondent was to receive, but did award to her a percentage of the net amount paid to petitioner under the severance plan.

8.

On February 15, 1999, petitioner's lawyer sent the Accused a check written on her trust account in the amount of $5,268.03. The accompanying letter authorized the Accused to negotiate the check only upon execution and prompt return of an enclosed full satisfaction.

9.

On February 18, 1999, the Accused sent petitioner's lawyer a copy of a satisfaction signed by respondent. In an accompanying letter, the Accused advised that he would send the original satisfaction as soon as the check sent by petitioner's lawyer cleared the bank. The signed satisfaction was not the one sent by petitioner's lawyer and did not state that it was a full satisfaction, but did acknowledge that the $5,268.03 sent satisfied the petitioner's obligation under the applicable provisions of the parties' dissolution decree.

10.

On February 19, 1999, petitioner's lawyer sent a letter, by facsimile, to the Accused regarding his failure to comply with her directions concerning the full satisfaction. She demanded that, by the end of the day, the Accused send to her, by facsimile, a signed copy of the full satisfaction she had sent with a cover letter that the original was in the mail. Later that day the Accused sent a note, by facsimile, to petitioner's lawyer stating that there was no dispute that respondent was owed at least the amount that had been sent by petitioner, that respondent had a right to appeal the February 12, 1999, order, and that until the judgment was final, he could not provide a full satisfaction.

11.

On March 22, 1999, the Accused sent a signed full satisfaction to petitioner's lawyer.

Violations

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3) and DR 7-104(A)(1) of the Code of Professional Responsibility.

Sanction

13.

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 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 personal integrity. *Standards,* § 5.1. The Accused also violated his duty to avoid improper communications with individuals in the legal system. *Standards,* § 6.3.

B. *Mental State.* The Accused acted negligently in contacting a represented party. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7. The Accused acted knowingly in failing to comply with the instructions of petitioner's lawyer concerning the satisfaction. "Knowledge" is defined in the *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. *Standards,* p. 7.

C. *Injury.* Injury may be either actual or potential. In this case, there was potential injury to petitioner, in that respondent might have decided to appeal the order. Under those circumstances and while the appeal was pending, petitioner would have paid the judgment but would not have received a full satisfaction. In fact, no injury occurred because the Accused sent petitioner's lawyer a signed full satisfaction within approximately one month.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary offense. *Standards,* § 9.22(a). The Accused was admonished in 1992 for violating DR 6-101(B);

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

3. The Accused has substantial experience in the practice of law, having been admitted to practice in Oregon in 1979. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused did not act with a dishonest or selfish motive but instead acted with a desire to serve his client in difficult and contentious litigation. *Standards*, § 9.32(b);

2. The Accused made full and free disclosure to the Disciplinary Board, and had a cooperative attitude toward the proceeding. *Standards,* § 9.32(e); and

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

14.

The *Standards* provide that reprimand is generally appropriate when a lawyer knowingly engages in noncriminal 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 reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party, or interference or potential interference with the outcome of a legal proceeding. *Standards,* § 6.33.

15.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. *See In re Schenck*, 320 Or 94, 879 P2d 863 (1994); *In re Zumwalt,* 296 Or 631, 678 P2d 1207 (1984); *In re Burrows*, 291 Or 135, 629 P2d 820 (1981); *In re Hostettler*, 291 Or 147, 629 P2d 827 (1981); *In re McCaffrey*, 275 Or 23, 549 P2d 666 (1976).

16.

Other Oregon cases regarding violations of DR 1-102(A)(3) where a lawyer has negotiated a check or taken action without authorization from opposing counsel have resulted in suspensions. *See, e.g., In re Magar,* 312 Or 139, 817 P2d 289 (1991); *In re Porter,* 320 Or 692, 890 P2d 1377 (1995). However, the parties agree that the conduct of the Accused in this case is less aggravated because he immediately disclosed to the opposing attorney that he had deposited the check and provided a signed satisfaction, though different in form, to opposing counsel.

17.

The Accused agrees to accept a public reprimand for the violations 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 SPRB. If approved by the SPRB, the

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

EXECUTED this 19th day of July 2000.

/s/ David A. Dorsey
David A. Dorsey
OSB No. 79210

EXECUTED this 24th day of July 2000.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-170
	)	
LORI S. RUBENSTEIN,	)	
	)	
Accused.	)	

Bar Counsel:	Stephen R. Blixseth, Esq.
Counsel for the Accused:	Eldon F. Caley, Esq.
Disciplinary Board:	Paul E. Meyer, Esq., Chair; Risa L. Hall, Esq.; Linda K. Beard, Public Member
Disposition:	Violation of DR 7-102(A)(7). Public reprimand.
Effective Date of Opinion:	August 3, 2000

MAJORITY OPINION OF THE TRIAL PANEL

Introduction

The Accused is Roseburg attorney Lori S. Rubenstein.

On June 29, 1999, the Oregon State Bar ("Bar") charged the Accused with one violation of DR 7-102(A)(7) (counseling a client in conduct known to be illegal). The charge arises out of advice that the Accused gave to her client, Kathleen Jensen ("Jensen"), concerning what to do with drugs found by Jensen in Jensen's husband's vehicle.

The trial in the matter was held before the trial panel on May 15, 2000, in the Douglas County Courthouse in Roseburg, Oregon. The Bar appeared by Stephen R. Blixseth and Jeffrey D. Sapiro. The Accused appeared personally with her attorney, Eldon F. Caley. The Bar called three witnesses: Jensen; deputy district attorney William Marshall; and attorney Stan LeGore. The Accused called attorney Greg Hazarabedian as a witness. She also testified on her own behalf. The trial panel received the following documentary evidence: Bar Exhibits 1 through 24, 24A, 25 through 27, 27A, and 29 through 34. The Bar did not offer Exhibit 28. The trial panel also received defense Exhibit 101. The trial panel took the offer of defense Exhibit 102 (a fax from the American Bar Association) under advisement and now rejects Exhibit 102 as evidence, pursuant to *In re Leonard*, 308 Or 560, 570, 784 P2d 95 (1989) (holding that oral brief as to why one particular construction of the

disciplinary rule would not be violated by a particular hypothetical set of facts is not admissible as evidence).

Facts

In March 1997, the Accused began to represent Jensen in a contested divorce from her husband, Rodney Jensen ("Rodney"). Jensen and Rodney had a small child, a boy, and Jensen was concerned about Rodney having unsupervised visitation with the child, because she knew that Rodney was using illegal drugs at the time.

While the divorce was pending, Rodney failed to make the payments on his vehicle and Jensen took the vehicle away from Rodney in order to make the payments and prevent the vehicle from being repossessed by the finance company. On or about July 14, 1997, while she was cleaning out Rodney's vehicle, Jensen found a number of syringes (or needles) and a plastic baggie containing a small amount or "residue" of a white powder that Jensen believed was illegal drugs.[1] Jensen referred to the baggie at the time of trial as a "meth baggie" and a "crank baggie."[2] Jensen took the needles and baggie into the house, photographed the needles and threw them away to protect her child from them, and called the Accused to seek her advice as to what should be done with the baggie of drugs. Jensen told the Accused that she believed the baggie contained drugs and that she wished to use the drugs in the visitation litigation against Rodney in order to gain restrictions on Rodney's visitation rights. Even though the Accused never saw the baggie herself, she accepted Jensen's opinion that the baggie contained illegal drugs.

The Accused practices domestic relations law almost exclusively and has no criminal law experience. She knew that possession of a controlled substance without a prescription in Oregon is illegal, but she did not know what to advise Jensen. The Accused told Jensen that she wanted to consult with a criminal defense attorney before she could advise Jensen on the matter. The Accused then called either Tom Bernier or Greg Hazarabedian, both respected Roseburg criminal defense attorneys. At the trial in this matter, Mr. Hazarabedian testified that he could not remember talking to the Accused about the matter in July of 1997. The Bar submitted a written statement by Mr. Bernier (Bar Exhibit 34) that states that he could not remember talking to the Accused about the matter in July of 1997 either. The Bar seems to suggest that the conversation between the Accused and either Mr. Hazarabedian or Mr. Bernier never happened. However, Mr. Bernier was not called to testify at the trial and the exhibit simply says that he "has no recollection of talking" to the

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[1] The deputy district attorney testified at trial that the state crime lab had tested the substance and determined it to be methamphetamine. He also testified that the baggie contained one tenth of a gram, that a user quantity is one quarter of a gram, and that the baggie thus contained "a little bit more than [a] residue [amount]."

[2] Apparently "crank" and methamphetamine are the same substance. Jensen testified at trial that she thought they were "the same thing."

Accused about the matter at the time. Furthermore, Mr. Hazarabedian did not testify at the hearing that he did not talk to the Accused, only that he could not remember doing so. On the other hand, the Accused testified unequivocally that she did, in fact, talk to one of them or the other. Her testimony was believable and we find that she was a credible witness. We find that the Accused did, in fact, seek advice from either Mr. Bernier or Mr. Hazarabedian.

After talking with either Mr. Bernier or Mr. Hazarabedian, the Accused called Jensen back and they engaged in the conversation that constitutes the factual basis for the charge in this case. The Accused presented the following options to Jensen as to what to do with the baggie.

(1) Jensen could destroy it, by flushing the baggie down the toilet, for example. Jensen, however, wished to preserve the evidence to use against Rodney later. Also, Mr. Bernier or Mr. Hazarabedian had told the Accused that destroying the drugs could violate the tampering-with-evidence statute. At trial, Mr. Hazarabedian testified that destroying the drugs could have violated the tampering statute. Similarly, Mr. Bernier's statement (Bar Exhibit 34) says, "destroying the drugs theoretically could have been a problem under the statute prohibiting tampering with evidence and could have been an act of possession itself."

(2) Jensen could call the authorities and report that she had found a baggie of drugs in her husband's vehicle. The degree of risk of arrest or prosecution for drug possession that Jensen would run was the subject of much debate among the witnesses at trial. Mr. Hazarabedian testified that the drug enforcement authority in the county in 1997 was "zealous" or "over-zealous" and that if Jensen were to call the authorities, she would be subjecting herself to the "strong possibility" of arrest. If Jensen were to be arrested, the Accused and Jensen were both very concerned that the local SOSCF office could have taken Jensen's child away from her, which fact would have been difficult to cope with in the pending custody or visitation litigation. Also, Jensen did not want to notify anybody about the drugs, because—for whatever reason—she did not want Rodney to get in trouble.

(3) Jensen could put the drugs in her car and drive them a number of miles to the police and turn them in. If Jensen were to be stopped by a police officer for some reason, however, her possession of the drugs in the vehicle would, in the words of Mr. Hazarabedian, "almost certainly subject [Jensen] to arrest."

(4) Jensen could simply keep the baggie of drugs in a safe place away from her child until such time as she might need it in the visitation litigation.

The Accused knew that the possession of controlled substances without a prescription is illegal under Oregon law (see paragraph 3 of the Accused's *Answer* to the Bar's *Formal Complaint*), but, given the risks to Jensen involved in the other options and given the fact that Jensen wished to be able to use the drugs as evidence in the visitation litigation, the Accused did advise Jensen to "keep" the baggie of drugs and Jensen followed the Accused's advice.

Contrary to the above factual findings, Jensen testified at trial that the Accused had only one conversation with her, not two, that the Accused did not take time to consult with someone else before giving Jensen advice, and that the Accused did not tell Jensen what her options were. However, we have considered the demeanor of the witnesses at trial. Jensen did not seem sure of herself and was hesitant in answering many questions, as if she was having a difficult time remembering exactly what had happened when. On the other hand, the Accused's testimony was convincing. Thus, we do not adopt Jensen's recollection of the sequence of events.

The divorce and visitation litigation was resolved two months later, in September 1997. The drug evidence was not needed at the trial, Jensen did not take the baggie to court, and thereafter "basically forgot" about the baggie that she had hidden in the kitchen in a cupboard under a box of cereal.

Jensen and the Accused did not discuss the baggie further, until the baggie was found by the police when they executed a search warrant a few months later.

Analysis

The Bar has charged Accused with one violation of DR 7-102(A)(7). The rule provides, "In the lawyer's representation of a client or in representing the lawyer's own interests, a lawyer shall not: . . . (7) Counsel or assist the lawyer's client in conduct that the lawyer knows to be illegal or fraudulent."

ORS 475.992(4) provides, in relevant part, "It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription."

The parties present conflicting arguments as to the continuing nature of the crime. That is, the Bar argues that possession of a controlled substance ("PCS") is continuous in nature and that, by counseling Jensen to retain possession of the drugs, the Accused advised Jensen to violate the criminal statute. The Accused argues that PCS is not a continuous offense, that Jensen already was in violation of the law before she called the Accused for advice, and that, once in possession, the Accused's advice to Jensen to simply keep possession of the drugs was not counseling Jensen to violate the criminal statute.

We believe that the court has resolved this issue in favor of the Bar's position. *State v. Boyd*, 271 Or 558, 570, 533 P2d 795 (1975), states that "the criminal code treats the fact of possession as a criminal act of a continuing nature."

Jensen knew that the baggie contained illegal drugs. The Accused believed Jensen's opinion that the baggie contained illegal drugs.[3] The Accused counseled Jensen to keep possession of the baggie. Jensen followed her lawyer's advice.

Because we find that PCS is continuous in nature, we hold that the Accused's advice to keep possession of the baggie constitutes counsel to the client to engage

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[3] On direct examination, the Accused testified at trial as follows:

> Question: "Now, we have the phone ringing at your desk in your office in the Pacific Building and you pick it up and it's Kathy Jensen. . . . As best you can recount it, tell us what she said to you."
>
> Answer: "Okay. She and her boyfriend, Jeff Stookey, were cleaning out the car that she had just taken back, it was a truck that she had just had taken back from her ex-husband. . . . They were cleaning out the car, and in the glove box they found a baggie with heroin or crank, and she had also found needles in the car. . . . So then the question was, what to do with the baggie. What to do with the— I was—it was heroin. I mean that was the idea. Heroin or crank. And I'm not sure if they're the same thing or different."
>
> Question: "Had you pictured the quantity in the baggie by that time?"
>
> Answer: "Yeah. My mind—until today, until today, it was a Zip Lock baggie with like this much white powder in it. That's what I thought we were talking about."
>
> Question: "What did you learn for the first time today?"
>
> Answer: "She said empty. Or resin only."
>
> Question: "Residue?"
>
> Answer: "And it was like a different shaped baggie than I had pictured."
>
> Question: "So I think it follows from that, and I want this absolutely certain in the record, you never saw the baggie[ ], did you?"
>
> Answer: "No."
>
> Question: "[It] never came even remotely close to being in your presence?"
>
> Answer: "No."
>
> Question: "Or your possession?"
>
> Answer: "Right." (Tr. 151–153.)

When the Accused stated that she believed the baggie to contain "like this much white powder," she candidly held up her hands to demonstrate that the baggie was approximately one-third full.

We find this statement significant, because it demonstrates that the Accused believed—at the time she gave advice to Jensen—that Jensen was in possession *not* of a residue of drugs, but was in possession of a substantial quantity of drugs. Notwithstanding the dissenting opinion, the majority of the trial panel finds that counseling a client to retain possession of that quantity of methamphetamine compels the trial panel to take some kind of action.

in conduct that the Accused knew to be illegal. The Accused violated the disciplinary rule.

Affirmative Defenses

The Accused's answer raises a number of affirmative defenses. The Bar's trial memorandum responds to those defenses. At the time of trial in this matter, counsel for the Accused declined the opportunity to argue the defenses and has presented the trial panel with no authority or argument in support of the defenses. The trial panel rejects all affirmative defenses for the reasons articulated by the Bar in its trial memorandum.

Sanction

Facts

The facts relevant to the sanction constitute something of a complicated story. In January 1998—four months after Jensen's divorce was over—, Jensen was living with Jeff Stookey ("Stookey"). They shared Jensen's house with her child. Stookey himself was, at that time, involved in a contentious divorce with his own wife, involving custody or visitation of their child, a girl. Stookey's wife made sex abuse allegations to the police about Stookey and the daughter. The police obtained a warrant to search Jensen and Stookey's house for evidence of the alleged sex abuse.

On January 6, 1998, the police executed the warrant. Jensen, Stookey, and Jensen's child were home at the time. The police found and seized what they considered to be possible evidence of sex abuse or other criminal activity, including a bowl containing a small amount of marijuana which Jensen testified belonged to Stookey, a marijuana pipe that Jensen testified belonged to Stookey, cameras and film of various sorts, and the baggie which Jensen attempted to explain to the police was left over from her divorce and which her divorce attorney had told her to keep. The police field-tested the baggie at the scene and determined that it contained methamphetamine.

The police report states that Jensen was arrested for endangering the welfare of a minor and possession of a controlled substance, to wit: "meth" (Bar Exhibit 4). She was fingerprinted and jailed. Thereafter, a story about the arrest appeared in a local newspaper (Bar Exhibit No. 21). Jensen lost her job (Bar Exhibits 31 and 33), although it is not clear to the trial panel that that was a result of the arrest. That is, Jensen testified that her employer told her that they were going to "let her go" because "of what was printed in the paper," although the exhibits indicate that she was terminated because of lack of work. Jensen also testified that she applied for unemployment benefits "because of lack of work."

Jensen was prosecuted by district attorney information for endangering the welfare of a minor, under ORS 163.575, based on her possession of the methamphetamine in the baggie (Bar Exhibit 2). Jensen retained Stan LeGore to represent her in the criminal matter and paid him $1,000 for his services (Bar

Exhibit 26). In an affidavit that the Accused prepared to assist Jensen and Mr. LeGore in defense of the criminal charge, the Accused stated, "Since it was obvious that the drug usage may be an issue in visitation, I suggested that Kathy [Jensen] hold on to the baggie in case we needed it for evidence" (Bar Exhibit 5).

The district attorney was persuaded to amend the information to charge Jensen with endangering the welfare of a minor, based on possession of the marijuana (Bar Exhibit 3). Jensen pleaded no contest to the amended endangering charge, was sentenced to bench probation (Bar Exhibits 24, 24A, and 25) which she completed, and the criminal case against her was then dismissed.

There is clearly no causal connection between the advice that the Accused gave Jensen and many of the unfortunate things that happened to her. No one suggests, for example, that the Accused is responsible for Stookey's wife making sex abuse allegations to the police about him, or for the police obtaining a warrant to search the house, or for the police finding the bowl of marijuana, the marijuana pipe, or the cameras and film.

The evidence is not clear and convincing that the Accused was responsible for the story in the newspaper or for Jensen's loss of her job.

However, the trial panel finds by clear and convincing evidence that the Accused's advice to Jensen is the reason why the police found the baggie, and why Jensen was arrested for and charged with endangering the welfare of a minor based on possession of methamphetamine.

Analysis

Under BR 6.1, the sanctions available are limited to public reprimand, suspension, and disbarment. In its trial memorandum, the Bar argued for either reprimand "at a minimum" or "a short-term suspension." During closing argument at trial, the Bar argued only for reprimand.

In applying an appropriate sanction, we are to look to the ABA *Standards for Imposing Lawyer Sanctions* (1991 Edition) ("Standards") for guidance. We are to consider the ethical duty violated; the lawyer's mental state; the extent of actual or potential injury; and the existence of aggravating or mitigating factors. *Standards,* § 3.0.

Duty: The Bar argues that the Accused violated her duty to her client and to the legal system, but cites us to no specific provision of the *Standards* to justify the argument.

Mental State: The Accused acted with knowledge that Jensen would violate the PCS statute.

Injury: Jensen was actually injured by following the Accused's advice, for she was arrested for and charged with endangering the welfare of a minor based on possession of methamphetamine.

Aggravating and Mitigating Factors: The Bar argues that the Accused's situation is aggravated by the fact that she has refused to acknowledge the wrongful nature of her conduct. *Standards*, § 9.22(g). However, the Accused made a difficult call in a difficult situation. Under the circumstance, we do not find this to be an aggravating factor.

The Bar argues that the case is aggravated by the fact that Jensen was a vulnerable victim. *Standards*, § 9.22(h). We are not convinced that she was.

The Bar finally argues that the case is aggravated by the fact that the Accused had substantial experience in the practice of law. *Standards*, § 9.22(i). However, the Accused had no criminal law experience. We do not find this to be an aggravating factor.

We accept the Bar's concession that mitigating factors include the lack of any prior disciplinary record (*Standards*, § 9.32(a)), lack of a dishonest or selfish motive (*Standards*, § 9.32(b)), and full disclosure and cooperation (*Standards*, § 9.32(e)).

We agree with the Bar that this case does not fit easily into any standard in the *Standards.* However, because we understand the Bar to really be asking simply for reprimand, we hold that reprimand is appropriate under the circumstances, even though we are not bound by the Bar's recommendation.

Disposition

It is the decision of a majority of the trial panel that the Accused be reprimanded.

DATED this 28th day of June 2000.

/s/ Risa L. Hall
Risa L. Hall
Panel Member

/s/ Linda K. Beard
Linda K. Beard
Public Member

OPINION OF DISSENTING MEMBER

This case is a prime example of the perfectly correct and perfectly unhelpful comment in the American Bar Association's Model Rules of Professional Conduct (1981, Proposed Final Draft) which—in commentary on rule 1.2(d)[4]—states, "When

[4] Model Rule 1.2(d) reads, in relevant part, "A lawyer shall not counsel or assist a client in conduct that the lawyer knows or reasonably should know is criminal or fraudulent."

the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate."

