

DISCIPLINARY BOARD REPORTER

VOLUME 16

January 1, 2002, to December 31, 2002

Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2002



5200 SW Meadows Road
Lake Oswego, OR 97035
(503) 620-0222 or
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BOARD
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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, summaries of 2002 decisions of the Oregon Supreme Court involving the discipline of attorneys, and orders of reciprocal discipline imposed by the court. Cases in this DB Reporter should be cited as 16 DB Rptr ____ (2002).

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 2002 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, 2003, are also available at the Oregon State Bar Web site, <www.osbar.org>. 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

CONTENTS

<i>Oregon Supreme Court, Board of Governors, State Professional Responsibility Board</i>	iv
<i>Disciplinary Board</i>	
2003	v
2002	vi
<i>List of Cases Reported in This Volume</i>	vii
<i>Cases</i>	1–394
<i>Table of Cases</i>	395
<i>Table of Disciplinary Rules and Statutes</i>	400
<i>Table of Bar Rules of Procedure</i>	404

Justices of the Oregon Supreme Court

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LIST OF CASES REPORTED

Volume 16 DB Reporter

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

	<i>Page No.</i>
<i>In re Albrecht</i>	80
Violation of DR 1-102(A)(2) and (A)(3) and DR 7-102(A)(7) and (A)(8). Disbarment.	
<i>In re Allaire</i>	273
Violation of DR 1-103(C), DR 6-101(B), DR 7-101(A)(1) and (A)(2), and DR 9-101(C)(3). Stipulation for Discipline. 90-day suspension.	
<i>In re Balfour</i>	131
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re John Bassett</i>	119
Violation of DR 1-102(A)(3) and DR 5-103(B). Trial Panel Opinion. Public reprimand.	
<i>In re John Bassett, Order on Cost and Disbursements</i>	129
<i>In re William Bassett</i>	190
Violation of DR 3-101(B) and ORS 9.160. Stipulation for Discipline. Public reprimand.	
<i>In re Benett</i>	57
Violation of DR 1-102(A)(3) and (A)(4) and DR 7-102(A)(5). Stipulation for Discipline. 180-day suspension.	
<i>In re Berger</i>	363
Violation of DR 5-101(A) and DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Black</i>	52
Violation of DR 1-102(A)(3). Stipulation for Discipline. Two-year suspension.	

Cases Reported in Volume 16

<i>In re Bryant</i>	40
Violation of DR 5-101(A) and DR 5-105(C) and (E). Stipulation for Discipline. Public reprimand.	
<i>In re Campbell</i>	186
Violation of DR 9-101(A). Stipulation for Discipline. Public reprimand.	
<i>In re Cann</i>	173
Violation of DR 1-102(A)(3) and (A)(4), DR 5-101(A), and DR 5-104(A). Stipulation for Discipline. 180-day suspension.	
<i>In re Stephen Carroll</i>	330
Violation of DR 1-102(A)(2). Stipulation for Discipline. 120-day suspension.	
<i>In re Tami Carroll</i>	306
Violation of DR 1-102(A)(2). Stipulation for Discipline. 120-day suspension.	
<i>In re Chapman</i>	350
Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Coran</i>	234
Violation of DR 5-101(A) and DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Covert</i>	87
Violation of DR 2-110(A)(1) and DR 5-105(C) and (E). Stipulation for Discipline. Public reprimand.	
<i>In re Coyner</i>	315
Violation of DR 2-110(A)(2) and DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Cummins</i>	195
Violation of DR 1-102(A)(3). Stipulation for Discipline. Public reprimand.	
<i>In re Davenport</i>	156
Violation of DR 1-102(A)(2), (A)(3), and (A)(4) and DR 7-102(A)(5). Two-year suspension.	

<i>In re Derby</i>	82
Violation of DR 6-101(B) and DR 9-101(C)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Ditton</i>	69
Violation of DR 9-101(A), (C)(3), and (C)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Dodge</i>	278
Violation of DR 1-102(A)(3) and (A)(4), DR 1-103(C), DR 2-106(A), DR 2-110(A)(2) and (B)(4), DR 6-101(A) and (B), DR 7-101(A)(2), and DR 9-101(C)(3) and (C)(4). Stipulation for Discipline. Two-year suspension (21 months stayed; two-year probation).	
<i>In re Dugger</i>	295
Violation of DR 1-102(A)(3) and (A)(4) and DR 7-110(B)(2) and (B)(3). Nine-month suspension.	
<i>In re Eakin</i>	137
Violation of DR 9-101(A), (C)(3), and (C)(4). 60-day suspension.	
<i>In re Erikson</i>	329
Reciprocal discipline. 60-day suspension.	
<i>In re Facaros</i>	3
Complaint dismissed.	
<i>In re Flannery</i>	136
Violation of DR 1-102(A)(2) and (A)(3) and ORS 9.527(2). Public reprimand.	
<i>In re Gallagher</i>	109
Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Gear (I)</i>	252
Violation of DR 1-102(A)(3) and (A)(4), DR 1-103(C), DR 6-101(B), and DR 7-101(A)(1) and (A)(2). Stipulation for Discipline. 180-day suspension.	
<i>In re Gear (II)</i>	390
Violation of DR 1-102(A)(4) and DR 6-101(B). Stipulation for Discipline. 60-day suspension.	

Cases Reported in Volume 16

<i>In re Gedrose</i>	301
Violation of DR 6-101(B) and DR 9-101(C)(4). Stipulation for discipline. Public reprimand.	
<i>In re Geiger</i>	200
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Gudger</i>	245
Violation of DR 5-105(C) and (E) and DR 6-101(A). Stipulation for Discipline. 120-day suspension.	
<i>In re Gustafson</i>	62
Violation of DR 1-102(A)(2) (two counts), DR 1-102(A)(3), DR 1-102(A)(4) (two counts), DR 7-102(A)(5), DR 7-102(A)(8), and DR 7-106(A). Disbarment.	
<i>In re Hanson</i>	64
Violation of DR 2-110(A)(2) and DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Harris</i>	185
Violation of nine DRs and ORS 9.527(4). Disbarment.	
<i>In re Hatch</i>	240
Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Hayes</i>	296
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Hockett</i>	151
Violation of DR 9-101(C)(1) and (C)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Honsowetz</i>	345
Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Jackson</i>	206
Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.	

<i>In re James</i>	379
Violation of DR 5-105(E), DR 6-101(B), and DR 9-101(C)(3). Stipulation for Discipline. 60-day suspension.	
<i>In re Klosterman</i>	384
Violation of DR 5-101(A) and DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Koblegarde</i>	374
Violation of DR 6-101(A). Stipulation for Discipline. Public reprimand.	
<i>In re Koontz</i>	93
Violation of DR 3-102(A). Stipulation for Discipline. Public reprimand.	
<i>In re Lackey</i>	1
Violation of DR 4-101(B) and ORS 9.460(3). One-year suspension.	
<i>In re Lekas</i>	263
Violation of DR 5-101(A) and DR 6-101(A). Stipulation for Discipline. Public reprimand.	
<i>In re Lemery</i>	258
Violation of DR 5-101(A)(1). Stipulation for Discipline. Public reprimand.	
<i>In re MacNair</i>	98
Violation of DR 6-101(A) and (B) and DR 9-101(A) and (C)(3). Stipulation for Discipline. 60-day suspension.	
<i>In re Matthews</i>	180
Violation of DR 5-101(A) and DR 6-101(A). Stipulation for Discipline. Public reprimand.	
<i>In re McCallie</i>	33
Violation of DR 1-102(A)(3) and (A)(4) and DR 6-101(A) and (B). Stipulation for Discipline. 90-day suspension.	
<i>In re McKee</i>	2
Conditional reinstatement approved.	

Cases Reported in Volume 16

In re McLaughlin 293
Violation of DR 1-102(A)(3) and (A)(4), DR 1-103(C),
DR 2-110(A)(2) and(B)(2), DR 6-101(A) and (B),
DR 7-101(A)(2) and (A)(3), DR 7-102(A)(2), DR 7-106(A),
and ORS 9.527(3). Disbarment.

In re Moe 139
Violation of DR 2-106(A), DR 6-101(A) and (B), and
DR 9-101(A)(2), (C)(3), and (C)(4). Trial Panel Opinion.
Four-month suspension.

In re Montgomery 210
Violation of DR 1-102(A)(3) (two counts), DR 1-102(A)(4),
DR 2-106(A), and DR 7-102(A)(3). Stipulation for Discipline.
Six-month suspension.

In re Nealy 47
Violation of DR 5-105(E). Stipulation for Discipline.
Public reprimand.

In re Nicholls 334
Violation of DR 1-103(C), DR 6-101(B), and
DR 9-101(C)(3) and (C)(4). Stipulation for Discipline.
Two-year suspension (all but 90 days stayed; two-year probation).

In re O'Dell 219
Violation of DR 5-101(A) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.

In re Onken 292
Conditional reinstatement approved.

In re Ositis 46
Violation of DR 1-102(A)(1) and (3). Public reprimand.

In re Pangburn 389
Reciprocal discipline. Public reprimand.

In re Passannante 310
Violation of DR 2-110(A)(2), DR 6-101(B), and DR 9-101(A)
and (C)(3). Stipulation for Discipline. Public reprimand.

In re Pavithran 321
Violations of DR 1-102(A)(3), DR 1-103(C), DR 2-110(B)(2),
DR 3-101(B), DR 6-101(B), and DR 9-101(A) and (C)(4).
Stipulation for Discipline. One-year suspension.

<i>In re Penz</i>	169
Violation of DR 7-110(B). Stipulation for Discipline. Public reprimand.	
<i>In re Plinski</i>	114
Violation of DR 5-105(E). Stipulation for Discipline. Public reprimand.	
<i>In re Rhodes</i>	150
DR 1-102(A)(3) and (A)(4), DR 1-103(C), and DR 7-102(A)(5). Disbarment.	
<i>In re Robertson</i>	104
Violation of DR 5-105(E). Stipulation for Discipline. Public reprimand.	
<i>In re Elissa Ryan</i>	19
Violation of DR 1-102(A)(3), DR 3-101(B), DR 7-102(A)(5), ORS 9.160, and ORS 9.527(4). Stipulation upon Review. 18-month suspension.	
<i>In re T. Michael Ryan</i>	358
Violation of DR 1-103(C), DR 6-101(B), and DR 9-101(C)(4). Stipulation for Discipline. 30-day suspension.	
<i>In re Seto</i>	10
Violation of DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2). Stipulation for Discipline. 180-day suspension, 120 days stayed; two-year probation.	
<i>In re Shera Taylor</i>	75
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Snyder</i>	287
Violation of DR 1-102(A)(3) and (A)(4), DR 1-103(C), DR 5-105(E), and DR 6-101(A) and (B). Stipulation for Discipline. One-year suspension.	
<i>In re Spencer</i>	357
Violation of DR 1-102(A)(3) and DR 9-101(C)(4). 60-day suspension.	
<i>In re Storkel</i>	224
Violation of DR 5-101(A) and DR 6-101(A) and (B). Stipulation for Discipline. Public reprimand.	

Cases Reported in Volume 16

<i>In re Sunderland</i>	230
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Valent</i>	164
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	
<i>In re Weisser</i>	269
Violation of DR 5-101(A). Stipulation for Discipline. Public reprimand.	
<i>In re Wine</i>	159
Violation of DR 6-101(B) and DR 9-101(C)(4). Stipulation for Discipline. Public reprimand.	
<i>In re Woodard</i>	369
Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.	

Cite as 333 Or 215 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
DAVID N. LACKEY,)
)
Accused.)

(OSB No. 98-33; SC S48552)

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

Argued and submitted November 2, 2001. Decided January 10, 2002.

David N. Lackey, Salem, argued the cause and filed the briefs in propria persona.

Martha M. Hicks, Assistant Disciplinary Counsel, Lake Oswego, argued the cause for the Oregon State Bar. With her on the brief was Wilson C. Muhlheim, Eugene.

Before Gillette, Presiding Justice, and Durham, Leeson, Riggs, De Muniz, and Balmer, Justices. (Carson, C.J., did not participate in the consideration or decision of this case.)

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar (“Bar”) charged the Accused with twice revealing client confidences and secrets in violation of Code of Professional Responsibility Disciplinary Rule (DR) 4-101(B)(1) through (3) and ORS 9.460(3). A trial panel of the Disciplinary Board concluded that the Accused had committed violations on both occasions and suspended him from the practice of law for 18 months. *Held:* The Accused violated the Disciplinary Rules on one occasion. The Bar failed to prove by clear and convincing evidence that, on the second occasion, the Accused had revealed information that was a client confidence or secret. The Accused is suspended from the practice of law for one year, after which the Accused must reapply for admission and show that he has the requisite character and fitness to practice law.

Cite as 330 Or 209 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
ROBERT L. McKEE,)
)
Accused.)

(SC S48122)

Application for reinstatement to the practice of law in Oregon.

Argued and submitted May 9, 2001. Decided January 10, 2002.

Susan D. Issacs, Beaverton, argued the cause and filed the briefs for applicant.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Durham, Leeson, Riggs, and De Muniz, Justices. (Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case. Balmer, J., did not participate in the consideration or decision of this case.)

PER CURIAM

Conditional reinstatement approved.

Leeson, J., dissents and files an opinion in which Carson, C.J., joins.

SUMMARY OF SUPREME COURT OPINION

The Supreme Court suspended the applicant for 18 months in 1993. The Oregon State Bar opposed the applicant's reinstatement and recommended that he retake the Oregon State Bar Examination. A trial panel of the Disciplinary Board recommended that the applicant be reinstated on the condition that he complete 60 hours of minimum continuing legal education (MCLE) courses during his first year of reinstatement. *Held*: The applicant satisfied the requirements of Bar Rule of Procedure (BR) 8.1(b) (good moral character and fitness to practice law) and BR 8.1(c) (requisite learning and ability to practice law). The applicant is reinstated, provided he successfully completes 60 hours of MCLE courses during the first 12 months of reinstatement.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 00-151
)
NICKOLAS FACAROS,)
)
Accused.)

Bar Counsel: Louis L. Kurtz, Esq.
Counsel for the Accused: Nickolas Facaros, Esq.
Disciplinary Board: Jerry Casby, Esq. (Chair); Laurence E. Thorp, Esq.; Richard Hansen
Disposition: Trial panel opinion. Complaint dismissed.
Effective Date of Opinion: January 24, 2002

OPINION OF THE TRIAL PANEL

The above-entitled matter came before the Trial Panel for hearing on November 20, 2001. The Accused appeared representing himself. The Bar was represented at the hearing by Jane E. Angus and Louis L. Kurtz. The amended complaint alleges that the Accused failed to make disclosure of certain facts to a trial judge in conjunction with an ex parte motion for an order of default pursuant to ORCP 69 A. It also alleges such failure violated DR 1-102(A)(4) because it was prejudicial to the administration of justice. The amended answer denied the failure constituted a violation of DR 1-102(A)(4) and that the disciplinary rule is unconstitutionally vague.

Findings of Fact

The Accused undertook representation of David Schneider in tort litigation against Mr. Schneider's wife, Vida Gabriel, related to an alleged conspiracy between her and another person to murder Mr. Schneider. Ms. Gabriel had been indicted for conspiracy to commit aggravated murder relating to the alleged attempt. The trial court in the criminal case concluded that Ms. Gabriel was unfit to proceed to trial and committed her to the state mental hospital. The court's decision was based upon an evaluation of Ms. Gabriel's condition by Robert T. Kurlychek, Ph.D., a licensed psychologist. Dr. Kurlychek found that she was delusional and believed that her

defense counsel and the prosecutor were conspiring against her. Based upon his examination of Ms. Gabriel, he stated:

I am of the opinion that this individual does not have any intellectual or neurocognitive limitations. She is a very bright and articulate individual. I also am of the opinion that she understands the nature of the charges against her. Because of her mental disorder, however, I do not feel that she is currently able to assist with her own defense. Her delusional thinking renders her incapable of working with an attorney at this time.

Subsequent to Ms. Gabriel's commitment to the state mental hospital, the Accused filed a complaint against her on behalf of Mr. Schneider seeking damages for emotional distress related to the alleged conspiracy to have Mr. Schneider murdered. The Accused unsuccessfully attempted to serve Ms. Gabriel with a summons and copy of the complaint at the state mental hospital. The statute of limitations was about to expire on the claim. As a result, the Accused filed an ex parte motion for approval of an alternative method of service pursuant to ORCP 7 D(6)(a). In support of the motion, he filed an affidavit indicating that Ms. Gabriel's "usual place of abode is the Oregon State Hospital." The affidavit recited attempts to make service and the defendant's refusal to allow visitation so that a process server could serve her with the summons and complaint. Based upon the affidavit, the court authorized service on Ms. Gabriel by mailing a copy of the summons and complaint by first class mail to the "person who is apparently in charge of defendant's usual place of abode" and a copy by certified mail, return receipt requested, with delivery restricted to Ms. Gabriel at her "usual place of abode."

Service was made as provided by the order and proof of service was filed with the court on October 14, 1999. Ms. Gabriel failed to appear and the Accused filed a motion dated December 7, 1999, for an order of default pursuant to ORCP 69 A. The motion was supported by an affidavit executed by the Accused indicating that "the defendant is not an incapacitated person." The motion was presented ex parte to Judge Cynthia Carlson, who granted the motion.

Mr. Schneider's claim was for unliquidated damages. As a result, a damage hearing was required and was subsequently scheduled. Prior to the damage hearing, the Accused withdrew from representing Mr. Schneider. Mr. Schneider appeared at the damage hearing representing himself. When the case was called by Presiding Judge Jack Mattison, who knew that Ms. Gabriel was in the state mental hospital, he set aside the order of default, sua sponte. The Bar alleged that the Accused should have disclosed all of the details surrounding Ms. Gabriel's commitment to the state hospital at the time he presented the motion to Judge Carlson for the order of default and that his failure to do so violated DR 1-102(A)(4). The Accused denies any violation and affirmatively asserts that DR 1-102(A)(4) is unconstitutionally vague.

The Bar presented testimony of Mr. Schneider, as well as Judge Carlson, and Judge Mattison. Judge Carlson testified that if she had known Ms. Gabriel's situation at the time the motion for an order of default was presented by the Accused, it would

have “raised a red flag” and she would have declined to sign the order and consulted with other, more experienced judges about how to proceed. Judge Mattison testified that he set aside the order of default because he felt that it would be “fundamentally unfair” to allow an order of default to be entered against someone committed to the state hospital regardless of whether they were *incapacitated* or *financially incapable* as those terms are defined in ORS 125.005. Neither Judge found that Ms. Gabriel was incapacitated or financially incapable under that statute. For the reasons outlined below, Judge Mattison’s order setting aside the order of default was probably a reversible error.

The Accused testified on his own behalf. He also presented the testimony of Dr. Kurlychek and Richard K. Sherman, M.S., who is a certified mental health examiner and the mental health supervisor for the Lane County Sheriff’s Office Corrections Division. Mr. Sherman had also examined Ms. Gabriel. Both Dr. Kurlychek and Mr. Sherman testified that in their opinion, Ms. Gabriel was not *incapacitated* or *financially incapable* as those terms are defined in ORS 125.005. Mr. Sherman also testified that in his opinion, Ms. Gabriel was competent to stand trial in the criminal case.

The Bar presented no evidence whatsoever that Ms. Gabriel was incapacitated or financially incapable. The only evidence that she might have been was the fact that she was committed to the state hospital. However, that evidence alone is insufficient to establish incompetency. *See* ORS 426.295(1).

Conclusions

ORCP 27 B requires appointment of a guardian ad litem only when a person is incapacitated or financially incapable as defined in ORS 125.005. Service of a summons and complaint needs to be made on the conservator or guardian for a person only if they are incapacitated or financially incapable as provided in ORS 125.005. ORCP 7 D(3)(a)(iii). There are no special requirements for entry of an order of default for a failure to appear for someone who is incapacitated or financially incapable. ORCP 69 A. However, an incapacitated or financially incapable person must be represented by a conservator, guardian or guardian ad litem for entry of a default judgment. ORCP 69 B.

The dissent argues that the Accused “should have done something . . . he didn’t do” i.e., provide Judge Carlson more information regarding Ms. Gabriel’s situation. But, the dissent fails to point out any authority requiring the Accused to provide more information, particularly since the evidence was that Ms. Gabriel was neither incapacitated nor financially incapable. That leaves the Accused, and anyone else presenting something to a judge ex parte, to guess at what has to be disclosed and subjected to disciplinary action if they guess wrong. If DR 1-102(A)(4) isn’t unconstitutionally vague, it surely would be if it contains no standard by which an attorney can determine what has to be disclosed.

The Accused may have been well advised to have a guardian ad litem appointed for Ms. Gabriel to avoid a potential subsequent collateral attack on any judgment which might have been obtained. However, at the very most, that constitutes malpractice. There is no evidence in the record of any illegal or unethical conduct on the part of the Accused. The mere fact that one or more judges would have preferred that the Accused provide additional information which is not legally required, does not constitute conduct prejudicial to the administration of justice.

There is no need to address the Accused's affirmative defense of the unconstitutionality of DR 1-102(A)(4).

The Bar's complaint is dismissed.

/s/ Laurence E. Thorp

Laurence E. Thorp

/s/ Richard E. Hansen

Richard Hansen

Dissenting Opinion

I respectfully dissent from the result ordered by the majority in this matter. I set out my reasons, because I believe that the majority errs in identifying the issue to be resolved in this matter. Some timelines will help with understanding.

Vida Gabriel was indicted by the Lane County Grand Jury on August 22, 1997, for solicitation and conspiracy to commit aggravated murder. The alleged victim was Gabriel's husband, David Schneider. On March 5, 1998, Judge Leonard signed an unopposed order declaring that Gabriel lacked fitness to proceed, referring to a report by a psychologist, Dr. Robert T. Kurlychek. The order also committed Gabriel to "a State Mental Hospital . . . so long as such unfitness shall endure" and suspended the criminal case until Gabriel is able to proceed. Dr. Kurlychek had examined Gabriel on two occasions in January 1998. His report was dated January 30, 1998.

On August 10, 1999, the Accused filed a civil action in favor of Schneider against Gabriel, alleging intentional infliction of emotion distress as a result of the acts alleged in the indictment returned against Gabriel, which had occurred, according to the civil complaint, on August 11, 1997. The Accused made unsuccessful efforts to accomplish personal service on Gabriel. The Accused then moved, ex parte, for an order allowing substituted service. The motion was supported by an affidavit dated October 8, 1999, which reported that Gabriel's usual place of abode was the Oregon State Hospital, in Salem. Although there was no express representation that Gabriel was a patient in the hospital, the full content of the affidavit suggested as much. There was no mention in the affidavit of the order finding Gabriel unfit to proceed with her defense of the criminal case. An order permitting substituted service was

presented ex parte to Judge Billings and signed October 8, 1999. Substituted service was promptly accomplished on October 8, 1999.

On December 8, 1999, the Accused presented to Judge Carlson, sitting ex parte, an order finding Gabriel in default, supported by an affidavit signed by the Accused on December 7, 1999. The record shows that ex parte orders are presented to the Court under circumstances that require the Court to rely on the representations of counsel about relevant facts. No file is available to the Court at that time. Nevertheless, the Accused's affidavit represented, among other things, that Gabriel was "not an incapacitated person." The Accused told Judge Carlson nothing about the unfitness to proceed order or Dr. Kurlychek's report or anything else about Gabriel's mental status except the affidavit representing that Gabriel was "not incapacitated."

When the default order and supporting affidavit were presented to Judge Carlson, the Accused had a copy of Dr. Kurlychek's January 30, 1998, report and knew that Gabriel remained confined at the State Mental Hospital. The Accused also knew of a case involving Gabriel in Klamath County wherein a guardian ad litem had been appointed for Gabriel. That guardian had been discharged, by an order entered November 24, 1998, based on the guardian's representations that the purpose for his appointment had been "resolved." The Accused's knowledge of Gabriel's mental status, as of December 8, 1999, was limited to anecdotal information from lay sources and Dr. Kurlychek's report.

A violation of DR 1-102(A)(4) occurs if the accused has done something that he/she should not have done (or failed to do something he/she should have done), in the course of the administration of justice, which caused prejudice to the administration of justice. *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998). I find that the Bar has established by clear and convincing evidence all three elements.

There seems little reason to doubt that the Accused's affidavit in support of the motion for an order of default occurred in the course of the administration of justice. The real issues are two: First, whether the Accused's conduct was "something . . . [he] should not have done" or, conversely, whether he "should have done something . . . [he] didn't do." *In re Gustafson*, supra. Second, whether that conduct prejudiced the administration of justice.

These two issues should be resolved against the Accused.

The majority of the Trial Panel is impressed that the Bar failed to prove that Gabriel lacked mentally capacity at any relevant time. In my judgment, that is irrelevant. The issue is not whether Gabriel was incapacitated, but what the Accused should have advised Judge Carlson. I think it is unnecessary to consider whether the Accused was wrong in his representation or that the Court ultimately should find that Gabriel was incapacitated. Based on the record here, we cannot resolve either of those questions. Rather, the wrongful conduct and the harm to the administration of

justice occur because the Accused never advised the Court of any of the pertinent information.

Dr. Kurlychek's report alone raises serious question about Gabriel's mental status. Dr. Kurlychek states in his report that Gabriel is "experiencing a major psychiatric disorder." He continues:

She [Gabriel] has elements of both a persecutory type and grandiose type. She has delusions of inflated worth, power, knowledge and special relationship to a deity. She believes that many people have conspired to threaten her life. She is currently of the opinion that you [her attorney who commissioned the report] are conspiring with the DA to ensure her prolonged imprisonment.

He concludes:

Because of her mental disorder . . . I do not feel she is currently able to assist with her own defense. Her delusional thinking renders her incapable of working with an attorney at this time.

Dr. Kurlychek spoke, with Gabriel's permission, to Alan Cohn, M.D., a psychiatrist who saw Gabriel several times in the Lane County jail. Dr. Cohn also found that Gabriel suffered from a major psychiatric disorder. Relying on his own interpretation of these materials, the Accused deprived Judge Carlson of important and pertinent information. Judge Carlson testified she would not have signed the default order until she had resolved what course to follow.

Even if the information known to the Accused were only the unfitness order, I still would not agree with the majority's result. ORS 426.295(1) does not prevent a finding that a patient in the State Mental Hospital is incapacitated. The wording of the standards for a finding of unfitness to proceed, ORS 161.360(2), is different from the wording of ORS 125.005. It does not follow, however, that a finding relevant to the former is irrelevant to the latter. More importantly, an order already had been entered regarding unfitness to proceed. Judge Carlson needed to decide whether that order and the default were in conflict, not the Accused.

Had the Accused made any effort to inform himself on the subject other than the three to five minutes (according to his testimony) he spent "researching" ORS 125.005, I could be more sympathetic to his position.

At the time he submitted the affidavit, he knew nothing about the opinion of Mr. Sherman, who, incidentally, also opined that Gabriel was fit to proceed with the criminal case, an issue resolved to the contrary by the order of March 5, 1998. The Accused also knew that Dr. Kurlychek never examined Gabriel for purposes of determining her status judged by the standard of ORS 125.005. Dr. Kurlychek testified that as a result of his examinations of Gabriel in January 1998, he was not aware of any reason to find Gabriel incapacitated under the standards of ORS 125.005. This is not surprising, however, given that he was never asked to examine Gabriel so as to give such an opinion. The Accused never contacted Dr. Kurlychek

to inquire whether that professional could give an opinion based on his examinations of January, 1998, about Gabriel's mental capacity pursuant to ORS 125.005. No effort was made to seek information from Dr. Kurlychek or other sources, such as the District Attorney's office, or Gabriel's lawyers or from the State Mental Hospital. No effort was made to speak to Dr. Cohn, the Lane County jail psychiatrist quoted by Dr. Kurlychek. The Accused never consulted with any mental health professional about Gabriel's mental state. Schneider did not tell the Accused that Gabriel was not suffering from mental incapacity. Schneider did report Gabriel to be articulate and intelligent, a conclusion also reached by Dr. Kurlychek, but that hardly forecloses the inquiry into mental capacity.

The facts applicable to the charge are not in dispute on any material point. The issue is whether the Accused's failure to alert Judge Carlson to important facts violates DR 1-102(A)(4). The Trial Panel does not have to find that Judge Carlson should or would have refused ultimately to sign the default order. I believe it is enough to warrant discipline that she was not given the information so that she herself could make the judgment.