I agree with the majority's articulation of the facts and its disposition of the affirmative defenses. I also agree that the Accused counseled Jensen to violate the law.

I am extremely bothered, however, by the Hobson's choice with which the Accused was confronted. As the Accused's counsel stated at trial,

> [T]his case illustrates the fact that the practicing lawyer does not work in a candy store, that . . . problems must be fielded and advice given under most unusual circumstances.

Because there is no advice that the Accused could have given Jensen which would not have been wrong, I am hesitant to discipline a lawyer for choosing what seemed to the lawyer to be the least bad option.

The parties seem to agree that the Accused had to give Jensen some kind of advice; neither party argues that it would have been appropriate for the Accused to simply tell Jensen that she would have to figure the matter out on her own. Furthermore, telling Jensen to call a criminal defense lawyer, like Mr. Bernier or Mr. Hazarabedian, would have simply put that lawyer in the same predicament that the Accused faced.

The Bar argued at closing argument:

> The alternative that I would do is photograph the baggie and toss it. Nobody can prove what's in the baggie, there was no pending prosecution, the risk of anybody being indicted for tampering with evidence is so ephemeral as to be nonexistent.

However, the Accused was told by the criminal defense attorney with whom she consulted at the time that destroying the baggie could very well be a violation of the tampering statute. Furthermore, the Bar's own criminal defense expert says in his statement (Bar Exhibit 34) that "destroying the drugs theoretically could have been a problem under the statute prohibiting tampering with evidence and could have been an act of possession itself." Thus, counseling Jensen to destroy the baggie was not a good option.

I agree with the majority that counseling Jensen to retain the baggie was not a good option either. I also agree with the Accused that counseling Jensen to call the police or to turn the drugs in to the police would have exposed Jensen to a serious risk of arrest. With no good answer available, I would analyze this case in terms of choice-of-evils doctrine.

The Bar argues in its posttrial brief,

> If the Trial Panel believes that some account should be taken of the limited options the Accused saw available in this case, that can be done in the disciplinary sanction selected by the panel. It should not excuse a disciplinary rule violation.

However, in the one case in which the court discussed choice-of-evils doctrine in the context of attorney discipline—*In re Weidner*, 320 Or 336, 883 P2d 1293 (1994)—the court considered the doctrine in terms of the disciplinary rule violation. I would tend to do the same and would hold that the choice of evils *does* excuse the disciplinary rule violation in the present case.

I understand that the choice-of-evils doctrine has been memorialized in Oregon by the legislature as a statutory defense to a criminal prosecution, ORS 161.200, and that attorney disciplinary cases are not criminal in nature. *In re Barber*, 322 Or 194, 206, 904 P2d 920 (1995) ("Lawyer disciplinary proceedings are *sui generis*, being neither civil nor criminal in nature"). However, *Weidner* does not hold that the doctrine is irrelevant in attorney disciplinary cases. It simply says, "Even assuming the availability of that defense, it would not be supportable on the present record" (320 Or at 343–344).

I would find that the doctrine is applicable to attorney disciplinary cases in appropriate circumstances, like the present, where the client had already gotten herself into an unsolvable predicament before she called her lawyer. I would hold that the choice of evils *does* excuse the disciplinary rule violation and I thus would not reach the question of an appropriate sanction.

I dissent.

DATED this 29th day of June 2000.

/s/ Paul E. Meyer
Paul E. Meyer
Trial Panel Chair

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-142
	)	
LORRAINE D. HOFFMAN,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Christopher R. Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(B)(1). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	August 11, 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 approved and the Accused is suspended for 30 days, effective August 11, 2000, for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(B)(1).

DATED this 4th day of August 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Lorraine D. Hoffman, 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, Lorraine D. Hoffman, 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. At all relevant times herein, the Accused had her office and place of business in Yamhill 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, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(B)(2), and DR 7-102(B)(1) 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.

Beginning in May 1995 and at all relevant times thereafter, the Accused was employed as an associate attorney by Stan Bunn and Associates, P.C. (hereinafter "the firm"). Beginning before September 30, 1996, the firm represented Klau-Med, Inc. in corporate matters and Alex Wright, the former president of Klau-Med, on other matters.

6.

On or about September 30, 1996, Klau-Med was involved in litigation filed in the circuit court of Washington County, Klau-Med, Inc. v. Body Works Medical, Inc. et al, Case No C960175CZ. On September 30, 1996, Klau-Med, through one of its officers, Kimberly Wright (hereinafter "Wright") terminated the services of the lawyer who represented Klau-Med in this litigation. The services of this lawyer were

terminated because the lawyer had in good faith represented to the court that Kimberly Wright's husband, Alex, resided in Florida, but that he would make Alex Wright available for deposition. At this time, Alex Wright was incarcerated in the federal penitentiary in Sheridan, Oregon, and Kimberly Wright did not want the opposing parties in the litigation to know this.

7.

On or about September 30, 1996, the firm, through the Accused, agreed to monitor the above-referenced litigation while Klau-Med found other counsel to represent it. Klau-Med was unable to find other counsel, and on October 30, 1996, it retained the firm to represent it in the litigation. Klau-Med and Alex Wright instructed the Accused not to divulge Alex Wright's incarceration to the defendants in the litigation.

8.

When the firm undertook to represent Klau-Med, trial was set for December 12, 1996, and the court had ordered the parties to arrange for Alex Wright's deposition and a date for the deposition had been set. On October 31, 1996, the Accused wrote to opposing counsel and represented that the scheduled deposition date was inconvenient for her and for Alex Wright and knowingly perpetuated the false impression created by Klau-Med's former counsel that Mr. Wright resided in another state. In her October 31 letter and in a telephone conversation with opposing counsel on October 30, 1996, the Accused knowingly did not disclose that Alex Wright was, in fact, in Oregon at the federal penitentiary, despite the fact that she knew Mr. Wright's whereabouts was a material fact to opposing counsel. A copy of the Accused's October 31, 1996, letter is attached hereto as Exhibit 1 and incorporated by reference herein.

9.

On or about November 25, 1996, the court dismissed the litigation. On or about November 26, 1996, the Accused submitted to the court an affidavit in support of Klau-Med's motion for rehearing on defendants' motion to dismiss. In this affidavit, the Accused perpetuated the false impression that Alex Wright could not be subpoenaed in an Oregon proceeding and that he was unavailable for deposition. A copy of the Accused's affidavit is attached hereto as Exhibit 2 and incorporated by reference herein.

10.

At no time before opposing counsel discovered the whereabouts of Alex Wright did the Accused call upon Klau-Med or Mr. Wright to correct the misimpression about Mr. Wright's whereabouts and his availability for deposition.

Violations

11.

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

12.

Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 2-110(B) should be and, upon the approval of this stipulation, is dismissed.

Sanction

13.

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 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 public to maintain her personal integrity and her duty to the legal system to avoid withholding material information from the court. *Standards,* §§ 5.0, 6.0.

B. *Mental State.* The Accused acted knowingly in that she knew she was perpetuating a false impression created in good faith by her client's former counsel but was negligent in determining the nature of her ethical obligations in light of the fact that her client had instructed her not to disclose the information that would correct the false impression.

C. *Injury.* The defendants in the litigation were injured in that they were denied their right to depose Alex Wright for a time. The Accused's client was injured in that once the court learned of the Accused's role in perpetuating the false impression as to Alex Wright's whereabouts, it dismissed Klau-Med's claims.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has committed multiple offenses. *Standards,* § 9.22(d).

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. The Accused made full and free disclosure to the Bar and displayed a cooperative attitude toward the proceedings. *Standards,* § 9.32(e).

4. The Accused was inexperienced in the practice of law. She was admitted to the Bar in September 1994. Her employment with the firm began in May

1995, and, thus, she had been practicing law for approximately 17 months at the time of the conduct described herein. *Standards,* § 9.32(f).

5. The Accused possesses good character. *Standards,* § 9.32(g).

6. The Accused had displayed genuine remorse for her conduct. *Standards,* § 9.32(*l*).

7. The Accused did not call on Klau-Med for permission to correct the false impression concerning Alex Wright's availability for deposition because she was certain the permission would not be granted. The Accused believed that she was unable to withdraw from representing Klau-Med because it was a client of the firm and that if she withdrew from the representation without authority from the firm, her employment would be terminated.

8. The litigation was complex, and the opposing parties were represented by very experienced and knowledgeable counsel who were vigorous in their defense of their clients. Because of her inexperience and the circumstances of the litigation, the Accused was not capable of representing Klau-Med in the litigation without significant guidance and assistance by more experienced counsel. The Accused was instructed by her employer, who was an experienced lawyer, to agree to undertake the representation of Klau-Med in the litigation, and the Accused did not believe she was authorized to withdraw the firm from representing Klau-Med without her employer's consent. Before the firm agreed to take the case, the Accused consulted with her employer regarding what course of action the firm should take regarding the representations that had been made to the court by prior counsel concerning the whereabouts of Mr. Wright. The Accused's employer gave the Accused advice concerning her ethical obligations, which the Accused understood to be that it would be a disclosure of client confidences or secrets (DR 4-101(B)) to disclose Alex Wright's whereabouts and that so long as she made no affirmative misrepresentations to opposing counsel or the court, she would not be violating any ethical obligations.

14.

Standards, § 6.12 suggests that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Oregon case law is in accord. In *In re Melmon*, 322 Or 380, 908 P2d 822 (1995), the court suspended an inexperienced lawyer for 90 days for three current client conflicts of interest (DR 5-105(E)) and one misrepresentation. The misrepresentation consisted of creating a bill of sale for an aircraft that falsely stated the identity of the owner. In imposing a sanction the court found that the lawyer had acted intentionally in preparing the false bill of sale and had changed her story during the disciplinary proceeding. The Accused's conduct was considerably less egregious than the conduct in *Melmon* in that she sought ethical advice from an

experienced lawyer, believed she was choosing the lesser of two evils in a supposed ethical dilemma, and was candid and forthright in her contacts with the Bar.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102B)(1), the sanction to be effective beginning August 11, 2000.

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction proposed herein was approved by the State Professional Responsibility Board on June 17, 2000 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 August 2000.

/s/ Lorraine D. Hoffman
Lorraine D. Hoffman
OSB No. 943342

EXECUTED this 2nd day of August 2000.

OREGON STATE BAR

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

Cite as 330 Or 489 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
RICHARD D. COHEN,	)
	)
Accused.	)

(OSB 95-83, 96-129; SC S39908)

En Banc

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

Argued and submitted November 4, 1999.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the petition and reply brief for the Oregon State Bar. Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, filed a supplemental brief for the Oregon State Bar.

Robert A. Shlachter, Portland, argued the cause for the Accused. Richard D. Cohen, Portland, filed the answering brief pro se. Robert A. Shlachter and Scott Shorr, of Stoll Stoll Berne Lokting & Shlachter, P.C., filed a joint supplemental brief.

PER CURIAM

The Accused is reprimanded in case 96-129. The Accused's probation is terminated in case 95-83.

Riggs, J., concurred in part and dissented in part, and filed an opinion.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating Disciplinary Rule (DR) 6-101(B) (neglect of a legal matter) (case 96-129) and also petitioned to revoke the Accused's probation and impose a previously stayed 120-day suspension for an earlier violation of that same rule (case 95-83). A trial panel of the Disciplinary Board concluded that the appropriate sanction in case 96-129 was a public reprimand

and that the Accused's probation would continue, but no suspension would be imposed, in case 95-83. *Held:* (1) The appropriate sanction for the neglect at issue in case 96-129 is a public reprimand; and (2) the Accused's probation must be terminated, and no suspension imposed, in case 95-83. The Accused is reprimanded in case 96-129. The Accused's probation is terminated in case 95-83.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-147
	)	
DOUGLAS W. MOORE,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(C)(4). Stipulation for discipline. Public reprimand.
Effective Date of Order:	August 14, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having come on to be heard upon the Stipulation for Discipline between Douglas W. Moore 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 9-101(C)(4) of the Code of Professional Responsibility.

DATED this 14th day of August 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Douglas W. 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 was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Linn 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 3.5(h).

4.

At its June 17, 2000, meeting, the State Professional Responsibility Board ("SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of DR 9-101(C)(4) of the Code of Professional Responsibility. Pursuant to its authorization, 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

5.

Richard and Rebecca Davenport (hereinafter "the Davenports") retained the Accused in July 1997 to represent them in a civil matter. The Davenports paid a retainer to the Accused, which he deposited in his lawyer trust account.

6.

In early September 1998, the Davenports sent a letter to the Accused requesting that he cease work and return the trust account balance. The Accused did not respond. The Davenports sent the Accused a second letter in early October 1998. Again, the Accused did not respond. The Davenports filed a complaint with the Bar in early December 1998. On December 23, 1998, the Accused forwarded the trust account balance to the Davenports.

7.

The Accused admits that by engaging in the conduct described in this Stipulation, he failed to promptly deliver property the client was entitled to receive in violation of DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") 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 9-101(C)(4), the Accused violated his duty to his clients. *Standards,* § 4.1.

B. *Mental State.* The Accused acted with knowledge and negligence. "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. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. The Accused knew that his clients had requested the return of the unused portion of the retainer, but failed to promptly respond.

C. *Injury.* The Accused's conduct resulted in potential injury to his clients. Because the Accused failed to promptly return the clients' funds, the clients were denied the use of their money for a period of time. The clients were also frustrated because the Accused failed to respond to their communications.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of discipline consisting of an admonition for violation of DR 6-101(B) in August 1980; an admonition for violation of DR 6-101(B) in October 1980; and an admonition for violation of DR 1-102(A)(3) in February 1995. *Standards,* § 9.22(a).

2. The Accused has substantial experience in the practice of law, having been admitted to practice in 1973. *Standards,* § 9.21(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused displayed a cooperative attitude in resolving this formal proceeding. *Standards,* § 9.32(e).

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

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

9.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property, and causes injury or potential injury to a client. *Standards,* § 4.13. Case law is in accord. *See, e.g., In re Holden*, 12 DB Rptr 49 (1998) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Brownlee*, 9 DB Rptr 85 (1995) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Stimac,* 14 DB Rptr 42 (2000) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)).

10.

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

11.

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

DATED this 2nd day of August 2000.

/s/ Douglas W. Moore
Douglas W. Moore
OSB No. 73211

OREGON STATE BAR

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

Cite as 330 Or 541 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
WILLIAM M. PARKER,	)
	)
Accused.	)

(OSB 97-184, 98-4, 98-36, 98-45; SC S46496)

En Banc

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

Argued and submitted November 10, 1999.

William M. Parker, Kirkland, Washington, argued the cause and filed the brief in propria persona.

Jane E. Angus, 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 suspended from the practice of law for a period of four years, commencing 60 days from the date of filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 1-102(A)(4) (prohibiting conduct prejudicial to administration of justice), DR 1-103(C) (four counts) (requiring cooperation with disciplinary investigation), DR 2-110(A) (prohibiting withdrawal unless lawyer takes steps to avoid foreseeable prejudice to client), DR 6-101(B) (four counts) (prohibiting neglect of legal matter), DR 7-101(A)(2) (three counts) (prohibiting failure to carry out contract of employment), and DR 9-101(C)(4) (requiring prompt payment or delivery of client's property or money). The alleged violations stemmed from the Accused's neglect and mismanagement of his law practice. The Accused defaulted, the trial panel imposed a five-year suspension. *Held:* The Accused is guilty of violating DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C) (four counts), DR 2-110(A), DR 6-101(B) (four counts), DR 7-101(A)(2) (three counts), and DR 9-101(C)(4). The Accused is suspended from the practice of law for a period of four years.

Cite as 330 Or 517 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
DANIEL J. GATTI,	)
	)
Accused.	)

(OSB 95-18; SC S45801)

En Banc

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

Argued and submitted March 3, 2000.

Christopher R. Hardman, Portland, argued the cause and filed the brief for the Accused.

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

Robert K. Udziela, Portland, filed a brief for amici curiae Oregon Consumer League, Fair Housing Counsel of Oregon, Oregon Law Center, Kathryn H. Clarke, Esq., Jeffrey P. Foote, Esq., William A. Gaylord, Esq., Phil Goldsmith, Esq., Maureen Leonard, Esq., and David F. Sugerman, Esq.

Kristine Olson, United States Attorney, Portland, filed a brief for amici curiae United States Department of Justice and United States Attorney's Office District of Oregon. With her on the brief were Michael W. Mosman, Assistant United States Attorney, and Phillip Schradle, Assistant Attorney General, State of Oregon.

PER CURIAM

The Accused is reprimanded.

SUMMARY OF SUPREME COURT OPINION

The Accused represents personal injury plaintiffs. During the relevant times, a California company, Comprehensive Medical Review (CMR), provided State Farm Insurance Company (State Farm) with medical review reports recommending whether to accept or deny medical claims. The Accused believed that CMR was using individuals other than medically trained personnel to prepare reports and then have medical reviewers sign those reports, and that CMR was using a "formula" designed

to help State Farm contain costs. On May 17, 1994, after State Farm had denied an insurance claim by one of the Accused's clients, the Accused placed telephone calls to CMR personnel Becker and Adams. He told Becker that he was a chiropractor. He told Adams that he was a doctor, that he had experience performing independent medical examinations, that he was interested in participating in CMR's educational programs for insurance claims adjusters, and that he was interested in working for CMR as a claim reviewer. The Accused failed to disclose that he was a lawyer and that he was preparing to sue CMR and Adams. The Accused hoped that he would obtain information from the telephone calls that he could use in his claims against CMR and Adams. The Bar charged the Accused with violating Professional Responsibility Disciplinary Rules DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation), DR 7-102(A)(5) (knowingly making false statement of law or fact), and ORS 9.527(4) (willful deceit or misconduct in the legal profession). A trial panel of the Disciplinary Board concluded that the Accused had violated the rules and statute, but it held that the Bar was estopped from prosecuting the Accused. *Held:* The Bar was not estopped from prosecuting the Accused, the Accused's constitutional challenges were unavailing, the disciplinary rules and statute apply to all members of the bar, without exception, and the Accused violated DR 1-102(A)(3), DR 7-102(A)(5), and ORS 9.527(4). The Accused is publicly reprimanded.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 00-91
	)	
THEODORE C. CORAN,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C) and (E). Stipulation for discipline. Public reprimand.
Effective Date of Order:	August 25, 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 approved and the Accused shall be publicly reprimanded.

DATED this 25th day of August 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Theodore C. Coran, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 June 17, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(C) and (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.

On December 13, 1999, the Accused was appointed to represent Anthony Robertson (hereinafter "Robertson") on felony charges of Robbery I. Later that same day, the Accused was appointed to represent Robertson's common-law wife, Kerri Anne Burhans (hereinafter "Burhans"), as a codefendant on the felony charges of Robbery I.

6.

After being appointed, the Accused first met with Robertson and advised him that he would review the facts of the case to determine if his continued representation of both defendants was possible. The Accused subsequently met separately with Burhans and advised her that he would only be able to represent one of the defendants and that he would review discovery from the District Attorney, then meet with both defendants to decide how to proceed. Both defendants were scheduled to be arraigned on December 27, 1999.

7.

On December 14, 1999, the Accused met with Burhans, who expressed concern as to what might happen to her, since she had three young children. The

Accused and Burhans also discussed details of the alleged robbery. The Accused subsequently met with Robertson, who raised certain constitutional challenges to his arrest. The Accused advised Robertson that such concerns would be raised after arraignment, and he would make a decision as to whether he could continue the multiple representation after both defendants were arraigned.

8.

On December 27, 1999, the Accused appeared at the arraignment for both Robertson and Burhans. Both matters were set for reappearance on January 3, 2000. The Accused advised the court of the multiple representation and informed the court that he intended to withdraw from representation of one of the defendants on January 3, 2000, after he again conferred with each of the defendants.

9.

On January 2, 2000, the Accused met with Robertson and discussed contents of the reports he had received from the District Attorney. Thereafter, the Accused told Robertson that he intended to withdraw from further representation of him the following day but would continue to represent Burhans. The Accused subsequently met with Burhans, discussed his conversation with Robertson, and continued his representation of Burhans for a period of time.

10.

Simultaneous representation of both Robertson and Burhans as codefendants in the criminal matter resulted in either an actual or a likely conflict of interest between current clients. Continued representation of Burhans after representing and consulting with Robertson, but then withdrawing from Robertson's case, resulted in an actual or a likely conflict of interest between a current and a former client. To the extent that consent after full disclosure may have cured either the current client or former client conflict of interest, the Accused did not get the consent of Robertson and Burhans after full disclosure.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-105(C) and (E).

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 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.* By accepting the appointment to represent codefendants in a criminal matter, the Accused acted negligently in failing to promptly determine if his clients had a conflict of interest *Standards,* p. 7.

C. *Injury.* In respect to the conflict of interest, there was potential injury to the clients in that the Accused may not have been in a position to give each client independent legal advice and adequately represent the interests of each client.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards,* § 9.32(a);

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

3. Full and free disclosure and a cooperative attitude in the investigation. *Standards,* § 9.32(e).

13.

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

14.