The Accused's argument that the DR in question is unconstitutionally vague has been resolved. *In re Haws*, 310 Or 741, 745-746, 801 P2d 818 (1990). That precedent binds us.

For these reasons, I would find the Accused guilty.

/s/ Jerry Casby

Jerry Casby

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 99-25, 99-83, 99-104,
) 01-197
LESTER E. SETO,)
)
Accused.)

Bar Counsel: Caren J. Rovics, Esq.
Counsel for the Accused: Walter J. Todd, Esq.
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. 180-day suspension, 120 days of which
are stayed subject to a two-year period of
probation.
Effective Date of Order: February 1, 2002

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 180 days, 120 days of which shall be stayed subject to a two-year period of probation, effective February 1, 2002, or 10 days after the date below, whichever is first, for violation of DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2).

DATED this 30th day of January 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Lon N. Bryant
Lon N. Bryant, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Lester E. Seto, 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, Lester E. Seto, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 9, 1979, 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 November 28, 2001, the Bar filed a Second Amended Complaint against the Accused for alleged violations of DR 1-103(C) (three causes of complaint); DR 2-110(A)(2); DR 6-101(B) (four causes of complaint); and DR 7-101(A)(2) (two causes of complaint) 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.

The Troy Osburne Matter

Case No. 99-25

Facts

5.

In August 1998, the Accused was appointed by the court to represent Troy Osburne (“Osburne”) in the appeal of a criminal conviction. From the time of his appointment through June 30, 1999, the Accused took no substantial action on the appeal, despite receiving reminders of his obligation to do so, and intentionally failed to communicate with Osburne, despite Osburne’s attempts to communicate with him. On or about June 30, 1999, the Court of Appeals dismissed the case for lack of prosecution.

6.

On November 3, 1998, the Bar received Osburne's complaint concerning the Accused's conduct. During the investigation of his conduct, the Accused responded to Disciplinary Counsel's initial letter but failed to respond to two additional requests for information.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-103(C) (duty to cooperate with an authority empowered to investigate his conduct); DR 6-101(B) (neglect of a legal matter); and DR 7-101(A)(2) (intentional failure to carry out a contract of employment) of the Code of Professional Responsibility.

The Kenneth Neal Matter

Case No. 99-83

Facts

8.

On March 30, 1998, the Accused was appointed to represent Kenneth Neal ("Neal") in a habeas corpus matter. The State was to respond to the writ by April 20, 1998, and the Accused was to reply by May 11, 1998. The Accused had no contact with Neal after being appointed. On May 11, 1998, the Accused was contacted by Neal's girlfriend who asked that he send a letter to the court explaining that he had not contacted Neal, asking that the case not be dismissed and asking for an extension of time to file a response. The Accused agreed to do so but did not, and the case was dismissed on May 22, 1998.

9.

On or about July 20, 1999, Neal filed a complaint with Disciplinary Counsel's Office concerning the Accused's conduct. On August 5, 1999, the complaint was forwarded to the Accused for response. The Accused did not respond to that letter or other inquiries from Disciplinary Counsel's Office and the matter was referred to the Local Professional Responsibility Committee for investigation.

Violations

10.

The Accused admits that by engaging in the aforesaid conduct he neglected a legal matter entrusted to him in violation of DR 6-101(B) and effectively improperly withdrew from representation of Neal in violation of DR 2-110(A)(2) of the Code of Professional Responsibility. By failing to respond to initial inquiries from Disciplinary Counsel's Office, the Accused admits that he failed to cooperate with

an authority empowered to investigate his conduct in violation of DR 1-103(C) of the Code of Professional Responsibility.

The Olonzie Clemman Matter

Case No. 99-104

Facts

11.

On or about July 15, 1996, the Accused was appointed to represent Olonzie Clemman (“Clemman”) on an appeal of a denial of postconviction relief. Notice of appeal was timely filed by predecessor counsel naming the Accused as the appellate attorney. On October 10, 1996, the Court of Appeals gave notice that the appeal would be dismissed unless good cause was shown within 14 days. The Accused did not show cause why the appeal should not be dismissed, and a judgment of dismissal was entered November 22, 1996. The Accused did not advise Clemman of these events.

12.

On June 28, 1999, Clemman filed a complaint with Disciplinary Counsel’s Office concerning the Accused’s conduct. On July 20, 1999, Disciplinary Counsel’s Office forwarded the complaint to the Accused for response. The Accused did not respond to the complaint or a follow-up letter and the matter was referred to the Local Professional Responsibility Committee for investigation.

Violations

13.

The Accused admits that by failing to take action to preserve Clemman’s appeal, he neglected a legal matter in violation of DR 6-101(B) of the Code of Professional Responsibility and by failing to respond to initial inquiries from Disciplinary Counsel’s Office he failed to cooperate with an authority empowered to investigate his conduct in violation of DR 1-103(C) of the Code of Professional Responsibility.

The William Cowley Matter

Case No. 01-197

Facts

14.

On March 23, 2000, the Accused was appointed to represent William Cowley (“Cowley”) in his appeal of a criminal conviction. On May 2, 2000, the Accused filed a motion for additional time to complete the written brief but did not advise Cowley of the request. The motion was granted and the Accused was given until

June 21, 2000, to file the brief. The Accused failed and neglected to file the brief, and the court issued a notice of default on July 13, 2000. The Accused failed and neglected to respond and the appeal was dismissed on August 15, 2000. The Accused did not advise Cowley of the dismissal and failed to respond to Cowley's telephone calls concerning the status of his appeal.

Violations

15.

The Accused admits that by failing to complete the appeal of Cowley's conviction and failing to respond to his telephone calls, he neglected a legal matter and intentionally failed to carry out a contract of employment in violation of DR 6-101(B) and DR 7-101(A)(2) of the Code of professional Responsibility.

Sanction

16.

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 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 failing to respond to inquiries from an authority empowered to investigate his conduct, the Accused violated his duty to the public and the legal system. *Standards*, § 6.0.

B. *Mental State.* By intentionally failing to carry out a contract of employment with clients, and by intentionally failing to respond to inquiries from Disciplinary Counsel's Office, the Accused acted with intent, that is, the conscious objective or purpose to accomplish a particular result. By neglecting legal matters of his clients, 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 that results from a lawyer's misconduct. In this case, the Accused's misconduct caused actual injury to each of his clients as all of their cases were dismissed due to his failure to take action to protect their interests. In failing to respond to inquiries from Disciplinary Counsel's Office there was actual injury to the profession as some of the matters had to be referred to the Local Professional

Responsibility Committee for investigation requiring additional time and resources to investigate the complaints. *Standards*, p. 7.

- D. *Aggravating Factors*. Aggravating factors include:
1. A pattern of misconduct. *Standards*, § 9.22(c).
 2. Multiple offenses. *Standards*, § 9.22(d).
 3. Failure to cooperate during the initial investigation of his conduct. *Standards*, § 9.22(e).
 4. 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).
 3. Personal or emotional problems. *Standards*, § 9.32(c).
 4. Remorse. *Standards*, § 9.32(l).
 5. During the time of the misconduct described in this stipulation, the Accused has experienced a major depressive disorder with melancholic features according to his treating psychologist, Dr. Gary Nielsen, requiring ongoing therapy and monitoring of antidepressant medication.

17.

Under all of the circumstances of this case, the *Standards* suggest that a period of suspension and probation are an appropriate sanction. *Standards*, §§ 4.42, 7.2.

18.

Oregon case law is in accord. For instance, in *In re Cohen*, 9 DB Rptr 229 (1995), the lawyer was suspended for 180 days with 120 days stayed pending a two-year period of probation for violating DR 6-101(B) when there was evidence that he was experiencing emotional problems and had voluntarily sought counseling to assist with his problems. In *In re Hughes*, 9 DB Rptr 37 (1995), the accused was suspended for 30 days that was stayed pending a two-year period of probation for violating DR 6-101(B), DR 1-103(C), and DR 9-101(C)(4).

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 180 days, 120 days of which shall be stayed subject to a two-year period of probation for violation of DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2). The sanction shall be effective February 1, 2002, or 10 days after approval of this stipulation, whichever is first. During the period of probation, the Accused shall comply with the following conditions:

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

B. Walter J. Todd, 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 his probation.

C. The Accused shall continue medical treatment as required with Dr. Myron Lee, including any and all medications for medical or mental health issues. The Accused shall waive any and all medical privileges necessary so that the Bar will have full access to information concerning the Accused's compliance.

D. The Accused shall continue mental health counseling and treatment with John B. Milnes, M.S.W., P.C., 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.

E. 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, his fitness to practice law and his compliance with the terms of his probation.

F. Mr. Milnes is of the opinion that the Accused currently is emotionally fit to practice law. Nevertheless, on the expiration of the 60 days of imposed suspension, the Accused shall not be eligible for reinstatement until such time as Mr. Milnes, 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.

G. The Accused hereby waives any privileges and expressly consents and authorizes the release and disclosure of information by Mr. Milnes, 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 his probation.

H. At least 14 days prior to the effective date of suspension, the Accused shall meet with the Supervising Attorney to review his existing caseload and shall

take all appropriate measures to conclude or to refer all cases to other counsel during the period of his suspension if reasonably necessary to protect the client.

I. 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 his 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 his compliance with the terms of this probation.

J. 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 he is in compliance with the terms of his 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.

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

L. In the event the Accused fails to comply with the conditions of his probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the stayed period of suspension. In the event the Accused successfully completes his probation, he shall be reinstated unconditionally after the expiration of the probationary term, without further order of the Disciplinary Board of the Supreme Court.

M. The Accused acknowledges that this Stipulation and sanction are limited to the matters described herein, and that he is required to apply for reinstatement pursuant to BR 8.3, and pay all fees required for reinstatement, when the 60 days of imposed suspension expire.

N. The Accused's reinstatement after the 60 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 \$197.40, incurred for reporting and transcription of the Accused's deposition. Should the Accused fail to pay said sum in full by the 60th day of the 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.

20.

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

EXECUTED this 7th day of January 2002.

/s/ Lester E. Seto

Lester E. Seto
OSB No. 79108

EXECUTED this 8th day of January 2002.

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. 97-217
	)	SC S48903
ELISSA M. RYAN,)	
)	
Accused.)	

Bar Counsel:	William D. Bailey, Esq.
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	William B. Kirby, Esq. (Chair); John N. Berg, Esq.; Thomas Jeffrey Hughes (Public Member)
Disposition:	Violation of DR 1-102(A)(3), DR 3-101(B), DR 7-102(A)(5), ORS 9.160, and ORS 9.527(4). Stipulation upon Review. 18-month suspension.
Effective Date of Order:	April 6, 2002

ORDER ACCEPTING STIPULATION UPON REVIEW

Upon consideration by the court.

The Oregon State Bar and Elissa M. Ryan have filed a stipulation upon review that they find the trial panel opinion in this matter acceptable and the discipline imposed appropriate. The parties further petition the court to review this matter without briefs and argument.

The court accepts the parties' stipulation. Elissa M. Ryan is suspended from the practice of law in Oregon for 18 months. The suspension is effective 60 days from the date of this order.

DATED this 5th day of February 2002.

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

STIPULATION UPON REVIEW

Pursuant to BR 10.4(b), the Oregon State Bar, by and through Assistant Disciplinary Counsel Martha M. Hicks, and the Accused, Elissa M. Ryan, by and through her attorney, Susan D. Isaacs, stipulate that they find the trial panel opinion acceptable and the discipline imposed appropriate. A copy of the trial panel opinion in the above-captioned matter is attached hereto and by reference incorporated herein.

The parties further petition the court to review this matter without briefs and argument.

EXECUTED this 21st day of December 2001.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

EXECUTED this 20th day of December 2001.

/s/ Susan D. Isaacs

Susan D. Isaacs

OSB No. 79277

OPINION OF THE TRIAL PANEL

Introduction

By its Formal Complaint of May 13, 1999, the Oregon State Bar (“Bar”) alleges that Ellisa M. Ryan (“Accused”) violated the following standards of professional conduct established by law and by the Bar:

DR 1-102(A)(3), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation;

DR 3-101(B), which prohibits a lawyer from practicing law where to do so is in violation of Bar regulations;

DR 7-102(A)(5), which prohibits a lawyer from knowingly making a false statement of law or fact in the course of the lawyer’s representation of a client;

ORS 9.160, which prohibits a person from the practice of law unless the person is an active member of the Bar; and

ORS 9.527(4), which allows for the discipline of a member of the Bar who is guilty of willful deceit or misconduct in the legal profession.

The Bar contends that the Accused violated DR 3-101(A) and ORS 9.160 when she continued to practice law after the Bar had suspended her for failure to pay her Professional Liability Fund (PLF) assessment. The Bar further contends that the Accused violated DR 1-102(A)(3), DR 7-102(A)(5), and ORS 9.527(4) when she misrepresented her eligibility to practice law by failing to disclose her suspension to her clients, opposing counsel, and the courts, and for making a false statement in the sworn statement she submitted in support of her petition for reinstatement.

The Accused admits all but one of the allegations. She admits that she violated DR 3-101(B) and ORS 9.160 when she practiced law while suspended for failure to pay her PLF premium. She also admits that she violated DR 1-102(A)(3) and DR 7-102(A)(5) when she made misrepresentations and gave false statements to the Bar in connection with her petition for reinstatement. The Accused denies she engaged in willful deceit or misconduct in the legal profession in violation of ORS 9.527(4). She contends she did not willfully deceive the Bar when she stated in her sworn statement in support of her petition for reinstatement that she had not engaged in the unauthorized practice of law during the period of her suspension.

The matter came before the trial panel for hearing on December 7, 8, and 10, in Lake Oswego, Clackamas County, Oregon. The Bar appeared by and through Martha Hicks, Assistant Disciplinary Counsel, and William Bailey, Bar Counsel. The Accused appeared personally and was represented by Susan Isaacs. At hearing, the Bar presented testimony from witnesses Lori Lucas, Kathleen Medford, Susan Parks, Jeff Sapiro, and John Klor. The Accused presented testimony from witnesses Beverly Lauck, Norman White, Michael Sweeney, Skip Frank, Leesa Orcutt, Montgomery Cobb, and the Accused. In the course of the hearing, the trial panel received Bar's exhibits 1–31, 33, 35–61, and 63–65 and Accused's exhibits 101–106 into evidence.¹

Findings of Fact

The Accused practices law and maintains a law office in the Cedar Mill area of Washington County. She has been a member of the Oregon State Bar since 1992. She is not admitted to practice law in any other state. At the time of the alleged violations, the Accused had between four and five years' professional legal experience. At all times relevant to the accusations at issue, the Accused practiced law as a sole practitioner.

The Accused chose to pay her 1997 PLF premium by installments. Her second installment was due no later than by 5:00 p.m., April 10, 1997. It was late. The Accused knew that if she did not pay her PLF assessment on time, she would be suspended from the practice of law. She intended to pay her assessment on time. It was by her unintentional error that her payment arrived late to the PLF offices.

¹ With regard to Bar Exhibit 52, the following portion of the exhibit were withdrawn by the Bar and not admitted into evidence: the last paragraph on page 2, the first paragraph on page 3, the last paragraph on page 5, all of page 6, and the first two and one-half paragraphs on page 7.

The Bar administratively suspended the Accused from the practice of law on April 11, 1997. *See* ORS 9.080(2)(a) (authority to require active Bar members to maintain professional liability insurance). On that date, the Bar sent the Accused by certified mail a copy of a letter it had sent to the Supreme Court's Office of Legal Counsel requesting the Court to delete the Accused's name from the Court's roster of attorneys. Leesa Orcutt, the secretary for the Accused, signed for the Accused's copy of the letter on Monday, April 14, 1997. Later that day—in the late afternoon of April 14, 1997—the Accused personally received the Bar's suspension letter and actually learned of her suspension.

The Accused thought she could appeal the suspension or “work something out with the PLF.” She wrote a letter to the PLF explaining why her payment was late. The Accused asked the PLF to accept the late payment in lieu of suspension. In the meantime, she continued to practice law. She believed she was authorized to practice law while suspended based upon a mistaken belief. She thought that her suspension was stayed pending its appeal or the negotiation of some alternative disposition in lieu of suspension.

In response to her inquiries about an appeal or alternative disposition to her suspension, the Accused was told repeatedly by PLF and Bar officials that there was no appeal or alternative disposition available for this type of administrative, nondisciplinary suspension. (Once a Bar member is suspended for delinquency in payment of a PLF assessment, ORS 9.200(3) requires that the lawyer may be reinstated to the Bar only upon payment of all required PLF contributions.) On April 16, 1997, the Accused received a letter from Kathleen Medford, PLF Assessment Coordinator, returning the late check for the PLF assessment and stating that on April 15, 1997, Ms. Medford had “left a voice mail message at 2:15 p.m. today regarding reinstatement procedures. We unfortunately cannot extend the deadline as you have requested.” The PLF thus denied the Accused's request that the PLF accept her late payment in lieu of suspension.

No later than April 16, 1997, the Accused understood that she was suspended from the practice of law and that in all likelihood the suspension could not be appealed, stayed or otherwise challenged or alternatively disposed of. Her belief that there was no available alternative to her suspension was not absolute. She still held out hope that she could find some way to practice law while an alternative disposition to her suspension was worked out or while she found some way to appeal and stay the suspension. While the accused explored these hoped-for-but-unlikely possibilities, she continued to operate her law practice as usual, meeting with clients, appearing in court, conferring with opposing counsel. She failed to tell her clients, opposing counsel or the courts of her suspension.

The Accused's suffered from chronic depression. She also had financial difficulties in that she had more than \$33,000 in short-term debt owed at the time of her suspension and no ready means to pay it. During the times in question, the Accused had trouble concentrating and focusing. She was under a therapist's care for

the depression; people she knew well had noticed a change in her personality. Her therapist had prescribed Zoloft to deal with the depression.

The Accused suggests that her depression and/or the Zoloft played a role in the formation of her belief that she was permitted to practice law while suspended. The testimony of the Accused's therapist, however, establishes that neither depression nor the prescribed medication causes people, including the Accused, to make up excuses or misapprehend reality. The Accused's depression caused the Accused to have difficulty focusing, organizing and prioritizing, but it did not interfere with her understanding that she was suspended from the practice of law.

On or about April 17, 1997, the Accused called Michael Sweeney of the Oregon Attorney Assistance Program. On April 21, 1997, she met Mr. Sweeney in his office. The two talked about the Accused's situation involving the PLF. This was the first time they had discussed the situation. When they met, the Accused was emotionally overwhelmed and struggling to keep things together. The Accused and Mr. Sweeney discussed the Accused's predicament and her financial situation. She was badly in debt and did not have enough money to pay her full PLF assessment. The Accused asked Mr. Sweeney if there was anything that could be done either to prevent the acceleration of the PLF assessment balance owed or to reinstate the PLF installment payment program. Mr. Sweeney said he did not know, but would check for her. The two never discussed the impact the suspension would have on the Accused's clients, her ability to practice law, or whether the Accused could fully engage in the practice of law while Mr. Sweeney investigated the situation. The focus of their discussion was on the Accused and her money problems.

Late in the day on April 24, 1997, the Accused heard from Mr. Sweeney. He reported that there was nothing that could be done; there was no such thing as a PLF assessment waiver. The full PLF assessment had to be paid before the Accused could be reinstated. After this, the Accused came to fully understand and entirely accept that she was suspended from the practice of law for failure to pay her PLF installment and that there was no appeal or alternative resolution available to her. At this point, on April 24, 1997, the Accused unquestionably knew that she was unauthorized to practice law during the period of her suspension. *See, e.g.*, Exhibit 51 (June 4, 1998, letter from the Accused to John Klor, LPRC investigator, stating that it was not until April 24, 1997, that the Accused considered herself suspended).

On April 25, 1997, the Accused practiced law. She telephoned another attorney regarding a subpoena for a client's corporate records. She then called the client; they discussed the situation regarding the subpoena. Later, she conferred with another client on a different matter. Following that conversation, she prepared a draft motion and order for an extension of time to respond to a petition for attorney's fees. She billed her clients a total of about one hour for the legal work performed on April 25, 1997. This work constituted the unauthorized practice of law by the Accused, and she knew it. The Accused then left on vacation and was away until May 6, 1997.

On May 6, 1997, the Accused returned to her law office. She reviewed the mail delivered to her law office while she was away on vacation. She worked on three pending cases. The mail she reviewed included mail regarding legal matters she represented clients on. The legal work she did consisted mainly of dictating documents for her secretary to type later. Specifically, the Accused drafted two letters to two clients and drafted two other letters to two opposing attorneys. She also discussed one case at length with her secretary. She billed her clients a total of 2.20 hours for the legal work done on May 6, 1997. This work constituted the unauthorized practice of law by the Accused, and she knew it.

On May 8, 1997, the Accused attended a deposition, met with clients, worked on a memorandum, and called other attorneys on behalf of her clients. She billed her clients 4.5 hours for the work. All of the work occurred after the Accused had submitted her petition for reinstatement to the Bar, along with her PLF premium and reinstatement fee. She hand-delivered those materials to the Bar at about 8:00 a.m. on May 8, 1997. The Accused contends that she thought she was allowed to practice law as soon as she delivered the petition, PLF premium and reinstatement fee to the Bar. In fact, the Accused was not reinstated to practice law until on May 9, 1997.

We find the Accused's belief that she was instantly reinstated to be unreasonable for at least two reasons. First, the Accused had reviewed a Bar memorandum regarding reinstatement procedures. The memorandum stated that applicants for reinstatement from suspensions over financial matters "should expect to be notified of their reinstatement within two weeks of the filing of the [petition for reinstatement]." This suggests that reinstatement from an administrative suspension is neither automatic nor immediate. The second factor showing the unreasonableness of the asserted belief is the petition the Accused filled out in support of her request for reinstatement. The petition is addressed to the Bar's Executive Director, it contains a statement that the petitioner is "seeking reinstatement" to the Bar, and it has a signature block for the Executive Director to sign indicating that the petitioner is "hereby reinstated" as a member of the Bar. A reasonable person would conclude from these facts that the Bar's Executive Director must grant a request for reinstatement before the person requesting reinstatement can lawfully engage in the practice of law following the submission of a petition for reinstatement from a financial suspension. The legal work the Accused performed on May 8, 1997, constituted the unauthorized practice of law, and she knew it.

From April 16 to May 8, 1997, the Accused never genuinely believed she was authorized to practice law. She hoped she would find a way to nullify the suspension or to legitimately practice law while she appealed the suspension, but from April 16 to the time she submitted her sworn statement in support of her petition for reinstatement on May 8, 1997, the Accused never genuinely believed she was authorized to practice law. The distinction between the hopes of the Accused and her beliefs is an important one to draw. A person may hope to win the lottery, but not reasonably believe they are going to.

When the Accused sought reinstatement to the Bar on May 8, 1997, she was required to complete a statement in support of her petition for reinstatement. As a part of that statement, the Accused subscribed and swore before a notary public to the following declaration: “I, Elissa M. Ryan, being first duly sworn, state ... [t]hat I did not engage in the practice of law except where authorized to do so during the period of my suspension.” The Accused knew she was making this statement. She considered the meaning of the statement. She knew at the time she subscribed and swore to the statement she had in fact engaged in the unauthorized practice of law during a period of her suspension.

Conclusions of Law

To establish a violation of any standard of professional conduct established by law or by Bar rule, the Bar must prove the violation by clear and convincing evidence. BR 5.2. *In re Bourcier*, 322 Or 561, 567, 909 P2d 1234 (1996). Clear and convincing evidence means that the truth of the facts asserted is highly probable. *In re Taylor*, 319 Or 595, 878 P2d 1103 (1994). The Accused is presumed innocent until proven otherwise. *In re Jordan*, 295 Or 142, 665 P2d 341 (1983). With these principles in mind, the panel concludes as follows.

The Accused violated DR 3-101(B) and ORS 9.160 when she practiced law on repeated occasions between April 11 and May 9, 1997, while suspended for failure to pay her PLF premium. She was never authorized to practice law during any period of her suspension. The Accused violated DR 1-102(A)(3) and DR 7-102(A)(5) when she made misrepresentations to her clients, opposing counsel, and the court regarding her eligibility to practice law during the entire period of her suspension.

The Accused violated ORS 9.527(4) on May 8, 1997, in that she knew that she was not being completely truthful in her petition for reinstatement to the Bar when she swore under oath that she had not engaged in the unauthorized practice of law during the period of her suspension. As of April 16, 1997 (the date she received Ms. Medford’s letter), the Accused knew that she was suspended; as of April 24, 1997 (the date she heard back from Mr. Sweeney), the Accused unquestionably knew there was no exception available to her that would provide her with the necessary authority to practice law during any period of her suspension. Thus, when she filled out her sworn statement on May 8, 1997, the Accused knew that from the start of her suspension to that May 8 date, she lacked any lawful authority to practice law while she was suspended.

As to the legal work the Accused performed after she submitted her petition for reinstatement on the morning of May 8, 1997, we conclude that the Accused made no representation about her intentions regarding the legal work she planned on doing while waiting for her reinstatement to become official. When the Accused submitted her sworn statement to the Bar on May 8, 1997, the Bar only required her to make representations regarding her past conduct during her period of suspension. The statement the Bar required the Accused to swear to is not drafted in such a

manner as to clearly require one to make a representation about his or her future intentions.

Sanction

The Bar requests that the Accused be suspended from the practice of law for two years. The purpose of lawyer disciplinary proceedings is not to punish the lawyer, but to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession. American Bar Association's *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) ("ABA Standards"), § 1.1; *In re Bourcier*, *supra*, 325 Or at 437 (to same effect).

In considering the appropriate sanction for the violations found, we refer to the ABA *Standards* and to Oregon case law. *In re Meyer*, 328 Or 220, 226, 970 P2d 647 (1999). We consider (1) the ethical duty violated; (2) the accused lawyer's mental state; and (3) the actual or potential injury caused by the accused lawyer's misconduct. If mitigating or aggravating circumstances are present, we consider those as a fourth factor and determine whether the sanction should be adjusted (i.e., increased or decreased). In determining the correct sanction, we are also to examine the conduct of an accused in light of prior Oregon case law.

A. *Duty Violated.* The Accused's conduct in failing to notify those concerned of her administrative suspension violated her duty of honesty to her clients, the public, and the legal profession. ABA *Standards*, §§ 4.0, 5.0, 7.0. The Accused also breached her duty to the public and to the legal profession to refrain from the unauthorized practice of law. ABA *Standards*, §§ 5.0, 7.0. See *In re Devers*, 328 Or 230, 241, 974 P2d 191 (1999) (identifying these duties as those violated by an attorney engaging in analogous conduct).

B. *Mental State.* The Accused acted intentionally when she falsely stated under oath that she had not engaged in the unauthorized practice of law during the period of her suspension. The Accused consciously made the statement, knowing it to be false, in order to be reinstated as quickly as possible once she had the money available to pay the PLF premium and reinstatement fee. See ABA *Standards*, p. 17 (stating that an act is intentional if it is done with a conscious objective or purpose to accomplish a particular result). The Accused also acted intentionally when she failed to disclose to her clients and others on April 25, 1997, and May 6, 1997, that she was suspended from the practice of law.

C. *Injury.* "Injury" 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 "little or no" injury to "serious" injury; a reference to "injury" alone indicates any level of injury greater than "little or no injury." ABA *Standards*, p. 7. "Potential injury" is the harm to a client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for

some intervening factor or event, would probably have resulted from the lawyer's misconduct. *ABA Standards*, p. 7. Both actual injury and potential injury are to be considered in imposing a sanction for lawyer misconduct.

The conduct of the Accused in willfully misrepresenting facts in her reinstatement petition caused serious injury to the public and the legal profession. The Bar must be able to rely on the candor, honesty, and integrity of the lawyers it licenses. The Oregon Supreme Court has identified the filing of false affidavits with the Bar as a form of "serious misconduct." *See, e.g., In re Wyllie*, 327 Or 177, 183, 957 P2d 1222 (1998). The conduct of the Accused also has the potential for injury to her clients and the legal system. When a lawyer practices law during a suspension for failure to pay a PLF assessment, the lawyer is practicing law without professional liability insurance. The Accused thus caused potential injury to her clients by performing legal services for them without the required malpractice insurance. The Accused also caused potential injury to the legal system by practicing law when she was not authorized to do so.

The Accused's misconduct implicates several *ABA Standards*. *ABA Standards* § 4.62 provides:

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

ABA Standards § 5.11 provides, in part:

Disbarment is generally appropriate when:

. . . .

(b) a lawyer engages in . . . intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

ABA Standards § 7.1 provides:

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and caused serious or potentially serious injury to a client, the public, or the legal system.

ABA Standards § 7.2 provides:

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.

At this point, and without yet considering applicable aggravating or mitigating factors, the *ABA Standards* provide that disbarment or a suspension would be an appropriate sanction in this case. We turn now to the aggravating and mitigating factors.

D. *Mitigating or Aggravating Circumstances.* Several aggravating factors are present. First, the conduct of the Accused involved a dishonest motive. ABA *Standards*, § 9.22(b). She chose to engage in the unauthorized practice of law while suspended and to lie to the Bar in her petition for reinstatement for her own financial gain. Second, the Accused engaged in a pattern of misconduct that extended in excess of 24 days. ABA *Standards*, § 9.22(c). Third, the Accused violated multiple rules and laws applicable to lawyers. ABA *Standards*, § 9.22(d). Fourth, the Accused submitted false documents during the disciplinary process when she falsely certified that she had not engaged in the unauthorized practice of law while suspended for failure to pay her PLF premium. ABA *Standards*, § 9.22(f). Fifth, the Accused has refused to acknowledge the wrongful nature of her conduct as it relates to willful deceit. ABA *Standards*, § 9.22(g). She continues to maintain that she did not willfully deceive the Bar when she knowingly submitted to the Bar a false statement made under oath.

In mitigation, the Accused has no prior disciplinary record. ABA *Standards*, § 9.32(a). In addition, the Accused suffered from personal and emotional problems during the relevant times in question. ABA *Standards*, § 9.32(c). She was under a therapist's care for depression; people she knew well noticed a change in her personality; she also had substantial financial difficulties, which is likely the major cause of her failure to pay her PLF premium on time. Witnesses testified as to her good character. ABA *Standards*, § 9.32(g).

We conclude that the aggravating factors outweigh the mitigating factors. In light of the duty violated, the Accused's mental state, the injuries caused, and the greater number of aggravating factors, which outweigh the fewer number of mitigating factors, the ABA *Standards* suggest that disbarment would be appropriate here.

E. *Oregon Case Law.* In determining the correct sanction, we also examine the conduct of the accused in light of the prior Oregon case law. *In re Garvey*, 325 Or 34, 44, 932 P2d 549 (1998). We are mindful that the Oregon Supreme Court takes a particularly serious view of a lawyer's intentional use of known false documentation in the lawyer's dealings with the Bar. *In re Wyllie, supra*, 327 Or at 183 (citing *In re Morin*, 319 Or 547, 878 P2d 393 (1994)); *In re Yacob*, 318 Or 10, 860 P2d 811 (1993); *In re Brown*, 298 Or 285, 692 P2d 107 (1985); *See also In re Devers, supra* (lawyer disbarred after filing false affidavit with Bar following disciplinary suspension).

The Accused's misconduct in this case is less serious than was the conduct sanctioned in *Devers*, *Morin*, or *Yacob*. In *Devers*, the court disbarred a lawyer with substantial experience in the practice of law who engaged in multiple violations of disciplinary rules, including filing a false affidavit with the Bar and engaging in the unauthorized practice of law after he had been suspended by the court. Here, the Accused was administratively suspended by the Bar and does not have substantial experience in the practice of law.

In *Morin*, the court disbarred the lawyer who defended his ethics complaint by willfully and falsely claiming that he had permitted a will to be witnessed improperly only once, when in fact he had caused over 300 wills to be improperly witnessed. The lawyer knew the 300-plus wills were improperly witnessed. Here, the Accused willfully and falsely claims she did not engage in the unauthorized practice of law during the period of her suspension when in fact she had over a 24-day period, which period of suspension included a 12-day vacation. We find the magnitudes of the ethical transgressions in the two cases are qualitatively different, and that the Accused committed the lesser wrong.

In *Yacob*, the court disbarred a lawyer who engaged in ethical misconduct involving menacing, false advertising, the withholding of client funds, and falsifying documents. The Accused has not engaged in comparable misconduct.

The Accused's conduct bears a substantial similarity to that in *In re Brown, supra*, but we are uncertain what weight to ascribe *Brown*, given that the court decided the case without reference to the *ABA Standards*. In *Brown*, the court suspended a lawyer for two years after he prepared false affidavit for a client in an effort to fend off an investigation by the Bar. The Bar's underlying investigation related to the lawyer improperly advancing money to the client for her personal expenses. In the course of that investigation, the lawyer prepared the affidavit and submitted it to the Bar in an attempt to falsely show that there had been no loan to the client. The lawyer had no prior record of discipline. The court decided the 1985 case without reference to the *ABA Standards*. This causes us to question the weight of authority *Brown* carries under the current disciplinary rubric.

The Accused's misconduct in this case is also comparable to the conduct sanctioned in *Wyllie*. In *Wyllie*, the court suspended a lawyer for two years after the lawyer submitted a minimum continuing legal education (MCLE) report that falsely represented he had individually screened 45 hours of taped continuing legal education materials. The lawyer had no prior disciplinary record, but told markedly different versions of his story as the MCLE investigation and disciplinary proceeding evolved. Here, the Accused has no prior disciplinary record, and while there are multiple statements made by the Accused, the differences are not as marked as those in *Wyllie* are. Additionally, there were few mitigating circumstances in *Wyllie* to counterbalance multiple aggravating circumstances. Here, while the balance tips toward aggravating circumstances, the difference is narrower than in *Wyllie*. The attitudes of *Wyllie* and the Accused also differ, although neither is appropriate. In *Wyllie*, the court described the accused attorney's attitude as cavalier. Here the attitude is one of unreasonable denial and tenuous self-justification.

In *In re Huffman*, 331 Or 209, 13 P3d 994 (2000), the court imposed a two-year suspension on a lawyer with a prior record of serious misconduct. The accused lawyer, acting pro se, filed a motion to waive or defer the filing fee related to an

appeal from an adverse judgment in a civil action. He later filed a motion to waive or defer the costs of preparing the transcript. In both instances, the lawyer asserted that he had “insufficient monies” to pay the costs and fees. This was not true; the lawyer had a net worth approaching at least a million dollars. The Court of Appeals denied the two motions, and the lawyer did not pursue them. Opposing counsel filed an ethics complaint with the Bar. The Supreme Court found that the lawyer had acted intentionally and had caused serious injury. The court stated that a lawyer’s intentional misrepresentation to a court is serious misconduct, because courts must be able to rely on the candor, honesty and integrity of the lawyer who appear before them. *In re Huffman*, *supra*, 331 Or at 229. Similarly, a lawyer’s intentional misrepresentation to the Bar is serious misconduct, since the Bar must be able to rely on the candor, honesty and integrity of the lawyers it licenses. Unlike the case under consideration, only aggravating circumstances existed in *Huffman*. We find *Huffman* and *Wyllie* to set the upper end of an appropriate sanction in this case.

The Accused cites the panel to *In re Schmidt*, 2 DB Rptr 97 (1988), *In re Van Leuven*, 8 DB Rptr 203 (1994), *In re Black*, 10 DB Rptr 25 (1996), *In re Dale*, 10 DB 73 (1996), *In re Gerttula*, 12 DB Rptr 105, *In re Fuller*, 284 Or 273, 586 P2d 1111 (1978), *In re Melmon*, 322 Or 380, 908 P2d 822 (1995), and *In re Page*, 326 Or 572, 955 P2d 239 (1998), as comparable cases by which to gauge the appropriate sanction. Those cases are unlike this case in that the lawyers in those cases did not make intentional misrepresentations to the Bar, a court, or other similar institution. The remainder of cases the Accused cites us to are discussed below.

In *In re Morris*, 326 Or 493, 953 P2d 387 (1998), the court suspended a lawyer for 120 days. The lawyer was found to have knowingly altered previously signed and notarized probate documents. He then filed the false documents with the probate court. The Bar alleged the lawyer had willfully violated ORS 9.257(4), but the court did not so find. The Bar did not prove the lawyer intended to deceive the court or the other parties to the litigation. Here, the Accused is found to have violated ORS 9.257(4) because she submitted the false affidavit with the intention of deceiving the Bar regarding her conduct during the course of her suspension. Given that the lawyer in *Morris* was acquitted of violating ORS 9.257(4), we find the sanction in *Morris* to be too lenient for application in this case.

A 120-day suspension was also imposed in the case of *In re Unrein*, 323 Or 285, 917 P2d 1022 (1996). There the lawyer applied for and received four unemployment insurance benefit checks at a time when she knew that she was ineligible for unemployment benefits. In applying for the benefits, the accused certified four times that had not worked for the week for which the benefits were paid. She in fact had worked part-time as a lawyer in a law office. The court found that the accused acted intentionally when she sought to obtain unemployment benefits for which she was ineligible. The court found that the acts of the accused caused actual harm, but not serious harm. In discussing the length of suspension, the court

considered it a significant factor that the accused had made misrepresentations on four separate occasions. Here the Accused made only one intentional misrepresentation, but she also knowingly engaged in a lengthy pattern of misconduct when she practiced law knowing she was not authorized to do so. Additionally, the Accused here has caused serious harm by her submission of a false affidavit to the Bar. We find the facts of *Unrein* to be little like the facts of the case under consideration.

In *In re MacMurray*, 12 DB Rptr 115 (1998), the lawyer, with no prior disciplinary record, stipulated to a six-month suspension in a case involving five disciplinary violations. The lawyer suffered from personal and marital problems at the time he engaged in the unethical conduct. He failed to inform a bankruptcy trustee of facts that were material to a case pending in bankruptcy court. He later received and retained attorney fees without complying with the Bankruptcy Code. The lawyer admitted, inter alia, that he had engaged in conduct involving willful deceit in violation of ORS 9.527(4). He acted with intent and knowledge, and caused actual and potential serious injury. There were four aggravating and four mitigating factors connected with the violations in *MacMurray*. The case sets the lower appropriate sanction for this case.

In *In re Sawyer*, 331 Or 240, 13 P3d 112 (2000), the court found the accused lawyer, an experienced practitioner with no prior disciplinary record, had committed six disciplinary violations, including violation of ORS 9.527(4). The lawyer received a nine-month suspension. On the one hand, *Sawyer* is unlike this case in that it arose out of the lawyer's involvement in a fraudulent scheme to deceptively settle civil claims involving her client, and did not involve any direct misrepresentations to a court or to the Bar. On the other hand, the facts in *Sawyer* are like those here in that the lawyer in *Sawyer* acted intentionally when she engaged in the conduct that gave rise to the charge of willful deceit, and her deceitful conduct caused actual harm. An additional similar circumstance is that the lawyer in *Sawyer* failed to acknowledge the wrongful and deceptive nature of her misconduct.

In summary, Oregon case law demonstrates that the appropriate sanction in this case is a suspension ranging from six months to two years in duration. We have trouble with both extremes. The lawyer in *MacMurray* acknowledged the wrongful and deceptive nature of his misconduct. The misconduct in *Sawyer* is not as serious as the misconduct here. The lawyer in *Huffman* engaged in analogous misconduct as that here, but had a prior record of serious misconduct. And finally, unlike what the court detected about the lawyer in *Wyllie*, we do not detect a cavalier attitude in the Accused. However, we do fully appreciate the seriousness of the misconduct she chose to engage in.

Disposition

In light of the ABA *Standards* and Oregon case law, we suspend the Accused from the practice of law for 18 months for violation of DR 1-102(A)(3), DR 3-101(B), DR 7-102(A)(5), ORS 9.160, and ORS 9.527(4).

DATED this 11th day of June 2001.

/s/ William B. Kirby

William B. Kirby
Trial Panel Chairperson

/s/ John N. Berg

John N. Berg
Trial Panel Member

/s/ Thomas Jeffrey Hughes

Thomas Jeffrey Hughes
Trial Panel Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 00-22
)	
KEVIN M. McCALLIE,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Stephen R. Moore, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), and DR 6-101(B). Stipulation for Discipline. 90-day suspension.
Effective Date of Order:	March 1, 2002

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 90 days, effective March 1, 2002, or 10 days after approval by the Disciplinary Board, whichever date is later, for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), and DR 6-101(B).

DATED this 4th day of February 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Lon N. Bryant
Lon N. Bryant, Esq., Region 6,
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kevin M. McCallie, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Kevin M. McCallie, 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 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 November 18, 2000, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), and DR 7-110(B) of the Code of Professional Responsibility. On January 19, 2002, the SPRB authorized an additional charge for alleged violation of DR 6-101(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.

In 1992, Thomas Callander (“Callander”) retained the Accused to represent him as personal representative of Callander’s late grandmother’s estate. Prior to this time, the Accused had never handled an estate matter. Callander and his sister Elizabeth were the sole heirs of the estate. The estate consisted of several bank accounts, personal property, and a farm on which Callander had been living with his grandmother. On July 2, 1992, Callander was appointed as personal representative of the estate.

6.

Based on Callander's representation that his grandmother died intestate, the Accused filed a notice of intestate probate. Elizabeth's counsel subsequently produced a will that his client's grandmother had executed. In September 1992, the will was admitted to probate, a bond of \$150,000 was set, and Callander was reappointed as personal representative. The Accused subsequently timely filed a notice of the decedent's death to allow creditors an opportunity to file claims against the estate. Thereafter, the Accused periodically filed accountings and orders relating to estate assets, but did not serve copies of any documents on Elizabeth's counsel.

7.

On August 15, 1997, Callander agreed to be removed as personal representative, and a subsequent audit and trial determined that:

1. He failed to discover and report all assets of the estate;
2. He failed to preserve estate assets;
3. He failed to collect income from estate assets;
4. He failed to pay all obligations and taxes;
5. He failed to distribute estate assets;
6. He failed to timely close the estate;
7. He commingled personal funds with estate funds;
8. He engaged in conflicts of interest and self-dealing; and
9. He failed to maintain accurate and accessible records.

8.

At all material times, the Accused should have been aware of Callander's failure to carry out his statutory duties as Personal Representative of the estate as described above, and was to some degree aware of these facts, but took no action to require him to fulfill those duties. As a result of the Accused's inaction, the estate was not closed until April 20, 2000. Because of the Accused's failure to take action to ensure that Callander timely performed his duties as Personal Representative, Callander's share of the estate was surcharged \$50,000, including \$20,000 for accounting fees incurred to review and properly account for estate assets.

9.

On or about September 10, 1993, the Accused filed a Petition for Partial Distribution on behalf of Callander as Personal Representative at the request and with the consent of both heirs. The petition sought partial distribution of the assets to persons the Accused represented to be heirs and devisees, including Margaret I. Callander. When the Accused prepared and filed the petition, he knew that Margaret I. Callander was not an heir or devisee under the will and knew that this

representation was false. Relying on this material representation, the court entered an order authorizing the partial distributions including a distribution of \$25,045 to Margaret I. Callander.

10.

On June 21, 1994, the Accused filed an Annual Accounting with the court. On April 5, 1995, the Accused filed an inventory of estate property with the court. On July 19, 1995, the Accused filed an Annual Accounting with the court. On June 13, 1996, the Accused filed a Final Accounting with the court. All these filings were inaccurate, incomplete and based upon information provided by Callander that the Accused failed and neglected to verify.

11.

On or about June 6, 1996, the Accused filed a Final Account and Petition for Decree of Final Distribution that stated that all Oregon income, inheritance, and personal property taxes, if any, due from the estate had been paid and appropriate releases had been filed. These statements were not true, the Accused knew they were not true when he submitted the petition to the court, and he intended that the court rely on the statements to close the estate.

Violations

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3) (conduct involving misrepresentation), DR 1-102(A)(4) (conduct prejudicial to the administration of justice); DR 6-101(A) (lack of competence); and DR 6-101(B) (neglect of a legal matter). Upon further factual investigation, the parties agree that the alleged violation of DR 7-110(B) (ex parte contact with a judge) should be and, upon approval of this stipulation, shall be 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.* By failing to provide competent representation and neglecting a legal matter entrusted to him, the Accused violated his duty to his client. *Standards*, §§ 4.4, 4.5. By filing inaccurate and false documents with the court, the Accused violated his duty to the public to maintain the standard of personal integrity

upon which the community relies, and he violated his duty to the legal system. *Standards*, §§ 5.0, 6.1.

B. *Mental State*. In neglecting a legal matter over a prolonged period of time, 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. The Accused also acted with knowledge when he submitted inaccurate and false documents to the court relying on inaccurate information provided to him by his client. By failing to provide competent representation, the Accused acted negligently, that is, 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.

C. *Injury*. In failing to timely close the estate, the judicial system suffered some injury in that additional judicial time was necessary to see that the estate was properly closed. In neglecting a legal matter and failing to competently oversee the administration of the estate, the estate suffered actual injury in that it was not timely closed and Callander's share was surcharged \$50,000. There was no actual injury from the improper distribution to Margaret Callander as Callander and Elizabeth, the two heirs, agreed to share the estate funds with Margaret, their mother.

D. *Aggravating Factors*. Aggravating factors include:

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

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of selfish or dishonest motive. *Standards*, § 9.32(b).
3. Full and free disclosure during the disciplinary investigation. *Standards*, § 9.32(e).
4. Inexperience in the practice of law. *Standards*, § 9.32(f).
5. Good character and reputation. *Standards*, § 9.32(g).
6. Remorse. *Standards*, § 9.32(l).

14.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to timely and competently perform services for a client and causes injury or potential injury to a client or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, §§ 4.42, 4.52. The *Standards* also provide that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court 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.

Oregon case law is in accord. *In re Gresham*, 318 Or 162, 864 P2d 360 (1993) (91-day suspension for neglect of a probate and real estate matter, failure to provide competent representation, and conduct prejudicial to the administration of justice). *See also In re Roberts*, 15 DB Rptr 133 (2001) (90-day suspension for neglect of a legal matter, conduct prejudicial to the administration of justice and knowingly making a false statement of law or fact).

15.

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 for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), and DR 6-101(B), the sanction to be effective March 1, 2002, or 10 days after approval by the Disciplinary Board, whichever date is later.

16.

In addition, on or before June 1, 2002, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$174, incurred for transcribing a copy of his deposition. Should the Accused fail to pay \$174 in full by June 1, 2002, 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 approved by the State Professional Responsibility Board (SPRB). 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 13th day of January 2002.

/s/ Kevin M. McCallie

Kevin M. McCallie

OSB No. 90336

EXECUTED this 23rd day of January 2002.

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. 98-77
)
THOMAS V. BRYANT,)
)
Accused.)

Bar Counsel: Michael A. Lewis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A), DR 5-105(C), and
DR 5-105(E). Stipulation for Discipline. Public
reprimand.
Effective Date of Order: February 5, 2002

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 5-101(A), DR 5-105(C), and DR 5-105(E).

DATED this 5th day of February 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Thomas V. Bryant, 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 V. Bryant, 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 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 August 17, 2001, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter SPRB), alleging violation of DR 5-101(A), DR 5-105(C), 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.

At all relevant times, Michael Leo (hereinafter “Leo”) was the Chief Executive Officer of three investment corporations, XSIS, XBEN, and XREAL (hereinafter “the corporate clients”), which Leo had formed to invest in residential home construction in Central Oregon. At all relevant times, Soliang Huang (hereinafter “Huang”) was a shareholder in XSIS.

6.

In 1992, the Accused undertook to represent the corporate clients. The Accused’s representation included contracting with a builder-architect on behalf of the corporate clients to construct two homes; supervising the construction of these homes; and accounting for and disbursing the corporate clients’ funds for

construction-related expenses. In the course of his employment, the Accused deposited funds he received from some or all of the corporate clients into his lawyer trust account and disbursed funds for the construction project from this account.

7.

In January 1995, Huang filed suit against the Accused, Leo, XSIS, and XBEN in the Circuit Court of Deschutes County, Case No. 95 CV 0155 AB. This litigation alleged negligence or wrongdoing by the Accused and/or Leo in disbursing and transferring funds relating to the construction project; in supervising the construction project; in withholding corporate records; and in taking title to the real property on which the above-described homes were to be constructed, thereby subjecting the property to claims of the Accused's creditors. The litigation sought, among other remedies, to impose a constructive trust on funds held by the Accused or Leo that were the proceeds from the sale of the two homes and to enjoin the Accused or Leo from transferring any asset of XSIS. The Accused undertook to represent himself, Leo in his corporate capacity, and XSIS and XBEN in the litigation. When he undertook the representation, and continuing thereafter, the Accused had a duty to contend for something on behalf of himself or one or more of these clients that he had a duty to oppose on behalf of one or more of them.

8.

At or before the time the above-described litigation was filed, the proceeds from the sale of the homes were in the Accused's possession and were insufficient to reimburse each of the corporate clients in full for the amounts owing to them from the construction project.

9.

On or about December 1, 1995, the Deschutes County Circuit Court ordered the Accused disqualified as counsel of record for XSIS in the litigation and enjoined him from further representing XSIS. Thereafter, the Accused continued to represent Leo and the remaining corporate defendant in the litigation without first having obtained the consent to do so from XSIS or the other defendants after full disclosure.

10.

After the litigation was filed, and while he represented XSIS and XBEN in the litigation, the Accused filed an attorney's lien against the proceeds from the sale of the above-described homes that he was holding in his client trust account. Although the Accused was never advised of the precise amounts due to or claimed by the corporate clients from the proceeds of the sale, he had reason to know that the funds in his possession were not sufficient to pay the competing claims of these clients.

11.

At the time he undertook to represent Leo, XSIS, and XBEN in the litigation, and continuing thereafter, the exercise of the Accused's professional judgment on behalf of his clients was or reasonably may have been affected by his own financial, business, property, or personal interests. The Accused accepted and continued his employment by Leo and the corporate clients without first having obtained their consent to the representation after full disclosure of the Accused's competing interests.

Violations

12.

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

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 his clients to avoid conflicts of interest. *Standards*, § 4.3.

B. *Mental State.* The Accused acted with a negligent mental state, that is, he was negligent in determining whether his representation of himself, Leo and the corporate clients might be materially affected by his own interests or whether the multiple representation might adversely affect one or more of his clients.

C. *Injury.* The Accused's clients were not actually harmed in the litigation by the Accused's multiple representation. The clients were, however, exposed to potential harm in that the Accused's loyalty to them could have been divided. The clients were also potentially harmed by the imposition of a lien upon the proceeds of the sale of the homes.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has substantial experience in the practice of law, having been admitted to the Oregon State Bar in 1973, but having practiced law since 1954 as a member of the New York Bar. *Standards*, § 9.22(i).

2. The Accused has a prior disciplinary record, having been publicly reprimanded for violation of DR 5-105(E) in 1998. *Standards*, § 9.22(a). The significance of this discipline as an aggravating factor is limited in that the conduct

for which the Accused was reprimanded occurred in 1989, and the sanction was not imposed, nor the complaint to the Bar filed, until after the conduct in this case had already occurred. The Accused, therefore, did not have the opportunity to adapt his conduct in this case in response to the sanction in the 1998 case. *In re Jones*, 326 Or 195, 201, 951 P2d 149 (1997).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused did not act with a dishonest or selfish motive. Rather, he was unable to locate Leo, the sole representative of the corporate defendants of whom he was aware, and undertook the multiple representation to protect Leo and the corporate clients from default. *Standards*, § 9.32(b).

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

3. The Accused enjoys a good reputation in his community. *Standards*, § 9.32(g).

4. The Accused's prior disciplinary offense is remote. *Standards*, § 9.32(m).

5. *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.

14.

Oregon case law is in accord. See *In re Cohen*, 316 Or 657, 853 P2d 286 (1993) (public reprimand for violation of DR 5-105(E)); *In re Carey*, 307 Or 315, 767 P2d 438 (1989) (public reprimand for multiple violations of former DR 5-101(A) [current DR 5-101(A)] and former DR 5-101(B) [current DR 5-105(C) and (E)] and one violation of former DR 9-102(B)(3) [current DR 9-101(C)(3)]).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A), DR 5-105(C), and DR 5-105(E).

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the SPRB on 1/19/2002. 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 8th day of January 2001.

/s/ Thomas V. Bryant

Thomas V. Bryant

OSB No. 73362

EXECUTED this 24th day of January 2001.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75162

Assistant Disciplinary Counsel

Cite as 333 Or 366 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
ANDREW P. OSITIS,)
)
)
Accused.)

(OSB No. 97-194; SC S46805)

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

Argued and submitted May 10, 2000. Decided February 14, 2002.

Jay Edwards, Salem, argued the cause and filed the briefs for the Accused.

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

Robert K. Udziela, Portland, filed the 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.

Before Carson, Chief Justice, Gillette, Durham, Leeson, and Riggs, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case; Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case; De Muniz and Balmer, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is reprimanded.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(1), DR 1-102(A)(3), and ORS 9.527(4), by directing a private investigator to pose as a journalist to interview a party to a potential legal dispute. A trial panel of the Disciplinary Board found that the Accused committed those violations and ordered that the Accused be suspended from the practice of law for a period of 30 days. *Held:* The Accused is guilty of violating DR 1-102(A)(1) and (3). The Accused is reprimanded.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 01-125
)	
OSCAR R. NEALY,)	
)	
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:	February 14, 2002

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 14th day of February 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray
Dwayne R. Murray, 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 December 14, 2001, 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.

Gary L. Middleton, Jr. (“Middleton”) and Jeannie Chaney (“Chaney”) had a son (“the child”) out of wedlock. At some point in time, Chaney’s uncle and his wife, Jerry and Patricia Cummings (“the Cummings”), were appointed as guardians for the child without initial opposition from the natural parents.

6.

On October 30, 1997, Middleton initiated a court proceeding to terminate the guardianship and to obtain custody of the child. Ryan Joslin (“Joslin”) represented Middleton. The Accused undertook to represent the Cummings and Chaney as codefendants in the termination proceeding.

7.

Pretrial discovery was initiated by Joslin and the Accused waived appearing at the depositions of Chaney and the Cummings. During Chaney’s deposition, Chaney acknowledged that she was aware the Cummings were preparing to move out of state and did not want the child to leave Oregon. However, Chaney stated her child should stay with the Cummings. Testimony elicited during the depositions

suggested that Chaney's interests and those of the Cummings were not aligned. After the deposition, Joslin wrote the Accused advising him that Joslin believed the Accused had a conflict of interest in continuing to represent Chaney and the Cummings.

8.

After the deposition, the Accused met with Chaney to discuss her apparent change in position regarding custody of the child. Chaney claimed that she had been intoxicated at the deposition and ratified her position that she wanted the guardianship continued. The Accused verbally explained to Chaney that if her position changed regarding continuation of the guardianship, he would be obligated to withdraw from representing her and the Cummings. The Accused did not confirm this advice in writing after full disclosure and did not get Chaney and the Cummings' consent to continued representation after full disclosure.

9.

The matter proceeded to trial. Chaney did not appear and the Accused represented the Cummings. The court denied the petition to terminate the guardianship.

Violations

10.

The Accused admits that, by failing to get the consent of the Cummings and Chaney in writing after full disclosure for the continued representation of all after learning that Chaney had testified that she did not want the child to leave the state, he violated DR 5-105(E).

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 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 avoid a conflict of interest, the Accused violated his duty to his client. *Standards*, § 4.3.

B. *Mental State.* By failing to obtain written consent to the continued representation of Cummings and Chaney after full disclosure, the Accused acted negligently, that is, he failed to heed a substantial risk that circumstances existed or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

C. *Injury*. The Cummings and Chaney suffered little or no injury.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused was reprimanded in 2000 for a conflict of interest. *In re Nealy*, 14 DB Rptr 79 (2000); *Standards*, § 9.22(a). However, the events in the pending proceeding predated the earlier reprimand. See *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

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

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

12.

The *Standards* provide 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.

13.

Oregon case law also suggests that a reprimand is appropriate under these circumstances. See *In re Berg*, 14 DB Rptr 100 (2000) (public reprimand for violation of DR 5-105(E)); *In re Rich*, 13 DB Rptr 67 (1999) (public reprimand for violation of DR 5-105(E)).

14.

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), the sanction to be effective immediately upon approval of this Stipulation for Discipline.

15.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) on December 14, 2001. 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 31st day of January 2002.

/s/ Oscar R. Nealy

Oscar R. Nealy
OSB No. 68115

EXECUTED this 4th day of February 2002.

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. 00-3
) SC S49279
J. KURT BLACK,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3). Stipulation for
Discipline. Two-year suspension
Effective Date of Order: March 21, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

The Oregon State Bar and J. Kurt Black have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved. J. Kurt Black is suspended from the practice of law for a period of two years effective 30 days from the date of this order.

DATED this 19th day of February 2002.