Oregon case law is in accord. In *In re Cohen*, 316 Or 657, 853 P2d 286 (1983), the court reprimanded a lawyer for representing two clients with conflicting interests, failing to provide full disclosure of the conflict at the outset of the representation, and in continuing to represent both parties after notice of the actual conflict of interest. In *In re O'Neal*, 297 Or 258, 683 P2d 1352 (1984), the court concluded that a reprimand was appropriate where the accused simultaneously represented codefendants in a drug case even when the representation was limited to negotiating guilty pleas.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-105(C) and (E), the sanction to be effective the day the Order Approving Stipulation for Discipline is signed by the Disciplinary Board.

16.

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

EXECUTED this 7th day of August 2000.

/s/ Theodore C. Coran
Theodore C. Coran
OSB No. 82226

EXECUTED this 11th day of August 2000.

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. 00-52
	)	
DEBBE STEIN,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Bradley F. Tellam, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and DR 5-101(A). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	September 1, 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 approved and the Accused is suspended for 30 days, effective September 1, 2000, for violation of DR 1-102(A)(3) and DR 5-101(A).

DATED this 28th day of August 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Debbe Stein, 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, Debbe Stein, was admitted by the Oregon Supreme Court to the practice of law in Oregon on July 23, 1997, and has been a member of the Oregon State Bar continuously since that time, having her 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 April 15, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 5-101(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 Steven Weigel in a workers' compensation claim, which was closed by a Determination Order dated July 29, 1999. The Determination Order made no award of permanent partial disability (PPD). Mr. Weigel asked the Accused, and the Accused agreed, to request reconsideration with the Workers' Compensation Division of the State of Oregon (WCD). On August 28, 1999, the Accused drafted a letter directed to WCD, notifying it that Mr. Weigel requested reconsideration of the Determination Order. The WCD never received the letter.

6.

Because the reconsideration request was not received within the applicable statutory deadline, Mr. Weigel lost the right to do so.

7.

Sometime thereafter, Mr. Weigel asked the Accused about the status of his case. It was at this time that she learned that WCD had never received her August 28, 1999, letter. On November 8, 1999, the Accused wrote Mr. Weigel a letter

stating that "reconsideration was requested and subsequently it has been determined that the Department will not be reopening your claim for an award of PPD."

8.

The letter she sent to Mr. Weigel implied to him that a reconsideration request actually had been received and rejected by WCD. Such implication was untrue, and the Accused knew it when she sent the letter to Mr. Weigel. The letter also failed to disclose the Accused's potential liability for malpractice.

Violations

9.

The Accused admits that by sending Mr. Weigel the above letter, she violated DR 1-102(A)(3) and DR 5-101(A) of the Code of Professional Responsibility.

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 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) and DR 5-101(A), the Accused violated her duties of candor and loyalty to her client. *Standards,* §§ 4.6, 4.3.

B. *Mental State.* The Accused's conduct in sending a misleading letter was knowing. The *Standards* define conduct as "knowing" if it is performed with the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

C. *Injury.* The Accused created the potential that her client would be misled as to the true facts regarding his case and his possible remedies against her. Only because the client contacted WCD (and subsequently hired a new attorney) did he learn the true facts.

D. *Aggravating Factors.* Aggravating factors include a selfish motive. *Standards,* § 9.22(b).

E. *Mitigating Factors.* Mitigating factors include:

1. The absence of a prior disciplinary record. *Standards,* § 9.32(a).

2. Personal or emotional problems. *Standards,* § 9.32(c).

3. A cooperative attitude toward disciplinary proceedings. *Standards,* § 9.32(e).

4. Inexperience in the practice of law. *Standards,* § 9.32(f)).

5. Remorse. *Standards,* § 9.32(*l*).

11.

The *Standards* provide that a suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to the client the possible effect of that conflict. *Standards,* § 4.32. The *Standards* also provide that a suspension is appropriate when a lawyer knowingly deceives a client. *Standards,* § 4.62.

12.

Oregon case law is in accord and provides guidance in determining the appropriate sanction in this case.

In *In re Stout*, 13 DB Rptr 80 (1999), the accused attorney promised a third party that certain funds would be maintained in trust. However, upon the client's direction, he disbursed the funds without notifying the third party. His failure to disclose the disbursement was stipulated to violate DR 1-102(A)(3). He was suspended for 30 days.

In *In re Meigs*, 13 DB Rptr 140 (1999), the accused was suspended for 30 days for misrepresenting his entitlement to a settlement check by depositing it without authority from one of the payees. This conduct violated DR 1-102(A)(3) and DR 7-102(A)(2).

In *In re Gough*, 13 DB Rptr 170 (1999), the accused attorney neglected a case, resulting in its dismissal, and then omitted to tell his client of the dismissal. The conduct was stipulated to violate DR 1-102(A)(3) and DR 6-101(B). Despite the dishonesty charge, however, there were significant mitigating factors. Gough was publicly reprimanded.

In *In re McCurdy*, 13 DB Rptr 107 (1999), a lawyer who missed a statute of limitations prepared an affidavit that contained a misstatement and also failed to tell his client that she might have a potential malpractice claim against him. No dishonesty was alleged, but the lawyer stipulated to having violated DR 1-102(A)(4) and DR 5-101(A). He was publicly reprimanded.

13.

In light of the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for 30 days for violation of DR 1-102(A)(3) and DR 5-101(A), the sanction to be effective September 1, 2000.

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 22nd day of August 2000.

/s/ Debbe Stein
Debbe Stein
OSB No. 97174

EXECUTED this 21st day of August 2000.

OREGON STATE BAR

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

Cite as 331 Or 113 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
WILLIAM D. BRANDT and	)
MARK E. GRIFFIN,	)
	)
Accused.	)

(OSB 95-6; SC S45122, S45123)

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

Argued and submitted September 8, 1999.

Peter R. Jarvis, Stoel Rives LLP, Portland, argued the cause and filed the briefs for the Accused, William D. Brandt.

W. Eugene Hallman, Pendleton, argued the cause and filed the briefs for the Accused, Mark E. Griffin.

Mary A. Cooper, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was Jeffrey Sapiro.

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

PER CURIAM

Griffin is suspended from the practice of law for 12 months, and Brandt is suspended from the practice of law for 13 months. The suspensions shall commence 60 days from the filing of this decision.

Kulongoski, J., concurred in part, dissented in part, and filed an opinion in which Riggs, J., joined in part.

Riggs, J., concurred in part, dissented in part, and filed an opinion in which Kulongoski, J., joined in part.

SUMMARY OF SUPREME COURT OPINION

William D. Brandt and Mark E. Griffin (the "Accused") represented Eric Bramel and his wife (Bramel), former hand-tool distributors, in resolving claims

against Mac Tools, which is owed by The Stanley Works (Stanley). The Accused also represented 48 other clients who had claims against Stanley. On December 20, 1993, the Accused, and three other lawyers who represented 71 other clients with claims against Stanley, agreed with Stanley to a proposed settlement of all the claims for $13.32 million. The proposal made no mention of the plaintiffs' lawyers being retained by Stanley in the future. However, on January 6, 1994, counsel for Stanley proposed adding a paragraph to the settlement agreement under which counsel for the plaintiffs would be retained by Stanley. Brandt attended an emergency meeting of the lawyers in Chicago on January 11, 1994, to discuss the matter. At that meeting, a mediator proposed that the plaintiffs' lawyers sign individual retainer agreements with Stanley and place them in "escrow" with the mediator until all the clients had executed settlement agreements. Brandt then signed the settlement agreement and the escrow agreement, and Griffin signed retainer agreements. Brandt signed retainer agreements approximately one week later. On January 13, 1994, Griffin called Bramel to discuss the settlement and advised him about Stanley's retainer proposal. On January 17, 1994, the Accused sent Bramel a letter stating that, after the cases had been resolved, the Accused had agreed to provide legal advice and counsel to Stanley. The letter did not mention the documents that the Accused had signed on January 11, 1994. On advice of different counsel, Bramel signed the settlement agreement on January 28, 1994. Subsequently, Bramel filed a complaint with the Oregon State Bar (Bar). The Bar charged the Accused with violating four disciplinary rules of the Code of Professional Responsibility*:* Disciplinary Rule (DR) 5-101(A)(1) (prohibiting accepting or continuing employment when exercise of lawyer's judgment will be or reasonably may be affected by lawyer's own interest, except with consent of client after full disclosure); DR 1-102(A)(3) (prohibiting engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-103(C) (requiring full and truthful responses to inquiries); and DR 2-108(B) (prohibiting, in connection with settlement, entering into an agreement that restricts lawyer's right to practice law). A trial panel of the Disciplinary Board found that the Accused had committed all the charged violations and recommended that each lawyer be suspended from the practice of law for six months. One panel member dissented, concluding that the charges against the Accused should be dismissed. *Held:* The Accused violated DR 5-101(A)(1), DR 2-108(B), and DR 1-102(A)(3). Griffin is suspended for a period of 12 months, and Brandt is suspended for a period of 13 months.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-26
	)	
ALLAN F. KNAPPENBERGER,	)	
	)	
Accused.	)	

Bar Counsel:	Craig Bachman, Esq.
Counsel for the Accused:	Timothy D. Smith, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 7-104(A)(1). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 14, 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 approved and the Accused is publicly reprimanded for violation of DR 7-104(A)(1).

DATED this 14th day of September 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Amy R. Alpern
Amy R. Alpern, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Allan F. Knappenberger, 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, Allan F. Knappenberger, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On February 19, 1999, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of DR 7-102(A)(2) and DR 7-104(A)(1). 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.

On August 22, 1991, sellers and purchasers entered into a land sale contract (the "contract"). In late 1996, the Accused began representing sellers regarding purchasers' continuing obligations to perform under the contract. The contract provided that the purchasers were to pay the full remaining balance of an underlying promissory note on or before February 1, 1997, unless on or before that date, the purchasers produced reasonable evidence that they had loan commitments and/or funds sufficient to pay the promissory note in full before August 1, 1997.

6.

On January 30, 1997, the purchasers sent the Accused what they claimed was evidence of a loan commitment to meet the terms of the contract. The sellers rejected the loan commitment as insufficient. On February 14, 1997, pursuant to the terms of the contract, the Accused sent the purchasers a notice of default.

7.

Starting in 1995, the purchasers had leased the property at issue to a third party. On February 28, 1997, the Accused sent a demand letter to the third party,

demanding that the third party send all future lease payments to the sellers (the "demand letter"). Simultaneously, the Accused sent a copy of this demand letter to the lawyer representing the third party. The Accused sent this demand letter when he knew that the third party was represented by a lawyer on a subject directly related to the lease payment**.**

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 7-104(A)(1).

Upon further factual inquiry, the parties agree that the alleged violation of DR 7-102(A)(2) should be and, upon the approval of this stipulation, is dismissed.

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 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 avoid improper communications with individuals in the legal system. *Standards,* § 6.3.

B. *Mental State.* The Accused acted with knowledge, in that he was aware that the third party was represented. 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. *Standards,* p. 7.

C. *Injury.* Injury may be either actual or potential. In this case, there was no injury or potential injury, because the Accused also sent a copy of the letter to the third party's lawyer. That lawyer did not raise any objections to the Accused's communication with the third party, although he had not given prior consent to it.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior letter of admonition where he was admonished for violating DR 7-104(A)(1) in February 1995. *Standards,* § 9.22(a). The Accused has received other admonishments, but the Bar concedes that those should not be considered as aggravating factors pursuant to *In re Cohen*, 14 DB Rptr 127 (2000).

2. The Accused has substantial experience in the practice of law, having been admitted to practice in Oregon in 1973. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused did not act with a dishonest or selfish motive in that at the time he sent the February 28, 1997, letter, he believed he was legally required to do so. His belief was wrong as a matter of law. *Standards,* § 9.32(b).

2. The Accused made free and full disclosure in the Bar's investigation of this matter and had a cooperative attitude toward the proceedings. *Standards,* § 9.32(e).

10.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party, or interference or potential interference with the outcome of the legal proceeding. *Standards,* § 6.33. The *Standards* also provide that admonition is generally appropriate when a lawyer engages in an isolated incidence of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding. *Standards,* § 6.34.

The *Standards* further provide that a reprimand is generally appropriate when a lawyer has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. *Standards,* § 8.3(b).

11.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. *See In re Schenck*, 320 Or 94, 879 P2d 863 (1994); *In re Burrows*, 291 Or 135, 629 P2d 820 (1981); *In re Hostettler*, 291 Or 147, 629 P2d 827 (1981); *In re McCaffrey*, 275 Or 23, 549 P2d 666 (1976).

12.

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

13.

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

EXECUTED this 8th day of September 2000.

/s/ Allan F. Knappenberger
Allan F. Knappenberger
OSB No. 73169

EXECUTED this 11th day of September 2000.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 99-33
	)	
DAVID A. PIPER,	)	
	)	
Accused.	)	

Bar Counsel:	David Mills, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2). Stipulation for discipline. 120-day suspension.
Effective Date of Order:	September 25, 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 approved and the Accused is suspended from the practice of law for 120 days, effective the date of this Order, for violation of DR 2-110(A)(2), DR 6-101(B), DR 7-101(A)(2), and DR 1-103(C).

DATED this 25th day of September 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

David A. Piper, 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. Piper, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1977, and has been a member of the Oregon State Bar since that time but has been suspended from the practice of law since April 21, 1998, for failure to pay his Professional Liability Fund assessment. Prior to his suspension, the Accused's principal place of business was 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 July 17, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 2-110(A)(2), DR 6-101(B), DR 7-101(A)(2), and 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 or about February 27, 1997, Ronalyn Provines ("Provines") retained the Accused to petition the court for an order appointing her conservator for her two minor children. On April 4, 1997, the Accused filed with the court a Petition for Appointment of Conservator for the minor children, paid the filing fee, and tendered a proposed order confirming the appointment.

6.

Shortly after the April 4, 1997 filing, the Probate Commissioner contacted the Accused and asked him to make certain changes to the proposed order and to obtain

more detailed waivers of notice from the fathers of the minor children. The Accused agreed to do so.

7.

By notice dated May 20, 1997, the court informed the Accused it would dismiss the petition on June 2, 1997, unless the defects were corrected. On June 4, 1997, the Accused filed the revised waivers of notice but did not submit a new proposed order. The court did not dismiss the petition.

8.

By notice dated January 10, 1998, the court informed the Accused that it would dismiss the petition unless the Accused submitted a proposed order by January 30, 1998. The Accused did not respond, and the petition was dismissed on February 4, 1998.

9.

At various times between April 1997 and September 1998, Provines tried to contact the Accused by telephone and letter. The Accused did not respond. On April 12, 1998, the Accused was suspended from the practice of law for failure to pay his Professional Liability Fund assessment. The Accused did not notify Provines of this fact nor did he take any steps to avoid foreseeable prejudice to Provines' rights.

10.

On or about October 8, 1998, Provines filed a complaint with the Oregon State Bar concerning the Accused's conduct. On or about October 30, 1998, Disciplinary Counsel's Office forwarded Provines' complaint to the Accused for response. The Accused did not respond to this letter or to additional inquiries from Disciplinary Counsel's Office in December 1998, January 1999, and February 1999.

11.

Because of the Accused's failure to respond to inquiries from Disciplinary Counsel's Office, Provines' complaint was referred to the Lane County Professional Responsibility Committee ("LPRC") on March 27, 1999, which assigned the case to a local lawyer for investigation. The LPRC investigator placed numerous calls to the Accused and spoke with the Accused on one occasion. The Accused did not further communicate with or cooperate with the LPRC investigator.

12.

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

Violations

13.

The Accused admits that, by engaging in the conduct described in this stipulation, he withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to his client's rights in violation of DR 2-110(A)(2); neglected a legal matter entrusted to him in violation of DR 6-101(B); intentionally failed to carry out a contract of employment in violation of DR 7-101(A)(2); and failed to respond fully to inquiries from and comply with reasonable requests of an authority empowered to investigate or act upon his conduct in violation of DR 1-103(C).

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*"). 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 his client and his duty to the profession. *Standards,* §§ 4.4, 7.0.

B. *Mental State.* In violating DR 2-110(A)(2), DR 6-101(B), and DR 1-103(C), 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. In violating DR 7-101(A)(2), the Accused's conduct demonstrates intent. "Intent" is the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

C. *Injury.* The conduct of the Accused caused some injury to the client in that she was required to retain another lawyer to complete the conservatorship, and the matter was delayed for 17 months. Piper did not charge Provines for the work he did do and did not request that she reimburse him for the filing fee he had advanced on her behalf. By failing to respond to Disciplinary Counsel's Office, the Accused caused some injury to the profession in that the matter had to be referred to the LPRC for investigation.

D. *Aggravating Factors.* Aggravating factors include:

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

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

3. The Accused has a prior disciplinary record. On December 6, 1990, the Accused was admonished for neglecting a legal matter in violation of DR 6-101(B).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused's prior disciplinary offense is remote in time. *Standards,* § 9.32(m).

15.

The *Standards* provide that suspension is generally appropriate when:

> (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
>
> (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client."

Standards, § 4.42.

Under duties owed the profession, which include communicating in response to disciplinary inquiries, *Standard* § 7.2 provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system."

16.

Oregon case law is in accord and provides guidance in determining the appropriate sanction in this case. *See, e.g., In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (accused suspended for 120 days for violating DR 6-101(B) and DR 1-103(C)). The Court concluded in that case that a 60-day suspension was appropriate for the failure to cooperate and an additional 60 days was appropriate for a knowing neglect of a client's case over a period of time. *See also In re Bonner*, 12 DB Rptr 209 (1998) (120-day suspension for neglect of legal matter in violation of DR 6-101(B); intentional failure to carry out a contract of employment in violation of DR 7-101(A)(2); and failure to cooperate in violation of DR 1-103(C)).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 120 days for violation of DR 2-110(A)(2), DR 6-101(B), DR 7-101(A)(2), and DR 1-103(C), with the sanction to be effective the date the Order approving this Stipulation for Discipline is signed by the Disciplinary Board.

18.

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

EXECUTED this 6th day of September 2000.

/s/ David A. Piper
David A. Piper
OSB No. 77059

EXECUTED this 11th day of September 2000.

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. 97-58;
	)	SC S47752
RAY ENGLISH,	)	
	)	
Accused.	)	

Bar Counsel:	Brian J. MacRitchie, Esq.
Counsel for the Accused:	Christopher R. Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 2-106(A), DR 2-110(B), DR 5-101(A) (two counts), DR 5-104(A), and DR 5-105(E). Stipulation for discipline. 18-month suspension.
Effective Date of Order:	October 11, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Ray English have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Ray English is suspended from the practice of law for a period of 18 months. The Stipulation for Discipline is effective 15 days from the date of this order.

DATED this 26th day of September 2000.

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

STIPULATION FOR DISCIPLINE

Ray English, 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, Ray English, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1969, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Sherman 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 April 19, 2000, an 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), DR 2-106(A), DR 2-110(B)(2), DR 5-101(A) (three counts), DR 5-104(A), DR 5-105(E) (two counts), and DR 7-102(A)(7) (two counts) of the Code of Professional Responsibility. A copy of the Amended 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

Conservatorship Matter

5.

Beginning in March 1989 and ending on January 31, 1994, the Accused represented Dean Rader (hereinafter "Rader") as conservator in the conservatorship of Florence Bruckert, Sherman County Court Case No. 1009.

6.

In October 1991, and again in August 1992, the Accused borrowed a total of $7,894.56 from the estate. In borrowing money from the estate, the Accused entered into a business transaction with a client in which they had differing interests. At the time the Accused borrowed these sums, he knew that Rader expected the Accused to exercise the Accused's professional judgment for the protection of Rader and the conservatorship. At the time the Accused borrowed these sums, the Accused failed to obtain consent after full disclosure from his client regarding the loans.

7.

Between 1990 and 1993, the Accused's secretary borrowed a total of $56,627.16 from the estate. The Bar withdraws its allegation that the Accused represented the secretary in these loans; however, at the time the secretary borrowed these sums, the Accused knew that Rader expected the Accused to exercise his professional judgment for the protection of Rader and the conservatorship and knew that the exercise of his professional judgment on behalf of the conservatorship may have been affected by his relationship with his secretary. At the time the Accused's secretary borrowed these sums, the Accused failed to obtain consent after full disclosure from his client regarding the loans.

8.

Beginning in 1990 and ending in January 1994, the Accused's office prepared for Rader's signature annual accountings regarding the conservatorship assets as provided in current ORS 125.475. Under that statute, each accounting must list the total value of the conservatorship assets, all money and property received, and all disbursements made during the period of the accounting. Vouchers for all disbursements must accompany the accounting. The Accused's office staff prepared the accountings based upon information provided by Rader concerning receipts and disbursements of conservatorship funds.

9.

The Accused had a duty to review the accountings and attached vouchers before submitting them to the court for its approval. The Accused failed to review the materials. Had the Accused reviewed them, he would have discovered that Rader had improperly expended large sums of conservatorship funds and had converted conservatorship funds to his own use.

10.

Beginning in 1990 and ending in January 1994, the Accused collected $6,929.29 in attorney fees from the conservatorship before the fees were approved by the court, in violation of ORS 116.183 and UTCR 9.090. The court ultimately did approve of these fees.