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

STIPULATION FOR DISCIPLINE

J. Kurt Black, 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, J. Kurt Black, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1970, and has been a member of the Oregon State Bar continuously since that time, but has not practiced law for approximately 19 years, having no law office or place of business in 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, 2000, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In approximately 1991, the Accused, Art Clayton (“Clayton”), and Glen King (“King”) entered into a business agreement for the production of madrone wood flooring under the name Oregon Pacific Hardwood. Because of financial difficulties, the business failed and King left the business to the Accused and Clayton. The Accused and Clayton orally agreed that the Accused would take the remaining madrone wood to Portland, have it milled, and sell it to anyone who might be interested in purchasing the flooring. The Accused and Clayton agreed they would split the proceeds from the sale of the flooring.

6.

Pursuant to the agreement, the Accused sold the flooring for a net profit of approximately \$15,000. Despite their oral agreement, the Accused failed and refused to pay Clayton his one-half share of the net profits when he had no legal right to the money, and thereby converted some or all of the proceeds.

7.

After the Accused's receipt of the sale proceeds, Clayton made efforts to contact the Accused to collect his share of the proceeds. On July 1, 1994, the Accused conceded his debt to Clayton and executed a promissory note in the amount of \$7,095.94, with interest at 9% per annum beginning January 1, 1995, promising to pay Clayton for his share of the proceeds. A copy of the note is attached hereto as Exhibit A. The Accused did not pay the note and Clayton filed a complaint with the Oregon State Bar in late 1999. After investigation, the Bar filed a Formal Complaint against the Accused alleging violation of DR 1-102(A)(3) of the Code of Professional Responsibility. A copy of the Formal Complaint is attached hereto as Exhibit B. As of the date of execution of this Stipulation for Discipline, the Accused has not repaid the note.

Violation

8.

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

Sanction

9.

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.* In this case, the Accused violated his duty to the public to maintain standards of personal integrity. *Standards*, § 5.1.

B. *Mental State.* The Accused acted intentionally, that is, with the "conscious objective or purpose to accomplish a particular result." *Standards*, p. 17 (defining "intent"). The Accused contends that he felt Clayton had an obligation to assist in the sale of the wood and when he did not do so, the Accused felt justified in not paying Clayton his share of the proceeds. However, the Accused concedes that, even under this view of the facts, he kept some portion of the proceeds to which Clayton was entitled.

C. *Injury.* "Injury" includes actual or potential harm to a client, the public, the legal system, or the legal profession. *Standards*, pp. 6–7. In this case, the Accused's conduct resulted in actual harm to Clayton as money due was delayed and, to date, has not been repaid.

D. *Aggravating Factors*. Aggravating factors include:

A selfish motive. *Standards*, § 9.22(b).

E. *Mitigating Factors*. Mitigating factors include:

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

10.

Oregon case law and the *Standards* suggest that suspension is an appropriate sanction in this case. *Standards*, § 5.12. In *In re Gregg*, 252 Or 174, 446 P2d 123, *modified*, 252 Or 174, 448 P2d 547 (1968), the accused lawyer was suspended from the practice of law for three years when he converted funds of an organization of which he was the treasurer. In *In re Stodd*, 279 Or 565, 568 P2d 665 (1977), the accused was suspended from the practice of law for two years when he stole funds from a nonprofit organization of which he was the president. Because he had returned most of the money by the time his theft was discovered, and had no prior discipline record, the court distinguished the case from *Gregg*, *supra*, and imposed a two-year suspension.

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for two years for violation of DR 1-102(A)(3), the sanction to be effective 30 days after approval of this stipulation. As part of this Stipulation for Discipline, the Accused also agrees that he will make restitution to Clayton by repaying the principal and all interest due on the note not later than June 1, 2002.

12.

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

EXECUTED this 4th day of February 2002.

/s/ J. Kurt Black

J. Kurt Black

OSB No. 70018

Cite as *In re Black*, 16 DB Rptr 52

EXECUTED this 4th day of February 2002.

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. 01-85
)	
EDWARD BENETT,)	
)	
Accused.)	

Bar Counsel:	Kathryn M. Pratt, Esq.
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5). Stipulation for Discipline. 180-day suspension.
Effective Date of Order:	February 27, 2002

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 a period of 180 days, effective on the date this order is signed for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5).

DATED this 27th day of February 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Edward Benett, 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, Edward Benett, was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 23, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On May 19, 2001, State Professional Responsibility Board (SPRB) authorized a formal disciplinary proceeding alleging that the Accused violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5). 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 1999, the Accused represented plaintiffs in the Multnomah County Circuit Court case *Khammong Phanarath, et al. v. Brayden Motor Co., et al.*, No. 9811-07787. Trial in the matter was scheduled for June 3, 1999. On May 27, 1999, the Accused filed a motion to postpone the trial until August 31, 1999.

6.

When the Accused filed his motion for postponement, he represented to the court that the opposing parties consented to the motion and to the new trial day, and that he had served a copy of the motion on the opposing parties. At the time the Accused made these representations, he knew they were false.

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he violated DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(4) (conduct prejudicial to the administration of justice); and DR 7-102(A)(5) (knowingly making a false statement of law or fact).

Sanction

8.

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*. The Accused violated his duty to maintain personal integrity, his duty to avoid making false statements to the court, and his duty to avoid conduct prejudicial to the administration of justice. *Standards*, §§ 5.1, 6.1.

B. *Mental State*. The Accused acted intentionally, particularly when he informed the court that the opposing party agreed to the August 31, 1999, trial date. The Accused chose that date because he was angry with one of the opposing lawyers and knew the lawyer was not available on that date.

C. *Injury*. The Accused’s conduct caused actual injury in that one of the opposing lawyers and the court had to spend time and resources getting the trial date reset again.

D. *Aggravating Factors*. The following aggravating factors apply:

1. Prior disciplinary offenses. In November 2000, the court suspended the Accused for 180 days for violating DR 1-102(A)(3) in one matter and DR 1-102(A)(3), DR 2-106(A), and DR 9-101(C)(4) in another matter (*see In re Benett*, 331 Or 270, 14 P3d 66 (2000)). *Standards*, § 9.22(a).

2. Multiple offenses. *Standards*, § 9.22(d).

3. Substantial experience in the practice of law. The Accused has practiced law in Oregon since 1982. *Standards*, § 9.22(i).

E. *Mitigating Factors*. The following mitigating factor applies:

Cooperative attitude toward the proceeding. *Standards*, § 9.32(e).

9.

The *ABA Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, § 6.12.

10.

Generally, lawyers who have made a misrepresentation to the court have been suspended from the practice of law. See *In re Page*, 326 Or 572, 955 P2d 239 (1998); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985); *In re Walker*, 293 Or 297, 647 P2d 468 (1982); *In re Greene (II)*, 290 Or 291, 620 P2d 1379 (1980).

11.

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). However, the parties also recognize that at the time the Accused engaged in the conduct at issue in this matter, the court had not yet issued its decision in *In re Benett, supra*. See *In re Jones, supra*, in which the court gave less weight to prior discipline because it was imposed after the lawyer had already met with the clients involved in the pending matter such that the lawyer did not have an opportunity to adapt his conduct in the pending case.

12.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of 180 days for violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) of the Code of Professional Responsibility, the suspension to be effective on the date this Stipulation for Discipline is approved by the Disciplinary Board.

13.

The Accused presently is a suspended Bar member as a result of the discipline imposed in *In re Benett I, supra*. The Accused acknowledges that, by operation of BR 8.1(a)(v), he will be required to apply for reinstatement under BR 8.1, when the term of suspension in this proceeding (*Benett II*) expires.

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 13th day of February 2002.

/s/ Edward Benett

Edward Benett
OSB No. 82506

EXECUTED this 19th day of February 2002.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

Cite as 333 Or 468 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
TERESE M. GUSTAFSON,)
)
)
Accused.)

(OSB No. 97-146; SC S43937)

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

Argued and submitted November 2, 2000. Decided March 7, 2002.

Wayne Mackeson, Portland, argued the cause and filed the briefs for the Accused. With him on the briefs was Pat Birmingham.

Martha M. Hicks, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, Durham, Leeson, and Riggs, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case; Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case; Gillette, De Muniz, and Balmer, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar alleged that the Accused violated Code of Professional Responsibility (Code) Disciplinary Rule (DR) 1-102(A)(2) (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness to practice law); DR 1-102(A)(3) (dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(4) (conduct prejudicial to administration of justice); DR 7-102(A)(5) (knowingly making false statement of law or fact); DR 7-102(A)(8) (knowingly engaging in illegal conduct or conduct contrary to DR); and DR 7-106(A) (disregarding ruling of tribunal). The alleged violations stemmed from the Accused's retention and release of records subject to an expunction order that she possessed as result of her position as a deputy

district attorney and her false testimony regarding those records at a compliance hearing. The Accused maintained that she had not violated the Code. However, the trial panel found that the Accused was not credible and ordered that she be disbarred. *Held*: The Accused is guilty of violating DR 1-102(A)(2) (two counts), DR 1-102(A)(3), DR 1-102(A)(4) (two counts), DR 7-102(A)(5), DR 7-102(A)(8), and DR 7-106(A). The Accused is disbarred.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 01-140
)
ALAN G. HANSON,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(2) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: March 11, 2002

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 2-110(A)(2) and DR 6-101(B).

DATED this 11th day of March 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Lon N. Bryant
Lon N. Bryant, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Alan G. Hanson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Alan G. Hanson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1997, 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 December 14, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 2-110(A)(2) 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.

In or about April 1999, Marcellino Lorenzo (hereinafter “Lorenzo”) consulted the Accused about a problem Lorenzo was having with his residential landlord. The Accused agreed to represent Lorenzo in the dispute, gave Lorenzo advice regarding vacating the premises, and discussed a claim for damages against the landlord.

6.

Communication between the Accused and Lorenzo was sporadic thereafter. Ultimately, in April 2000, the Accused drafted and sent a demand letter to Lorenzo’s former landlord, asserting a claim for damages on Lorenzo’s behalf and advising that a lawsuit would be filed by May 1, 2000, if the demand was not paid.

7.

At or about the time that the Accused wrote the demand letter for Lorenzo, the Accused obtained employment outside the private practice of law. This new employment commenced on May 1, 2000. The Accused closed down his law practice before starting the new job.

8.

The Accused failed to follow up on the demand letter he wrote on behalf of Lorenzo, did not take further steps to advance Lorenzo's claim against the former landlord, failed to give Lorenzo notice that the Accused had closed his office and left private practice, and did not arrange for other counsel to take over the Lorenzo matter.

9.

After unsuccessful attempts to locate the Accused, Lorenzo learned about the Accused's new employment and contacted the Accused in or about October 2000. The Accused provided Lorenzo with the name of another lawyer, but Lorenzo did not pursue the matter.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5-8, he violated DR 2-110(A)(2) and DR 6-101(B) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following 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 act with reasonable diligence and promptness in representing Lorenzo. *Standards*, § 4.4.

B. *Mental State.* "Negligence" is defined in the *ABA Standards* as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused acted with negligence in failing to attend to Lorenzo's matter diligently and promptly, and withdrawing from the matter without notice to his client.

C. *Injury*. Injury may be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this case, Lorenzo suffered aggravation in not being able to determine for a time where the Accused was or what, if anything, the Accused was doing with the claim against the former landlord. Ultimately, Lorenzo did not pursue the claim, which is some evidence that no actual injury occurred.

D. *Aggravating Factors*. Aggravating factors include:

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

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of prior disciplinary record. *Standards*, § 9.32(a);
2. Absence of dishonest or selfish motive. *Standards*, § 9.32(b);
3. Full and free disclosure to and cooperation with disciplinary authority. *Standards*, § 9.32(e);
4. Inexperience in the practice of law, having been admitted in 1997. *Standards*, § 9.32(f); and
5. Remorse. *Standards*, § 9.32(l).

12.

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

13.

Oregon case law is consistent with the imposition of a public reprimand under circumstances similar to those present in this matter. *See In re Coulter*, 15 DB Rptr 220 (2001); *In re Barrett*, 15 DB Rptr 72 (2001); *In re Kafoury*, 15 DB Rptr 188 (2001); *In re Stimac*, 14 DB Rptr 42 (2000); *In re Goff*, 14 DB Rptr 70 (2000).

14.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a public reprimand for violation of DR 2-110(A)(2) and DR 6-101(B), to be effective upon the approval of this stipulation by the Disciplinary Board.

15.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and 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 February 2002.

/s/ Alan G. Hanson

Alan G. Hanson

OSB No. 97278

EXECUTED this 19th day of February 2002.

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 Nos. 01-175, 01-176
)	
THOMAS J. DITTON,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 11, 2002

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

DATED this 11th day of March 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Thomas J. Ditton, 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 J. Ditton, 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 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 October 20, 2001, the State Professional Responsibility Board (SPRB) authorized formal disciplinary proceedings against the Accused for alleged violations of the following provisions of the Code of Professional Responsibility: DR 9-101(A) and DR 9-101(C)(3) in the Reed matter (Case No. 01-175); and DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) in the Jaeger matter (Case No. 01-176). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Reed Matter

Case No. 01-175

Facts

5.

On April 4, 2000, a support order was entered requiring Scott Reed (hereinafter “Reed”) to pay child support. On October 16, 2000, the Accused orally agreed to represent Reed in connection with setting aside the support order for a flat fee of \$700 and costs of \$325. Reed’s parents paid the Accused \$1025, which the Accused deposited into his lawyer trust account.

6.

On October 20, 2000, the Accused filed a petition to set aside the support order. On October 27, 2000, Reed's wages were garnished by the State of Oregon. Before October 31, 2000, the Accused paid costs of \$325 in Reed's legal matter. On October 31, 2000, before the Accused completed Reed's legal matter, he transferred the \$700 attorney fee from his lawyer trust account to his general business account.

7.

The Accused failed to render an appropriate accounting to Reed regarding the \$1,025.

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

Jaeger Matter

Case No. 01-176

Facts

9.

On May 5, 2000, Robert Jaeger (hereinafter "Jaeger") retained the Accused to represent him in a dissolution-of-marriage proceeding. The written fee agreement provided for Jaeger to pay the Accused \$125 per hour with a minimum fee of \$4,500 plus \$350 for costs. On that same day, Jaeger paid the Accused \$4,850, which the Accused deposited into his lawyer trust account.

10.

On May 11, 2000, the Accused filed a response to the dissolution of marriage petition filed by Jaeger's former wife. The Accused expended \$91 in costs to file that response. On May 31, 2000, before the Accused completed Jaeger's legal matter, he transferred the remaining \$4,759 from his lawyer trust account to his general business account.

11.

The Accused failed to render an appropriate accounting to Jaeger regarding the \$4,850.

12.

In August 2000, Jaeger and his former wife resolved the dissolution-of-marriage proceeding. Shortly thereafter, Jaeger asked the Accused for a refund of any

unearned fees or costs. The Accused did not refund the \$259 in unused costs to Jaeger until December 2001.

13.

The Accused admits that, by engaging in the conduct described in paragraphs 9 through 12, he violated DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) 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 duties to preserve and account for client funds, and promptly return client funds. *Standards*, § 4.1.

B. *Mental State.* “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result would follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

The Accused acted negligently when he failed to maintain funds he received from Reed’s parents and Jaeger in his lawyer trust account until he had completed those legal matters. The Accused mistakenly believed he had earned the fees upon receipt, although the fee agreements with the clients did not so state. For the same reason, the Accused acted negligently when he failed to provide an accounting to Reed and Jaeger, and when he failed to promptly refund unused costs to Jaeger.

C. *Injury.* The Accused’s failure to maintain client funds in trust caused potential injury to Reed, because if the Accused had not earned the \$700 attorney fee, there may not have been sufficient funds available to make a refund. Both Reed and Jaeger sustained potential injury when the Accused failed to provide them with an appropriate accounting because they could not confirm that the Accused applied the funds for their benefit. Jaeger also sustained potential injury in that he had to file a bar complaint before the Accused refunded the unused costs to him.

D. *Aggravating Factors.* Aggravating factors include:

1. Selfish motive in the Jaeger matter for failing to promptly refund monies to Jaeger. *Standards*, § 9.22(b).
2. Multiple offenses. *Standards*, § 9.22(d).

3. Substantial experience in the practice of law. The Accused was admitted to the Oregon State Bar in 1974. *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 motive. *Standards*, § 9.32(b).
3. The Accused has demonstrated a cooperative attitude toward the Bar's investigation of this matter. *Standards*, § 9.32(e).
4. Remorse. *Standards*, § 9.32(l).

15.

The ABA *Standards* suggest 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.

16.

Oregon case law is in accord. See *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (lawyer who failed to deposit client funds into a trust account on many occasions, in violation of DR 9-101(A), received reprimand); *In re Moore*, 14 DB Rptr 129 (2000) (lawyer who failed to promptly make a refund to client, in violation of DR 9-101(C)(4), was reprimanded); *In re Long*, 14 DB Rptr 35 (2000) (lawyer who simultaneously represented codefendants in a criminal matter, failed to deposit client funds into trust, and failed to render an appropriate accounting to clients, in violation of DR 5-105(E), DR 9-101(A), and DR 9-101(C)(3), was reprimanded).

17.

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

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 11th day of February 2002.

/s/ Thomas J. Ditton

Thomas J. Ditton
OSB No. 74078

EXECUTED this 21st day of February 2002.

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. 01-158
)	
DIANA M. SHERA TAYLOR,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 13, 2002

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).

DATED this 13th day of March 2002.

/s/ Paul E. Meyer
 Paul E. Meyer, Esq.
 State Disciplinary Board Chairperson

/s/ Janice Krem
 Janice Krem, Esq., Region 4
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Diana M. Shera Taylor, 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, Diana M. Shera Taylor, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1995, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Columbia 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 15, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for the alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In October 1999, the Accused undertook to represent Barbara Endicott to settle her deceased husband's estate. Ms. Endicott's husband died intestate. The estate was small and held only one asset: \$21,000 in escrow, the proceeds of a real property sale. Ms Endicott could not receive the money until the estate was settled.

6.

The decedent had two sons from a prior marriage and they had a legal claim to the estate. However, during the marriage, Ms. Endicott had used her own funds to pay her husband's debts, and the stepsons had previously agreed to disclaim their interests in the estate. The Accused made contact with Ms. Endicott's stepsons, who now expressed reluctance to disclaim their interests without first receiving complete information regarding estate assets and Ms. Endicott's financial situation. The Accused hoped to persuade the stepsons to disclaim their interests, but had difficulty contacting them because of conflicts between her schedule and those of the stepsons and because of the different time zones in which each was located. From December 1999 to May 2001, when her employment was terminated, the Accused took insufficient action to close the estate or communicate with the stepsons. In addition,

she did not respond to numerous telephone contacts from Ms. Endicott in which she inquired about the status of the estate and urged the Accused to move forward with the matter.

Violations

7.

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

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 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 entrusted to her by Barbara Endicott, the Accused violated her duty to her client to exercise diligence in representing her. *Standards*, § 4.4.

B. *Mental State.* The Accused acted negligently. “Negligence” is a failure to heed a substantial risk that circumstances exist or a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation. From December 1999 to May 2001, the Accused displayed little or no regard for Ms. Endicott’s requests that she move forward to close the estate, which severely delayed her client’s access to the funds held in escrow. *Standards*, p. 7.

C. *Injury.* The Accused’s conduct resulted in an actual injury to Endicott. Because the Accused took little or no action to close the estate from December 1999 to May 2001, Endicott did not have access to the \$21,000 in escrow for that time. Endicott had been experiencing financial difficulties after her husband’s death and was required to sell items of her personal property in order to pay her bills.

D. *Aggravating Factors.* Aggravating factors include:

Barbara Endicott was vulnerable. She relied upon the Accused to protect her interests by administering the estate promptly. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused did not have a dishonest or selfish motive. *Standards*, § 9.32(b).

3. The Accused has made full and free disclosure to the Disciplinary Counsel and has demonstrated a cooperative attitude toward resolving this matter. *Standards*, § 9.32(e).

9.

The ABA *Standards* provide that, absent aggravating or mitigating circumstances, reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and thereby causes injury or potential injury to the client. *Standards*, § 4.43.

Oregon case law is in accord. In *In re Brownlee*, 9 DB Rptr 85 (1995), a lawyer was appointed to represent a criminal defendant in a postconviction proceeding. The lawyer failed to communicate with his client regarding the client's appeal, failed to respond to the client's attempts to communicate with the lawyer, and failed to promptly return trial court transcripts and other documents to the client, in violation of DR 6-101(B) and DR 9-101(C)(4). The lawyer was reprimanded. Similarly, in *In re Hall*, 10 DB Rptr 19 (1996), a lawyer who failed to timely prepare a QDRO and respond to the client's numerous inquiries concerning the status of the legal matter was reprimanded for violating DR 6-101(B). *See also In re Reid*, 10 DB Rptr 45 (1996). More recently, an attorney received a public reprimand for neglecting an estate planning matter for a period of approximately two years. *See In re Barrett*, 15 DB Rptr 72 (2001).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for one violation of DR 6-101(B). The sanction will be effective as of the date this stipulation is approved by the Disciplinary Board.

11.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The State Professional Responsibility Board (SPRB) approved the sanction provided for herein on September 15, 2001. If approved by the Disciplinary Counsel, 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 12th day of February 2002.

/s/ Diana M. Shera Taylor

Diana M. Shera Taylor

OSB No. 95143

EXECUTED this 1st day of March 2002.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

Cite as 333 Or 520 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
NIKOLAUS ALBRECHT,)
)
Accused.)

(OSB No. 95-195; SC S45913)

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

Argued and submitted March 8, 2000. Decided March 14, 2002.

Marc D. Blackman, Ransom Blackman, Portland, argued the cause and filed the brief for the Accused.

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

Before Carson, Chief Justice, and Gillette, Durham, Leeson, and Riggs, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case; Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case; De Muniz and Balmer, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

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

Durham, J., dissents and files an opinion.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar (“Bar”) charged the Accused with four counts of violating DR 1-102(A)(2) (criminal act that reflects adversely on honesty, trustworthiness, or fitness to practice law); four counts of violating DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation); four counts of violating DR 7-102(A)(7) (knowingly counseling or assisting client in illegal conduct); four counts of violating DR 7-102(A)(8) (knowingly engaging in illegal conduct or conduct prohibited by disciplinary rules); three counts of violating DR

9-101(A) (lawyer must deposit client funds in trust account); two counts of violating *former* DR 9-101(B)(4) (now DR 9-101(C)(3)) (lawyer must maintain complete records of client funds); two counts of violating ORS 9.460(1) (lawyers must support state and federal law); four counts of violating ORS 9.527(1) (lawyers prohibited from actions that would prevent their admission if applying to the Bar); and four counts of violating ORS 9.527(4) (willful deceit or misconduct prohibited in the legal profession). All of the charges against the Accused arose from his alleged involvement in a money-laundering scheme. The trial panel dismissed the complaint against the Accused after it determined that the Bar acquired financial records in violation of Federal Rule of Criminal Procedure 6(e). Despite its dismissal, the trial panel anticipated review and made a provisional ruling on the merits. The trial panel found that the Accused violated DR 1-102(A)(2), DR 1-102(A)(3), DR 7-102(A)(7), and DR 7-102(A)(8) and that these violations would warrant disbarment. The court determined that the plain wording of Rule 6(e) did not require the Bar to obtain a court order prior to using the Accused's financial records or submitting them to a disciplinary proceeding. *Held:* The Accused knowingly and intentionally violated DR 1-102(A)(2), DR 1-102(A)(3), DR 7-102(A)(7), and DR 7-102(A)(8). The Accused is disbarred, effective 60 days from the filing of this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 01-164
)
MATTHEW W. DERBY,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
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 21, 2002

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

DATED this 21st day of March 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray
Dwayne Murray, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Matthew W. Derby, 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, Matthew W. Derby, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1994, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Douglas 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 20, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) 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.

On or about March 17, 2000, the Accused was contacted by Robert J. DiLorenzo (hereinafter “DiLorenzo”), a California attorney. At that time, DiLorenzo consulted the Accused about how to vacate a default judgment in a dissolution proceeding that had been entered against his client, Jean Fuller (hereinafter “Fuller”) and requested that the Accused obtain information from Douglas County Circuit Court. Fuller’s primary objective was to obtain several items of personal property that were in her ex-husband’s possession. Between March 17 and May 5, 2000, the Accused performed approximately one hour’s worth of work on the Fuller matter, including reviewing documents from the court file.

6.

On or about April 24, 2000, DiLorenzo sent the Accused a check for \$125 for one hour of legal work and described the legal services for which he was retaining the Accused. The Accused received DiLorenzo's April 24, 2000, letter and negotiated the check.

7.

By letter dated July 10, 2000, DiLorenzo advised the Accused that Fuller wanted to pursue an order vacating the judgment of default, and DiLorenzo requested that the Accused advise him of the cost of filing a motion for such an order. The Accused did not respond to DiLorenzo's inquiry.

8.

By letter dated August 9, 2000, DiLorenzo sent the Accused a check for \$375, representing legal fees for three hours of work and indicated that he would be sending two affidavits to support a motion to vacate the judgment of default. Even though the Accused did not expressly agree to undertake further work for Fuller, he deposited the \$375 check into his trust account. Thereafter, the Accused did nothing further on the Fuller matter and did not respond to DiLorenzo's August 9, 2000 letter. By letter dated August 22, 2000, DiLorenzo sent the Accused one affidavit to file in support of a motion to vacate the judgment of default and information from Fuller for the Accused's use in drafting and filing a response to the petition for dissolution. The Accused did not take any action on Fuller's behalf and did not notify DiLorenzo that he did not intend to do so.

9.

The Accused did not acknowledge or respond to additional letters from DiLorenzo dated August 31, September 22, October 12, and November 10, 2000.

10.

On October 12, 2000, DiLorenzo requested that the Accused return the \$375 paid to him in August 2000, if the Accused could not handle the Fuller matter. The Accused did not promptly refund Fuller's money or perform any legal services to earn it.

Violations

11.

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).

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 duties owed to his client to act with reasonable diligence and promptness and to promptly return her property. *Standards*, § 4.4.

B. *Mental State.* In failing to diligently attend to Fuller’s legal matter, failing to respond to DiLorenzo’s letters, failing to notify DiLorenzo that he did not wish to handle the Fuller matter, and failing to return the \$375 retainer, the Accused acted negligently. “Negligence” is defined as 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.

C. *Injury.* The Accused’s conduct resulted in a potential injury to Fuller, who was seeking the return of personal property in the possession of her ex-husband. Fuller suffered actual injury in that the return of her money and the resolution of her legal matter were delayed.

D. *Aggravating Factors.* There are no aggravating factors present in this case that may justify an increase in the degree of discipline to be imposed. *Standards*, § 9.2.

E. *Mitigating Factors.* Mitigating factors which may justify a reduction in the degree of discipline to be imposed, include the following:

1. The absence of a prior disciplinary record. (*Standards*, § 9.32(a)); and
2. The absence of a dishonest or selfish motive. (*Standards*, § 9.32(b)).

13.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13. A public reprimand is also generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, causing injury or potential injury to a client. *Standards*, § 4.43.

Oregon case law is in accord. See, e.g., *In re Moore*, 14 DB Rptr 129 (2000) (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)); *In re Jennings*, 12 DB Rptr 190 (1998) (public reprimand for violation

of DR 6-101(B) and DR 9-101(C)(4)); *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)).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall receive a public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4).

15.

The sanction provided for herein was approved by the State Professional Responsibility Board (SPRB) on October 20, 2001. This Stipulation for Discipline is subject to review by Disciplinary Counsel. 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 5th day of March 2002.

/s/ Matthew W. Derby

Matthew W. Derby
OSB No. 94291

EXECUTED this 11th day of March 2002.

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. 01-153
)	
CHRIS COVERT,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 2-110(A)(1), DR 5-105(C), and DR 5-105(E). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 26, 2002

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 2-110(A)(1), DR 5-105(C), and DR 5-105(E).

DATED this 26th day of March 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Chris Covert, 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, Chris Covert, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 15, 1997, 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 24, 2001, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”) alleging violations of DR 5-105(C) and DR 5-105(E). A copy of the Formal Complaint is attached as Exhibit A. On February 15, 2002, the SPRB authorized an additional charge that the Accused violated DR 2-110(A)(1) in connection with the same underlying matter. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Dana Fagenstrom (hereinafter “Fagenstrom”) and Don Hewlett (hereinafter “Hewlett”) were cohabitants in a relationship. The relationship ended and they sought to create an enforceable agreement between them regarding the division of properties and liabilities.

6.

On June 30, 2000, the Accused met with Fagenstrom and Hewlett, and prepared a Settlement Agreement and Promissory Note (hereinafter “the agreement”), which Fagenstrom and Hewlett executed in the Accused’s office that day. The

agreement required Hewlett to make monthly payments to Fagenstrom on a debt he owed to her. Fagenstrom and Hewlett also agreed that Hewlett could retain possession of a car leased in Fagenstrom's name as long as he made monthly payments to her in an amount equal to the lease payment.

7.

The Accused represented both Fagenstrom and Hewlett with regard to the agreement, even though their interests as creditor and debtor were in actual conflict.

8.

Hewlett failed to pay Fagenstrom as provided in the agreement. Fagenstrom filed a lawsuit against Hewlett for breach of contract and on March 2, 2001, she obtained a judgment against him. The Accused did not represent either party in the lawsuit. On March 9, 2001, Fagenstrom issued a writ of garnishment and served it on Hewlett's employer, Auto & Truck Warehouse (hereinafter "Auto & Truck").

9.

After the writ of garnishment was served on Auto & Truck, the Accused undertook to represent Hewlett and, on April 11, 2001, he filed a Chapter 13 bankruptcy petition on Hewlett's behalf.

10.

The Accused failed to obtain consent after full disclosure from Hewlett and Fagenstrom before undertaking to represent Hewlett as described in paragraph 9, even though the interests of Fagenstrom and Hewlett with regard to the writ of garnishment and bankruptcy proceeding were adverse and those matters were significantly related to the agreement he prepared for them the previous year.

11.

At the time the Accused undertook to represent Hewlett as described in paragraph 9, he also represented Auto & Truck in other matters. The Accused failed to obtain consent to the dual representation from Auto & Truck and Hewlett after full disclosure, when the interests of Hewlett, as judgment debtor, and of Auto & Truck, as the employer on whom the writ of garnishment had been served, were adverse.

12.

On April 20, 2001, the Accused withdrew from representing Hewlett in the bankruptcy proceeding. The Accused failed to obtain permission to withdraw from the bankruptcy proceeding, as provided by LR 83.11 for the United States District Court for the District of Oregon.

Violations

13.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 12, he violated DR 5-105(C), DR 5-105(E), and DR 2-110(A)(1).

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 avoid conflicts of interest. *Standards*, § 4.3. He also violated his duty to properly withdraw from representation. *Standards*, § 7.0.

B. *Mental State.* “Negligence” is defined in the ABA *Standards* as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused acted with negligence when he engaged in improper conflicts of interests and when he failed to properly withdraw from representation.

C. *Injury.* Injury can be either actual or potential. In this case, there was potential injury to Fagenstrom, Hewlett, and Auto & Truck. Because of the undisclosed conflicts of interest, all three did not understand or consent to the Accused’s divided loyalty. Fagenstrom sustained additional potential injury because she reasonably believed the Accused represented her interests in preparing the agreement and the Accused compromised his loyalty to her when he subsequently thwarted her efforts to enforce the agreement. The bankruptcy court also sustained potential injury because it continued to send documents to the Accused even though he was no longer representing Hewlett in the bankruptcy proceeding.

D. *Aggravating Factors.* Aggravating factors include:

1. A pattern of misconduct. *Standards*, § 9.22(c); and
2. Multiple offenses. *Standards*, § 9.22(d).

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);

3. Inexperience in the practice of law as the Accused has been a member of the bar since 1997. *Standards*, § 9.32(f); and

4. Remorse. *Standards*, § 9.32(l).

15.

The *Standards* provide that 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. *Standards*, § 4.33. Reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

16.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Holmes*, 290 Or 173, 619 P2d 1284 (1980) (lawyer who represented creditor and debtor in a dispute over payment of various debts and subsequently sued the debtor on behalf of the creditor regarding those same debts received reprimand); *In re Cohen*, 316 Or 657, 853 P2d 286 (1983) (lawyer who represented two clients with an actual conflict of interest received reprimand); *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (lawyer who failed to timely withdraw from representing a client after he learned that his law partner previously drafted wills for the opposing party and that the wills contained information supporting his current client's claim).

17.

The Accused agrees to accept a public reprimand for the violations described in the Stipulation for Discipline.

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 to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 11th day of March 2002.

/s/ Chris Covert

Chris Covert

OSB No. 97045

EXECUTED this 14th day of March 2002.

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. 99-88
)	
WILLIAM P. KOONTZ,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 3-102(A). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 26, 2002

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 3-102(A).

DATED this 26th day of March 2002.

/s/ Paul E. Meyer
 Paul E. Meyer, Esq.
 State Disciplinary Board Chairperson

/s/ Gregory E. Skillman
 Gregory E. Skillman, Esq., Region 2
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William P. Koontz, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, William P. Koontz, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 24, 1978, 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 July 21, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 3-101(A) and DR 3-102(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.

Between October 1995 and January 1997, James Wirth, dba "Estate Preservation Consultants" (hereinafter "Wirth"), engaged in the business of selling revocable living trusts to third persons. In his business, Wirth used a targeted direct mail advertising campaign in which a California company sent advertisements for revocable living trusts to Oregon homeowners over the age of 60. The advertisement invited recipients who were interested in purchasing a revocable living trust to send a reply postcard to Wirth.

6.

Wirth met with the people who expressed interest in purchasing living trusts, advised them of the advantages of living trusts as estate planning devices, and reviewed and recorded the clients' financial information to be used in the preparation of trust and related documents.

7.

When Wirth sold a living trust, the Accused drafted the trust and any other necessary related estate planning documents. The Accused knew Wirth was not an Oregon lawyer or licensed to practice law in any other jurisdiction.

8.

During his meetings with the clients to whom he sold revocable living trusts, Wirth entered into agreements that set forth the terms of the sales of the living trusts, including price, which was between \$600 and \$800. Wirth also provided the clients with a separate document on which they could indicate whether they chose the Accused or another lawyer to draft the trust and advise them about it, and to assist them in executing and funding the trust. This document set the Accused's fee for the Accused's services at \$160. Wirth collected both his fee and the Accused's fee from the clients.

9.

The Accused was the only lawyer whose name Wirth offered to the purchasers of living trusts as a lawyer who could advise them concerning their estate planning.

10.

By receiving payments for revocable living trust documents when he knew that Wirth was also receiving payment for reviewing the clients' financial information and advising them regarding the purchase of revocable living trusts, the Accused shared a legal fee with a nonlawyer in exchange for services related to the obtaining or performing of legal work.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 3-102(A). Upon further review of the facts, the parties agree that the DR 3-101(A) charge authorized by the SPRB should be, and with the approval of this stipulation will be, dismissed.

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 owed as a professional to refrain from sharing legal fees with a nonlawyer. *Standards*, § 7.0.

B. *Mental State.* The Accused acted with a negligent mental state, that is, 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 in the situation.

C. *Injury.* There was potential injury to members of the public in that they were placed at risk of receiving nonexpert legal advice concerning their estate planning. *In re Griffith*, 304 Or 575, 611, 748 P2d 86 (1987).

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. Delay in the disciplinary proceedings. *Standards*, § 9.32(i).

Although the Accused was the only lawyer whose name was offered by Wirth to provide advice to his clients, the clients were free to utilize the services of any attorney.

13.

Standards § 7.3 suggests that a reprimand is generally appropriate when a lawyer negligently 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. While there is no Oregon case precisely on point with this case, other cases involving lawyers who represented living trust companies suggest that a public reprimand is appropriate here. See *In re Durbin*, 9 DB Rptr 71 (1995) (corporate counsel for a company that sold living trusts publicly reprimanded for conflicts of interest); distinguish, *In re Benson*, 12 DB Rptr 167 (1998) (lawyer who represented a company that sold living trusts and who also prepared trust documents for the customers of his client company was suspended for 60 days for violating DR 3-102(A) and six other disciplinary rules).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 3-102(A) upon approval of this stipulation by the Disciplinary Board.

15.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the State

Professional Responsibility Board on February 15, 2002. 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 March 2002.

/s/ William P. Koontz

William P. Koontz

OSB No. 78056

EXECUTED this 13th day of March 2002.

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 Nos. 98-110, 98-111, 98-136
)
THOMAS MacNAIR,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(A), DR 6-101(B),
DR 9-101(A), and DR 9-101(C)(3). Stipulation for
Discipline. 60-day suspension.
Effective Date of Order: April 24, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline between Thomas MacNair and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. Thomas MacNair shall be suspended from the practice of law for 60 days effective May 1, 2002, for violation of DR 6-101(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 24th day of April 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Thomas MacNair, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to 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 MacNair, was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 7, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

Pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), a Formal Complaint was filed against the Accused on January 19, 2000, alleging violations of DR 1-102(A)(3), DR 6-101(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Case No. 98-110

Facts

5.

At all times relevant to these proceedings, the Accused engaged in the private practice of law and personally handled all financial business of the practice, including the receipt, deposit, accounting, and disbursement of client and other funds.

6.

Between about May 1996 and into 1998, the Accused engaged in the following conduct in connection with the handling of funds received from one or more clients (hereinafter “Client Funds”) who had retained the Accused for legal services: (a) the Accused did not deposit some Client Funds into his lawyer trust account, incorrectly believing that he was entitled to the funds upon receipt; (b) the Accused failed to enter into a written agreement with his clients expressly stating that

fees paid in advance constituted a nonrefundable retainer, earned on receipt; (c) the Accused failed to deposit in his trust account costs paid in advance by one client; (d) checks were drawn inadvertently on the trust account for other than client expenses; (e) the Accused failed to prepare and maintain complete records reflecting his receipt, deposit, and disbursement of Client Funds, and failed to account to his clients for the funds; (f) those accounting records the Accused did maintain contained errors in various entries.

Violations

7.

Based on the foregoing, the Accused admits that he violated DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

Case No. 98-136

Facts

8.

On or about September 27, 1996, Richard Rich (hereinafter “Rich”) consulted the Accused concerning an injury claim against the Tillamook Police Department for excessive force allegedly occurring on or about September 9, 1996 (hereinafter “Tort Claim”). The Accused agreed to represent Rich for a contingency fee, plus costs.

9.

The Accused neglected Rich’s legal matter entrusted to him and failed to provide competent representation to his client. The Accused accepted Rich’s Tort Claim case when he did not have any knowledge or experience with such matters. He failed to consult with or associate an attorney experienced with Tort Claim cases or to refer the client to an attorney who was experienced with such claims. The Accused failed to review the Tort Claim statutes and did not conduct other research concerning such matters. The Accused failed to give the required notice of tort claim to a public body within six months of the client’s injury; incorrectly advised his client not to worry about the statute of limitations and that the statute of limitations was two years; and failed to take other action to protect or pursue the client’s Tort Claim.

Violations

10.

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

Remaining Allegations

11.

On further review of the facts, the DR 1-102(A)(3) charge alleged in Case No. 98-110 should be and, with the approval of this stipulation, will be dismissed. Specifically, the parties stipulate that conduct described in paragraph 6 above was the result of negligent accounting practices, rather than intentional or knowing conduct. In addition, the charges alleged by the Bar in Case No. 98-111, DR 6-101(B) and DR 9-101(A), should be and, with the approval of this stipulation, will be dismissed.

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

A. *Duty*. In violating DR 6-101(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3), the Accused violated duties to his clients and the profession. *Standards*, §§ 4.1, 7.0.

B. *State of Mind*. The Accused’s conduct demonstrates 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 cause a particular result. “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 knew that he was inexperienced and lacked the knowledge necessary to handle a tort claim and that he was not performing the services Rich had retained him to perform. The Accused negligently mismanaged his trust account. He knew he had a duty to properly maintain that account and failed to take the care necessary to do so over a period of several months.

C. *Injury*. Rich suffered some injury in that his claim was barred because the Accused failed to take required action. Rich was required to pursue a malpractice claim against the Accused. The malpractice claim was settled for a nominal sum. There was potential injury but no actual injury to clients who provided funds for legal services to be performed by the Accused. All client funds were accounted for, and the Accused did not collect fees that he did not ultimately earn. The Accused’s clients were not provided with an accounting of the funds that they paid to the Accused until the Bar inquired and was investigating his conduct. The clients were

therefore uncertain that the Accused actually earned the funds that were paid until long after the Accused had completed the clients' legal matters.

D. *Aggravating Factors*. Aggravating factors include:

1. This stipulation involves four disciplinary rule violations, which involve multiple client matters. *Standards*, § 9.22(d);
2. There is a pattern of misconduct. *Standards*, § 9.22(c);
3. The Accused's clients were vulnerable. *Standards*, § 9.22(h).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.32(a);
2. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b);
3. The Accused reported his trust account violations. He also cooperated in the investigation of his conduct and in resolving this disciplinary proceeding. *Standards*, § 9.32(e);
4. The Accused was admitted to practice in May 1996 and had limited experience in the practice of law at the time of the violations. *Standards*, § 9.32(f);
5. The events in this proceeding are remote in time and there has been delay in the disciplinary proceeding. *Standards*, § 9.32(i);
6. The Accused acknowledges the wrongfulness of his conduct and is remorseful. *Standards*, § 9.32(l).

13.

The *Standards* provide that a 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 generally appropriate when a lawyer engages in an area of practice which the lawyer knows he or she is not competent, or knowingly fails to perform services for a client, and causes injury or potential injury to a client. *Standards*, §§ 4.42, 4.52. 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.

14.

Oregon case law is in accord. *See, e.g., In re Steves*, 14 DB Rptr 11 (2000) (lawyer suspended for 60 days for violation DR 6-101(B) and DR 9-101(C)(3)); *In re Wettland*, 12 DB 245 (1998) (lawyer suspended for 60 days 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 Michaels*, 10 DB Rptr 69 (lawyer suspended for 30 days for violation of DR 6-101(A), DR 9-101(A), and DR 9-101(C)(3)). *Compare In re Morrison*, 14 DB Rptr

234 (2000) (more experienced lawyer who grossly mismanaged his trust account and charged excessive fees was suspended for 15 months).

15.

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 for violation of DR 6-101(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3). The suspension shall be effective May 1, 2002, or three days after this stipulation is approved by the Disciplinary Board, whichever is later.

16.

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

DATED this 22nd day of April 2002.

/s/ Thomas MacNair

Thomas MacNair
OSB No. 96162

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. 98-92
)
DONALD K. ROBERTSON,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Wayne Mackeson, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-105(E). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: April 25, 2002

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 25th day of April 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Donald K. Robertson, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Donald K. Robertson, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1958, and has been a member of the Oregon State Bar since that time, except as noted herein, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On May 16, 2000, pursuant to the authorization of the State Professional Responsibility Board, a formal complaint was filed 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.

On or about March 4, 1996, Virginia Taylor (“Taylor”), pursuant to advice from her personal attorney Stephen Lewis (“Lewis”), offered to sell a parcel of real property to Redeemer Lutheran Church (“the Church”). The offer was accepted. Afterwards, the Accused, who was a member of the Church’s congregation, was approached by Church officials and asked to prepare documents necessary to complete the transaction.

6.

The Accused contacted Lewis and Taylor and learned that title to the real property was vested in Taylor’s deceased husband’s name. Lewis and the Accused concluded that Mr. Taylor’s estate would have to be probated in order to consummate the transfer of the property to the Church. Since the only known asset of the estate was the real property, the Accused and Lewis concluded that Taylor should serve as personal representative of the estate.

7.

Because Taylor could not afford to pay the fee quoted by Lewis to probate the estate, Church officials asked the Accused if he would assist in the probate of the estate in order to consummate the transfer of the property. The Accused told the Church officials he would represent Taylor as personal representative in the probate if all parties consented to any potential conflicts of interest and if Lewis continued to represent Taylor personally and review the documents the Accused would prepare and file in the probate. This was confirmed in a letter dated March 20, 1996, from the Accused to Lewis with copies to Taylor and the Church. A copy of the letter is attached hereto as Exhibit 1. This letter did not provide an explanation sufficient to apprise Taylor and the Church of the potential adverse impact on them from any conflict of interest, nor did it include a recommendation that each seek independent legal advice to determine if consent should be given.

8.

On Taylor's behalf, the Accused prepared and filed a petition for appointment of Taylor as Personal Representative of her husband's estate, and became attorney of record for Taylor in the probate. The Accused later prepared the documents to transfer title to the real property from the estate to the Church. Lewis reviewed all the documents as Taylor's personal lawyer. Upon the closing of the transaction, the Church paid Lewis \$750 for his services.

9.

While representing the Personal Representative, who owed a fiduciary duty to the estate, who was the seller, and the Church as buyer in the closing of the sale of the real property, the Accused was representing multiple current clients when such representation would result in an actual or likely conflict of interest.

10.

To the extent full disclosure and consent was available to remedy any likely conflict of interest, the Accused undertook the multiple representation without the consent of both clients after full disclosure.

Violations

11.

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

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

C. *Injury*. There was little or no injury as a result of the conflict.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior disciplinary record. In 1981, the Accused was suspended from the practice of law for 30 days for engaging in a conflict of interest involving undertaking to represent the vendors in a land sale transaction while undertaking to represent the purchaser in the same transaction. *In re Robertson*, 290 Or 639, 624 P2d 603 (1981). In 1994, the Accused was suspended from the practice of law for 30 days for failing to comply with the full disclosure and consent requirements of DR 10-101 in conjunction with representing clients with whom he had a self-interest. *In re Robertson*, 8 DB Rptr 229 (1994). *Standards*, § 9.22(a).

2. The Accused has substantial experience in the practice of law having been admitted to the Oregon Bar in 1958. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a dishonest or selfish motive. The Accused received no fee for his services in this matter. He was attempting to assist his Church without compensation. *Standards*, § 9.32(a).

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

3. The events are remote in time and there has been delay in the disciplinary proceedings. *Standards*, § 9.32(i).

4. Remoteness of the 1981 suspension. *Standards*, § 9.32(m).

5. The Accused attempted to disclose to the parties that there might be a conflict of interest between them but did not adequately comply with the requirements of DR 10-101(B).

13.

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

14.

The Bar and the Accused agree that the prior disciplinary record of the Accused is a significant aggravating factor but is outweighed in this case by the Accused's attempt to make full disclosure, the involvement of another lawyer on Taylor's behalf, and the fact that the Accused received no fee for the work he did in the case.

15.

Oregon case law is consistent with a reprimand in this matter. See *In re Berg*, 14 DB Rptr 100 (2000) (public reprimand for a single violation of DR 5-105(E)); *In re Kelly*, 12 DB Rptr 58 (1998) (public reprimand for a single violation of DR 5-105 (C) and (E)); *In re Always*, 11 DB Rptr 153 (1997) (public reprimand for a violation of DR 5-105(C)).

16.

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), the sanction to be effective upon approval by the Disciplinary Board.

17.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction approved by the Chairperson of the State Professional Responsibility Board (SPRB) on April 2, 2002. 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 April 2002.

/s/ Donald K. Robertson

Donald K. Robertson
OSB No. 58081

EXECUTED this 16th day of April 2002.

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. 01-182
)	
DANIEL Q. GALLAGHER,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	May 17, 2002

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)(4).

DATED this 17th day of May 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray
Dwayne R. Murray, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Daniel Q. Gallagher, 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 Q. Gallagher, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1994, and has been a member of the Oregon State Bar since that time, except as noted herein, having his office and place of business in Douglas 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 20, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) and DR 1-102(A)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In 1997, the Accused represented Stephen Lunt (hereinafter “Lunt”) in a dissolution of marriage proceeding. At that time, Lunt was a resident of Douglas County. The Accused pursued the matter in Douglas County and in August 1997, the court entered a Judgment of Dissolution of Marriage. The parties subsequently remarried.

6.

On October 4, 2000, the Accused was again retained by Lunt to represent him in a dissolution of marriage proceeding. At the time he was retained, the Accused knew that Lunt was living in Colorado.

7.

On November 9, 2000, the Accused filed a Petition for Dissolution of Marriage (hereinafter “petition”) on behalf of Lunt. At the time, ORS 14.070 provided that a suit for dissolution of marriage must be commenced in a county in which one of the parties resided. When the Accused filed the petition, he had information in his possession from which he should have known that (1) Lunt had

obtained a restraining order against his wife in a Coos County proceeding on September 18, 2000; (2) Lunt's residence and legal address were in Colorado; and (3) Lunt, his wife, and his children had not lived in Douglas County since July 1997. Nevertheless, the Accused filed the petition in Douglas County.

8.

UTCR 8.010(1) requires the petitioner in a dissolution of marriage proceeding to file a certificate of residency establishing that one or both of the parties currently resides in the county in which the petition is being filed. In connection with the filing of the petition described in paragraph 7, the Accused prepared and caused Lunt to sign a certificate of residency stating that one or both of the parties had resided in Douglas County for the last six months. The Accused knew Lunt would sign the certificate in Colorado because he provided for it to be notarized by a Colorado notary.

9.

On November 9, 2000, the Accused filed the certificate of residence described in paragraph 8 with the court.

10.

The Accused represented Lunt in the matter until June 2001. Between November 2000 and June 2001, all of the Accused communications with Lunt were to and from Colorado. During those same months, the matter was set for trial a number of times. On January 17, 2001, the court assigned the matter to mediation. Because Lunt was in Colorado, the Accused arranged for him to participate in mediation by telephone. The Accused continued to pursue the matter in Douglas County despite ORS 14.070, which requires a suit for dissolution of marriage to be tried in a county in which one of the parties resides.

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated DR 1-102(A)(4) of the Code of Professional Responsibility. 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, is dismissed.

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 avoid conduct prejudicial to the administration of justice. *Standards*, § 5.2.

B. *Mental State.* “Negligence” is defined as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused acted with negligence in assuming that Lunt or his wife still resided in Douglas County when he had information clearly to the contrary. The Accused had no reasonable basis for his belief that Douglas County was the proper venue for the proceeding.

C. *Injury.* Injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this case, there was actual injury to the Douglas County court system because it expended resources processing a case that was not properly before it. There was also potential injury to Lunt because, until his subsequent lawyer transferred the matter to the proper county, the Douglas County court could have dismissed the matter at any time.

D. *Aggravating Factors.* There are no aggravating factors.

Effective July 1, 2001, the Accused was suspended from the practice of law for two years. *In re Gallagher*, 332 Or 173, 26 P3d 131 (2001). However, the prior discipline is given little weight in determining the appropriate sanction in this matter because it was imposed after the Accused engaged in the conduct underlying the present proceeding. *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

E. *Mitigating Factors.* Mitigating factors include:

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

13.

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

14.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. *See In re McCurdy*, 13 DB Rptr 107 (1999).

15.

The Accused agrees to accept a public reprimand for the violation described in the Stipulation for Discipline.

16.

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 that the Stipulation will be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 12th day of April 2002.

/s/ Daniel Q. Gallagher

Daniel Q. Gallagher

OSB No. 94075

EXECUTED this 17th day of April 2002.

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. 02-15
)
STEVEN PLINSKI,)
)
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: May 17, 2002

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 17th day of May 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq., Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Steven Plinski, 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 26, 1977, 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 19, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for an 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.

From about September 2000 through January 2001, the Accused undertook to represent Alfred and Geraldine Hallquist, an elderly married couple. Both Mr. and Mrs. Hallquist had adult children from previous marriages. The Hallquists had previously executed individual trusts and asked the Accused to amend their trusts to allow each of them to serve as successor trustee of the other's trust and that, if the other was unable to serve as trustee, a specified third party would serve as successor trustee.

6.

At the time the Accused undertook to represent both of the Hallquists, he was aware that their objective and subjective personal or property interests were adverse to each other in that:

A. Mr. and Mrs. Hallquist's trusts each had assets of substantially different values;

B. Mr. and Mrs. Hallquist stated that, upon the death of both of them, half of the remaining assets would pass to Mrs. Hallquist's child and the other half would pass to Mr. Hallquist's children;

C. Mrs. Hallquist's trust was subject to amendment by her surviving spouse, which could operate to permit Mr. Hallquist to prevent her child from receiving one half of the remaining assets upon his death;

D. Mr. and Mrs. Hallquist had ongoing disagreements as to what Mrs. Hallquist should do with her money;

E. Mrs. Hallquist was in frail health and, by character and disposition, was likely susceptible to pressure from her husband on financial issues.

7.

In or about February 2001 until about May, 2001, Mrs. Hallquist was represented by separate counsel to advise her on her estate plan. During this period, Mrs. Hallquist revoked her trust agreement and executed a will. The Accused continued to represent Mr. Hallquist during this time.

8.

In or about May 2001, the Accused again undertook to represent both Mr. and Mrs. Hallquist at their request. On their behalf, he drafted documents whereby Mr. Hallquist revoked his trust and Mr. and Mrs. Hallquist created a revocable joint trust. Pursuant to the terms of the revocable joint trust, Mr. and Mrs. Hallquist could modify or amend the trust or withdraw trust assets if they both agreed to do so.

9.

When the Accused represented Mr. and Mrs. Hallquist jointly, their objective personal and property interests were adverse. The Accused was aware of the adversity of his clients' interests and failed to obtain written consent from both of them after making full disclosure of the conflict of interest, as required by DR 10-101(B).

Violations

10.

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

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 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 clients 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. *See Standards*, p. 17.

C. *Injury.* Mr. and Mrs. Hallquist were both exposed to potential injury when the Accused rendered estate planning advice to both of them when their objective property and personal interests were adverse.

D. *Aggravating Factors.* Aggravating factors include:

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. Cooperative attitude toward the disciplinary process. *Standards*, § 9.32(e).
3. Good reputation within his area of practice. *Standards*, § 9.32(g).

12.

Standards § 4.33 suggests 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.

Oregon Case Law

13.

Oregon case law is in accord. Cases involving isolated conflict-of-interest violations that have resulted in public reprimands include the following: *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (former client conflict of interest); *In re Cohen*, 316 Or 657, 853 P2d 286 (1993) (current client conflict of interest); *In re Trukositz*, 312 Or 621, 825 P2d 1369 (1992) (former client conflict of interest); *In re Brandsness*, 299 Or 420, 702 P2d 1098 (1985) (former client conflict of interest); *In re Jayne*, 295 Or 16, 663 P2d 405 (1983) (former client conflict of interest); *In re Mumford*, 285 Or 559, 591 P2d 1377 (1979) (former client conflict of interest); *In re Berg*, 14 DB Rptr 100 (2000) (current client conflict of interest); *In re Bryant*, 12 DB Rptr 69 (1998) (current client conflict of interest); and *In re Kelly*, 12 DB Rptr 58 (1998) (current client conflict of interest).

14.

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

15.

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

EXECUTED this 2nd day of May 2002.

/s/ Steven Plinski

Steven Plinski
OSB No. 77304

EXECUTED this 6th day of May 2002.

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. 00-47
)
JOHN BASSETT,)
)
Accused.)

Bar Counsel: Michael J. Gentry, Esq.
Counsel for the Accused: Christopher Hardman, Esq.
Disciplinary Board: Gilbert B. Feibleman, Esq. (Chair); Honorable Jill Tanner; Robert Wilson (Public Member)
Disposition: Violation of DR 1-102(A)(3) and DR 5-103(B). Trial Panel Opinion. Public reprimand.
Effective Date of Opinion: May 30, 2002

OPINION OF THE TRIAL PANEL

This matter came regularly before a Trial Panel of the Disciplinary Board consisting of Gilbert B. Feibleman, Esq., Chair; Hon. Jill A. Tanner, and Robert Wilson, Public Member, on March 14 and 15, 2002. The Oregon State Bar was represented by Stacy J. Hankin, Assistant Disciplinary Counsel, and Michael Gentry, Esq. The Accused was represented by Christopher Hardman. The Trial Panel has considered the stipulations, pleadings, exhibits, testimony, trial memoranda, and arguments of counsel.

Cause of Wrongful Conduct

The Bar charges the Accused with conduct involving misrepresentation, in violation of DR 1-102(A)(3); collecting a clearly excessive fee, in violation of DR 2-106(A); and advancing financial assistance to a client, in violation of DR 5-103(B).

Introduction

In August 1997, the Accused undertook to represent Vivian Elliott (hereinafter “Elliott”) in claims for personal injuries she sustained in a car accident. On March 16, 1999, Elliott and the Accused signed a written fee agreement. The Oregon State Bar alleges that despite the terms of that agreement, the Accused collected an excessive fee when Elliott’s claims were resolved in August 1999. The Accused also

concedes that he improperly advanced funds to Elliott throughout the time he represented her.

As a result of the accident, Elliott obtained medical treatment from a number of hospitals and doctors. Two of those providers, Providence Hospital (hereinafter “Providence”) and Dr. Hill (hereinafter “Hill”) filed medical service liens pursuant to ORS 87.555 et seq.