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5–10, he violated DR 1-102(A)(4), DR 2-106(A), DR 5-101(A), and DR 5-104(A). Upon further factual inquiry, the parties agree that the alleged violations of DR 5-105(E) in the Second Cause of Complaint, and DR 1-102(A)(3) and DR 7-102(A)(7) in the Third Cause of Complaint should be and, upon the approval of this stipulation, are dismissed.

Probate Matter

12.

Florence Bruckert died on December 20, 1993. Beginning in December 1993 and ending in May 1995, the Accused represented Rader as personal representative in the probate of the Estate of Florence Bruckert, Sherman County Case No. 1049. During this same time, the Accused was also the District Attorney for Sherman County.

13.

As a result of the loans from the conservatorship to the Accused in October 1991 and August 1992, described in paragraph 6, the Accused was a debtor of the probate estate.

14.

The Accused admits that he accepted and then continued employment as attorney for the personal representative Rader, without having first obtained consent after full disclosure, when the exercise of the Accused's professional judgment on behalf of Rader and the probate estate, was likely to be, or may reasonably have been, affected by his own financial, business, property, or personal interests.

15.

In June 1994, several heirs of the probate estate petitioned the court for the removal of Rader as personal representative on the grounds that, since 1989, he had improperly handled conservatorship funds and had converted over $225,000 of conservatorship funds to his own use. The Accused made inquiry into these allegations and determined that they were substantially correct.

16.

As District Attorney for Sherman County, the Accused owed a duty to the county to prosecute persons who committed crimes such as embezzlement, fraud, or theft.

17.

The Accused admits that, once the heirs of the estate petitioned the court for the removal of Rader as personal representative, the interests of Sherman County and Rader were adverse. Insofar as it was possible for either Sherman County or Rader to consent to the Accused's continued employment of him by them, the Accused failed to obtain consent after full disclosure from either of them.

18.

The Accused admits that, once the heirs of the estate petitioned the court for the removal of Rader as personal representative, he should have withdrawn as

attorney for the personal representative Rader, because it was obvious that his continued employment would result in a violation of a disciplinary rule.

19.

The Accused admits that, by engaging in the conduct described in paragraphs 12–18, he violated DR 2-110(B)(2), DR 5-101(A), and DR 5-105(E). Upon further factual inquiry, the parties agree that the alleged violation of DR 7-102(A)(7) in the Fourth Cause of Complaint should be and, upon the approval of this stipulation, is dismissed.

Sanction

20.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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 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 various duties in this matter. By accepting or continuing employment in situations where he had a self-interest or current-client conflict of interest, the Accused violated his duty to his clients. *Standards,* § 4.3. By collecting attorney fees that were illegal or contrary to law, the Accused violated his duty to his clients and to the profession. *Standards,* §§ 4.1, 7.0. By failing to review the annual accountings and vouchers before submitting them to the court, the Accused violated his duty to the legal system and to the profession to avoid conduct prejudicial to the administration of justice. *Standards,* §§ 6.2, 7.3. By failing to timely withdraw, the Accused violated his duty to the profession. *Standards,* § 7.0.

B. *Mental State.* "Knowledge" is defined in the *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. *Standards,* p. 7. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7.

The Accused acted negligently in accepting or continuing employment where he had a self-interest or current client conflict of interest, in failing to obtain court approval before collecting attorney fees from the conservatorship, and in failing to timely withdraw. The Accused recognized the self-interest conflict of interest in

obtaining loans from the conservatorship estate and in having the conservatorship loan money to his secretary, and satisfied some, but not all, of the requirements of obtaining consent after full disclosure regarding those conflicts. The Accused did not have substantial experience in conservatorships and was not familiar with the procedures for collecting attorney fees. The Accused failed to appreciate or recognize the self-interest conflict of being a debtor of the probate estate, the conflict of interest between Sherman County and Rader, and his duty to withdraw from representation once the other heirs petitioned the court to remove Rader as personal representative.

The Accused acted knowingly in failing to review the accounting and vouchers before they were submitted to the court for approval. The Accused knew he had a duty to review these accountings, but failed to do so.

C. *Injury.* Injury may be either actual or potential. In this case, as a result of the Accused's conduct, the court in the conservatorship and probate matters was injured, in that it could not fulfill its statutory responsibilities to insure the proper performance of the conservator's fiduciary duties or the payment of attorney fees. The protected person in the conservatorship and the other heirs in the probate estate were also injured, in that Rader was allowed to convert a significant amount of conservatorship funds for his own use. The other heirs incurred substantial attorney and other fees in pursuing the removal of Rader as personal representative, and then pursuing, obtaining, and executing upon a judgment in the amount of $270,000 against Rader for the funds he converted.

There was no injury from the loans the Accused took from the conservatorship because he repaid these debts. The conservatorship did not recover all the money loaned to the Accused's secretary because she filed bankruptcy.

There was also potential injury to Sherman County, in that it was denied an opportunity to investigate and prosecute Rader.

D. *Aggravating Factors.* Aggravating factors include:

1. Selfish motive with respect to the DR 5-101(A) and DR 5-104(A) violations, *Standards,* § 9.22(b);

2. A pattern of misconduct in that the conflict of interests and failure to review the accountings occurred over the course of five years, *Standards,* § 9.22(c);

3. Multiple offenses, *Standards,* § 9.22(d); and

4. Substantial experience in the practice of law in that the Accused has been licensed to practice law in Oregon since 1969, *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record, *Standards,* § 9.32(a);

2. Cooperative attitude toward proceedings, *Standards,* § 9.32(e);

3. Character or reputation, *Standards,* § 9.32(g); and

4. Remorse, *Standards,* § 9.32(*l*).

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *See Standards,* §§ 4.32, 6.2, 7.2.

21.

Although no Oregon case contains the exact violations described herein, various cases provide guidance in each of the areas of violation. When the various violations committed by the Accused are taken together as a whole, Oregon case law suggests that a significant term of suspension is warranted. *See In re Alstatt*, 321 Or 324, 897 P2d 1164 (1995) (one-year suspension for collecting attorney fees in a probate matter without prior court approval and for undertaking and then continuing to represent personal representatives of an estate where lawyer was also debtor of estate); *In re Moore*, 299 Or 496, 703 P2d 961 (1985) (lawyer suspended for one year for representing multiple clients from whom he borrowed money without fully disclosing the nature of the conflict of interest between them); *In re Whitewolf*, 12 DB Rptr 231 (1998) (lawyer stipulated to 18-month suspension for, among other things, mishandling probate matters and for failing to obtain court approval before collecting fees); *In re Hewes*, Or S Ct. No. S39882 (1992) (lawyer pleaded no contest and accepted a one-year suspension for improper handling of a trust matter, for continuing to represent the trust when he was a competing creditor of the trust's debtor, and for loaning money from the trust to another client when the lawyer knew the debtor was having financial difficulties). The magnitude of the injury in this case further aggravates the sanction.

Consistent with the ABA *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of 18 months, to commence on the 15th day after this stipulation is approved by the Supreme Court.

21.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the 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 July 2000.

/s/ Ray English
Ray English
OSB No. 69048

EXECUTED this 31st day of July 2000.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-140;
	)	SC S47888
JOHN G. MEYER,	)	
	)	
Accused.	)	

Bar Counsel:	Robert E. Barton, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B) and DR 9-101(C)(4). Stipulation for discipline. Two-year suspension.
Effective Date of Order:	September 26, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and John G. Meyer have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. John G. Meyer 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 September 2000.

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, John G. Meyer, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1967, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clatsop 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 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility. 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.

On October 9, 1995, the Accused was retained by Robert Rose (hereinafter "Rose") to represent him in a dissolution-of-marriage proceeding. On October 12, 1995, the Accused filed a petition for dissolution of marriage. He filed an amended petition on October 27, 1995.

6.

On January 6, 1996, Rose's wife was served with the amended petition. Shortly thereafter, the Accused was contacted by a lawyer representing Rose's wife. For the next few months, the parties discussed settlement of the matter through correspondence. On April 23, 1996, the lawyer representing Rose's wife made another settlement proposal. The Accused failed to communicate that proposal to Rose and last spoke with him regarding this matter in mid-May 1996.

7.

On May 30, 1996, the court issued a notice of intent to dismiss the matter in 28 days because Rose's wife had not filed an appearance. The Accused admits that he failed to take any steps to prevent the matter from being dismissed and failed to inform Rose that the court was going to dismiss the matter.

8.

On July 1, 1996, the court dismissed the matter. The Accused admits that he failed to take any steps to reinstate the matter and failed to inform Rose that the matter had been dismissed.

9.

On September 20, 1996, Rose contacted the Accused and terminated his services. Rose asked the Accused for a copy of his file. The Accused admits that he failed to provide Rose with a copy of his file.

Violations

10.

The Accused admits that by engaging in the conduct described above, he violated DR 6-101(B) and DR 9-101(C)(4). Upon further factual inquiry, the parties agree that the alleged violations of DR 9-101(A) and DR 9-101(C)(3) 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 Supreme Court 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 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 Rose to act with reasonable diligence and promptness and to promptly return client property. *Standards,* § 4.4.

B. *Mental State.* In failing to diligently attend to Rose's legal matter and in failing to provide Rose with a copy of his file, the Accused acted knowingly. "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.

C. *Injury.* The Accused's conduct resulted in potential injury to Rose. As a result of the Accused's failure to act, the matter did not resolve, the Oregon proceeding was dismissed, and Rose was unable to complete the dissolution of his marriage until he retained the services of another lawyer in California. There was no actual injury resulting from the dismissal as the Oregon court most likely did not have jurisdiction over the matter.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offenses in that the Accused was publicly reprimanded in 1990 for violating DR 2-110(A)(1), DR 2-110(A)(2), DR 6-101(A), and DR 6-101(B) (*In re Meyer I*, 4 DB Rptr 101 (1990)). In 1999 he was suspended in two separate matters: the first for 90 days for violating DR 1-102(A)(4) and DR 7-106(C)(6) (*In re Meyer II*, 328 Or 211, 970 P2d 652 (1999)); and the second for a year for violating DR 6-101(B) (*In re Meyer III*, 328 Or 220, 970 P2d 647 (1999)). *Standards,* § 9.22(a);

2. Multiple offenses. *Standards,* § 9.22(d);

3. Substantial experience in the practice of law in that the Accused has been a lawyer in Oregon since 1967. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

The *Standards* provide that a period of suspension is appropriate in this matter. *See Standards,* § 4.42.

12.

Under Oregon case law, the Accused's prior disciplinary history is a significant aggravating factor in determining the length of the appropriate suspension in this matter. *In re Meyer III, supra; In re Jones*, 326 Or 195, 951 P2d 149 (1997).

In *In re Meyer III, supra*, the Accused was suspended for one year for neglecting a legal matter. The suspension in this case should be longer than what was imposed in *In re Meyer III* because, taken together, the Accused now has seven disciplinary rule violations resulting in three separate sanctions. See *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997), in which a lawyer who had previously been suspended for 120 days for violating DR 1-103(C) and DR 6-101(B) was subsequently suspended for two years for violating the same disciplinary rules.

13.

The parties recognize that this is the third time the Accused has been found to have neglected a legal matter. However, it is significant that this matter involves neglect only and that neither the extent of the neglect nor the injury in this matter is substantial. *See In re Bourcier*, 325 Or 429, 939 P2d 604 (1997) (lawyer, with a prior disciplinary history of neglect and failure to cooperate, was disbarred for more serious acts of neglect and failure to cooperate); *In re Christ*, 327 Or 609, 965 P2d 1023 (1998) (lawyer, with a prior disciplinary history of neglect and failure to cooperate, was suspended for five years for neglect causing actual injury and for substantial failure to cooperate).

14.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of two years, to commence immediately upon the approval of the Stipulation.

15.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the 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 21st day of August 2000.

/s/ John G. Meyer
John G. Meyer
OSB No. 67088

EXECUTED this 23rd day of August 2000.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 00-82, 00-90
	)	
GREG PERKINS,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	John C. Fisher, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and DR 6-101(B). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	October 9, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

ORDERED that the stipulation entered into between the parties is approved. Greg Perkins shall be suspended from the practice of law for 60 days, effective October 9, 2000, or three days after the date of this order, whichever is later, for violation of DR 1-102(A)(3) and DR 6-101(B) of the Code of Professional Responsibility.

DATED this 27th day of September 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Mary Jane Mori
Mary Jane Mori, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Greg Perkins, 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, Greg Perkins, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon on April 25, 1986, to practice law in this state, and a member of the Oregon State Bar, having his office and place of business in the Lane County, Oregon.

3.

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

4.

On June 17, 2000, the State Professional Responsibility Board (hereinafter "SPRB") authorized a formal disciplinary proceeding against the Accused for alleged violation 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 these proceedings.

Facts and Violations

Jensen Matter

Case No. 00-82

5.

On or about November 24, 1998, Ralph Jensen (hereinafter "Jensen") retained the Accused to file a Chapter 13 bankruptcy case to prevent foreclosure of Jensen's real property and home. Jensen told the Accused that a foreclosure sale was scheduled to occur. Jensen was an elderly man who was unsophisticated in legal matters. Jensen had limited income. He paid the Accused $260.

6.

The Accused instructed his legal assistant to prepare a draft of the petition and schedules. In late December 1998, the legal assistant telephoned Jensen and obtained additional information from him. Thereafter, Jensen telephoned the Accused several

times to inquire about the status of the matter. The Accused did not return Jensen's calls or otherwise advise Jensen of the status of his legal matter.

7.

The foreclosure of the trust deed on Jensen's real property continued unabated, and on February 19, 1999, the trustee's sale was held and Jensen's real property and home was sold. The trustee's deed was recorded on February 22, 1999.

8.

On February 24, 1999, Jensen went to the Accused's office because he had not heard from him. Jensen was first told that he had not paid the required fee. However, Jensen had a receipt evidencing payment. On February 25, 1999, Jensen signed the bankruptcy petition, which was filed the same day. On February 28, 1999, notice of the bankruptcy case was sent to Jensen's creditors. In April 1999, Jensen received a letter from Southern Pacific Funding offering him $500 to move off of the property. Jensen contacted the Accused who told him not to worry because the Chapter 13 had been filed. On April 26, 1999, the Accused sent Jensen a letter in which he informed Jensen that the trustee's sale had been held on February 19, 1999, and the bankruptcy petition had been filed too late. Southern Pacific Funding filed a motion for relief from the automatic stay arising from the filing of the Chapter 13 bankruptcy petition and obtained an order for relief.

9.

During his representation, the Accused failed to seek from Jensen or third parties information sufficient to ascertain the date of the foreclosure sale; failed to follow up or otherwise supervise preparation of the Chapter 13 bankruptcy petition and related documents to be certain they were filed in a timely manner; failed to file Jensen's bankruptcy petition and schedules in advance of the foreclosure sale; failed to adequately communicate with Jensen; and failed to take steps to protect a client who lacked the ability and resources to protect his own interests.

10.

The Accused admits that he neglected Jensen's legal matter and that his conduct constituted a violation of DR 6-101(B) of the Code of Professional Responsibility.

Charles Matter

Case No. 00-90

11.

Beverly and Leroy Charles (hereinafter "the Charles") retained the Accused to handle a Chapter 13 bankruptcy case. The Charles identified Associates Financial

(hereinafter "Associates") in their schedules as a secured creditor. The Chapter 13 plan filed by the Charles provided for periodic payments to be made to Associates.

12.

Associates failed to timely file a proof of claim. Its motion to allow the late filing was denied. Nevertheless, Associates had a security interest in the Charles' mobile home that was not affected by its failure to timely file a proof of claim. In February 1999, Associates proposed terms to the Accused to settle the matter. Associates acknowledged that it would not be paid through the plan and advised the Accused that if no payments were made, the Charles would be in default immediately upon completion of the Chapter 13 plan. The Accused failed to forward a copy of Associates' letter to the Charles and otherwise took no action on the proposal.

13.

Associates filed a motion for relief from stay to foreclose its security interest. The court denied the motion conditioned upon the trustee's commencement of an adversary proceeding by May 21, 1999, to avoid Associates' lien on the Charles mobile home. The court also ordered that Associates was allowed to submit an order granting relief from stay if the trustee failed to file the adversary proceeding. The trustee determined there was no basis to avoid the lien and did not file an adversary proceeding. Associates submitted an order granting relief from stay, which the court signed on June 24, 1999.

14.

On June 29, 1999, Associates made another proposal to resolve the dispute. Because the Charles were dissatisfied with the Accused's performance, they retained a second attorney to review matters, but directed that the Accused continue to represent them in seeking to resolve the Associates' lien. On June 30, 1999, the Charles's second attorney told the Accused that the Charles did not agree with Associates's June 29, 1999, proposal and requested that he advise the Charles of the options available to them. The Accused provided this information to the Charles, but did not advise Associates that its June 29, 1999, proposal had been rejected by the Charles.

15.

On July 12, 1999, the Charles' second attorney again notified the Accused that the Charles were not willing to modify the plan on the terms proposed by Associates, but were willing to amend the plan to provide for payment outside the plan if it could be arranged at the same principal and interest rate provided in the plan.

16.

On July 13, 1999, Associates notified the Accused by letter sent via facsimile that Associates' June 29, 1999, offer would be withdrawn unless the Charles accepted it within five days.

17.

On July 16, 1999, the Accused wrote at the bottom of Associates' June 29, 1999, letter, "Offer Accepted. Greg Perkins. 7/16/99." The Accused also added a line and the name "Mr. & Mrs. Charles" under it. The Accused faxed the letter with the handwritten additions to Associates. The Accused mailed a copy of the letter with the handwritten acceptance to the Charles and their second attorney.

18.

The Accused admits that he engaged in misrepresentation in violation of DR 1-102(A)(3) when he accepted Associates' June 29, 1999, proposal on behalf of his clients. The Accused knew that his clients had not authorized the Accused to accept Associates' proposal and had expressly rejected it. The Accused impliedly represented to Associates that his clients had approved Associates settlement proposal and that he had the authority to accept it. *See In re McKee*, 316 Or 114, 849 P2d 509 (1993); *In re Fuller*, 284 Or 273, 586 P2d 1111 (1978).

Sanction

19.

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) 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) and DR 6-101(B), the Accused violated his duties to his clients to exercise diligence in the representation and his duty to the public to maintain personal integrity. *Standards*, §§ 4.4, 5.1.

B. *Mental State.* The Accused acted with knowledge. "Knowledge" is the conscious awareness of the nature or the attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused knew Jensen had retained him to file the bankruptcy case to stay the foreclosure so as to either work something out with the creditor or allow Jensen time to try to sell his property to recover any equity. The Accused also knew that he failed to take timely action and failed to properly monitor his client's case to ensure that it was timely filed. In the Charles' matter, the Accused knew that the Charles had not given him authority to accept the Associates' proposal and that they had expressly rejected its terms.

C. *Injury.* The Accused's conduct resulted in actual injury to Jensen. Because the Accused failed to act, the foreclosure sale occurred before the bankruptcy petition was filed. Jensen lost his home and any portion of its value that could have been saved if he could have sold the property. The Accused caused Jensen to be very upset. The Accused's conduct also resulted in potential injury to the Charles. The Charles' second attorney was able to withdraw the acceptance of the Associates' proposal and resolve the matter on terms acceptable to the Charles.

D. *Aggravating Factors.* Aggravating factors include:

1. This stipulation involves two rule violations involving two client matters. *Standards,* § 9.22(d).

2. Jensen and the Charles were vulnerable. Jensen was especially vulnerable. He was an elderly man who was unsophisticated in legal matters. Jensen and the Charles relied on the Accused to protect their interests. *Standards,* § 9.22(h).

3. The Accused has substantial experience in the practice of law, having been admitted to practice in 1986. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused has displayed a cooperative attitude during the investigation and in resolving this formal proceeding. *Standards*, § 9.32(e).

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

20.

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(a). Case law is in accord. *See In re McKee*, 316 Or 114, 849 P2d 509 (1993); *In re Fuller*, 284 Or 273, 586 P2d 1111 (1978).

21.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 60 days, commencing October 9, 2000, or three days after the date the Order Approving Stipulation for Discipline is signed by the Disciplinary Board, whichever is later.

22.

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

DATED this 15th day of September 2000.

/s/ Greg Perkins
Greg Perkins
OSB No. 86082

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. 98-27, 99-24, 00-30;
	)	SC S46875
ANDREW E. TOTH-FEJEL,	)	
	)	
Accused.	)	

Bar Counsel:	Stephen Werts, Esq.
Counsel for the Accused:	Mark M. Williams, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) (two counts), DR 1-102(A)(4) (two counts), DR 5-101(A), DR 7-102(A)(1), DR 7-102(A)(2), DR 7-102(A)(3), DR 7-106(A), ORS 9.460(2), ORS 9.527(3), and ORS 9.527(4) (two counts). Stipulation for discipline. Five-year suspension.
Effective Date of Order:	December 3, 2000

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Andrew E. Toth-Fejel have entered into a Stipulation for Discipline. The Stipulation for Discipline is accepted. Andrew E. Toth-Fejel is suspended from the practice of law for a period of five years. The Stipulation for Discipline is effective 60 days from the date of this order.

DATED this 4th day of October 2000.