On May 13, 1999, the Accused sent letters to Providence and Hill representing that because the financial recovery available was insufficient to satisfy all of Elliott’s medical creditors, they should accept a reduced payment in full satisfaction. Thereafter, the amount available to satisfy the medical creditors increased substantially. The Accused intentionally failed to disclose this information to Providence and the lawyer representing Hill. Instead, he allowed them to believe that the financial recovery available had not changed. Both Providence and Hill eventually agreed to accept a reduced payment.

As a result of his conduct, the Accused is charged with conduct involving misrepresentation, in violation of DR 1-102(A)(3); collecting a clearly excessive fee, in violation of DR 2-106(A); and advancing financial assistance to a client, in violation of DR 5-103(B).

In light of prior case law, the nature and severity of the violations, the aggravating factors and the lack of prior disciplinary record, the Accused should be publicly reprimanded.

Summary of Facts

In August of 1997, Elliott orally retained the accused in a personal injury matter. At that time, due to the inability of Elliot to leave her car, Elliott and the Accused orally agreed that he would collect a contingent fee. Between January 26, 1998, and July 12, 1999, the Accused made 16 advances to Elliott for a total of \$3,554.99. These advances were primarily for personal expenses not related to litigation. The Accused did not charge interest on the repayment.

On March 16, 1999, Elliott signed a written retainer agreement. The relevant portions of that agreement provided as follows:

1. That the fee for legal services shall be a contingent fee predicated on recovery made, whether by way of settlement of (sic) litigation, as the case may be, and shall be computed as follows:

A. One-third (1/3) of any amount of recovery or settlement achieved without institution of an action.

. . . .

3. It is understood that the attorney fee is entirely contingent and shall be obtained from proceeds only, and it is agreed that no settlement shall be made without full discussion and agreement between the parties.

By April 1999, Farmers Insurance Group (hereinafter “Farmers”), who insured the owner of the other car involved in the accident, had offered to pay its policy limit of \$30,000.

On May 4, 1999, State Farm, Elliott’s insurance, carrier sent a letter to the Accused requesting additional information so that it could evaluate an underinsured demand. The letter also requested that the Accused hold the check he received from Farmers in trust (made out to the Elliotts, Hill, and Providence) because it had not yet determined whether to waive its PIP lien.

On May 13, 1999, the Accused sent letters to Providence and Hill, both medical providers of the Elliotts. In that letter, the Accused informed them that Farmers has offered to pay the policy limits of \$30,000, that State Farm had a PIP lien of \$11,150.96, and that Elliott’s medical expenses totaled \$33,095.66. He further asserted that the financial recovery did not allow Elliott to satisfy all the medical creditors, after considering his entitlement to attorney fees and the PIP lien. He informed them that Elliott would like to avoid bankruptcy and pointed out that she would be entitled to receive \$10,000 from the settlement in a bankruptcy proceeding. However, in order to avoid that result, the Accused offered to pay Providence and Hill a pro rata share in full satisfaction of their claims for payment. In that letter he disclosed the existence of Sate Farm but did not overtly disclose that there may be additional underinsurance benefits.

After receiving this letter, Hill retained attorney Bottini, to pursue the matter. Bottini and the Accused were unable to resolve the matter so on or about June 1, 1999, Bottini referred the matter to attorney Ferraro.

On June 1, 1999, a State Farm representative left a telephone message for the Accused stating that it would pay the \$20,000 underinsured claim and waive its PIP lien in exchange for a full release.

On June 4, 1999, the Accused spoke with State Farm wherein he was informed that there might be an additional liability policy issued by Shelter Insurance (hereinafter “Shelter”) on the driver of the other car involved in the accident.

On June 15, 1999, Ferrero sent a letter to the Accused offering to reduce the unpaid balance of Hill’s bill to \$5,000.

On June 24, 1999, the Accused had a conversation with a representative from Providence regarding settlement of its claim for payment but no agreement was reached.

On June 28, 1999, the Accused’s assistant placed a note in Elliott’s file indicating that per the Accused, Shelter would be sending the policy limit of \$25,000.

On June 29, 1999, Shelter sent a release and draft for \$25,000 to the Accused.

On June 29, 1999, the Accused wrote Farmers falsely stating that he had negotiated separate settlements with Hill and Providence and asked Farmers to reissue the check, payable to Elliott, himself, and State Farm only. On that same day, the

Accused spoke with a representative from Providence regarding settlement of its claim for payment. No settlement was reached.

On July 8, 1999, Elliott and her husband signed a release in favor of Shelter.

On July 9, 1999, State Farm sent the Accused a letter confirming that it would waive its PIP lien.

On July 13, 1999, the Accused sent a letter to State Farm accepting its offer to waive the PIP lien.

On July 15, 1999, the Accused had further negotiations with Ferraro.

On July 16, 1999, the Accused sent a letter to Providence disputing the validity of its lien. He also rejected Providence's offer to reduce its lien if he reduced the attorney fees he was to receive. Finally, he encouraged Providence to review the May 13, 1999, letter, and provide him with a figure that it is willing to accept.

On July 20, 1999, the Accused wrote a note to the file that the case had settled, with Farmers paying its limit, Shelter paying its limit and State Farm waiving the PIP lien. He acknowledged that "all that remains is addressing the liens filed by Providence and Dr. Hill."

On July 22, 1999, the Accused sent a letter to Providence disputing its recent attempt to perfect the lien. At the end of that letter, the Accused again encouraged Providence to resolve the matter without a bankruptcy or further litigation.

On July 26, 1999, Hill sent a letter to the Accused accepting the Accused's May 13, 1999 offer.

On July 27, 1999, Providence left a telephone message for the Accused that it would accept an additional \$8,400 as payment in full.

On August 6, 1999, Elliott and her husband signed the Farmers release. Elliott was also provided with a draft settlement statement prepared by the Accused's assistant contrary to his instructions.

On August 9, 1999, Elliott and her husband signed another Settlement Statement prepared by the Accused. This statement was different from the draft she had received three days before. In this statement, the Accused calculated his contingency fee based upon the \$55,000 recovery from Farmers and Shelter plus a contingency fee based on the settlement benefit achieved due to the PIP lien waiver by State Farm and the reduction in the liens asserted by Providence and Hill. Total proceeds from the settlement were \$55,000. The Accused received \$26,153.09 of that total. Another \$11,814.68 was paid to medical providers. Costs and advances totaled \$5,007.18. Elliott was to receive \$12,025.05. One-third of the recovery only would have been a fee of \$18,333.33. The Elliots then sought other counsel then threatened a bar complaint for advancing monies if the fee was not renegotiated. The Accused refused.

A Bar complaint followed.

Burden of Proof/Evidentiary Standard

The Bar has the burden of establishing the Accused's misconduct in this proceeding 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).

Conclusion

1. There is clear and convincing evidence that the Accused's failure to inform Providence that the available funds increased substantially was a misrepresentation by omission, in violation of DR 1-102(A)(3).

There is clear and convincing evidence that the Accused's letter to Farmers Insurance dated June 29, 2002, misrepresented the current status of his negotiations with Hill and Providence, in violation of DR 1-102(A)(3).

DR 1-102(A)(3) finds it professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Failure to disclose information can be a misrepresentation. *In re Hiller*, 298 Or 526, 532, 694 P2d 540 (1985). Evaluating misrepresentation, whether direct or by omission, involves a two-part inquiry: (1) whether the lawyer knew that the statement was a misrepresentation and (2) whether the lawyer knew that the misrepresentation was material. *In re Bennett*, 331 Or 270, 277, 14 P3d 66 (2000). A lawyer need not have an intent to deceive or commit fraud in order to engage in conduct involving misrepresentation. *In re Hiller, supra*, 298 Or at 533.

The Accused claims he did not disclose receipt of the additional funds from Shelter or the PIP waiver by State Farm to Ferraro (for Hill) or Providence because they did not ask whether there was additional liability coverage or whether the PIP had been waived.

The Bar has failed to sustain its burden regarding the Hill lien.

The Bar has sustained its burden regarding the Providence lien. Paraphrasing the court's in other cases, a person must be able to trust a lawyer's word as the lawyer should expect his word to be understood, without having to search for equivocation, hidden meaning, deliberate half-truths, or camouflaged escape hatches. That trustworthiness is the essential principle embodied in the Disciplinary Rules. Such trust would have been misplaced in this case, if Providence had taken at face value the accused reaffirmation of the facts contained in the May 13th letter. The facts on May 13th may have been accurate but on July 16th the facts had changed substantially.

"The failure to make that disclosure but to leave it to investigation by a skeptical opponent was a misrepresentation within the meaning we gave that word in *In re Greene, supra*." 298 Or at 534.

In this case, the Accused did not tell Providence the truth, as he knew it to be after receiving funds from Shelter and a confirmation from State Farm that it was waiving its PIP lien. Instead, he deliberately failed to disclose that information to them. Because Providence took the Accused's May 13th words at face value, it did not discover the additional funds. The Accused's failure to disclose the whole truth constitutes conduct involving misrepresentation, in violation of DR 1-102(A)(3).

Further, on April 29, 1999, Farmers sent a check to the Accused for \$30,000, representing the policy limits. The check was payable to Elliott, the Accused, State Farm, Dr. Hill, and Providence. Because Hill and Providence were listed as payees, the Accused had to obtain their endorsement in order to cash the check and complete the settlement.

As of June 28, 1999, the Accused knew that Shelter was sending him a check for \$25,000. On June 29, 1999, the Accused sent a copy of the \$30,000 Farmers check to Farmers. The accompanying letter stated that he had negotiated separate settlements with Hill and Providence and asked Farmers to reissue the check, payable to Elliott, himself, and State Farm only. However, at the time the Accused made this representation, he had not settled with either Hill or Providence. In light of the timing of these events, the trial panel does infer that the Accused knew that he was going to obtain additional funds from Shelter and decided not to disclose the existence of these additional funds.

The amount of proceeds available at the time of the last representation was a material consideration affecting Providence's choice among available courses of action. By failing to disclose that the amount of proceeds available had increased substantially from the May 13th letter, the Accused intended to Providence to believe that they could not collect more than what he was offering them, irrespective of the validity of the lien. To the extent that picture was inaccurate and the Accused knew that it was inaccurate, the failure to disclose was material.

As previously stated, on June 29, 1999, the Accused's letter to Farmers stated that he had negotiated separate settlements with Hill and Providence and asked Farmers to reissue the check, payable to Elliott, himself, and State Farm. However, at the time the Accused made this representation, he had not settled with either Hill or Providence. Accused gave false information to Farmers. The Accused knew he was misrepresenting material facts, which if known to Farmers would have prevented Farmers from issuing the check as requested.

In *In re Gatti*, 330 Or 517, 8 P3d 966 (2000), *In re Wren*, 13 DB Rptr 101 (1999), and *In re McGraw*, 12 DB Rptr 110 (1998), a sanction of public reprimand was appropriate for misrepresentation.

There is little question that the Accused left the lienholders to investigate on their own and that disclosure was only made to the extent the accused felt he was required to. Though the panel is not impressed with the extent of disclosure, it is only the specific referral back to the May 13th letter made to Providence and the

letter to Farmers that rise to the level of a violation by clear and convincing evidence. Although the Bar's allegation does not specify the letter to Farmers as a violation, the uncontroverted evidence cannot be ignored.

A lawyer, if he chooses to negotiate and make representation upon which others are expected to rely, must be candid and not negotiate with, hidden meanings, half-truths, or camouflaged escape hatches. That trustworthiness was missing in those two examples.

2. There is not clear and convincing evidence that the Accused charged and collected an excessive fee, in violation of DR 2-106(A).

DR 2-106(A) provides, in relevant part, that a lawyer shall not collect a clearly excessive fee. A lawyer who charges or collects more than the agreed-upon fee violates DR 2-106(A). See *In re Sassor*, 299 Or 720, 705 P2d 736 (1985); *In re Kerrigan*, 271 Or 1, 530 P2d 26 (1975).

The Bar has not sustained its burden of showing by clear and convincing evidence that the agreement providing for a fee of "one-third (1/3) of any amount of recovery or settlement achieved" did not include lien reductions and PIP waivers. The evidence is conflicting as is the expert testimony. The Elliotts' memory as to events and discussions appeared to the panel to be very selective. Although the panel does not find that the Bar has sustained its burden, the panel does wish to note that had the burden of proof been lower, a different conclusion may have been drawn. The panel is disturbed that the Accused was aware that the Elliotts' ability to fully understand matters was limited and that they may not have fully understood at the outset how "amount of recovery" may have differed from "settlement achieved." There is also no evidence in the record that the Accused used the model explanation of contingency fees before execution of the fee agreement.

3. The Accused concedes that he improperly advanced fund to Elliott, in violation of DR 5-103(B).

DR 5-103(B) provides that while representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the lawyer's client, except that a lawyer may advance or guarantee the expenses of litigation, provided the client remains ultimately liable for such expenses to the extent of the client's ability to pay.

Between January 26, 1998 and July 12, 1999, the Accused made 16 advances to Elliott for a total of \$3,554.99. Those advances violate DR 5-103(B) unless they were advanced for expenses of litigation.

The panel finds that the Accused was unaware that such advances were a violation and they were made solely for the benefit of his clients. No interest was charged.

Sanction

In fashioning a sanction in this case, it is appropriate for the trial panel to consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) and Oregon case law. *In re Biggs*, 318 Or 281, 295, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 541, 852 P2d 831 (1993). 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.

ABA Standards

A. *Duty Violated*. The most important ethical duties are those obligations a lawyer owes to the client. *Standards*, p. 5. In this case, the Accused’s advances violated his duty to avoid improper conflicts of interest with Elliott. *Standards*, § 4.3.

The most fundamental duty which a lawyer owes to the public is the duty to maintain the standards of personal integrity upon which the community relies. *Standards*, p. 36. The Accused violated that duty when he intentionally misrepresented the facts to Farmers and further when failed to inform Providence that his reference to his May 13th letter was no longer accurate in that he had received additional funds from Shelter and that State Farm had waived its PIP lien. *Standards*, § 5.1.

B. *Mental State*. “Intent” is the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7.

The Accused intentionally or knowingly failed to be candid with both Farmers and Providence. There was simply no settlement with either Hill or Providence at the time the Accused asked Farmers to reissue the check on the representation that such a settlement had been reached. In addition, though initially the Accused’s representations about funds available to Elliott were accurate, the basis for that representation changed shortly thereafter. The Accused failed to be candid with Providence in order to increase the amount of funds available for himself and Elliott.

“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. The Accused acted negligently when he failed to recognize that loaning funds to Elliott was improper.

C. *Injury*. Injury can be either actual or potential under the *ABA Standards*. *In re Williams*, *supra*. Elliott sustained potential injury as a result of the Accused’s violation of DR 5-103(B). The improper advances placed the Accused in a position where his own interests in ensuring recovery of the advances may have conflicted with Elliott’s interests in determining how to proceed with her legal matter.

Providence sustained potential injury as the result of the Accused's conduct. Because the Accused failed to inform them of the additional funds yet implying that the May 13th letter still was accurate as to the only funds available, they were not able to accurately assess their options with regard to whether they should resolve the claim for payment as proposed by the Accused or pursue the matter further. On the other hand, the Accused advised Providence and Hill of the existence of both the State Farm and the Farmers policy and as such they had the ability to assess their position without relying solely on the Accused. The reissuance of the check by Farmers created potential injury to Hill and Providence but no actual harm in that the status of the check had no impact on the negotiations nor was it a factor in the communications. The *Standards* provide as follows:

4.33 FAILURE TO AVOID CONFLICTS OF INTEREST

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving conflicts of interest:

4.33 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.

5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving . . . cases with conduct involving dishonesty, fraud, deceit or misrepresentation:

5.51 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

7.0 VIOLATIONS OF DUTY OWED TO THE PROFESSION

7.2 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.

7.3 Reprimand is generally the appropriate sanction 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 legal system.

D. *Aggravating factors.* The following aggravating factors are present in this case:

1. A dishonest and selfish motive. The Accused was motivated by a desire to obtain additional fees for himself and his client when he failed to disclose the additional available amounts to Providence and Hill and when he misrepresented to

the insurance company that he had settled with Providence and Hill. *Standards*, § 9.22(b).

2. A pattern of misconduct. The Accused had multiple violations for almost two years, from the time he began loaning Elliott funds in October 1997, until he collected his fee in August 1999. *Standards*, § 9.22(c).

3. Substantial experience in the practice of law. The Accused has been a member of the Oregon State Bar since 1965. *Standards*, § 9.22(i).

E. *Mitigating factors*. The following mitigating factor is present in this case:

1. Absence of a prior disciplinary record over a 37-year career. *Standards*, § 9.32(a).

2. Character and reputation. The Accused has an excellent reputation and reputation in the community for upstanding character. *Standards*, § 9.32(g).

3. Delay in disciplinary proceedings. It has been almost three years since the violations. *Standards*, § 9.32(i).

In this case, the aggravating factors do not outweigh the mitigating factors. Under the circumstances, the *Standards* suggest a public reprimand is the appropriate sanction.

Disposition

The Accused shall be publicly reprimanded.

IT IS SO ORDERED.

Dated this 24th day of April 2002.

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman
Trial Panel Chair

/s/ Honorable Jill A. Tanner
Honorable Jill A. Tanner
Trial Panel Member

/s/ Robert Wilson
Robert Wilson
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 00-47
)	
JOHN BASSETT,)	
	)	ORDER ON COSTS
Accused.	)	AND DISBURSEMENTS

This matter is before me on the motion of the Oregon State Bar (“Bar”) for costs and disbursements dated June 18, 2002, to which the Accused has filed an objection dated June 25, 2002.

The Bar charged the accused with violations of DR 1-102(A)(3), DR 2-106(A), and DR 5-103(B). The Accused offered to stipulate to violations of DR 2-106(A) and DR 5-103(B), but denied that he violated DR 1-102(A)(3). The Accused also offered to stipulate to a public reprimand. The Bar rejected the Accused’s offer and the matter proceeded to hearing. The trial panel found that the Accused had violated DR 1-102(A)(3) and DR 5-103(B), but that the Accused had not violated DR 2-106(A), and imposed a public reprimand.

Neither party sought review. Pursuant to BR 10.7(b), the Bar is deemed to be the prevailing party. Thus the Bar is entitled to its costs and disbursements, unless BR 10.7(c) applies. It provides, in relevant part,

In the event the written offer by an accused to enter into a stipulation for discipline . . . is rejected by the SPRB, and the matter proceeds to hearing, and results in a final decision of the Disciplinary Board . . . imposing a sanction no greater than that to which the accused was willing to . . . stipulate based on the charges the accused was willing to concede or admit, the Bar shall not recover. . . .

In this case the offer of the Accused to enter into a stipulation for discipline was rejected by the SPRB, the matter did proceed to hearing, and the hearing resulted in a final decision of the Disciplinary Board that imposed a sanction no greater than that to which the Accused was willing to stipulate.

However, that is not the end of the analysis. The rule also requires that the sanction imposed by the Disciplinary Board be “based on the charges the accused was willing to concede or admit.” That did not happen in this case. The Accused was willing to stipulate to violations of DR 2-106(A) and DR 5-103(B), but not to DR 1-102(A)(3). However, the Disciplinary Board imposed its sanction based on its conclusion that the Accused violated, *inter alia*, DR 1-102(A)(3). Thus the sanction imposed by the Disciplinary Board was *not* “based on the charges the accused was willing to concede or admit.” Hence BR 10.7(c) does not apply.

The Bar is therefore entitled to its costs and disbursement allowed under BR 10.7(a). The Accused does not deny that the items set forth in the Bar's Statement of Costs and Disbursements are within the scope of BR 10.7(a). If the Bar had sought an award of 100% of its costs and disbursements, I would have ordered the same. However, the Bar has for whatever reason waived its right to 50% of the award. I am therefore going to enter judgment for 50% and I have signed the Judgment for Costs tendered by the Bar with its motion.

DATED: July 1, 2002.

/s/ Paul E. Meyer

Paul E. Meyer

Disciplinary Board State Chair

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 01-214
)	
CLARK I. BALFOUR,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Bradley F. Tellam, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	June 3, 2002

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).

DATED this 3rd day of June 2002.

/s/ Paul E. Meyer
 Paul E. Meyer, Esq.
 State Disciplinary Board Chairperson

/s/ Michael R. Levine
 Michael R. Levine, Region 5
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Clark I. Balfour, 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, Clark I. Balfour, 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 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 December 14, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Jeffrey Bowden and Marilyn Rea (“the clients”) purchased a residential building lot from Dan and Nikki Hatton (“the Hattons”) in February 1993. In October 1993, the clients retained attorney James McCaffrey (“McCaffrey”) to assist them in pursuing a claim against the Hattons for failing to disclose certain defects in the property that they had to repair at a cost of \$35,937. McCaffrey handled the claim until November 1994, when he associated attorney Gretchen Buehner (“Buehner”) to assist him in pursuing the claim.

6.

In December 1995, the Accused met with McCaffrey and Buehner and agreed to assist with prosecution and possible arbitration of the claim. The Accused was aware that McCaffrey and Buehner had been working on the case since the fall of 1993. By March 15, 1996, the Accused had agreed to take over the arbitration of the claim against the Hattons. By June 19, 1996, the Accused had a petition for arbitration drafted but had not filed it. Between June 19, 1996, and September 24, 1998, the Accused took no substantive action to file and arbitrate the claim.

7.

On September 24, 1998, the Accused filed a Statement of Claim with the Arbitration Service of Portland along with the appropriate filing fee. After filing the claim, the Accused took some action on the claim but did not arbitrate it. On May 31, 2001, the clients filed a Bar complaint concerning the Accused's handling of their claim. On August 15, 2001, the Accused wrote the clients advising that he was withdrawing from case. A copy of the letter is attached hereto as Exhibit 1. At the time the Accused withdrew from representation, the claim was still pending before the arbitrator.

8.

The clients did not respond to the Accused's letter of August 15, 2001. On October 11, 2001, the Accused wrote the clients confirming his withdrawal, returning their files, and fully refunding all fees he had received from the clients.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he neglected a legal matter entrusted to him and violated DR 6-101(B).

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). 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 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.* The clients' substantive interests were not actually harmed by the delay as any cause of action based on tort had expired before he began representing them. There was some potential injury if the contract cause of action was applicable and not yet time barred. However, the clients were frustrated by the delay and may have had a cause of action against their prior lawyer for failing to recognize the applicable tort statute of limitations.

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

The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1979, although he had little experience in this particular area of practice. *Standards*, § 9.22(i).

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

1. The Accused has no prior disciplinary record. *Standards*, § 9.23(a).
2. He had no dishonest or selfish motive. *Standards*, § 9.23(b).
3. He made timely good-faith restitution. *Standards*, § 9.23(d).
4. He has fully cooperated in the disciplinary investigation. *Standards*, § 9.23(e).
5. He has a good reputation. *Standards*, § 9.23(g).
6. He acknowledges the misconduct and is remorseful. *Standards*, § 9.23(l).

Standards § 4.33 suggests that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to the 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. In the recent stipulation for discipline of *In re Kafoury*, 15 DB Rptr 188 (2001), the Board approved a public reprimand for a lawyer who admitted to two counts of neglect of a legal matter over prolonged periods of time. 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 previously for violation of DR 6-101(A) and (B).

11.

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) of the Code of Professional Responsibility, the sanction to be effective upon approval by the Disciplinary Board.

12.

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

EXECUTED this 21st day of May 2002.

/s/ Clark I. Balfour

Clark I. Balfour

OSB No. 79152

EXECUTED this 23rd day of May 2002.

OREGON STATE BAR

By: /s/ Chris Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

Cite as 334 Or 224 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
PAUL FLANNERY,)
)
Accused.)

(OSB No. 00-98; SC S48338)

En Banc

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

Argued and submitted September 6, 2001. Decided June 7, 2002.

Chris L. Mullmann, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the briefs for the Oregon State Bar.

Paul Flannery, Vancouver, Washington, argued the cause and filed the brief for himself.

PER CURIAM

The Accused is publicly reprimanded.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.527(2), when he made a false statement in an application for an Oregon driver license. A trial panel of the Disciplinary Board found that the Accused committed those violations and ordered that the Accused be publicly reprimanded. *Held*: The Accused is guilty of violating the disciplinary rules and the statute charged. The Accused is publicly reprimanded.

Cite as 334 Or 238 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
MARGARETTA EAKIN,)
)
Accused.)

(OSB Nos. 94-204, 95-193, 97-16; SC S47644)

En Banc

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

Argued and submitted November 1, 2001. Decided June 7, 2002.

Carl R. Neil, of Lindsay Hart Neil & Weigler, LLP, Portland, argued the cause for the Accused. With him on the brief was Roy Pulvers.

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

PER CURIAM

The Accused is suspended for 60 days, effective 60 days from the date of the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The proceeding involved two client matters. In the first matter, the Oregon State Bar had alleged that the Accused intentionally had converted client funds. The Accused denied that allegation but acknowledged that she violated DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4), when she mistakenly removed a client’s funds from the client trust account, failed to maintain adequate trust account records, and failed promptly to return client property when requested to do so. The court found that the Accused’s actions were not intentional and agreed that she had violated the above rules. In an unrelated second matter, the court concluded that the Bar did not prove by clear and convincing evidence that the Accused violated DR 2-106(A) (charging a clearly excessive fee), DR 1-102(A)(3) (conduct involving dishonesty due to padding bills), and DR 1-102(A)(4) (conduct prejudicial to administration of justice). The Bar had alleged that the Accused had charged a client, in a domestic relations proceeding, a clearly excessive fee. *Held:* On de novo review the trial panel’s decision is not adopted. The court suspended the Accused from the practice

Cite as *In re Eakin*, 16 DB Rptr 137

of law for 60 days for violating Code of Professional Responsibility Disciplinary Rule (DR) 9-101(A) (maintain client funds in lawyer's trust account); DR 9-101(C)(3) (maintain adequate records of client property); and DR 9-101(C)(4) (deliver client property to client when requested).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 00-142
)
WARREN G. MOE,)
)
Accused.)

Bar Counsel: Douglas G. Combs, Esq.
Counsel for the Accused: Michael J. Dooney, Esq.
Disciplinary Board: Janice Krem, Esq. (Chair); Anne M. Thompson, Esq.; Thomas Jeffrey Hughes
Disposition: Violation of DR 2-106(A), DR 6-101(A), DR 6-101(B), DR 9-101(A)(2), DR 9-101(C)(3), and DR 9-101(C)(4). Trial Panel Opinion. Four-month suspension.
Effective Date of Opinion: July 4, 2002

OPINION OF THE TRIAL PANEL

Introduction

On October 27, 2001, the trial panel appointed by the Disciplinary Board held a hearing regarding the complaint against Warren G. Moe, Accused. The Accused was represented by Michael J. Dooney, Attorney at Law. The Oregon State Bar was represented by Douglas G. Combs, Bar Counsel, and Stacy J. Hankin, Bar Assistant Disciplinary Counsel. The trial panel consisted of T. Jeff Hughes, Anne Thompson, and Janice Krem, Chair.

In its Formal Complaint, the Bar alleges that the Accused violated DR 2-106(A), DR 6-101(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4). All these charges arise from the Accused's representation of Lina Florendo during her dissolution proceeding in Clatsop County. The Bar alleges that the Accused provided incompetent representation and neglected Ms. Florendo's legal matter. The Bar further alleges that the Accused collected an excessive fee from Ms. Florendo, failed to deposit her funds in a trust account, failed to maintain appropriate records concerning these funds, and failed to promptly refund Ms. Florendo's funds as requested by Ms. Florendo. In his Answer, the Accused denied the substance of the Bar's allegations.

At the hearing, the Bar and the Accused stipulated to the admission into evidence of the Bar's Exhibits 1 through 95, including Exhibit 12 A. The Accused testified, but offered no documentary evidence. Sandra Lee Richards, dissolution clerk for Clatsop County Circuit Court, and Vicki Lyle, the Accused's ex-secretary, testified for the Bar.

The Bar requested that the Accused be sanctioned for his noncompliance with the discovery order issued in this case regarding the Accused's telephone records. The Accused was unable to locate these records. The Bar's request was denied, as was the Accused's request to have more time to try to locate them.

Findings of Fact

Based on clear and convincing evidence in the record, the trial panel makes the following findings of facts:

1. Currently, the Accused is admitted to practice law in Oregon by the Oregon Supreme Court and is a member of the Oregon State Bar, practicing law in Clatsop County, Oregon. That was also the Accused's status at the time of the alleged violations. The Accused was admitted to the Oregon Bar in 1991.