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

STIPULATION FOR DISCIPLINE

Andrew E. Toth-Fejel, 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, Andrew E. Toth-Fejel, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 19, 1984, 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 September 2, 1998, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB") in Case No. 98-27, alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-106(A), DR 9-101(A), ORS 9.460(2), ORS 9.527(3), and ORS 9.527(4). On January 13, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the SPRB in Case No. 99-24, alleging violation of DR 1-102(A)(3) and ORS 9.527(4). On April 20, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the SPRB in Case No. 00-30, alleging violations of DR 1-102(A)(4), DR 7-102(A)(1), DR 7-102(A)(2), and DR 5-101(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 these three proceedings.

The Braun Matter

Case No. 98-27

Facts

5.

The Accused represented the Brauns in a bankruptcy matter. One of the assets of the estate was the repayment of a loan to the debtors' daughter and her husband. It was agreed between them that the loan would be repaid when the daughter and son-in-law's home sold. The house sold while the Accused was representing the debtors, and the title company forwarded a check to satisfy the debt to the Accused. The Accused took possession of the check, did not deposit the check in his trust account, did not negotiate it, and did not disclose receipt of the check to the bankruptcy trustee or trustee's attorney until the trustee independently learned of the

check six months later. In between receipt of the check and discovery of the check by the trustee, the Accused made false representations to the trustee's attorney and failed to comply with an order of the bankruptcy court mandating the disclosure of information regarding the loan. During this time, the Accused had not made a determination whether there were any appropriate means to preserve part, or all, of this asset for his clients.

6.

On August 30, 1999, a trial panel of the Disciplinary Board issued an opinion finding the Accused guilty of violating DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-106(A), ORS 9.460(2), ORS 9.527(3), and ORS 9.527(4). A copy of the opinion is attached hereto as Exhibit A. The case presently is pending before the Oregon Supreme Court on automatic review and is set for oral argument on September 12, 2000.

Violations

7.

The Accused admits that, by engaging in the conduct described above, he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), DR 7-106(A), ORS 9.460(2), ORS 9.527(3), and ORS 9.527(4).

8.

Upon further factual investigation and consistent with the opinion of the trial panel, the parties agree that the charge of alleged violation of DR 9-101(A) should be and, upon the approval of this stipulation, is dismissed.

The Mark Kramer Matter

Case No. 99-24

Facts

9.

From 1989 to August 31, 1998, the Accused and Mark Kramer ("Kramer") practiced law together and operated their practice under a business form of partnership. Pursuant to the verbal partnership agreement, the Accused was required to deposit all income generated from his practice into a partnership account. The Accused was entitled to pay himself from the partnership only after his overhead and professional expenses were paid from the account.

10.

Between 1997 and about August 1998, without Kramer's knowledge or consent, the Accused failed to deposit income from his practice totaling approximately $63,724.46 into the partnership account and used the money for his own purposes. At the time the Accused diverted partnership funds, he and Kramer

were in a protracted dispute over the allocation of overhead, expenses, and distribution of firm revenues.

11.

On two occasions, the Accused represented to Kramer that he had not diverted partnership funds. These representations were false, and the Accused knew they were false when he made them. Pursuant to a subsequent written settlement agreement between the Accused and Kramer, the Accused has paid to Kramer his agreed portion of the income improperly withheld from the partnership account.

Violations

12.

The Accused admits that, by engaging in the conduct described above, he violated DR 1-102(A)(3) and ORS 9.527(4).

The Des Chuttes Matter

Case No. 00-30

Facts

13.

In March 1998, the Accused was retained by Des Chuttes Investments ("the Debtor") to file a Chapter 11 bankruptcy petition and a Motion for Approval of Settlement Agreement and to represent it in related proceedings. Cupertino National Bank's ("Cupertino") interests were adversely affected by that proceeding. Cupertino subsequently moved to sanction the Debtor and the Accused for both filings under Federal Rule of Bankruptcy Procedure 9011.

14.

A hearing on Cupertino's motion to sanction both the Debtor and the Accused was timely scheduled. At the hearing, the Accused appeared representing himself and the Debtor at a time when his professional judgment on behalf of the Debtor was or reasonably may have been affected by his own financial or personal interests. The Accused did not obtain the Debtor's consent to the continued representation after full disclosure.

15.

The Bankruptcy Court awarded $105,424.29 in sanctions against the Debtor for filing a bankruptcy petition in bad faith and against the Accused for failing to make a proper inquiry before filing either the petition or the motion. An appeal was timely filed and the matter reviewed by United States District Court Judge Robert Jones (the "Judge").

16.

The Judge affirmed the Bankruptcy Court's conclusion that the Accused willfully breached his duty to investigate both the legitimacy of the bankruptcy petition, which had been filed in bad faith, and the motion to approve the settlement agreement, which was neither warranted by existing law nor premised on a good-faith basis for modification of existing law.

Violations

17.

The Accused admits that by engaging in the conduct described above, he violated DR 1-102(A)(4), DR 7-102(A)(1), DR 7-102(A)(2), and DR 5-101(A).

Sanction

18.

The Accused and the Bar agree that in fashioning an appropriate sanction in these cases, the Supreme Court 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 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.* By making false statements to the bankruptcy trustee's attorney and in failing to disclose the existence of the check in the Braun matter, the Accused failed to maintain his personal integrity in violation of his duty to the public and the legal system. By diverting partnership funds and lying to his partner regarding the diversion, the Accused also failed to maintain his personal integrity in violation of his duty to the public. In filing a bankruptcy petition and motion in bad faith without proper inquiry into the factual and legal basis for such filings, the Accused engaged in conduct prejudicial to the administration of justice and violated his duty to the legal system in the Des Chuttes matter. By continuing to represent a client when his professional judgment on behalf of the client was or reasonably may have been affected by his own financial or personal interests, the Accused violated his duty to his client. *Standards,* §§ 4.3, 5.1, 6.1.

B. *Mental State.* In taking the actions described herein in the Braun and Des Chuttes matters, the Accused acted with, at least, knowledge: that is, the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. In taking the action described herein in the Kramer matter, the Accused acted with intent: that is, the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

C. *Injury.* Injury is harm to a client, the public, the legal system, or the profession that results from a lawyer's misconduct. The level of injury can range from serious injury to little or no injury. In the Braun matter, there was some injury

in that collection of the check was delayed and additional legal expenses were incurred by the trustee to investigate the Accused's failure to promptly turnover the refund check. The Chapter 7 case was administered with no delay in its completion since there was another asset for the Trustee to liquidate, a personal injury claim. Many creditors suffered no injury because their claims were paid in full with excess funds returned to the Brauns. In the Kramer matter, there was serious actual injury in that Kramer was denied money that he was entitled to receive even though the Accused has now repaid all of the income improperly withheld from Kramer. In the Des Chuttes matter, there was significant actual injury in that Cupertino was required to retain a lawyer to resist the Accused's efforts to discharge Des Chuttes' obligation to Cupertino. The Accused's misconduct, together with his client's, also resulted in a sanction award in excess of $100,000 being entered against him and his client.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary record having received a public reprimand in 1998 for neglect of a legal matter. *In re Toth-Fejel,* 12 DB Rptr 65 (1998). *Standards,* § 9.22(a);

2. Dishonest or selfish motive. *Standards,* § 9.22(b);

3. A pattern of misconduct. *Standards,* § 9.22(c);

4. Multiple offenses. *Standards,* § 9.22(d); and

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

E. *Mitigating Factors.* Mitigating factors include:

1. Cooperative attitude toward the investigation of his conduct. *Standards,* § 9.32(e);

2. During the period of misconduct, the Accused was having personal and emotional problems. He was having marital difficulties and, in March 1998, his wife suffered a physical and emotional breakdown requiring her hospitalization. *Standards,* § 9.32(c);

3. Remorse. *Standards,* § 9.32(*l*).

19.

The *Standards* provide that disbarment is generally appropriate when:

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

Standards, § 5.11. The *Standards* also provide that suspension is generally appropriate when "a lawyer engages in criminal conduct which does not contain the

elements listed in *Standards* § 5.11 and that seriously adversely reflects on the lawyer's fitness to practice law." *Standards,* § 5.12.

According to the *Standards*, suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards,* § 6.12.

Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards,* § 6.22.

20.

Oregon case law supports a suspension in this case. In *In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998), the court suspended a lawyer from the practice of law for two years for being untruthful about videotapes he claimed to have reviewed for his mandatory continuing legal education requirements and for lying to the Bar about participation in CLE activities.

In *In re Claussen*, 322 Or 466, 909 P2d 862 (1996), the court suspended a lawyer for one year when it concluded that he had represented both a bankrupt debtor and one of its creditors in violation of DR 5-105(E) (current client conflict). In addition, the court found that the lawyer intentionally made material misrepresentations to the bankruptcy court in order to further his clients' interests, in violation of DR 1-102(A)(3), and he violated DR 1-102(A)(4) by submitting inaccurate and misleading documents to the bankruptcy court. The court also concluded that he violated DR 1-102(A)(4) and DR 7-102(A)(3) by failing to reveal certain information to the bankruptcy court.

In *In re Busby*, 317 Or 213, 855 P2d 156 (1993), the court suspended the accused lawyer for four months for making misrepresentations to the firm's office administrator and to a client relating to income that he was withholding from the firm and for withholding the income. The accused had become dissatisfied with his contractual relationship with the firm and the support it was providing to him. The accused decided to accumulate some funds so that he could go into solo practice. To accomplish his goal, the accused had one of his clients make payments directly to him and he then underreported the fee to the firm. This practice went on for several months. When asked about the increasing balance due by the office administrator, the accused told her he would talk to the client. However, he did not do so because he knew the client's payments were current. When the client asked about the increasing amount shown as past due on his bills, the accused blamed the mistake on billing system errors. Ultimately, the office administrator contacted the client directly and the scheme was uncovered. In a settlement between the accused and his firm, the accused agreed to pay the firm its share of payments that the accused had underreported.

In *In re Murdock*, 328 Or 18, 968 P2d 1270 (1998), an associate attorney was disbarred by the court for misappropriating from his law firm earned fees, and for lying about the misappropriation when questioned by firm personnel. Unlike the accused in *Busby, supra*, and the Accused in these proceedings, Murdock was a firm employee who had no colorable claim of right to the misappropriated funds, or any dispute with the law firm justifying even a misguided attempt at self-help.

In *In re White*, 311 Or 573, 815 P2d 998 (1991), the supreme court held that filing unwarranted actions and advancing unwarranted claims merely to harass, accepting employment knowing that the client intended to bring actions merely to harass and advance unwarranted claims, failing to appear for hearings, failing to follow an order concerning venue, failing to prosecute claims, making a false statement to the court, and assaulting a police officer warranted a three-year suspension (the maximum period of suspension then available under the Bar Rules of Procedure).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for five years for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), DR 7-102(A)(1), DR 7-102(A)(2), DR 7-102(A)(3), DR 7-106(A), ORS 9.460(2), ORS 9.527(3), and ORS 9.527(4), the sanction to be effective 60 days after approval of this stipulation by the Supreme Court.

22.

In addition, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $2,310.45 incurred for trial and deposition transcripts. The Accused shall repay these costs at the rate of $200 per month until paid in full. Should the Accused fail to pay any installment when due, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

23.

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. The parties agree that the stipulation is to be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of September 2000.

/s/ Andrew E. Toth-Fejel
Andrew E. Toth-Fejel
OSB No. 84102

EXECUTED this 12th day of September 2000.

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. 00-125
	)	
RICHARD L. WEHMEYER,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Stephen A. House, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4). Stipulation for discipline. Public reprimand.
Effective Date of Order:	October 6, 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 approved and the Accused is reprimanded, effective immediately for violation of DR 1-102(A)(4) of the Code of Professional Responsibility.

DATED this 6th day of October 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Paul E. Meyer
Paul E. Meyer, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Richard L. Wehmeyer, 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 L. Wehmeyer, 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 Benton 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 19, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 1-102(A)(4) of the Code of Professional Responsibility. 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.

In or about March 2000, the Accused represented a client who had been charged with driving under the influence of intoxicants (DUII). The client was prepared to enter a plea of guilty to the DUII and accept a suspension of his driver's license as a consequence of the plea. Under those circumstances, the client would have been eligible for a hardship permit enabling the client to drive for employment purposes. The client needed such a permit to retain his present job.

6.

As a result of his DUII arrest and before the DUII case was resolved, the client also was facing a hearing before the Department of Motor Vehicles (DMV). A likely outcome of the DMV hearing was that the client's driver's license would be suspended immediately and he would not be eligible for a work permit. Under those circumstances, the client would lose his job if he could not drive for work.

7.

On March 8, 2000, the Accused telephoned the arresting officer in the DUII matter, who was under subpoena to be a witness at the DMV hearing. The Accused

was not aware that the officer was under subpoena, but assumed the officer would be called as a witness at the DMV hearing. The Accused advised the officer of the hardship to the client if the client were to lose his driver's license as a result of the DMV hearing. The Accused further told the officer that the Accused was hoping for a "mercy nonappearance" by the officer. The officer reasonably understood the Accused to be asking that the officer fail to appear at the DMV hearing so that no adverse consequence to the client would result from the DMV hearing.

Violations

8.

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

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 owed to the legal system when he engaged in improper communication with a witness to a legal proceeding. *Standards,* § 6.3.

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*, p. 7. The Accused asserts that his comment to the officer was a complete lapse in judgment that he immediately recognized as a mistake and that he did not intend to induce a witness to disobey a subpoena for attendance at a hearing. Although this may not have been the Accused's intent, he knew even the suggestion that the officer fail to appear was not proper.

C. *Injury.* There was no actual injury in this matter. The officer immediately contacted the District Attorney's Office, the Accused immediately acknowledged his conduct, and there was no impact on the client's proceedings. There is great potential for injury to the justice system any time a lawyer suggests to a witness that the witness not appear to testify in a proceeding.

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

1. The Accused has substantial experience in the practice of law, practicing approximately 20 years in California before being admitted to the Oregon State Bar in 1992. *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. The Accused fully cooperated with Disciplinary Counsel in connection with the investigation of the Accused's conduct. *Standards,* § 9.32(e).

4. The Accused's conduct has been examined for possible criminal prosecution. The Lane County District Attorney's Office decided that no criminal charge will be brought. *Standards,* § 9.32(k).

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

10.

The *Standards* provide that suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding. *Standards,* § 6.32. The *Standards* further provide that reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *Standards,* § 6.33.

11.

The closest case in Oregon to the present proceeding is *In re Smith,* 316 Or 55, 848 P2d 612 (1993), in which a lawyer sent a letter to a potential medical witness in a workers' compensation matter threatening the witness with civil action if the witness's testimony was harmful to the lawyer's client. The lawyer was suspended by the Supreme Court for 35 days for violating DR 1-102(A)(4). The conduct of the Accused in this proceeding is not as egregious as the conduct described in *In re Smith, supra*. Moreover, unlike the lawyer in *Smith*, the Accused admitted his wrongdoing and expressed remorse.

12.

The parties agree that the Accused shall be reprimanded for violation of DR 1-102(A)(4), effective immediately upon the acceptance of this stipulation by the Disciplinary Board.

13.

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

EXECUTED this 26th day of September 2000.

/s/ Richard L. Wehmeyer
Richard L. Wehmeyer
OSB No. 92497

EXECUTED this 2nd day of October 2000.

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. 00-50
	)	
GARRY P. McMURRY,	)	
	)	
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 9-101(A). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	November 10, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

ORDERED that the stipulation entered into between the parties is approved. Garry P. McMurry shall be suspended from the practice of law for 60 days, effective November 10, 2000, or three days after the date of this order, whichever is later, for violation of DR 1-102(A)(3) and DR 9-101(A) of the Code of Professional Responsibility.

DATED this 9th day of October 2000.

/c/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Amy R. Alpern
Amy R. Alpern, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Garry P. McMurry, 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 in 1958, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, voluntarily, and with the advice of counsel. This Stipulation is made under the restrictions of Rule of Procedure 3.5(h).

4.

On April 15, 2000, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for violation of DR 1-102(A)(3) and DR 9-101(A) of the Code of Professional Responsibility.

Facts and Violations

5.

Prior to August 1999, the Accused maintained a lawyer trust account and business account at US Bank.

6.

Between August and November 1999, the Accused deposited funds belonging to him or his law firm in the US Bank lawyer trust account. In depositing personal funds in his trust account, the Accused represented that such funds belonged to his clients and were not subject to seizure. The Accused deposited personal funds in his lawyer trust account so as to shield the funds from the claims of his creditors.

7.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(3) and DR 9-101(A) of the Code of Professional Responsibility.

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") should be considered. The *Standards* establish the framework to analyze the Accused's conduct, including (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

A. *Duty.* In violating DR 1-102(A)(3) and DR 9-101(A), duties to clients, the public, and the profession are implicated. *Standards*, §§ 4.1 5.1, 7.2.

B. *State of Mind.* The Accused knew that he was not permitted to deposit personal funds in a lawyer trust account and that his creditors would not be permitted to seize funds on deposit in his lawyer trust account. *Standards*, p. 7.

C. *Injury.* As a result of the Accused's conduct, there existed the potential for injury to his clients, the public, and the profession. No actual loss or damage resulted to his clients. Funds of one client only were on deposit in the account during the relevant time period. Nevertheless, commingling of funds presents the potential for injury to clients whose funds are to be deposited in the lawyer trust account. In addition, the Accused's creditors may have been deceived and deterred from exercising rights to collect unpaid debts from the Accused's personal funds. The Accused established a new business account at a different financial institution in December 1999. *Standards*, p. 7.

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

1. The Accused was admitted to practice in 1958 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

2. This Stipulation involves two rule violations. *Standards*, § 9.22(d).

3. The Accused's conduct demonstrates an improper motive in that personal assets were shielded from seizure by creditors. *Standards*, § 9.22(b).

4. The Accused has a prior disciplinary record consisting of an admonition in June 1983 for violation of DR 7-110(B), and a public reprimand in 1988 for violation of DR 5-105(E) (former DR 5-105(A)) and DR 6-101(A). *In re McMurry*, 2 DB Rptr 63 (1988). *Standards*, § 9.22(a).

E. *Mitigating Factors.* Mitigating factors to be considered 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 responding to the complaint and resolving this disciplinary proceeding. *Standards*, § 9.32(e).

3. The Accused's reputation in the profession and the community is good. *Standards*, § 9.22(g).

4. The Accused's prior disciplinary record is remote in time from the conduct which is the subject of this stipulation. *Standards*, § 9.32(m).

5. The Accused reported that the situation was the result of several factors. His income was curtailed in September and October because one of his clients became insolvent and others made only partial or late payments on overdue bills. During the same time period, the Accused traveled to California on numerous occasions to attend to his elderly mother and her personal, financial, and property needs and to move her from her home into a care facility. The Accused was also in the process of moving his office to his home and was without full-time office help. At the same time, he continued to handle a busy law practice. The Accused acknowledges that he has no defense and that his conduct was wrong. However, he felt he needed to maintain his ability to conduct his business so that he could meet professional and personal financial responsibilities. *Standards*, § 9.32(c), (h).

9.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2 Case law is in accord. *See In re Whipple*, 1 DB Rptr 205 (1986) (lawyer was suspended for 60 days for violation of DR 1-102(A)(4) [current DR 1-102(A)(3)] and DR 9-102(A) [current DR 9-101(A)]); *In re Bassett*, 12 DB Rptr 14 (1998) (similar conduct).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for a period 60 days.

11.

This Stipulation for Discipline has been approved by the SPRB, reviewed by the Disciplinary Counsel of the Oregon State Bar, and is subject to the approval of the Disciplinary Board pursuant to BR 3.6. If approved by the Disciplinary Board, the Accused's suspension shall be effective November 10, 2000.

DATED this 2nd day of October 2000.

/s/ Garry P. McMurry
Garry P. McMurry
OSB No. 58062

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. 97-190, 97-191, 97-192
	)	
BEVERLY LONG PENZ,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	Jonel Ricker, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-103(C), DR 7-102(A)(2), and ORS 9.527(4). Stipulation for discipline. 90-day suspension, 60 days stayed, subject to a two-year period of probation.
Effective Date of Order:	November 18, 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 approved and the Accused shall be suspended from the practice of law for 90 days, 60 days of which shall be stayed, subject to a two-year period of probation, effective 30 days after date of signing, for violation of DR 1-102(A)(3), DR 1-103(C), DR 7-102(A)(2), and ORS 9.527(4).

DATED this 19th day of October 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Timothy J. Helfrich
Timothy J. Helfrich, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Beverly Long Penz, 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, Beverly Long Penz, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1984, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Union 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 2, 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 1-103(C), DR 2-106(A), DR 2-110(A)(2), DR 6-101(B), DR 7-102(A)(2), and ORS 9.527(4), arising from three separate matters. 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. As set forth below, the parties agree that charges from two of the three initial matters (No. 97-190 and No. 97-192) should be dismissed. This stipulation relates to the remaining matter (No. 97-191, Welborn).

Welborn Matter

No. 97-191

Facts

5.

Mark and Teresa Wilen (hereinafter "the Wilens") retained the Accused to represent them in a personal injury claim. Aetna Insurance Company insured both the defendants and the Wilens, as to PIP and uninsured motorist coverage. Aetna, on the main personal injury claim, was represented by attorney Gordon Welborn (hereinafter "Welborn"), while Aetna appeared to represent itself on the PIP portion of the claim.

6.