2. The Bar's Formal Complaint against the Accused was filed on November 30, 2000. The Accused's Answer was filed on January 11, 2001. A hearing before the trial panel appointed in this matter was held in Clatsop County more than 63 days, but less than 91 days, after the service of the complaint on the trial panel's chair.

3. At the time of the alleged violations, the Accused was a sole practitioner with one person, Vicki Lyle, acting as office staff. The Accused's practice had been primarily criminal cases; however, he was diversifying his practice in 1998 to include domestic relations cases. Currently, the Accused is a sole practitioner with a barely viable practice.

Fees

4. Pursuant to an oral agreement, the Accused agreed to represent Ms. Florendo in a pending dissolution proceeding for the flat fee of \$750. Ms. Florendo paid \$500 towards the fee on August 21, 1998, and she paid the remaining \$250 on September 17, 1998. The Accused did not complete this matter for Ms. Florendo, withdrawing as her attorney in August 1999. In October 1999, Ms. Florendo requested that the Accused refund to her the \$750 that she paid to the Accused. The Accused did not refund to Ms. Florendo any of the funds she paid to the Accused until July 2000, when the Accused returned \$750 to Ms. Florendo.

5. None of the funds Ms. Florendo paid to the Accused were deposited in a trust account. The Accused did not maintain records clearly and expressly reflecting the date, amount, source, and explanation for the withdrawals, deliveries, and

disbursements of Ms. Florendo's funds. Furthermore, the Accused did not provide an accounting to Ms. Florendo concerning these funds.

Competence and Neglect

6. Acting as her own attorney, Ms. Florendo began a dissolution proceeding in Clatsop County in March 1998. On July 8, 1998, Ms. Florendo was advised by the Court that the matter would be dismissed within 28 days for lack of prosecution. In the affidavit provided to the Court by Ms. Florendo on July 22, 1998, Ms. Florendo stated that the minor child of the marriage had been living in Oregon since July 16, 1998, which was less than six months. On July 27, 1998, the Court advised Ms. Florendo that she needed to provide information regarding service on her husband and other documents pertinent to child custody and support. According to the Court's file, the court did not believe it had jurisdiction to make a custody determination.

7. Ms. Florendo retained the Accused on August 21, 1998, to represent her in this matter. At the time Ms. Florendo retained the Accused, or shortly thereafter, it should have been clear to the Accused that jurisdiction over the minor child was an issue in the dissolution proceeding based on information Ms. Florendo provided to the Court, from communications from the Court, from the Court's file, and from information the Accused should have obtained from his client in the ordinary course of representing her in a divorce proceeding.

8. The Accused obtained an extension of the date for dismissal of the matter until August 31, 1998. Nevertheless, the Accused failed to respond before August 31, 1998. Accordingly, the Court dismissed the matter on September 11, 1998.

9. After the matter was dismissed, the Accused unsuccessfully attempted to get the matter reinstated by the Court on three occasions. In October 1998, the Accused sent a motion, affidavit, and order to reinstate the case to the court for filing. These documents were rejected by the Court because the Accused failed to provide proof that the Court had jurisdiction over the minor child of the marriage. In December 1998, the Accused sent another motion, affidavit, and order to reinstate the case to the court for filing. These documents were also rejected by the Court because they failed to provide proof regarding jurisdiction over the minor child.

10. In November and December 1998, Ms. Florendo requested that the Accused provide her with information regarding the status of the case and his ability to pursue her interests. The Accused did not respond to Ms. Florendo's inquiries in a timely manner.

11. On January 5, 1999, the Accused determined that he needed to pursue having the matter reinstated after January 16, 1999, when six months would have lapsed since the child began living in Oregon. However, nothing was filed in the case until July 1999.

12. Between January 1999 and July 1999, the Accused failed to take any significant action to further Ms. Florendo's dissolution proceeding.

13. Between January 1999 and July 1999, the Accused also failed to respond in a timely manner to Ms. Florendo's repeated and persistent requests for information regarding her case.

14. In July 1999, the Accused attempted for the third time to reinstate the case. He sent another motion, affidavit, and order for reinstatement to the Court for filing. He also included documents asking the Court to approve a stipulated decree of dissolution of marriage signed by Ms. Florendo and her husband.

15. In August 1999, all of these documents were rejected by the Court. The Court concluded that Ms. Florendo had moved outside the jurisdiction of the Court.

Discussion

The Accused provided no documentation substantiating that he returned Ms. Florendo's telephone calls. At the hearing, the Accused admitted that he did not respond in a timely manner to the inquiries from his client about the case. The Accused did not contest that he agreed to pursue and conclude the divorce for Ms. Florendo for the flat fee of \$750.

Conclusions of Law

The Disciplinary Panel has jurisdiction in this matter. ORS 9.534.

Fees

The first contested issue to be determined is whether the Accused violated the Disciplinary Rules when handling the fees paid to him by Ms. Florendo for the Accused's representation of her in the pending dissolution proceeding. The Bar contends that the Accused violated DR 9-101(A) and DR 9-101(C)(3) and (4) because he failed to deposit her funds in a trust account, failed to maintain appropriate records concerning these funds, and failed to promptly refund Ms. Florendo's funds as requested by her. In the Accused's brief, he argues that the fees were earned upon his acceptance of the case and that there was no need, therefore, for him to place the funds in trust. The Accused cites no authority to support his position, nor does he distinguish the Bar's supporting case law.

DR 9-101 provides:

(A) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated. Trust accounts shall be specifically identified by use of the phrase "Lawyer Trust Account." No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay account charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) With respect to each lawyer trust account, on or before the later of the date on which such account is opened or February 15, 1994, the lawyer or law firm in whose name such account is held shall mail or deliver to the financial institution in which such account is held a written notice stating that the financial institution holds one or more lawyer trust accounts in the name of said lawyer or law firm, and setting forth the name of the lawyer or law firm in whose name each lawyer trust account is held and the account number of each lawyer trust account.

(C) A lawyer shall:

(1) Promptly notify a client of the receipt of the client's funds, securities or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them. Every lawyer engaged in the private practice of law shall maintain and preserve for a period of at least five years after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or equivalent records clearly and expressly reflecting the date, amount, source and explanation for all receipts, withdrawals, deliveries and disbursements of funds or other property of a client.

(4) Promptly pay or deliver to client as requested by the client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive. Under circumstances covered by DR 9-101(A)(2), the undisputed portion of the funds held by the lawyer shall be disbursed to the client.

The Accused's argument regarding the fees is not persuasive. Unless the Accused had a written agreement clearly expressing that the fees were earned upon his acceptance of the case, the fees needed to be placed in a trust account. *In re Biggs*, 318 Or 281, 293, 864 P2d 1310 (1994); *In re Hedges*, 313 Or 618, 623-624, 836 P2d 119 (1992); OSB Legal Ethics Op No 1998-151.

Whatever the Accused subjectively believed at the time he agreed to represent Ms. Florendo regarding his ability to treat the fees as earned, without a written agreement, the fees are deemed to be earned only upon completion of the matter. The Accused resigned before completing the case for the agreed fee. The Accused, therefore, violated DR 9-101(A). OSB Legal Ethics Op No 1998-151.

The Accused needed to maintain records of how the fees were handled. The Accused needed to provide his client with an accounting. DR 9-101(C)(3). Having failed to meet these requirements, the Accused violated DR 9-101(C)(3).

The Bar further alleges that the Accused collected an excessive fee from Ms. Florendo. The Bar explains that because the Accused resigned before completing his representation of Ms. Florendo, collecting any fee results in an “excessive” fee. The Bar cites *In re Gastineau*, 317 Or 545, 857 P2d 136 (1993), as authority. The Accused argues that Ms. Florendo was not charged an excessive fee, but rather got a bargain for his representation at \$750. Furthermore, the Accused excuses his failure to complete the case as agreed because he was prevented from moving the case forward due to jurisdictional problems that he could not overcome or were outside his control. The Accused cites no authority or case law to support his contentions. The Accused does not distinguish the Bar’s supporting case law.

DR 2-106 provides:

(A) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge or collect:

(1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or

(2) A contingent fee for representing a defendant in a criminal case.

Assuming, without accepting, that \$750 was a bargain for his representation when the Accused entered into the agreement to represent Ms. Florendo, his failure to complete the case renders the fee he collected excessive. *In re Gastineau, supra*, 317 Or at 551–552 (citing *In re Thomas*, 294 Or 505, 526, 659 P2d 960 (1983)); OSB Legal Ethics Op No 1998-151. Furthermore, an attorney’s inability to complete the work for reasons beyond his control does not change the requirement in DR 9-101(C)(4) that the Accused promptly return any unearned fees. The Accused returned the fees to Ms. Florendo more than eight months after she requested them. The Accused violated DR 9-101(C)(4) and DR 2-106(A). *Gastineau, supra*, 317 Or at 551; OSB Legal Ethics Op No 1998-151.

Incompetence and Neglect

The Bar argues that the Accused handled the dissolution in an incompetent manner and neglected the case in violation of DR 6-101(A) and (B). In his brief, the Accused argues that that he did not violate DR 6-101(A) because he “knew the issues” and “attempted to deal with the (jurisdictional) issues, although unsuccessfully.” The Accused cites no cases to support his argument, nor distinguishes those relied upon by the Bar.

DR 6-101 provides:

(A) A lawyer shall provided competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

(B) A lawyer shall not neglect a legal matter entrusted to the lawyer.

Although the Accused performed some work during this attempts to reinstate the matter, his efforts did not constitute competent representation.¹ He failed to competently respond to the jurisdiction issues in the case. The Accused failed to obtain necessary information from his client regarding the child’s home state when he undertook the representation. He failed to file the appropriate documents before September 8, 1998, when the matter was to be dismissed for lack of prosecution. He failed to appreciate and pursue what needed to be filed to reinstate the case and

¹ The determination of whether a lawyer has competently represented a client is fact-specific. *In re Gastineau, supra*, 317 Or at 553.

establish the court's jurisdiction over the minor child. *See former* ORS 109.720 (1998). Once he understood what he needed to file, he failed to request reinstatement, or refile the case, until there was a new jurisdictional problem arising from his client's change in domicile. Consequently, he failed to use the legal knowledge, skill, thoroughness, and preparation reasonably required for the matter. DR 6-101(A). *See In re Gastineau, supra*, 317 Or at 554; *In re Magar*, 296 Or 799, 681 P2d 93 (1984); *In re Chambers*, 292 Or 670, 642 P2d 286 (1982); *In re Greene*, 276 Or 1117, 557 P2d 644 (1976).

The Accused argues in his brief that the Accused's failure to return phone calls from his client was not sufficient in duration to constitute neglect for purposes of DR 6-101(B). The Accused's admitted failure to appropriately respond to Ms. Florendo's repeated telephone calls is not an isolated problem. The Accused's failure to return Ms. Florendo's numerous calls is part of the course of neglectful conduct apparent in this matter, which spans many months. As already discussed above, the Accused failed to attend to Ms. Florendo's case. His neglect of the case culminated in the Accused's failure to take any steps to further Ms. Florendo's interests between January 5, 1999, and July 1999, when he filed more documents that were rejected by the court. The Bar has proved that the Accused engaged in a course of conduct that constitutes neglect of a legal matter. *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999).² *See In re Bourcier*, 322 Or 561, 567, 909 P2d 1234 (1996); *In re Collier*, 295 Or 320, 329–330, 667 P2d 481 (1983); *In re Biggs, supra*, 318 Or at 294.

Sanctions

The ABA's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") and Oregon case law apply when determining the appropriate sanctions in this case. *In re Binns*, 322 Or 584, 595, 910 P2d 382 (1996). The four factors to be considered in determining a sanction pursuant to the ABA Standards are: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) any aggravating or mitigating circumstances. ABA Standards, § 3.0. We discuss each factor in turn.

² In *In re Meyer* the court stated:

On review, the Bar asserts that, even though the accused's course of conduct lasted only two months, and even though he did render some services during that period, the Accused violated DR 6-101(B), because he took no constructive action to advance or to protect (the client's) legal position, especially as to the issue of temporary spousal and child support, which was (the client's) primary concern. We agree.

In re Meyer, supra, 328 Or at 225.

A. *Duty Violated.* The Accused violated his duty to his client. He failed to preserve his client's property, failed to provide her with competent representation, and failed to act with reasonable diligence and promptness. *ABA Standards*, §§ 4.1, 4.4, 4.5. The Accused also violated his duty to the profession by charging a clearly excessive fee. *ABA Standards*, § 7.0.

2. *Mental State.* The Bar does not allege that the Accused was deceitful, dishonest, malicious, or that his acts were intentional. However, the Accused knowingly³ failed to perform work on Ms. Florendo's matter and knowingly failed to communicate with her. He also knowingly failed to provide his client with competent representation. Furthermore, the accused was negligent⁴ in how he handled the fees paid to him in this case.

3. *Injury.* Although the Accused argues in his brief that Ms. Florendo did not suffer any "prejudice" from his failures in this matter, that contention is not supported by the record. It is undisputed that Ms. Florendo did not receive her divorce in Oregon, which constitutes actual injury.

4. *Aggravating and Mitigating Factors.* The Bar contends that there are several aggravating factors in this case. The Bar argues that the Accused's prior disciplinary offense, which resulted in a reprimand, should be given more than minimal weight in determining the appropriate sanctions in this matter. The Accused does not contest this treatment of his prior disciplinary offense. Accordingly, the Accused's prior disciplinary offense is an aggravating factor in this case. *ABA Standards*, § 9.22(a).

The Bar contends that the Accused had a selfish motive regarding the collection and retention of an excessive fee. *ABA Standards*, § 9.22(b). The Accused disputes this characterization of his motivation regarding his failure to promptly return the \$750 to Ms. Florendo. Although he should have known better, the Accused is convincing in his explanation that he believed he was entitled to the fee. Accordingly, based on his subjective belief that the fees were earned, his failure to promptly return the fees will not be considered an aggravating factor.

The Bar contends that the Accused engaged in a pattern of misconduct involving multiple offenses, while being an experienced practitioner. The Accused's failures involved multiple offenses and reflect a pattern of misconduct in this matter.

³ 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." Intent requires that the attorney have "the conscious objective or purpose to accomplish a particular result." *ABA Standards*, Definitions at p. 7.

⁴ 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. *ABA Standards*, Definitions at p. 7.

Furthermore, the incompetence was not caused by inexperience, but inattentiveness by a lawyer in practice for many years. Accordingly, there are aggravating circumstances pursuant to ABA *Standards* § 9.22(c), (d), and (i).⁵

The Bar recognized mitigating factors regarding the Accused's cooperative attitude and his remorse. ABA *Standards*, § 9.32(e) and (l). Apparently, the Bar does not consider the Accused's failure to provide discovery as sufficient to show a lack of cooperation by the Accused, although the Bar requested sanctions for his noncompliance with the discovery order. Since the Accused's failure to provide the requested office records undermined the Accused's defense, the Accused will be considered to have been cooperative. Furthermore, the Accused provided a chastened and remorseful acceptance of the Bar's position during his testimony.⁶ Accordingly, there are mitigating factors in this case pursuant to the ABA *Standards* § 9.32(e) and (l).

The trial panel also concludes that the Accused did not have a dishonest or selfish motive and is entitled to mitigation based on ABA *Standards* § 9.32(b).

Generally, absent aggravating or mitigating factors, the appropriate sanction for the Accused's knowing failure to provide competent representation and neglect of the matter would be suspension. ABA *Standards*, §§ 4.42, 4.52.⁷ The trial panel concludes that the aggravating factors offset the mitigating factors in this case and, therefore, suspension is appropriate. According to the ABA standards, suspension is generally for at least a six-month period, but should not exceed three years. ABA *Standards*, § 2.3. Based on Oregon case law, the Bar recommends that the Accused be suspended for only four months. The Bar relies on *In re Gresham*, 318 Or 162, 864 P2d 360 (1993); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996); *In re Holm*, 275 Or 178, 590 P2d 233 (1979); and *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001), as context for this recommendation.

The Accused does not contest the Bar's analysis of these cases in formulating the extent of the suspension in this matter or cite any case law in support of the Accused's position. Instead, the Accused argues that a four-month suspension is tantamount to destroying his practice and injures those current clients who need his

⁵ In its brief, the Bar cites vulnerability of the victim as an aggravating factor. However, the Bar does not provide its basis for this conclusion or any explanation of its position. Accordingly, this factor will not be considered an aggravating factor pursuant to ABA *Standards* § 9.22(h).

⁶ The Accused's posthearing brief was more contentious than the Accused's position during his testimony at the hearing.

⁷ The Accused knew that he had a jurisdictional problem. This mental state suggests the need for suspension, rather than reprimand. Compare ABA *Standards*, § 4.52 with § 4.53. The Accused's violations regarding his negligent handling of the fees would warrant a reprimand according to the ABA *Standards* at §§ 7.3 and 4.13.

representation. The Accused argues for a “relatively lenient sanction involving no actual suspension of his Bar license, but instead mandating a reasonable probationary period and appropriate oversight involving specified terms and conditions pertaining to the actual operation of the Accused’s law practice.” The Accused does not identify what those terms and conditions would be.

The Bar’s position already includes leniency. The trial panel is not convinced that relieving the Accused of any suspension in this matter, based on his future performance, is warranted considering the seriousness of the multiple violations in this case. The ABA Standards and case law support a suspension for at least four months. The trial panel, therefore, concludes that the Accused should be suspended for four months.

Disposition

It is the decision of the trial panel that the Accused by suspended for four months.

DATED this 11th day of January 2002.

/s/ Anne M. Thompson
Anne M. Thompson

/s/ Thomas J. Hughes
Thomas J. Hughes

/s/ Janice Krem
Janice Krem, Chair

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-04
)
SHARON L. HOCKETT,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None
Disposition: Violation of DR 9-101(C)(1) and DR 9-101(C)(4).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: June 17, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Sharon L. Hockett (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is reprimanded for violation of DR 9-101(C)(1) and DR 9-101(C)(4) of the Code of Professional Responsibility.

DATED this 17th day of June 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray
Dwayne R. Murray, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Sharon Hockett, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to 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, Sharon Hockett was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1981, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Douglas County, Oregon.

3.

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

4.

On January 19, 2002, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations DR 9-101(C)(1) 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 the proceeding.

Facts and Violations

5.

Barbara Christensen retained the Accused to represent her in a dissolution of marriage proceeding, *Douglas Christensen and Barbara Christensen*, Douglas County Circuit Court Case No. 99DO1957DS. In or about June 2000, the court ordered the husband to pay temporary spousal support to the Accused’s client.

6.

In or about October 2000, the Accused, at the Accused’s client’s request, advised opposing counsel that the husband should deliver the spousal support checks to the Accused’s office for delivery to the Accused’s client. On or before November 10, 2000, the husband delivered his check for the November payment, payable to the Accused’s client, to the Accused. The Accused failed to notify her client that she had received the check, and did not send the check to her client.

7.

On or before December 10, 2000, the husband delivered his check for the December payment, payable to the Accused's client, to the Accused. The Accused failed to notify her client that she had received the check, and did not send the check to her client.

8.

In November and December 2000, the Accused's client notified the Accused that she had not received the November and December spousal support payments from her husband and asked the Accused to take action. In late December 2000, the Accused's client learned from her husband's lawyer that her husband had delivered the spousal support checks to the Accused. The Accused's client demanded that the Accused deliver the checks to her, but the Accused failed to promptly do so.

9.

Based on the foregoing, the Accused admits that she violated DR 9-101(C)(1) and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") 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*. In violating DR 9-101(C)(1) and DR 9-101(C)(4), the Accused violated duties to her client and the profession. *Standards*, §§ 4.1, 7.0.

B. *State of Mind*. The Accused's conduct demonstrates knowledge and negligence. The Accused knew that the husband's checks had been delivered to her and that she had not notified the client or forwarded them to her client. She also knew that her client relied on the husband's support for her living expenses. The Accused was negligent in that she failed to communicate with her client to inform her that the Accused had received and was holding the support payments. *Standards*, p. 7.

C. *Injury*. The Accused's client was injured. The Accused withheld the spousal support that was intended for the Accused's client and upon which her client relied for her living expenses.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused's conduct demonstrates a selfish motive. The Accused decided, without an agreement from her client, to withhold the support for a retainer for her future attorney fees in the client's case. *Standards*, § 9.32(b).

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

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

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.22(a).

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

3. The Accused is remorseful and acknowledges that she should have promptly notified the client that she had received and promptly delivered each of the support checks to her client. *Standards*, § 9.32(l).

11.

The *Standards* provide 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. *Standards*, § 4.13. 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. *Standards*, § 7.3. Oregon case law is in accord. *See, e.g., In re Moore*, 14 DB Rptr 129 (2000) (reprimand for violation of DR 9-101(C)(4)); *In re Ditton*, 16 DB Rptr 69 (2002) (reprimand for violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)).

12.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 9-101(C)(1) and DR 9-101(C)(4) on approval of this stipulation by the Disciplinary Board.

13.

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

DATED this 22nd day of May 2002.

/s/ Sharon Hockett

Sharon Hockett
OSB No. 81266

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus
OSB No. 73014
Assistant Disciplinary Counsel

Cite as 334 Or 298 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
JOHN P. DAVENPORT,)
)
)
Accused.)

(OSB No. 97-138; SC S47245)

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

Argued and submitted November 7, 2000. Decided June 27, 2002.

Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, argued the cause and filed the request for review, briefs, and additional authorities for the Oregon State Bar.

Marc D. Blackman, Portland, argued the cause for the Accused. With him on the brief and additional authorities was Ransom Blackman LLP, Portland.

Before Carson, Chief Justice, and Gillette, Durham, Leeson, and Riggs, Justices. (Van Hoomissen, J., retired December 31, 2000, and did not participate in the decision of this case; Kulongoski, J., resigned June 14, 2001, and did not participate in the decision of this case; De Muniz and Balmer, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for two years, effective 60 days from the date of the filing of this decision.

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 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 in representation of client); DR 1-102(A)(4) (conduct prejudicial to administration of justice); DR 1-102(A)(2) (criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness to practice law); ORS 9.460(2) (conduct that misleads court by false statement of fact); and ORS 9.527(4) (Supreme Court may sanction lawyer for engaging in willful deceit). A trial

panel of the Disciplinary Board concluded that the Accused violated the rules and statutes as alleged, with the exception of DR 1-102(A)(2) and ORS 9.527(4), and suspended him from the practice of law for six months. *Held*: (1) The Accused violated DR 1-102(A)(3), DR 7-102(A)(5), DR 1-102(A)(4), and DR 1-102(A)(2); and (2) a two-year suspension is the appropriate sanction. The Accused is suspended from the practice of law for two years, effective 60 days from the date of the filing of this decision.

Cite as 335 Or 67 (2002)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
JOHN P. DAVENPORT,)
)
Accused.)

(OSB No. 97-138; SC S47245)

On petition for reconsideration, filed July 18, 2002, of an opinion filed June 27, 2002. Review of the decision of a trial panel of the Disciplinary Board. 334 Or 298, 49 P3d 91 (2002). Decided November 22, 2002.

Marc D. Blackman, of Ransom Blackman LLP, Portland, filed the petition for reconsideration for the Accused.

No appearance contra.

Before Carson, Chief Justice, and Gillette, Durham, Leeson, and Riggs, Justices. De Muniz and Balmer, JJ., did not participate in the consideration or decision of this case.

PER CURIAM

The petition for reconsideration is allowed. The former opinion is modified and, as modified, is adhered to.

SUMMARY OF SUPREME COURT OPINION

The court allows this petition for reconsideration to correct its discussion of materiality as it relates to 18 USC §1623 in *In re Davenport*, 334 Or 298, 49 P3d 91 (2002). In all other aspects, the court adheres to the former opinion, including the conclusions respecting the Accused's violations and the sanction. *Held*: The petition for reconsideration is allowed. The former opinion is modified and, as modified, is adhered to.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 00-156
)	
DENNIS J. WINE,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Bradley F. Tellam, 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:	June 25, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline between Dennis J. Wine and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. Dennis J. Wine is publicly reprimanded for violation of DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility.

DATED this 25th day of June 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Janice Krem
Janice Krem, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Dennis J. Wine, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused is, and at all times mentioned herein was, and attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Oregon State Bar, having his office and place of business in the Tillamook 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 21, 2001, 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)(4) 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 and Violations

5.

In or about June 1996, Randy Dobyms (hereinafter “Dobyms”) retained the Accused to pursue, through litigation and/or settlement, contractual claims against Terry Blanchard (hereinafter “Blanchard”) relating to a real property development in Rockaway Beach, Oregon.

6.

In and after June 1996, the Accused, with the assistance of an associate, represented Dobyms concerning the claim, including communications concerning settlement negotiations, and the preparation of drafts of various pleadings for a contemplated lawsuit.

7.

In or about November 1997, the Accused requested and Dobyms provided the Accused with a filing fee for his lawsuit against Blanchard. On or about November 4, 1997, the Accused communicated a settlement proposal to Blanchard's counsel. On November 13, November 19, November 25, November 26, December 2, December 3, December 12, and December 24, 1997, Blanchard's counsel sent letters to the Accused concerning settlement issues. Dobyms reported that the Accused did not provide him with a copy of some of the letters or otherwise inform him of the content of some of the communications. The Accused does not contest these facts.

8.

Dobyms understood the case had been settled and the settlement documents needed to be prepared and signed. The Accused understood that the case had not been settled, but failed to clearly inform Dobyms. Between about late December 1997 and the fall of 1999, the Accused did not take action to accomplish Dobyms' objectives and pursue his claims. Although the Accused understood that Dobyms was in the process of obtaining documents to facilitate settlement, the Accused acknowledges that he made no inquiry and did not communicate with Dobyms about this issue.

9.

About August 1999, the Accused notified Dobyms that he was going to move to California, delivered a copy of a complaint for Dobyms to file against Blanchard and a copy of a portion of Dobyms' file. In or about the fall of 1999, the Accused delivered Dobyms' file and the funds Dobyms had delivered to him for a filing fee to a law firm with which the Accused had become associated. On or about January 27, 2000, the other law firm returned Dobyms' funds to Dobyms and Dobyms' file to the Accused.

10.

Sometime after December 1999, Dobyms requested a complete copy of his file. On March 15, 2000, the Accused provided Dobyms with a copy of a portion of his file. Dobyms reported that the Accused failed to deliver copies of certain documents, including some letters the Accused received from opposing counsel in or about November and December 1997. The Accused does not contest these facts.

11.

The Accused admits that the aforementioned conduct constitutes neglect of a legal matter entrusted to a lawyer and failure to promptly deliver client property as requested by the client in violation of DR 6-101(B) and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

12.

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

A. *Duty*. In violating DR 6-101(B) and DR 9-101(C)(4), the Accused violated duties to his client and the profession. *Standards*, §§4.1, 4.4, 7.0.

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

C. *Injury*. The Accused’s conduct resulted in potential injury and actual injury to his client. He failed to take action to accomplish his client’s objectives, failed to keep his client apprised of the status of his case, and failed to promptly deliver copies of the letters from opposing counsel to the client. The client settled the claim after the Accused no longer represented him.

D. *Aggravating Factors*. Aggravating factors include:

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

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

E. *Mitigating Factors*. Mitigating factors include:

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

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

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

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

13.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property, or does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, §§ 4.13, 4.43. Reprimand is also 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. *Standards*, § .3. Oregon case law is in accord. See *In re Stimac*, 14 DB Rptr 42 (2000) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Holden*, 12 DB Rptr 49 (1998) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Brownlee*, 9 DB Rptr 85 (1995) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)).

14.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for the violations specified herein, the sanction to be effective the day this stipulation is approved by the Disciplinary Board.

15.

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

DATED this 12th day of June 2002.

/s/ Dennis J. Wine

Dennis J. Wine
OSB No. 85368

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. 02-38
)
WILLIAM R. VALENT,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Stephen Moore, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: June 25, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by William R. Valent (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is reprimanded for violation of DR 6-101(B) of the Code of Professional Responsibility.