On or about October 18, 1996, the Wilens signed a written settlement agreement providing for their receipt of $7,000 for release of their claims against the defendants. Welborn sent the Accused a check in the amount of $7,000. Aetna mistakenly sent a second check to the Accused in the amount of $7,000. The two checks arrived in the Accused's office within one week of each other.

7.

After some delay, the Accused instructed her staff to deposit both checks into her firm's trust account, release two-thirds of the total $14,000 to the Wilens, and retain the balance as earned fees. The Accused had no authority to negotiate both checks and had knowledge that her client was not entitled to receive a payment of $14,000. When Welborn advised the Accused of the duplicate payment, she stated that an Aetna representative had authorized payment of the second $7,000 and had advised her to cash both checks. Based on this purported authorization, the Accused told Welborn she already negotiated the checks and remitted the additional money to her client. Representatives of Aetna deny a conversation as described by the Accused ever occurred. The Accused's representation to Welborn regarding the conversation with Aetna was false.

8.

On March 19, 1997, Welborn filed a complaint with Disciplinary Counsel's Office concerning the conduct of the Accused. During the course of the Bar's investigation of Welborn's complaint, the Accused repeated her representations that the Accused and other members of her staff contacted Aetna about the double payment and were advised to cash both checks.

Violations

9.

By engaging in the foregoing conduct, the Accused admits that she violated DR 1-102(A)(3), DR 1-103(C), DR 7-102(A)(2), and ORS 9.527(4).

Upon further factual inquiry, the parties agree that the alleged violations arising out of Case No. 97-190 and the alleged violation arising out of Case No. 97-192 should be and, upon the approval of this stipulation, are 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 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.* By engaging in the conduct described herein, the Accused violated her duty to maintain her personal integrity and her duty to the legal system. *Standards,* §§ 5.1, 6.0.

B. *Mental State.* For the purposes of this stipulation, the parties agree that the Accused acted with "knowledge," that is, with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7. She had knowledge that the double payment was not what the parties had agreed to. Even the Accused's clients questioned her about whether they should have received the additional money. However, the Accused's mental state was affected by a mental health condition described in more detail below.

C. *Injury.* The conduct of the Accused caused potential injury to her clients in that they were not entitled to receive any money above their share of the agreed-upon settlement of $7,000, and if the funds had not been repaid, as they ultimately were by the Accused, the clients faced potential liability for unjust enrichment. Aetna Insurance Company also suffered some injury in that it was deprived of the use of its money and interest thereon for a substantial period of time until repaid by the Accused.

D. *Aggravating Factors.* Aggravating factors include:

1. Multiple offenses. *Standards,* § 9.21(d);

2. Substantial experience in the practice of law, although minimal experience in the civil practice of law. *Standards,* § 9.21(i).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards,* § 9.32(a);

2. Personal and emotional problems. *Standards,* § 9.32(c);

3. Mental impairment untreated at the time of the wrongful conduct. *Standards,* § 9.32(h); and

4. Remorse. *Standards,* § 9.32(*l*).

11.

The Accused has presented significant lay and medical evidence that, at the time of the misconduct, she was suffering from an undiagnosed bipolar disorder and was on various antidepressants which aggravated rather than ameliorated her disorder. According to the Accused's treating psychiatrist, the Accused returned to his active care in November 1997 and was finally correctly diagnosed and medicated in February 1998. The Accused's symptoms included distractibility, erosion of judgment, inability to concentrate or follow through on tasks, sleep deprivation, and severe depression mixed with states of hypomania. Medical evidence submitted

indicates that the Accused's bipolar disorder was primarily responsible for her actions related to the settlement checks and reports to the Bar concerning her alleged contacts with the insurance company. Medical evidence further indicates that the Accused currently is properly diagnosed and medicated, and is capable of functioning in the practice of law.

12.

The *Standards* provide that suspension is generally appropriate when a lawyer engages in dishonest conduct seriously adversely reflecting on the lawyer's fitness to practice law. *Standards,* § 5.12. The *Standards* also provide that suspension is appropriate when a lawyer knows that false statements are being submitted to a court (in this case, the Bar), causing injury or potential injury. *Standards,* § 6.12.

Commentary to *Standards,* § 9.32 also provides:

> Issues of physical and mental disability or chemical dependency offered as mitigating factors in disciplinary proceedings require careful analysis. Direct causation between the disability or chemical dependency and the offense must be established. If the offense is proven to be attributable solely to a disability or chemical dependency, it should be given the greatest weight. If it is principally responsible for the offense, it should be given very great weight; and if it is a substantial contributing cause of the offense, it should be given great weight. In all other cases in which the disability or chemical dependence is considered as mitigating, it should be given little weight.

According to the medical and lay evidence offered in this case, the mental illness of the Accused should be given very great weight. The *Standards* also recognize probation as a sanction in an appropriate case, thus allowing the lawyer to practice under specified conditions. *Standards,* §§ 2.7–2.8.

13.

Oregon case law provides some guidance as to sanction. In *In re Zumwalt*, 296 Or 631, 678 P2d 1207 (1984), the court disciplined a lawyer who retained for several months an erroneously made double payment under a settlement agreement, despite demands for the money's return. The court noted there was "no question but that this [misconduct] is a serious breach of professional ethics." However, because the accused was a practitioner with slightly over one year of experience, the court accepted the parties' agreement that she receive a public reprimand instead of a period of suspension.

In *In re Magar*, 312 Or 139, 817 P2d 289 (1991), the court suspended a lawyer for 60 days when he endorsed a draft with another's name, despite his knowledge that the person whose name he signed did not want him to do so.

As to mental illness defenses, the Oregon Supreme Court has adopted the *Standards* approach as set forth above. *In re Murdock*, 328 Or 18, 928 P2d 1270 (1998). The court also has accepted probation in appropriate cases. See *In re Hilke*, Or S Ct 40610 (1993), in which the court approved a stipulation for discipline imposing a 180-day suspension, 150 days stayed, subject to a two-year probation for violation of DR 1-103(C), DR 1-102(A)(3), DR 6-101(B), and DR 7-102(A)(2).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 90 days, 60 days of which shall be stayed, subject to a two-year period of probation. During the period of probation, the Accused shall comply with the following conditions:

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

B. Jonel K. Ricker, or such other person acceptable to the Bar, shall supervise the Accused's probation (hereinafter "Supervising Attorney"). The Accused agrees to cooperate and shall comply with all reasonable requests of the Supervising Attorney and Disciplinary Counsel's Office that are designed to achieve the purpose of the probation and the protection of the Accused's clients, the profession, the legal system, and the public. The Accused acknowledges that the Supervising Attorney is required to provide Disciplinary Counsel's Office with periodic reports concerning the Accused's compliance with her probation.

C. The Accused shall continue mental health counseling and treatment with Dr. Joel Rice, M.D., or such other mental health professional acceptable to the Bar. The mental health professional shall determine the frequency and scope of treatment, except throughout the period of probation, the Accused shall meet with the mental health professional at least once a month for the purpose of evaluating the Accused's psychological condition and to address counseling or treatment needs. The Accused shall comply with all reasonable recommendations of the mental health professional, including, but without limitation, more frequent counseling and treatment sessions.

D. The Accused shall obtain from the mental health professional a written report to the Supervising Attorney and Disciplinary Counsel's Office, on a quarterly basis, or more frequently if reasonably requested, which identifies the mental health professional's opinion concerning the Accused's mental health, her fitness to practice law, and her compliance with the terms of her probation.

E. Dr. Rice is of the opinion that the Accused currently is emotionally fit to practice law. Nevertheless, upon the expiration of the 30 days of imposed suspension, the Accused shall not be eligible for reinstatement until such time as Dr. Rice, or such other mental health professional acceptable to the Bar, provides a current written opinion that the Accused is fit to practice law and able to adequately perform the duties of an attorney.

F. The Accused hereby waives any privileges and expressly consents and authorizes the release and disclosure of information by Dr. Rice, or other treating mental health provider, to Disciplinary Counsel's Office and the Supervising Attorney, concerning the Accused's mental health, fitness to practice law, and compliance with the terms of her probation.

G. At least 14 days prior to the effective date of suspension, the Accused shall meet with the Supervising Attorney to review her existing caseload and shall take all appropriate measures to conclude or to refer all cases to other counsel during the period of her suspension if reasonably necessary to protect the client.

H. During the term of probation, the Accused shall meet no less than quarterly with the Supervising Attorney for the purpose of reviewing the status of the Accused's law practice and her performance of legal services on behalf of clients. The Accused shall respond, while preserving client confidences, to all reasonable requests from the Supervising Attorney for information that will allow the Supervising Attorney to evaluate the Accused's fitness to practice law and her compliance with the terms of this probation.

I. No less than quarterly, the Accused shall submit to Disciplinary Counsel's Office a written report, approved as to substance by the Supervising Attorney, advising whether she is in compliance with the terms of her probation. In the event that the Accused has not complied with any term of probation, the quarterly report shall describe the noncompliance and the reason for it.

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

K. In the event the Accused fails to comply with the conditions of her probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the stayed period of suspension. In the event the Accused successfully completes her probation, she shall be reinstated unconditionally after the expiration of the probationary term, without further order of the Disciplinary Board of Supreme Court.

15.

The Accused acknowledges that this Stipulation and sanction are limited to the matters described herein, and that she is required to apply for reinstatement pursuant to BR 8.3, and pay all fees required for reinstatement, when the 30 days of imposed suspension expire.

16.

The Accused's reinstatement after the 30 days of imposed suspension shall not become effective until the Accused pays to the Oregon State Bar its reasonable and necessary costs in the amount of $262.65, incurred for reporting and transcription of the Accused's deposition. Should the Accused fail to pay $262.65 in full by the 30th day of imposed suspension, the Bar may thereafter, without further notice to the

Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

17.

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

EXECUTED this 21st day of September 2000.

/s/ Beverly Long Penz
Beverly Long Penz
OSB No. 84320

EXECUTED this 11th day of October 2000.

OREGON STATE BAR

By: /s/ Chris L. Mullmann
Chris L. Mullmann
OSB No. 72311
Assistant Disciplinary Counsel

Cite as 331 Or 209 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

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

(OSB 95-228, 96-88; SC S43743)

En Banc

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

Submitted on the record October 12, 1999.

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

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

PER CURIAM

The Accused is suspended for two years, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Huffman,* 328 Or 567, 983 P2d 534 (1999).

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3) by filing a motion to waive or defer the filing fee and transcript preparation costs for an appeal in a case in which the Accused was a party, despite the Accused's substantial financial resources. The Bar also alleged that the Accused had violated DR 1-103(C) by failing to provide full and truthful responses to requests for financial information from a Local Professional Responsibility Committee (LPRC). The trial panel concluded that the Accused had violated DR 1-102(A)(3) and DR 1-103(C) and imposed an 18-month suspension. *Held:* The Accused violated DR 1-102(A)(3) by engaging in misrepresentation by nondisclosure, and the Accused violated DR 1-103(C) by providing incomplete and inaccurate responses to the LPRC's inquiries. The Accused is suspended for two years, with the period of suspension to run consecutively to the period of suspension imposed on the Accused in *In re Huffman*, 328 Or 567, 983 P2d 534 (1999).

Cite as 331 Or 240 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
SANDRA M. SAWYER,	)
	)
Accused.	)

(OSB 96-127; SC S46356)

En Banc

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

Argued and submitted September 7, 2000.

Jacob Tanzer, Portland, argued the cause and filed the briefs for the Accused.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause for the Oregon State Bar. With her on the brief was Jeffrey M. Kilmer, Portland.

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(3), DR 7-104(A)(2), DR 5-105(C), DR 5-105(E), ORS 9.460(2), and ORS 9.527(4). A trial panel of the Disciplinary Board found the Accused guilty of all of the alleged violations except DR 5-105(C). The trial panel imposed a nine-month suspension. *Held:* The trial panel's findings are adopted, with one exception. In addition to DR 1-102(A)(3), DR 7-104(A)(2), DR 5-105(E), ORS 9.460(2), and ORS 9.527(4), the Accused's conduct also violated DR 5-105(C). The Accused is suspended from the practice of law for a period of nine months.

Cite as 331 Or 231 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
WILLIAM T. RHODES,	)
	)
Accused.	)

(OSB 97-59; SC S46736)

En Banc

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

Submitted on the record September 8, 2000.

William T. Rhodes, Lake Oswego, filed a brief in propria persona.

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

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 7-106(A) and DR 1-102(A)(4) by violating a document production order (leading to a contempt order in 1993) and a child support order (leading to a contempt order in 1997), and thereby prejudicing the administration of justice. The Bar also charged the Accused with violating DR 1-103(C) by failing to cooperate with the Bar and the Local Professional Responsibility Committee during the disciplinary investigation. A trial panel of the Disciplinary Board concluded that the Accused had committed the alleged violations and imposed a two-year suspension. *Held:* The Bar proved by clear and convincing evidence that the Accused violated DR 7-106(A), DR 1-102(A)(4), and DR 1-103(C). The Accused is suspended from the practice of law for two years, commencing 60 days from the date of filing of this decision.

Cite as 331 Or 252 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
WILLIAM J. CLAUSSEN,	)
	)
Accused.	)

(OSB 96-107; SC S42174)

En Banc

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

Argued and submitted September 10, 1999.

Gary M. Bullock, of Bullock and Regier, P.C., Portland, argued the cause and filed the brief for the Accused. Daniel R. Reitman filed the reply brief.

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

PER CURIAM

Complaint dismissed.

SUMMARY OF SUPREME COURT OPINION

William J. Claussen ("the Accused") wrote a letter to an insurance carrier on behalf of a bankruptcy client, asserting that the carrier properly could release funds to the client because such a release was "in the ordinary course of business," as that term is used in bankruptcy law. The release of funds probably was not in the ordinary course of business. Also, the Accused did not mention in the letter that the bankruptcy court orally had indicated an intent to dismiss the bankruptcy proceeding. The Oregon State Bar (Bar) alleged that the Accused had violated Disciplinary Rule (DR) 1-102(A)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation) and DR 7-102(A)(7) (prohibiting counseling or assisting client in conduct that lawyer knows is illegal or fraudulent). A trial panel of the Disciplinary Board agreed with the Bar. *Held:* The Bar failed to prove by clear and convincing evidence that the Accused violated either DR 1-102(A)(3) or DR 7-102(A)(7). Complaint dismissed.

Cite as 331 Or 270 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
EDWARD J. BENETT,	)
	)
Accused.	)

(OSB 96-90, 96-184; SC S34639)

En Banc

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

Argued and submitted January 6, 2000.

Edward J. Benett, pro se, argued the cause and filed the briefs.

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

PER CURIAM

The Accused is suspended from the practice of law for 180 days, commencing 60 days from the filing date of this decision.

SUMMARY OF SUPREME COURT OPINION

In one matter, a $1,500 check received by the Accused on behalf of a client was dishonored by the bank. Opposing counsel agreed to send three $500 checks to replace the original check. The original $1,500 check subsequently was honored, but the Accused did not inform opposing counsel of that fact and allowed opposing counsel to send two of the $500 checks. When opposing counsel learned that the original check had been honored and demanded the return of the $1,000 overpayment, the Accused refused. In another matter, the Accused billed clients for time spent disputing his fee with them. Despite demands from the clients for the undisputed portion of their trust account, the Accused withheld those funds for months. The Accused also withheld the clients' file. The Oregon State Bar ("Bar") alleged that the Accused had violated Disciplinary Rule (DR) 1-102(A)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation) in both matters, as well as DR 2-106(A) (prohibiting excessive fees) and DR 9-101(C)(4) (requiring prompt return of client property) in the second matter. A trial panel of the

Disciplinary Board agreed with the Bar on three of the four allegations. *Held:* The Bar proved by clear and convincing evidence that the Accused committed all four violations alleged. The Accused is suspended from the practice of law for 180 days, commencing 60 days from the filing date of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-125
	)	
SCOTT D. TRUESDELL,	)	
	)	
Accused.	)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C), DR 2-106(A), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	December 11, 2000

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

ORDERED that the stipulation entered into between the parties is approved. Scott D. Truesdell shall be suspended from the practice of law for sixty (60) days, effective December 11, 2000, or the day after the date of this order, whichever is later, for violation of DR 1-103(C), DR 2-106(A), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

DATED this 21st day of November 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Amy R. Alpern
Amy R. Alpern, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Scott D. Truesdell, 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, Scott D. Truesdell, 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 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 17, 2000, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-103(C), DR 2-106(A), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) 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.

Hong Phan (hereinafter "Phan") retained the Accused in the fall of 1995 to determine whether a decree of dissolution of marriage that had been entered by default against Phan could be set aside, and to take such action. Pursuant to an oral fee agreement, Phan paid a flat fee of $1,500 to the Accused for the work to be performed. The Accused failed to deposit the funds in his lawyer trust account.

6.

The Accused worked on the matter and concluded that Phan would not be able to set aside the order of default and decree. Thereafter, the Accused did not take further action in the matter and failed to return to Phan any portion of Phan's funds. The Accused also failed to account to Phan for the funds he paid to the Accused. Phan terminated the attorney-client relationship and asked for a full refund. The

Accused offered Phan a partial refund in the amount of $750, but did not pay that or any amount to him.

7.

Phan filed a complaint with the Disciplinary Counsel's Office. The Accused cooperated with the Disciplinary Counsel's Office and initially with the Local Professional Responsibility Committee. The LPRC requested additional information from the Accused. The Accused failed to respond.

Violations

8.

The Accused admits by engaging in the conduct described above, he violated DR 1-103(C), DR 2-106(A), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards"*) 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 Violated.* In violating DR 1-103(C), DR 2-106(A), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4), the Accused violated duties to his client, the legal system and the profession. *Standards,* §§ 4.3, 7.0.

B. *Mental State.* The Accused's conduct demonstrates negligence and knowledge. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation of the standard of care that a reasonable lawyer would exercise in the situation. The Accused was negligent in notifying the Bar of changes in his address and maintaining records of his client's funds and accounting to his client for such funds. "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 knew that Phan had asked for a refund of all of the funds paid to the Accused. He also knew that he had not performed all of the work for which the fees were paid and that he failed to return a portion of the funds to the client for work that had not been performed.

C. *Injury.* Injury may be either actual or potential. *Standards,* p. 7*; In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this case, the Accused caused actual injury to his client and the profession. The client did not receive an accounting for the funds he paid to the Accused nor a refund of a portion of the fee that related to

work that was not performed. The Accused also caused injury to the profession by failing to satisfy his ethical responsibilities and failing to maintain communication with the Bar.

D. *Aggravating Factors.* Aggravating factors include:

1. This Stipulation involves five rule violations. *Standards,* § 9.22(d).

2. The client was vulnerable in that he relied upon the Accused to perform his duties consistent with the ethical standards of the legal profession. *Standards,* § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. There is an absence of dishonesty or selfish motives. *Standards,* § 9.32(b). The Accused offered to participate in the Bar's fee arbitration program and to refund one-half of the fee, but the client refused.

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

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

4. The Accused cooperated with the disciplinary authorities during the investigation before he moved out of state and failed to notify the Bar where he could be located. The Accused was represented by counsel for a period of time. After the Bar made inquiry with his former counsel, the Accused contacted the Bar and cooperated in resolving this proceeding. *Standards,* § 9.32(e).

8.

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards,* § 4.12. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards,* § 7.2.

9.

Oregon case law is in accord. *See In re Wetteland*, 12 DB Rptr 246 (1998) (60-day suspension for violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)); *In re Steves,* 12 DB Rptr 185 (1998) (30-day for violation of DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4)); *In re Steves*, 14 DB Rptr 11 (2000) (60-day suspension for violation of DR 6-101(B) and DR 9-101(C)(3)); *In re Barnett*, 14 DB Rptr 5 (2000) (60-day suspension for violation of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)).

10.

Consistent with the standards and case law, the Bar and the Accused agree that a 60-day suspension from the practice of law is an appropriate sanction. The

Accused agrees to accept a 60-day suspension from the practice of law, commencing December 11, 2000, or the day after the Disciplinary Board approves this stipulation, whichever is later.

11.

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

DATED this 7th day of November 2000.

/s/ Scott D. Truesdell
Scott D. Truesdell
OSB No. 89372

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. 97-11, 97-12
	)	
GUY B. RENCHER,	)	
	)	
Accused.	)	

Bar Counsel:	David Slader, Esq.
Counsel for the Accused:	Christopher Hardman, Esq.
Disciplinary Board:	James Leigh, Esq. (Chair); Mark McCulloch, Esq.; Wilbert Randle (Public Member)
Disposition:	Violation of DR 1-102(A)(3) and DR 2-101(A)(1). 30-day suspension.
Effective Date of Opinion:	December 1, 2000

OPINION OF TRIAL PANEL

Introduction

The Oregon State Bar ("the Bar") filed a formal Complaint against Guy B. Rencher ("the Accused") on May 5, 1997, and an Amended Formal Complaint on November 1, 1999, alleging violations of DR 1-102(A)(3), engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and DR 2-101(A)(1), making or causing to be made a communication about the lawyer or lawyer's firm which contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading.

The Accused, in an answer filed May 22, 1997, and Amended Answer filed November 23, 1999, denies violating such disciplinary rules and alleges as affirmative defenses (1) his obligation under the Code of Professional Responsibility to communicate changes in the law which may affect his clients and to render opinions regarding the changes in the law and how they may affect his clients, and (2) his rights under the constitutions of the United States and the State of Oregon, and under Oregon revised statutory provisions applicable to the conduct of attorneys, to express reasonable legal and personal opinions with regard to the status of the law.

This matter came before the Trial Panel for hearing on March 10, 2000, and was concluded on April 18, 2000. The Bar was represented by Assistant Disciplinary Counsel Jane Angus and Bar Counsel David L. Slader. The Accused appeared personally and was represented by Christopher R. Hardman. Both the Bar and the Accused submitted trial memoranda. The Accused also submitted a sanctions memorandum.

During the hearing, both the Bar and the Accused presented opening statements and closing arguments. The Bar presented testimony from expert witness Jonathan A. Levy, Esq., and fact witness Lia Saroyan, Esq. In addition, the Bar offered deposition testimony of the Accused (Exhibit 17). Bar Exhibits 1–8 and 10–19 were admitted into evidence. The Accused testified on his own behalf. He also called as fact witnesses his associates Charles D. Young, Esq., and John K. Larson, Esq.; as an expert witness, Christopher P. Cline, Esq.; and as character witnesses, John Lenz, Mark Brown, Thomas Pixton (narrative by Mr. Hardman), and Steve Berne. The Accused's Exhibits 101–125 were admitted into evidence.

Findings of Fact

The Trial Panel finds the following facts, to the extent they are in dispute, by clear and convincing evidence:

The Accused was admitted to the practice of law in Oregon in 1980. He practiced law in Corvallis until moving to Portland in about 1991. Since about 1989, the Accused has specialized in estate planning. Until about early 1997, the Accused and his firm (totaling eight lawyers at one point, but now three) regularly presented public seminars about revocable living trusts, advertising the seminars primarily through newspapers. The seminars were presented throughout Oregon and in Washington. As a result of these seminars, the Accused prepared revocable living trusts for many seminar attendees. Typical of such living trusts are those of Exhibits 12, 101A, and 101B. Article XV of these trust documents sets forth the powers of the trustee in managing the trust property.

In 1995, Oregon adopted the so-called Uniform Prudent Investor Act ("UPIA") as set forth in ORS 128.192–128.218. Under the UPIA, ORS 128.196(1), "except as expressly provided by the trust instrument itself, trustees are obligated to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust" (Exhibit 14).

Prior to 1995, Oregon trustees, absent express provisions in a trust instrument to the contrary, had a duty to manage their trusts under the so-called prudent person standard as set forth in ORS 128.009 and 128.057(1) (Exhibit 15). This latter section provided: "in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in

regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital." Both the prudent investor standard under the UPIA, and the prudent person standard in effect prior to the UPIA, were default provisions which only became applicable in the absence of express provisions in the trust instrument governing the duties and powers of the trustee. See ORS 128.194(2) (Exhibit 14) and ORS 128.007 (Exhibit 15).

In 1995, after the UPIA became effective in Oregon, the Accused had his associate Mr. Young conduct legal research concerning the effect of the new law. This resulted in a legal memorandum from the associate to the Accused, dated November 6, 1995 (Exhibit 8) and was the result of at least 26 hours of legal research. After reviewing the memorandum of Exhibit 8 and various articles concerning the UPIA (*see, e.g.,* Exhibits 7, 10, 11), the Accused prepared and sent, in March 1996, a letter (Exhibits 1, 2, 3) to at least 2,000 Oregon residents for whom his office had prepared revocable living trusts. A copy of this letter is attached as Exhibit A.

The letter advised them that because of a change in Oregon law, he believed their trusts must be amended immediately, and if they sent the Accused's firm $95 before a certain date in April 1996, the Accused's office would prepare and send them the necessary amendment for signature. In essence, the letter stated the Accused's belief that (1) because of a change in Oregon law, their trust must be amended immediately for their trust to continue to perform the way they want it to perform (Exhibit A, ¶1); (2) as a result of the change, only banks automatically qualify as trustees (Exhibit A, ¶2); (3) an amendment to their trust is mandatory (Exhibit A, ¶5); (4) a simple change in the trust would eliminate the requirements of the new law and preserve the benefits of the old law (Exhibit A, ¶¶1, 4, 6); and (5) if the change is not made, a successor-trustee could be subject to being removed by any beneficiary who claimed the trustee was not doing a good enough job (implying that was not the case under the old law) (Exhibit A, ¶¶3, 6, 7). The Bar contends that these statements were false and that the Accused knew they were false.

Each letter was accompanied by a form to return to the sender. The form had two boxes, one to check to indicate: "Yes! I want to make sure my trust continues to preserve the benefits of the old law. Please go ahead and prepare the amendment. Enclosed is my check for $95.00."; and the other to check to indicate: "No! I'm willing to run the risk that the new law may damage my successor trustees, and they may be sued for making good-faith decisions as a trustee and removed as trustees" (Exhibit A, p. 3).

The letter included highlighting, underlining, and/or enlarged print for emphasis of the above and other points (Exhibit A, pp. 1–3). It also included language such as "That is the bad news" and "That sounds pretty scary to me" in commenting on the possible effects of the new law, and: "The good news is . . ." in reference to the proposed amendment that could be made to eliminate the requirements of the new law (Exhibit A, ¶¶3, 4, 8).

The letter also indicated, in several postscripts, that the firm's $95 charge for the amendment was less than one-half of its normal fee, was only available if the amendment was requested within the next month, and was only available if the amendment could be sent by mail, without an office visit (Exhibit A, p. 2).

The letter was sent without the Accused reviewing the files of at least most of those receiving the letter. The letter was also prepared and sent by the Accused without any input from his associates, including Mr. Young.

The record shows that about 274 recipients of the letter returned it to the Accused's office indicating that they did not want the amendment. The number of recipients returning the form and sending in their $95 to have their trusts amended is not disclosed in the record. Apparently a large number of people called the Accused's office to inquire further about the need for the amendment. About a dozen recipients called the Accused's office to complain about the nature and tone of the letter. One couple, the Burkharts, wrote the Bar to inquire whether the letter was proper (Exhibit 119). Two other recipients, Linman and Howe, were incensed by the letter and wrote the Bar to complain about the unprofessional conduct of the Accused in sending the letter (Exhibits 1 and 2, respectively).

Based on the letter and the complaints to the Bar from Linman and Howe, the Bar filed its formal complaint, alleging, in essence, that the letter was materially misleading because it contained material misrepresentations, through statements or omissions, in violation of DR 2-101(A)(1) and DR 1-102(A)(3).

Credibility

The Accused contends and testified that he did not knowingly make any erroneous statements in the letter or omit any material information from the letter about the new law or its effect on the recipients' trusts, but was merely expressing his good-faith personal opinion or belief concerning the effect of the new law on such trusts. The Accused also testified that he may have been careless in drafting the letter and in his choice of language, and regretted his choice of language, but had no intention of misrepresenting the effect of the change in the law on his clients' trusts.

The Panel finds the Accused's testimony at trial less than credible. In the Accused's response to the Linman and Howe complaints to the Bar (Exhibit 4), the Accused vehemently defended the letter, stating, "I did not write the letter in question lightly, frivolously, or thoughtlessly. It was the result of many hours of legal research, primarily done by an associate of my firm." He defended at length each questioned statement in the letter. He also defended the language and "tone" of his letter, referring to his undergraduate degree in English and language skills, stating that the letter was deliberately designed to express his strong opinion and recommendation, and to cause his clients to take action. In his trial testimony, in contrast, the Accused was apologetic about the letter, and professed that it was not

a good letter and did a poor job of communicating certain things. He testified that if he had to do it over again, he would communicate his opinions differently.

The Panel finds that the Accused was trying to convey the impression at trial that his letter to his clients was the result of negligence, not intentional conduct. However, given (1) the Accused's experience in practicing in his specialty of the law, (2) the Accused's prior statements to the Bar regarding the care taken in drafting the letter, (3) the extent of research undertaken by the Accused's associate, (4) the Accused's review of that research before writing the letter in question, and (5) the failure of the research, the statute, the trust documents, and the testimony of Mr. Young and two experts at trial to support the strong statements made by the Accused in the letter, the Panel does not find the Accused's trial testimony credible in this regard.

Misstatements and Omissions

Based on the testimony of witnesses Levy, Cline, and Young, the contents of Mr. Young's memorandum and the articles on which it was based, and especially on an examination of the UPIA (Exhibit 14), prior law (Exhibit 15), and the trust documents (Exhibits 12 and 101A and B), the Panel finds that the Accused's letter contained material misstatements and omissions, including the following:

1. The letter omitted mention that the powers and duties of a trustee, as expressed in both the prior law and in the UPIA, were default provisions that did not apply if the trust instrument included express provisions to the contrary. For example, although under the UPIA a trustee may have a duty to diversify, an express provision in the trust instrument to the contrary would control. Thus, adoption of the UPIA in Oregon may have had no or little effect on the trusts in question.

2. The letter omitted mention that the living trusts of its recipients included detailed provisions regarding the powers and duties of the trustee and the types of investments, the extent of diversification, and the extent of delegation that was permitted but not required. Therefore it would appear, as expressed by Mr. Levy, that neither the Trustees Power Act under the old law, nor the UPIA under the new law, would have had much, if any, effect on the trusts in question. In other words, "the prudent person" standard under the old law and the "prudent investor" standard under the new law would not apply if the terms of the trust instrument set a different standard, which they appear to do.

3. The letter failed to mention that the "prudent investor" standard under the new law included a different standard for amateur trustees than for professional trustees. Thus, the Accused's statement in the letter that "only banks would automatically qualify under the new law" was clearly erroneous. (*See* ORS 128.196(6), 128.208, and 128.212.)

4. The letter failed to mention that several statements in the letter concerning requirements under the new law were also requirements under the old law, thus implying that the law had changed in certain respects when it had not. For example, the duty to diversify was part of the default provisions under the old as well as the new law. Also, a disgruntled beneficiary could take action against a trustee if the beneficiary felt the trustee was not doing a good enough job and try to have the trustee removed, both under the old law and under the new law.

5. The letter stated that the proposed amendment was "required" and "mandatory" in view of Oregon's adoption of the UPIA. However, there was nothing in the law nor anything apparent in the trusts themselves that made an amendment to the trusts mandatory, especially since the powers and duties of the trustee were spelled out in detail in the trusts.

6. The letter failed to mention possible benefits of Oregon's adoption of the UPIA, including increased flexibility given to the trustee in making investment decisions, in managing investments, and in delegating trustee functions.

7. Perhaps of paramount importance, the letter omits any mention that a decision whether or not to opt out of the new law might depend on the individual circumstances and desires of each client. The materiality of this omission is particularly important because the needs for amendment undoubtedly differed among the 2,000 recipients of the letter. A lawyer should know that he needs to personally counsel the recipients of such a letter to determine their respective circumstances and individual need for change to their existing trust agreements.

The above statements and omissions were intentional and, as a whole, misleading as to the nature of the change in the law, its effect on the trusts of those receiving the letter, and the need to take immediate action.

The letter of Exhibits 1–3 was prepared by the Accused alone, without assistance, input, or review by his associates. It was prepared carefully, skillfully, and deliberately by the Accused to induce its recipients to take action by sending the Accused money for an amendment to their trusts that may not have been needed and may not have had the desired effect if it had been needed. The letter, on its face, was a deliberate attempt to scare its recipients, with whom the Accused claimed an attorney-client relationship and therefore who presumably trusted the Accused, into sending the money without further attorney input, without counseling about their personal circumstances or needs, and without providing them with a fair explanation of the law or the need for the amendment.

Analysis and Conclusions of Law

DR 1-102(A)(3)

> It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Bar has the burden of establishing the Accused's misconduct by clear and convincing evidence. BR 5.2. Clear and convincing evidence means that the truth of the facts asserted is highly probable. *In re Taylor*, 319 Or 595, 600 878 P2d 1103 (1994).

Misrepresentation exists under DR 1-102(A)(3) when a lawyer makes a false statement of a material fact or does not disclose a material fact. *In re Leonard*, 308 Or 560, 569, 874 P2d 95 (1989). Neither damage nor detrimental reliance upon a false statement or nondisclosure is required for a misrepresentation. *In re Boardman*, 312 Or 452, 822 P2d 709 (1991); *In re Fulop*, 297 Or 354, 685 P2d 414 (1984). Nor is it necessary that the lawyer have an improper motive or intent to deceive to establish a misrepresentation in violation of the rule. *In re McKee*, 316 Or 114, 125, 849 P2d 509 (1993). However, knowledge that a statement is untrue or that an omission was made knowingly is necessary. *In re Hiller and Janssen*, 298 Or 526, 532, 694 P2d 540 (1985).

A misrepresentation becomes "fraud and deceit" when it is intended to be acted upon by another to his or her damage without being discovered. *In re Hiller, supra,* 298 Or at 243.

The lawyer must knowingly engage in the misconduct for there to be a violation of DR 1-102(A)(3). *In re Gustafson*, 327 Or 636, 648, 968 P2d 267 (1998).

Misrepresentations to clients violate the rule. *In re Willer*, 303 Or 241 [, 735 P2d 594] (1987).

The Accused, in sending the letter in question, knowingly made statements and omitted material facts concerning Oregon's adoption of the UPIA and its effect on his clients' living trusts. These statements and omissions were intentional, for the obvious purpose of inducing recipients of the letter to send the Accused's firm money for a proposed amendment of their trusts, without further contact between the Accused and the recipients, and without giving the recipients a fair statement of the law and its effect on their trusts so that they could make an informed decision. Not only was the amendment apparently unnecessary in view of the express provisions of the trusts, it may have been ineffective to do what it purported to do, that is, opt out of the change in the law. The Panel believes that the letter was a misrepresentation that was intended to be acted upon by the recipients, regardless of their need for the amendment and its effect on their trusts and their individual circumstances. Thus, the Panel concludes that the letter was deceitful. *In re Hiller, supra,* 298 Or at 543; *In re Hockett*, 303 Or 150, 734 P2d 877 (1987). The fact than many of the recipients of the letter did not send money, or called the Accused to explore further the need for doing so, is immaterial. Success of the scheme is not an element of the violation. It is enough that the lawyer tried to mislead his clients into taking action that might not have been in their best interests. *In re Benson*, 317 Or 164, 854 P2d 466 (1993).

DR 2-101(A)(1):

> A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication: contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading.

First, the Accused contends that his letter does not violate this rule because:

> (a) This rule applies only to advertising because Disciplinary Rule 2 includes the main heading, "Advertising, Solicitation, and Legal Employment."
>
> (b) Advertising only applies to nonclients, not clients.
>
> (c) The letter in question was directed to clients, not nonclients, and therefore cannot be advertising.
>
> (d) The recipients were clients because at some time in the past the Accused had prepared living trusts for them and such clients had never been told that the Accused no longer represented them.

The Panel assumes, for the sake of analysis, that the letter was directed to clients. Nevertheless, the Panel concludes that the rule applies to communications to clients and nonclients alike. Significantly, neither the language of the rule nor any case authority cited by the Accused excludes clients from the purview of the rule.

Furthermore, even if as contended by the Accused, the rule applies only to communications that are "advertising," neither the language of the rule, case authority, nor dictionary definitions exclude communications to clients from such definition.

Using the definition of advertising from Webster's dictionary, quoted by the Bar in its pretrial memorandum, "call attention to; to make people want to buy," the letter was clearly an advertisement, even more so than the typical law firm's newsletters to its clients. The Panel also notes that the definitions of "advertise" and "advertisement" in Black's Law Dictionary are clearly broad enough to cover clients as well as nonclients.

The Panel believes that the prohibition against false or misleading communications, encompassed by this rule, whether deemed an advertisement or not, should apply *especially* to clients because they usually have a degree of trust in their lawyers that the general public would not have, and therefore such clients are more vulnerable than the general public to being misled by such communications.

Regardless whether the letter in question is deemed an advertisement, a solicitation letter to clients, or simply an opinion letter to clients, the Panel believes that the rule applies to such letters. There is no language in DR 2-101 that would foreclose its application to clients as well as nonclients. In fact, DR 2-101(H) suggests that DR 2-101 applies to clients and nonclients alike. This rule states that

if a lawyer is sending an unsolicited communication to someone who is not a close friend, relative, *current client,* or *former client,* such communication must indicate that it is an "advertisement." The clear implication of this subsection is that direct mail advertising to *clients and former clients* need not be so marked. However, the further clear implication of this subsection is that although such solicitations to clients or former clients need not be so marked, they must nevertheless comply with the other provisions of DR 2-101, including DR 2-101(A)(1).

The Panel therefore concludes that DR 2-101(A)(1) applies to *all* communications about a lawyer or the lawyer's firm, whether deemed an advertisement or not, and whether directed to clients, former clients, or nonclients. The Panel recognizes that this may be a case of first impression in Oregon, because neither the Bar nor the Accused cites legal precedent directly on point.

Second, the Accused contends that the letter in question did not violate the rule because it was not "about the lawyer or the lawyer's firm." Instead, the Accused contends that the letter was about a change in the law and was simply the Accused's opinion and recommendation about that law and how to deal with it. Again, neither the Accused nor the Bar cites case authority dealing with this specific issue on similar facts. However, the Panel agrees with the Bar that a letter, whether to clients or nonclients, informing the recipient about a change in the law and what the lawyer or the lawyer's firm recommends doing about it, and further, what the lawyer or the lawyer's firm can do about it at a bargain price, is a communication "about the lawyer or the lawyer's firm" within the purview of DR 2-101(A)(1).

Third, the Accused contends that his statements are constitutionally protected under both the U.S. and Oregon constitutions, as well as by Oregon statute. The Panel disagrees. The letter is clearly commercial speech and therefore protectable only if truthful. *In re Fadeley*, 310 Or 548, 559, 801 P2d 31 (1990); *In re Lasswell*, 296 Or 121, 673 P2d 855 (1983). *See also Bates v. State Bar of Arizona*, 433 US 350, 97 S Ct 2691, 53 L Ed2d 810 (1977); *Ohralik v. Ohio State Bar Association.*, 436 US 447, 462, 98 S Ct 1912 (1978); *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 US 557, 100 S Ct 2343 (1980); *Florida Bar v. Went For It, Inc.*, 515 US 618, 115 S Ct 2371 (1995).

The Panel concludes that DR 2-101(A)(1) applies to the letter regardless whether deemed an advertisement and regardless whether its recipients were clients. The Panel also concludes that the letter was about the Accused and his firm and therefore a communication covered by the rule. The letter, considered as a whole, was materially misleading because of the misrepresentations of fact and law and omissions of fact and law noted. The Panel therefore concludes that by drafting and sending the letter to persons for whom he or his firm had prepared living trusts, the Accused violated DR 2-101(A)(1).

Sanctions

In determining an appropriate sanction, the Trial Panel has considered the *ABA Standards for Imposing Lawyer Sanctions* (*"Standards"*) and Oregon case law. Four factors should be considered in determining an appropriate sanction, namely, (1) the duty violated; (2) the lawyer's mental state; (3) the potential or actual injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standards,* § 3.0.

A. *Duty Violated.* The Accused violated the duty of candor to his clients in preparing and sending the letter to clients or former clients for whom he had prepared living trusts. The Accused also violated his duty to the legal profession, including the duty to maintain the integrity of the profession and the duty to comply with restrictions on advertising by not making materially misleading communications to others, including his clients or former clients.

B. *Mental State*. The *Standards* at page 7 defines "knowledge" as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." The *Standards* defines "intent" as "the conscious objective or purpose to accomplish a particular result." The *Standards* defines "negligence" as "the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." In preparing and sending the letter, the Accused engaged in intentional conduct; that is, the Accused had the conscious objective of inducing persons for whom the Accused had prepared living trusts to send the Accused money for an amendment to their trusts, without regard to their individual needs or the specific provisions in their trusts. Thus, the Accused's conduct in this regard was intentional.

C. *Injury.* With regard to injury, no doubt many of the 2,000 some persons who received the letter from the Accused sent $95 to the Accused's firm for the amendment, although the record is silent in this regard. The money would have been sent regardless of the person's need for the amendment. Although considered on an individual basis, $95 does not seem like much actual injury, cumulatively, the potential monetary injury was much greater, in the $200,000 range, if everyone receiving the letter had been convinced by it to send the Accused money.

Aside from the potential or actual monetary injury, there was also the potential injury to the clients and former clients because their trusts may not have needed an amendment at all to be protected from the change in the law. The change in the law also may have been beneficial to them. Finally, there was credible expert testimony that the proposed amendment may not have had its intended effect because it would have created an ambiguity in the trust instruments.

D. *Aggravating Factors.* One aggravating factor is the fact that the letter was sent to at least 2,000 people and thus resulted in multiple offenses. *Standards,* § 9.22(d). Also, as a class, recipients of the letter, having been clients of the

Accused and therefore presumably trusting, may have been particularly vulnerable to believing and acting on what the Accused stated in the letter. This would have been particularly true for those clients or former clients who may have been elderly and not particularly sophisticated in understanding the specifics of their trusts. *Standards,* § 9.22(h). The Accused also has substantial experience in the practice of law, and particularly, in the practice of the specialty of estate planning. *Standards,* § 9.22(i). Although the Accused expressed some apology in his trial testimony concerning the content and tone of the letter, this contrasted with his earlier defenses of the letter in correspondence with the Bar and in his deposition. Thus, the sincerity of his apology is questionable. It also appears that the Accused had a selfish motive in sending the letter, namely, to convince as many people as possible to send the Accused the requested money, with no client contact, no examination of the trust documents of the clients, and no consideration of the individual needs of the clients. *Standards,* § 9.22(b).

E. *Mitigating Factors.* As for mitigating factors, the Accused has no prior record of discipline. *Standards,* § 9.32(a). The Bar also admits to some delay in the disciplinary proceeding. *Standards,* § 9.32(i).

Oregon case law is also to be considered in determining an appropriate sanction. *In re Morin*, 319 Or 547 [, 878 P2d 393] (1994); *In re Biggs*, 318 Or 281, 295, 864 P2d 310 (1993); *In re Leonhardt*, 324 Or 498, 930 P2d 844 (1997). See especially *In re Willer, supra,* regarding deceitful conduct with respect to clients.

Neither the cases cited by the Accused nor those cited by the Bar are sufficiently close on their facts to those of the case before the Panel to provide much guidance in determining an appropriate sanction. However, the Panel has found that the Accused did act with knowledge and intent in sending the letter, and therefore believes that a period of suspension is appropriate. This is particularly true given the fact that the duties violated included a duty of candor to clients or former clients. *Standards,* § 4.62; *In re Willer, supra.* The Panel finds that the appropriate sanction in this case is a suspension for 30 days.

DATED this 11th day of July 2000.

/s/ James S. Leigh
James S. Leigh
Trial Panel Chair

/s/ Mark M. McCulloch
Mark M. McCulloch, Esq.

/s/ Wilbert H. Randle, Jr.
Wilbert H. Randle, Jr.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 98-100
	)	
STEPHEN D. FINLAYSON,	)	
	)	
Accused.	)	

Bar Counsel:	Greg Hendrix, Esq.
Counsel for the Accused:	Carl Burnham, Jr., Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(A). Stipulation for discipline. Public reprimand.
Effective Date of Order:	November 15, 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 approved and the Accused is publicly reprimanded for violation of DR 6-101(A).

DATED this 15th day of November 2000.

/s/ Derek C. Johnson
Derek C. Johnson
State Disciplinary Board Chairperson

/s/ Donald R. Crane
Donald R. Crane, Region 1
Disciplinary Board Chairperson, Pro Tem

STIPULATION FOR DISCIPLINE

Stephen D. Finlayson, 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, Stephen D. Finlayson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Harney 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 5, 1999, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging a violation of DR 1-102(A)(3). Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(3) should be and, upon the approval of this Stipulation for Discipline, is dismissed; and an alleged violation of DR 6-101(A) is the more appropriate charge under the facts of this case. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In or before September 1997, Penny Sharp (hereinafter "Sharp") entered into a real property transaction in which she sought to convey three adjoining parcels of property to a buyer. The transaction was to close through the offices of a local title company.

6.

Access to Sharp's three parcels required travel on a road used by Sharp's predecessor, a small portion of which roadway crossed property within the legal description of the Scotts' property. Sharp's real estate agent suggested that she get an easement from the Scotts as part of the real property transaction, although the preliminary title report issued by the title company contained no access-related exception. At Sharp's request, the Accused prepared an easement from the Scotts to Sharp (hereinafter "document"). The document recited that the easement was being

granted by both Mr. and Mrs. Scott. There was a signature line for each of them and for Sharp.

7.

On September 12, 1997, Mrs. Scott obtained a copy of the document from the Accused's office and informed his office that she would be taking it to a lawyer for review. On September 15, 1997, Mr. Scott signed the original document in the Accused's office.

8.

On September 29, 1997, Mrs. Scott informed the Accused's office that she wanted some changes to the document and that she would be speaking with Sharp about those changes.

9.

Between September 30 and October 3, 1997, the real property transaction between Sharp and the buyer closed at the title company. The Accused was not present and did not participate in the closing. The issue of the easement from the Scotts to Sharp was not a part of the closing in that the document prepared by the Accused had not been signed by Mrs. Scott or provided to the title company. The original document remained at the Accused's office.

10.

On or before October 6, 1997, Sharp told Mrs. Scott that the real property transaction had been completed and that the easement was no longer needed. This was news to Mrs. Scott who, through the office of a lawyer, inquired of the Accused's office on October 6, 1997, regarding the status of the matter. The Accused also was unaware that the transaction had closed and, upon inquiry from the other lawyer's office, directed his staff to confirm this with the title company. After speaking with individuals at the title company, the Accused's staff informed him that the transactions had closed the prior week and that a title company representative had stated that the document signed by Mr. Scott only was acceptable.

11.

On October 7, 1997, at the direction of the Accused, his staff informed Sharp that a title company representative had stated that the document signed by Mr. Scott only was acceptable. She then asked Sharp to come to the office the following day. On October 8, 1997, Sharp met with the Accused, executed the original document and instructed him to have it recorded. The document was recorded that same day.

12.

The Accused admits that, prior to having the document recorded, he did not act with the thoroughness and preparation reasonably necessary for the representation

in that he: did not make any inquiry whether Mr. Scott's signature on the easement was conditioned upon subsequent approval by Mrs. Scott or the other lawyer; did not make any inquiry whether Sharp and the Scotts had come to an agreement regarding the easement; did not research thoroughly whether the document signed and delivered by Mr. Scott created a valid easement in the absence of Mrs. Scott's signature; and did not consider thoroughly the effect on the real property transaction and the consequences to the parties of recording the document with Mr. Scott's signature only.

13.

The Accused admits that, in acting as described in this stipulation, he violated DR 6-101(A) of the Code of Professional Responsibility.

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*"). 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 provide competent representation. *Standards,* § 4.5.

B. *Mental State.* The Accused acted with negligence, in that he failed to determine whether Mr. Scott unconditionally had given an easement to the property, and failed to research or consider the effect or consequence of recording the document under the circumstances. Negligence is defined in the *Standards* as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7. The Accused did not act with an intent to deceive anyone by recording the document.

C. *Injury.* Injury may be either actual or potential. In this case, there was actual injury in that there now is litigation between Mrs. Scott and the buyers of the three parcels over access to the properties and the validity of the easement.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has substantial experience in the practice of law, having been admitted to practice in Oregon in 1974. *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. *Standards,* § 9.32(b).

3. The Accused made free and full disclosure in the Bar's investigation of this matter and had a cooperative attitude toward the proceedings. *Standards,* § 9.32(e).

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

15.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client. *Standards,* § 4.53.

16.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. *See In re Greene*, 276 Or 1117, 557 P2d 644 (1976); *In re Hall*, 10 DB Rptr 21, (1996); *In re Schmechel*, 7 DB Rptr 95 (1993).

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

EXECUTED this 26th day of October 2000.

/s/ Stephen D. Finlayson
Stephen D. Finlayson
OSB No. 74094

EXECUTED this 1st day of November 2000.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

Cite as 331 Or 398 (2000)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)
	)
Complaint as to the Conduct of	)
	)
KENNETH MILES JAFFEE,	)
	)
Accused.	)

(OSB 98-40, 98-123, 98-128, 98-132; SC S35948, S47246)

En Banc

On review of the decisions of trial panels of the Disciplinary Board.

Submitted on the record and briefs April 14, 2000.

Jane E. Angus, Assistant Disciplinary Counsel, Oregon State Bar, Lake Oswego, and Richard D. Adams, Bar Counsel, Grants Pass, filed the briefs for the Oregon State Bar.

No appearance for the Accused.

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

In two lawyer disciplinary proceedings pertaining to the same lawyer, trial panels of the Disciplinary Board found that the accused lawyer had violated numerous disciplinary rules by (1) practicing law while suspended; (2) failing to respond to orders of the United States District Court; (3) committing the crime of interfering with a peace officer; and (4) committing the crimes of giving false information to a police officer and giving false information about liability insurance to a police officer. In both cases, the trial panels recommended disbarment. The proceedings were combined for purposes of review and decision by the Oregon Supreme Court. *Held:* (1) The Bar proved all of the charged disciplinary violations by the applicable clear and convincing evidence standard; (2) disbarment was the appropriate sanction.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re	)	
	)	
Complaint as to the Conduct of	)	Case No. 97-195; SC S48094
	)	
CLAYTON H. MORRISON,	)	
	)	
Accused.	)	

Bar Counsel:	Kathryn M. Pratt, Esq.
Counsel for the Accused:	Christopher R. Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violations of DR 2-106(A) (four counts), DR 9-101(A) (six counts), and DR 9-101(C)(3) (four counts). Stipulation for discipline. 15-month suspension.
Effective Date of Order:	January 1, 2001

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and Clayton H. Morrison have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved. Clayton H. Morrison is suspended from the practice of law for a period of 15 months. The Stipulation for Discipline is effective January 1, 2001.

DATED this 19th day of December 2000.

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

STIPULATION FOR DISCIPLINE

Clayton H. Morrison, 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, Clayton H. Morrison, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 July 12, 2000, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of DR 1-102(A)(3) (six counts), DR 2-106(A) (four counts), DR 9-101(A) (six counts), and DR 9-101(C)(3) (four counts) 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

Taylor Matter

5.

In 1992, the Accused settled a claim for personal injuries on behalf of Averill Taylor (hereinafter "Taylor"). As part of that settlement, the Accused agreed to deposit $13,000 of Taylor's funds into his trust account and disburse those funds to pay Taylor's ongoing medical expenses.

6.

By August 17, 1994, the Accused had disbursed $11,211.24 of the funds he was holding for Taylor. Between August 18, 1994, and November 14, 1994, when the next disbursement was made on behalf of Taylor, the Accused should have maintained $1,788.76 in his trust account, representing the balance of the funds he was holding for Taylor. Between September 9, 1994, and September 15, 1994, the balance of the Accused's trust account dropped below $1,788.76.

7.

The Accused admits that he had a duty to accurately maintain the funds in his trust account. The Accused admits that he failed to satisfy that duty and specifically failed to ensure that there were sufficient funds in the account to satisfy his obligations to Taylor. Had the Accused balanced his trust account or reviewed the bank statements regarding the account, he would have discovered that the balance in the account was insufficient.

8.

On March 4, 1997, after the Accused settled Taylor's remaining claims, he provided her with an accounting of the funds he had held for her. That accounting was incomplete in that it failed to list all disbursements of funds paid on her behalf.

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8 herein, he violated DR 9-101(A) and DR 9-101(C)(3). Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(3) in connection with the Taylor matter should be and, upon the approval of this stipulation, is dismissed. Specifically, the parties stipulate that the shortage in the Accused's trust account was a result of negligent trust account practices, rather than intentional or knowing conduct.

Clark Matter

10.

In 1994, the Accused began representing Jeffrey Clark (hereinafter "Clark") in a claim against a third party for personal injuries he sustained at work on December 19, 1994. Clark also pursued a claim for and collected workers' compensation benefits. In 1996, Clark obtained a judgment against the third party.

11.

At the time, ORS 656.593 provided that, when an injured worker who collects workers' compensation benefits thereafter recovers damages from a third party, the amount that can be distributed in attorney fees shall not exceed the advisory schedule of fees established by the Workers' Compensation Board. At the time, OAR 438-015-0095, which contained the advisory schedule of fees established by the Workers' Compensation Board, provided that an attorney fee in a third-party case shall not exceed 33⅓% of the gross recovery unless ordered by the Workers' Compensation Board after a finding of extraordinary circumstances.

12.

When the Accused distributed the proceeds in the Clark matter, he charged and collected 40% of the gross recovery. The Accused failed to obtain an order from

the Workers' Compensation Board before he charged and collected that fee from Clark.

13.

Pursuant to the written retainer agreement between the Accused and Clark, the Accused earned his 33⅓% fee on or about August 27, 1996, when the check from the third party cleared the bank. The Accused did not withdraw all of his 33⅓% earned fees until October 28, 1996, and thereby commingled funds belonging to clients with funds belonging to himself.

14.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 13 herein, he violated DR 2-106(A) and DR 9-101(A).

Robinson Matter

15.

In 1994, the Accused represented Kevin Robinson (hereinafter "Robinson") in a claim against a third party for personal injuries he sustained at work in July 1992. Robinson also pursued a claim for and collected workers' compensation benefits. In September 1994, the Accused settled the third-party claim. The Accused deposited the proceeds from that settlement into his trust account on October 24, 1994.

16.

At the time, ORS 656.593 entitled workers' compensation carriers to be reimbursed for certain amounts they had paid or reasonably may pay in workers' compensation benefits to an injured worker. Argonaut Insurance Company (hereinafter "Argonaut"), the workers' compensation carrier in the Robinson matter, asserted a lien on the proceeds from the third-party settlement. Robinson disputed the amount of Argonaut's lien. The Accused agreed to hold the disputed amount in his trust account until the matter was resolved. Disputes between an injured worker and a workers' compensation carrier regarding the amount of reimbursement are resolved by the Workers' Compensation Board.

17.

On or about February 3, 1995, Robinson and Argonaut resolved the dispute regarding the lien. The Accused disbursed funds to Argonaut on February 3, 1995. He disbursed funds to Robinson on February 28, 1995.

18.

Between the time the Accused deposited the settlement proceeds into his trust account on October 24, 1994, and when he disbursed those funds to Argonaut and Robinson in February 1995, he was required to maintain the entire amount of the

disputed funds in his trust account. The Accused failed to maintain a sufficient balance in his trust account during that time period.

19.

The Accused admits that he failed to check his trust account to ensure that the balance in it was sufficient. The Accused further admits that, had he balanced his trust account or reviewed the bank statements regarding the account, he would have discovered that the balance in the account was insufficient.

20.

Pursuant to the written retainer agreement between the Accused and Robinson, the Accused earned his fee on or about October 24, 1994, when the check from the third party cleared the bank. The Accused did not withdraw all of his earned fees until January 3, 1995, and thereby commingled funds belonging to clients with funds belonging to himself.

21.

The Accused admits that, by engaging in the conduct described in paragraphs 15 through 20 herein, he violated DR 9-101(A) (two counts). Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(3) in connection with the Robinson matter should be and, upon the approval of this stipulation, is dismissed. Specifically, the parties stipulate that the shortages in the Accused's trust account was a result of negligent trust account practices, rather than intentional or knowing conduct.

Birlew Matter

22.

In 1995, the Accused represented Earl Birlew (hereinafter "Birlew") in a claim against a third party and against his employer's liability insurance carrier for personal injuries he sustained at work on August 18, 1992. Birlew also pursued a claim for and collected workers' compensation benefits. In March 1995, the Accused settled the third-party claim. The Accused deposited the proceeds from that settlement into his trust account on March 7, 1995.

23.

SAIF, the workers' compensation carrier in the Birlew matter, asserted a lien on the proceeds from the third-party settlement. Birlew disputed the amount of SAIF's lien.

24.

On or about August 30, 1995, Birlew and SAIF resolved the dispute regarding the lien. The Accused disbursed funds to Birlew on September 29, 1995. He disbursed funds to SAIF on December 28, 1995.

25.

Between the time the Accused deposited the settlement proceeds into his trust account on March 7, 1995, and when he disbursed funds to Birlew on September 29, 1995, he was required to maintain the entire amount of the disputed funds in his trust account. Between the time the Accused disbursed funds to Birlew on September 29, 1995, and when he disbursed funds to SAIF on December 28, 1995, he was required to maintain SAIF's portion of the settlement funds in his trust account. The Accused failed to maintain a sufficient balance in his trust account during those time periods.

26.

The Accused admits that he failed to check his trust account to ensure that the balance in it was sufficient. The Accused further admits that had he balanced his trust account or reviewed the bank statements regarding the account, he would have discovered that the balance in the account was insufficient.

27.

Pursuant to the written retainer agreement between the Accused and Birlew, the Accused earned his fee on or about March 6, 1995, when the check from the third party cleared the bank. The Accused did not withdraw all of his earned fees until October 9, 1995, and thereby commingled funds belonging to clients with funds belonging to himself.

28.

The Accused admits that, by engaging in the conduct described in paragraphs 22 through 27 herein, he violated DR 9-101(A) (two counts). Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(3) in connection with the Birlew matter should be and, upon the approval of this stipulation, is dismissed. Specifically, the parties stipulate that the shortages in the Accused's trust account was a result of negligent trust account practices, rather than intentional or knowing conduct.

Charboneau/Schwary/McCall Matters

29.

In 1995, the Accused settled personal injury claims on behalf of Diana Charboneau (hereinafter "Charboneau"), Livia Schwary (hereinafter "Schwary"), and Tasha McCall (hereinafter "McCall"). Pursuant to the written retainer agreement in these cases, the Accused was entitled to charge and collect his costs plus one third of any recovery as an attorney fee.

30.

In all three cases, the Accused failed to maintain adequate records of how and when the settlement proceeds were disbursed. As a result of his inadequate record keeping, costs and fees were disbursed to the Accused twice on each case.

31.

The Accused admits that, by engaging in the conduct described in paragraphs 29 and 30, herein he violated DR 2-106(A) (three counts) and DR 9-101(C)(3) (three counts). Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(3) in connection with the Charboneau, Schwary, and McCall matters should be and, upon the approval of this stipulation, are dismissed. Specifically, the parties stipulate that the shortages in the Accused's trust account was a result of negligent trust account practices, rather than intentional or knowing conduct.

Sanction

32.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Supreme Court 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 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 duties to seven clients by failing to maintain funds in trust and by failing to maintain adequate records and render appropriate accountings. *Standards,* § 4.0. By collecting attorney fees in four matters that were illegal or excessive, the Accused violated his duty to his clients and to the profession. *Standards,* §§ 4.1, 7.0.

B. *Mental State.* "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. *Standards,* p. 7. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7.

The Accused acted knowingly when he charged and collected an illegal fee in the Clark matter. Prior to charging and collecting his fee, the Accused reviewed ORS 656.593 and knew that there were limits on the amount of fees he could charge and collect, but failed to review the advisory schedule of fees to determine whether the fee he charged and collected was legal.

The Accused acted with gross negligence in the handling of his trust account. The Accused knew he had a duty to properly maintain that account and failed to do so over a period of at least two years.

C. *Injury.* Injury may be either actual or potential. In this case, there was no actual injury. No client or other lienholder complained about the Accused's conduct. All of the Accused's clients and others collected the funds they were entitled to receive. The potential injury, however, was substantial. Because of the Accused's failure to establish and follow proper accounting procedures, clients and others could have been deprived of funds they were entitled to receive.

D. *Aggravating Factors.* Aggravating factors include:

1. Selfish motive with respect to the DR 2-106(A) violations, *Standards,* § 9.22(b);

2. A pattern of misconduct in that the violations occurred over the course of at least two years, *Standards,* § 9.22(c);

3. Multiple offenses, *Standards,* § 9.22(d); and

4. Substantial experience in the practice of law in that the Accused has been licensed to practice law in Oregon since 1974, *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record, *Standards,* § 9.32(a). The Accused was admonished in 1991, but the Bar concedes that the admonition should not be considered an aggravating factor pursuant to *In re Cohen*, 330 Or 489, 8 P3d 953 (2000).

2. Cooperative attitude toward proceedings, *Standards,* § 9.32(e);

3. Character or reputation, *Standards,* § 9.32(g); and

4. Remorse, *Standards,* § 9.32(*l*).

33.

The ABA Standards provide that a period of suspension is appropriate in this matter. *See Standards,* §§ 4.12, 7.2.

34.

Although no Oregon case contains the exact number and type of violations described herein, a number of cases provide some guidance for the appropriate sanction in this matter. When the various violations committed by the Accused are taken together as a whole, Oregon case law suggests that a significant term of suspension is warranted. *See In re Starr*, 326 Or 328, 952 P2d 1017 (1998) (six-month suspension of lawyer who violated DR 9-101(A) on two occasions and DR 9-101(C)(1) [*former* DR 9-101(B)(1)] on four occasions by improperly handling client funds and by failing to notify her client that she had received funds); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997) (four-month suspension of lawyer who violated DR 9-101(A) once and DR 9-101(C)(3) twice, among other violations, by failing to deposit client funds into trust account and by failing to provide an accounting with regard to those funds and some other funds, and with regard to his

client's personal property); *In re Sassor*, 299 Or 570, 704 P2d 506 (1985) (one-year suspension of lawyer who, among other things, knowingly charged and collected an illegal fee in a workers' compensation case); *In re Brown*, 255 Or 628, 469 P2d 763 (1970) (two-year suspension of lawyer who, in one matter, commingled settlement funds and failed to disclose information to one of his client's creditors); *In re Windsor*, 231 Or 349, 373 P2d 612 (1960) (two-year suspension for lawyer who commingled funds on multiple occasions). The extended period of time during which these violations occurred as well as the number of violations further aggravates the sanction.

35.

Consistent with the ABA *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of 15 months, to commence on the 1st day of January 2001, assuming this stipulation is approved by the Supreme Court before then. If the stipulation is approved by the Supreme Court after January 1, 2001, the suspension will commence immediately.

36.

The Accused acknowledges that, should he seek reinstatement at the end of his 15-month suspension, he is required to apply under BR 8.1 of the Rules of Procedure.

37.

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

EXECUTED this 1st day of December 2000.

/s/ Clayton H. Morrison
Clayton H. Morrison
OSB No. 74225

EXECUTED this 1st day of December 2000.

OREGON STATE BAR

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