DATED this 25th day of June 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William R. Valent, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, William R. Valent, was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 31, 1985, 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 March 16, 2002, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for an alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

In or about November 2000, Mark Farley retained the Accused to represent him in a dissolution of marriage matter. The Accused filed a petition for dissolution of the parties’ marriage in December 2000, *Mark Farley and Natalie Farley*, Multnomah County Circuit Court Case No. 001273988 (hereinafter “Dissolution Case”). The parties agreed to settle the matter. On or about June 25, 2001, the Accused submitted a Motion for Default Order, Affidavit for Judgment Without Hearing, and Stipulated Judgment of Dissolution to the court. On or about June 28, 2001, the court returned the documents to the Accused with notice that the affidavit failed to include all information required by law. The documents were placed in the

client's file by the Accused's office staff and were not resubmitted to the court. The Accused failed to notify his client that the judgment had not been signed and that he remained married to Natalie Farley.

6.

Thereafter, the Accused took no action and the court dismissed the Dissolution Case on August 27, 2001, with notice and judgment of dismissal mailed to the Accused.

7.

Between about early July and November 9, 2001, the Accused failed to review the client's file, failed to communicate with his client, and failed to complete the Dissolution Case. On November 9, 2001, Mark Farley learned from a source other than the Accused that the Judgment of Dissolution had not been signed and filed with the court and that the Dissolution Case had been dismissed for want of prosecution. After Farley notified the Accused what he had discovered, Farley submitted a form of stipulated judgment to the court. The Judgment of Dissolution was signed on November 14, 2001, and filed by the court on November 16, 2001.

8.

Based on the foregoing, the Accused admits that he violated DR 6-101(B).

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

A. *Duty Violated.* The Accused violated his duties to his client and the profession. *Standards*, §§ 4.4, 7.0.

B. *Mental State.* The Accused's conduct demonstrates that he 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. When the Stipulated Judgment of Dissolution and affidavit were returned to the Accused's office, they were mistakenly placed in the Accused's client file. The Accused incorrectly assumed that he had completed the matter and failed to review the file to confirm that he had taken all required action and notified the client.

C. *Injury*. The Accused's conduct resulted in actual and potential injury to the Accused's client. The dissolution of the client's marriage was delayed. The client incorrectly understood that he was divorced when he was not.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has substantial experience in the practice of law having been admitted to practice in 1985. *Standards*, § 9.22(l).

2. The Accused has no prior record of formal discipline although he accepted a letter of admonition for violation of DR 6-101(B) in March 1998. *Standards*, § 9.32(a).

E. *Mitigating Factors*. Mitigating factors include:

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

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

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

10.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, § 4.43. Oregon case law is in accord. *In re Barrett*, 15 DB Rptr 72 (2001) (reprimand for violation of DR 6-101(B)); *In re Kafoury*, 15 DB Rptr 188 (2001) (reprimand for violation of DR 6-101(B)).

11.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that a reprimand is an appropriate sanction. The Accused agrees to accept a reprimand for violation of DR 6-101(B).

12.

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

DATED this 11th day of June 2002.

/s/ William R. Valent

William R. Valent

OSB No. 85439

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. 02-70
)
BEVERLY LONG PENZ,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 7-110(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: June 25, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Beverly Long Penz (hereinafter "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 for violation of DR 7-110(B) of the Code of Professional Responsibility.

DATED this 25th day of June 2002.

/s/ Paul E. Meyer
Paul E. Meyer
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 “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

The 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 May 18, 2002, the State Professional Responsibility Board directed that a formal disciplinary proceeding be filed against the Accused alleging that she violated DR 7-110(B) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts and Violations

5.

Husband and wife were divorced in 1991. Wife was awarded custody of the parties’ children. In August 2001, the ex-husband filed a motion to modify the decree for custody of the children. The husband was represented by counsel. The ex-wife retained the Accused to represent her.

6.

In late November 2001, without notice to husband’s counsel, the Accused submitted a motion for order for psychological home study, supporting affidavit, and proposed order to the court. The court granted the motion and signed the order that had been submitted by the Accused. The Accused did not provide the ex-husband’s

counsel with notice of the motion or her intent to present it to the court; did not provide the ex-husband's counsel with a copy of the motion, affidavit and order either before or after she presented them to the court; and did not promptly notify the ex-husband's counsel that the court had granted her client's motion.

7.

By engaging in the foregoing conduct, the Accused admits that she violated DR 7-110(B) 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 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 the legal system. *Standards*, § 6.0.

B. *Mental State.* The Accused's conduct demonstrates that she was negligent, or failed 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. The Accused did not understand that the procedures applicable to requesting an expert in a court-appointed criminal case did not apply in a postdissolution custody case. *Standards*, p. 7.

C. *Injury.* The Accused's conduct caused potential and actual injury to the opposing party, the Accused's client, and the court. Without notice of the Accused's intention to obtain the order, the ex-husband was denied the opportunity to be heard and present his position before an order was entered by the court. When the ex-husband learned about the order for psychological home study, his counsel filed a motion to set it aside. The court granted the ex-husband's motion and ordered the Accused's client to pay his attorney fees and costs associated with setting aside the order.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of discipline. *In re Penz*, 14 DB Rptr 198 (2000).

2. The Accused has substantial experience in the practice of law, although limited experience in family law matters. *Standards*, § 9.21(i).

- E. *Mitigating Factors*. Mitigating factors include:
1. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b);
 2. The Accused is remorseful. *Standards*, § 9.32(l).

9.

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. Case law is in accord. *See, e.g., In re Schenck*, 320 Or 94, 879 P2d 863 (1994).

10.

Consistent with the *Standards*, the Bar and the Accused agree that a reprimand is an appropriate sanction. The Accused agrees to accept a reprimand for the violation of DR 7-110(B).

11.

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 shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

DATED this 12th day of June 2002.

/s/ Beverly Long Penz

Beverly Long Penz

OSB No. 84320

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. 01-152
)
FREDERIC E. CANN,)
)
Accused.)

Bar Counsel: Miles Sweeney, Esq.
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),
DR 5-101(A), and DR 5-104(A). Stipulation for
Discipline. 180-day suspension.
Effective Date of Order: July 4, 2002

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 a period of six months, effective three days after approval of the stipulation for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), and DR 5-104(A).

DATED this 1st day of July 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levin
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Frederic E. Cann, 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, Frederic E. Cann, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the Multnomah County, Oregon.

3.

On May 20, 2002, 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), DR 1-102(A)(4), DR 5-101(A), and DR 5-104(A) 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

4.

In May 1996, the Accused undertook to represent Aldeane Soot (hereinafter “Soot”) as personal representative for the estate of David Fowler. On May 21, 1996, Soot was appointed personal representative in the Multnomah County Circuit Court case *Estate of David Fowler*, No. 9605-90900.

5.

In late May 1996, for investment purposes, the Accused and Michelle Masters (hereinafter “Masters”) decided to purchase a piece of property from the Fowler estate. The estate was financially troubled and the Accused believed that selling the property would benefit the estate.

6.

For various reasons, the Accused and Masters did not want to purchase the property in their own names. Instead, in early June 1996, the Accused had John Spoljaric (hereinafter “Spoljaric”) purchase the property from the estate. Spoljaric purchased the property subject to a second trust deed held by American General

Finance (hereinafter “AGF”). At the time there were no other offers to purchase the property.

7.

The Accused effected the sale to Spoljaric knowing that the Accused and Masters were the true principals and purchasers in the sale. The Accused knowingly failed to inform Soot that he was one of the principals in the sale.

8.

In connection with the sale of the property, the exercise of the Accused’s professional judgment on behalf of Soot and the estate may have been affected by his own financial, business, property, or personal interests. The Accused’s interests in the sale differed from those of Soot and the estate, and Soot expected the Accused to exercise his professional judgment for the protection of Soot and the estate. The Accused failed to obtain consent after full disclosure from Soot to his continued representation of the estate prior to purchasing the property.

9.

In connection with the sale of the property, the Accused:

1. prepared and had Soot and Spoljaric execute a land sale agreement and an amended land sale agreement that represented Spoljaric as buyer; and
2. prepared and had Soot execute a deed that represented Spoljaric as grantee.

At the time the Accused prepared these documents and had them executed, he knew that the representations about Spoljaric being the buyer and grantee were false.

10.

At all relevant times, ORS 114.355(1)(a) provided that in a probate proceeding any sale to the attorney of the personal representative is voidable unless the sale was consented to by all interested persons affected thereby. The Accused failed to inform the court that he was one of the true purchasers and failed to obtain consent from all interested persons affected by the sale, including, but not limited to, AGF and the heirs of the estate.

11.

On July 31, 1996, the lawyer representing AGF issued a Trustee’s Notice of Sale. On August 9, 1996, the Accused executed an acceptance of service of that notice, in which he knowingly misrepresented that he was the lawyer for Spoljaric.

12.

After the sale from Soot to Spoljaric was completed, the Accused and Masters decided to pay AGF in full. On November 26, 1996, the Accused sent a letter to the

lawyer representing AGF, in which he knowingly misrepresented that he had received all of the funds necessary to pay AGF from his clients. In fact, the Accused used his own funds and funds belonging to Masters to pay AGF.

13.

In connection with the sale of the property to Spoljaric, the Accused prepared an indemnity agreement, which was signed by the Accused, Spoljaric, and Masters. The indemnity agreement provided that Spoljaric was taking title to the property as nominee for the Accused and Masters and that Spoljaric would convey the property “to the order of” the Accused when the sale was completed.

14.

At that same time the indemnity agreement was signed, the Accused and Masters signed another agreement which provided that when the property was conveyed from Spoljaric “to the order of” the Accused, that the Accused would hold it as nominee for the Accused and Masters and that until further notice, the interests of the Accused and Masters in the property were as a common law 50/50 joint venture.

15.

On July 1, 1997, despite the agreements described in paragraphs 13 and 14, and without Masters’ knowledge or consent, the Accused prepared and had Spoljaric execute a deed conveying his interest in the property to Fort River Development, LLC, an entity wholly and solely owned by the Accused.

16.

In December 1998, the foundation of the home located on the property washed out. The Accused subsequently filed a claim against his insurance company. That claim was denied and in December 1999, the Accused initiated litigation against the insurance company for payment of the claim. As a result of defenses raised by the insurance company in that litigation, the Accused decided he needed to disclose to Soot and to the court his true interest in the 1996 sale.

17.

On July 8, 2000, the Accused, through a lawyer, petitioned the court to reopen the Fowler estate and to advise the court that he and Masters had been the true purchasers in the 1996 transaction. Soot retained a lawyer to represent her in the matter. On October 2, 2000, the court, after Soot and the heirs to the Fowler estate approved the 1996 sale to the Accused and Masters, signed an order closing the estate.

Violations

18.

The Accused admits that, by engaging in the conduct described in paragraphs 4 through 17, he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), and DR 5-104(A) of the Code of Professional Responsibility.

Sanction

19.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following 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. He violated his duty to avoid conflicts of interest and his duty to be candid with clients. *Standards*, §§ 4.3, 4.6. He violated his duty to maintain personal integrity. *Standards*, § 5.1. He also violated his duty to avoid conduct prejudicial to the administration of justice. *Standards*, § 6.1.

B. *Mental State.* The Accused intentionally (1) made misrepresentations to his client, (2) failed to obtain her consent after full disclosure, (3) failed to inform the court and interested persons affected by the sale about his role as purchaser, and (4) transferred the property to Fort River Development, LLC, without Masters’ consent or knowledge.

C. *Injury.* Injury may be either actual or potential. There was actual injury to the court because it spent additional time and resources reopening and then reclosing the estate. The Accused did not intend to injure Soot or the estate. However, there was potential injury to both because between the time of the sale in 1996 and when the court approved it in 2000, there was a risk that the sale could have been voided. The Accused paid all of the attorney fees and costs, including any costs incurred by Soot, associated with reopening the estate in 2000. There was also potential injury to Masters because her ownership interest in the property was complicated by the conveyance to Fort River Development, LLC.

D. *Aggravating Factors.* Aggravating factors include:

1. Selfish motive. *Standards*, § 9.22(b).
2. A pattern of misconduct. The Accused deceived his client and the court for four years. *Standards*, § 9.22(c).
3. Multiple offenses. *Standards*, § 9.22(d).

4. Vulnerability of victim. Soot was under extreme stress in assuming responsibility for the financially troubled estate. *Standards*, § 9.22(h).

5. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1978. *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 the proceeding. *Standards*, § 9.32(e).
3. Character and reputation. *Standards*, § 9.32(g).
4. Remorse. *Standards*, § 9.32(l).

20.

The *Standards* provide that a period of suspension is appropriate in this matter. See *Standards*, §§ 4.32, 4.62, 6.12.

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 the Accused should be suspended for a period of six months. See *In re Wittemyer*, 328 Or 458, 980 P2d 148 (1999) (lawyer who committed three violations of DR 5-101(A), one violation of DR 5-104(A), and one violation of DR 5-105(E) in connection with a loan by him and a client to another client and subsequent efforts to pursue payment on that loan, was suspended for four months); *In re Morris*, 326 Or 493, 953 P2d 387 (1998) (lawyer who violated DR 1-102(A)(3), DR 1-102(A)(4), DR 5-105(E), and DR 7-102(A)(5) when, in order to assist a former client, the lawyer filed a motion for attorney fees for that client who had been removed as a personal representative by the court, without discussing it with her subsequent client, the successor personal representative, and thereafter altering a signed final accounting for the estate by inserting an award for reimbursement of attorney fees paid by the prior personal representative, without notice to the court, was suspended for four months); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997) (lawyer who prepared a trust deed for a client that constituted a gift to the lawyer, who failed to obtain his client's consent before transferring title to her vehicle to the lawyer's professional corporation, and who failed to make full disclosure to the client regarding assigning a trust deed on her property to the lawyer, was suspended for four months); *In re Claussen*, 322 Or 466, 909 P2d 862 (1996) (lawyer who violated DR 1-102(A)(3), DR 1-102(A)(4), DR 5-105(E), DR 7-102(A)(3), DR 7-102(A)(5), and ORS 9.460(2) where he simultaneously represented a debtor and a creditor in a bankruptcy matter, and subsequently falsely represented to the court that his firm had no connection with any creditors or other parties in interest in the bankruptcy, was suspended for one year).

22.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of six months, to commence three days after approval of the stipulation by the Disciplinary Board.

23.

In addition, on or before August 1, 2002, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$500, incurred for transcribing a copy of his deposition. Should the Accused fail to pay \$500 in full by August 1, 2002, 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 at the legal rate to accrue from the date the judgment is signed until paid in full.

24.

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

EXECUTED this 18th day of June 2002.

/s/ Frederic E. Cann

Frederic E. Cann

OSB No. 78160

EXECUTED this 21st day of June 2002.

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. 02-28
)
DONNA M. MATTHEWS,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: John Fisher, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(A).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: July 10, 2002

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 5-101(A) and DR 6-101(A).

DATED this 10th day of July 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Gregory E. Skillman
Gregory E. Skillman, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Donna M. Matthews, 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, Donna M. Matthews, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1997, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

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

4.

On February 15, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A) and DR 6-101(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.

On or about July 12, 2000, Peggy Bond filed, on behalf of her client Marlene D. Strickland, a petition for custody, parenting time, and child support regarding Strickland’s grandson. Bond’s client is the child’s natural grandmother.

6.

The petition named two respondents, mother and father. Father was served on July 15, 2001. On August 8, 2001, father retained the Accused. Father and the Accused met on or about August 8, 2001, to discuss case strategy. During the consultation, the Accused learned that the court had not entered a status quo order.

The Accused also learned that father wanted to obtain physical custody of his son before revealing to other parties that he intended to contest custody. Based upon her understanding of the facts, the Accused thought this was an appropriate strategy, and did not notify opposing counsel of her representation of father.

7.

Father's response to the petition was due August 14, 2001. Due to a calendaring error, the Accused submitted father's response on August 15, 2001. At the time of the submission, opposing counsel Bond already had obtained a default order.

8.

Upon learning of the default order, the Accused prepared and filed a motion to set it aside. Prior to filing the motion, the Accused told her client that the default was the result of a calendaring error. However, the Accused did not fully discuss the potential ramifications of her error, or the effect that her error might have on her professional judgment should she continue to represent father. Moreover, the Accused did not advise father to seek independent counsel prior to determining whether the Accused should continue to represent him in the custody matter. The court declined to set aside the default order.

Violations

9.

The Accused stipulates that, by engaging in the conduct described in paragraphs 6 through 8 herein, she violated DR 5-101(A) (self-interest conflict) and DR 6-101(A) (competent representation) 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.* The Accused violated duties owed to her client when she failed to advise opposing counsel of her involvement in the case, failed to ensure that a critical deadline was not miscalculated, failed to recognize that a lawyer self-interest conflict had developed when a default was entered against her client due to the Accused's error, and failed to recognize that her continued representation of father may have been affected by her own interest. *Standards*, §§ 4.3, 4.4.

B. *Mental State*. As to both violations, the Accused acted negligently. She 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*. The client was actually injured by the Accused's conduct: an order of default was entered against him denying him the opportunity to seek custody of his child.

D. *Aggravating Factors*. Aggravating factors include:

None.

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).
3. Full and free disclosure and cooperative attitude toward the disciplinary proceeding. *Standards*, § 9.32(e).
4. Remorse. *Standards*, § 9.32(l).

11.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and when a lawyer is negligent in determining whether the representation of a client may be affected by the lawyer's own interest. *Standards*, §§ 4.33, 4.44. Oregon case law is in accord. See *In re Lawrence*, 332 Or 502, 513, 31 P3d 1078 (2001) (reprimand would be appropriate sanction for DR 5-101(A) violation; greater sanction imposed due to additional violations by lawyer); *In re Brownlee*, 9 DB Rptr 85 (1995).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violating DR 5-101(A) and DR 6-101(A) of the Code of Professional Responsibility. The sanction will be effective the date this Stipulation is approved by the Disciplinary Board.

13.

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

EXECUTED this 24th day of June 2002.

/s/ Donna M. Matthews

Donna M. Matthews

OSB No. 97327

EXECUTED this 3rd day of July 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 83314

Assistant Disciplinary Counsel

Cite as 334 Or 353 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
DAVID B. HARRIS,)
)
Accused.)

(OSB Nos. 99-37, 99-62 to 99-64, 99-114 to 99-117; SC S46572)

En Banc

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

Argued and submitted March 15, 2002. Decided July 11, 2002.

David B. Harris, Portland, argued the cause and filed briefs in propria persona.

W. Eugene Hallman, Hallman & Dretke, Pendleton, also argued the cause and filed briefs for the Accused.

Steven W. Seymour, Samuels Yoelin Kantor, Portland, argued the cause for the Oregon State Bar. With him on the brief was Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego.

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar (“Bar”) charged the Accused with 32 violations of nine Disciplinary Rules and ORS 9.527(4). A trial panel of the Disciplinary Board concluded that the Accused had committed those violations and disbarred him. On review, the Accused argued that he could not afford a lawyer to defend him and that the trial panel should have appointed one. *Held*: A lawyer does not have a constitutional right to appointed counsel in a Bar disciplinary proceeding. The Accused violated the Disciplinary Rules and is disbarred.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-85
)
G. JEFFERSON CAMPBELL,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 9-101(A). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: July 22, 2002

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 9-101(A).

DATED this 22nd day of July 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Dwayne R. Murray
Dwayne R. Murray, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

G. Jefferson Campbell, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, G. Jefferson Campbell, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1975, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

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

4.

On May 18, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings 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.

The Accused routinely receives referrals from the Oregon State Bar Lawyer Referral Program (hereinafter “Lawyer Referral”). After meeting with such referred clients, the Accused, at the client’s request, may prepare a demand or other form of letter. If requested, the Accused offers a discounted fixed fee covering both the initial office conference and the preparation of a demand or other form of letter. The current rate for this discounted fixed fee is \$100: \$35 for the initial office conference (as established by Lawyer Referral) and \$65 for the demand or other form of letter. The Accused normally advises such referred clients that the \$100 fixed fee must be prepaid in advance and the client would not be billed. However, these fee agreements are not reduced to writing.

6.

On or about August 26, 2001, Lawyer Referral referred Connie Price (hereinafter “Price”) to the Accused. On August 26, 2001, Price retained the Accused to write a demand letter in connection with a defective mattress she had purchased. During their initial consultation, the Accused explained his charges: \$35 for the initial conference and \$65 for the demand letter. He also explained that Price would need to pay \$100 in advance and that she would not be billed. Price and the Accused had no written fee agreement memorializing the scope of the services or denominating the \$100 as a nonrefundable fee earned on receipt. Prior to writing the demand letter, the Accused deposited Price’s check into his general office account.

Violations

7.

The Accused stipulates that by failing to have an express written fee agreement denominating the \$100 as a nonrefundable retainer earned on receipt, and for failing to deposit the fixed fee into his lawyer trust account, he violated 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 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 to his client to preserve client property. *Standards*, § 4.1.

B. *Mental State.* The Accused negligently believed that, due to the limited scope of his representation, he was entitled to treat the \$100 fee as earned on receipt.

C. *Injury.* Price was not actually injured by the Accused’s erroneous deposit. However, the potential for injury always exists when a lawyer mishandles client funds. Moreover, once Price expressed her dissatisfaction with the Accused’s services, the Accused refunded \$100. The Accused has also modified his office practice and is utilizing a written fee agreement that clearly denominates whether fees are nonrefundable and earned on receipt.

D. *Aggravating Factors.* Aggravating factors include:

1. In 1996, the Accused was publicly reprimanded for violating DR 9-101(A) and DR 9-101(C)(3). *In re Campbell*, 10 DB Rptr 97 (1996). *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 made full and free disclosure and displayed a cooperative attitude toward the disciplinary proceedings. *Standards*, § 9.22(e).

2. The Accused expressed remorse for his conduct. *Standards*, § 9.32(l).

9.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in handling client property. *Standards*, § 4.13. Oregon case law is in accord. See *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983); *In re Butler*, 15 DB Rptr 195 (2001); *In re Poling*, 15 DB Rptr 83 (2001).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violating DR 9-101(A) of the Code of Professional Responsibility. The sanction will be effective the date this Stipulation is approved by the Disciplinary Board.

11.

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

EXECUTED this 28th day of June 2002.

/s/ G. Jefferson Campbell

G. Jefferson Campbell

OSB No. 750611

EXECUTED this 15th day of July 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 833144

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-09
)
WILLIAM O. BASSETT,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 3-101(B) and ORS 9.160.
Stipulation for Discipline. Public reprimand.
Effective Date of Order: August 1, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline between William O. Bassett and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. William O. Bassett is publicly reprimanded for violation of ORS 9.160 and DR 3-101(B) of the Code of Professional Responsibility.

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William O. Bassett, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, William O. Bassett, 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 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 is made under the restrictions of Bar Rule of Procedure 3.6(h).

Facts and Violations

4.

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

5.

The Accused elected to make installment payments for the PLF insurance. The PLF notified the Accused that his fourth quarter PLF installment for 2001, had to be received by the PLF not later than 5:00 p.m. on October 10, 2001. The PLF also notified the Accused that payments received after that time, no matter when mailed, would be rejected, the lawyer’s name would be included on the suspension list submitted to the Bar on October 11, 2001, that the suspension was automatic, and that no further notice would be provided. The Accused received this notice.

6.

On October 10, 2001, during regular business hours, the Accused delivered a check to the PLF for the installment payment. About October 17, 2001, the Accused’s bank notified the Accused that his check to the PLF had been dishonored.

The Accused notified the PLF. On October 24, 2001, the PLF notified the Bar that the Accused's check for his fourth-quarter installment for the 2001 assessment had been returned as "unpaid," and that the deadline for payment was October 10, 2001. On October 25, 2001, the Bar sent a letter to the State Court Administrator in which it notified that the Accused was suspended from the practice of law for failure to pay his PLF assessment, effective October 11, 2001.

7.

On October 26, 2001, the Accused received a copy of the Bar's letter to the court, which notified that he was suspended, effective October 11, 2001. Later the same day, the Accused paid the fourth-quarter PLF installment, submitted an application for reinstatement (BR 8.4), and was reinstated as an active member of the Bar. The application disclosed that the Accused practiced law between October 11, 2001 and October 26, 2001.

8.

The Accused admits that he practiced law from October 11, 2001, until October 26, 2001, when he was not authorized to do because he had not paid his fourth-quarter PLF installment.

9.

The Accused admits that the above-described conduct constituted violation of ORS 9.160 and DR 3-101(B) of the Code of Professional Responsibility.

Sanction

10.

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

A. *Duty Violated.* By practicing law when he was not authorized to do so, the Accused violated his duty to the profession. *Standards*, § 7.0.

B. *Mental State.* The Accused acted negligently. "Negligence" is a failure to heed a substantial risk that circumstances exist or a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation. *Standards*, p. 7. The Accused was negligent in selecting a check he used for payment of the PLF installment, and in not confirming his suspended status after he was notified by his bank that the check had been dishonored.

C. *Injury*. The *Standards* and case law provide that injury may be actual or potential. *Standards*, p. 7; *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused potential injury to the clients for whom he performed legal services when he did not have malpractice insurance.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior record of discipline. *In re Bassett*, 12 DB Rptr 14 (1998).

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

3. The Accused was admitted to practice in 1969 and 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 dishonest or selfish motive. *Standards*, § 9.32(b).

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

3. The Accused acknowledges his misconduct and promptly sought reinstatement as an active member of the Bar. *Standards*, § 9.32(l).

11.

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 Black*, 10 DB Rptr 25 (1996) (lawyer reprimanded for violation of ORS 9.160 and DR 3-101(B)).

12.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violating ORS 9.160 and DR 3-101(B).

13.

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

DATED this 25th day of March 2002.

/s/ William O. Bassett

William O. Bassett

OSB No. 69013

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. 01-203
)	
ARTHUR B. CUMMINS, JR.,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	August 1, 2002

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).

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Arthur B. Cummins, Jr., 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, Arthur B. Cummins, Jr., was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 16, 1966, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 November 17, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 1-102(A)(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 this proceeding.

Facts

5.

Athletic Edge is an athletic facility in Salem, Oregon. Timothy Vondersaar (hereinafter "Vondersaar") was injured while using a trampoline at Athletic Edge. The Accused was retained by Vondersaar to pursue a claim for damages he sustained in the injury at Athletic Edge.

6.

On or about October 25, 2000, the Accused entered the Athletic Edge for the purpose of viewing the premises and identifying the trampoline on which Vondersaar had been injured. During that visit, he had a conversation with Jacque Wagner (hereinafter "Wagner"), an Athletic Edge employee. In that conversation, the Accused identified himself as a grandfather who was interested in gymnastics and whose children and grandchildren had been involved in gymnastic classes at another local facility. The Accused was then taken on a tour of the facility. During that tour, he asked about whether a particular trampoline was the one on which Vondersaar had been injured. After the Accused learned that it was the same trampoline, he identified himself as Vondersaar's lawyer and informed Wagner that a lawsuit had been filed.

7.

At the beginning of the above-referenced conversation with Wagner, the Accused knowingly failed to disclose one or more of the following material facts:

- a. That he was a lawyer;
- b. That he had sued Athletic Edge; and
- c. That he hoped to determine whether a specific trampoline was the one on which Vondersaar was injured.

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated DR 1-102(A)(3) 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 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.

B. *Mental State.* The Accused acted knowingly when he failed to reveal material information to Wagner. “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 can be either actual or potential. In this case, there was potential injury to Athletic Edge in that Wagner might have revealed information to the Accused that she would not have revealed had the Accused disclosed the material facts identified in paragraph 7. There was no actual injury because later in the conversation with Wagner, the Accused correctly identified himself and his purpose.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused initially sought to conceal his identity and purpose from Wagner. *Standards*, § 9.22(b); and
2. Substantial experience in the practice of law. The Accused was admitted to practice in Oregon in 1966. *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 selfish motive. *Standards*, § 9.32(b);
 3. Full and free disclosure and cooperative attitude toward the disciplinary proceeding. *Standards*, § 9.32(e).
 4. Remorse. *Standards*, § 9.32(l).

10.

The *Standards* provide that reprimand may be appropriate when a lawyer knowingly engages in noncriminal conduct that involves misrepresentation, and that adversely reflects on the lawyer's fitness to practice law. *Standards*, § 5.13.

11.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. *See In re Gatti*, 330 Or 517, 8 P3d 966 (2000) (lawyer who misrepresented his identify and purpose during his investigation of a legal matter reprimanded for violating DR 1-102(A)(3), among other rules).

12.

Other Oregon cases regarding violations of DR 1-102(A)(3) where a lawyer has made misrepresentations to an opposing party have resulted in suspensions. *In re Porter*, 320 Or 692, 890 P2d 1377 (1995) (lawyer suspended for 63 days when he led opposing counsel to believe no default would be taken without notice and then subsequently applied for default without notifying opposing counsel); *In re Leonard*, 308 Or 560, 784 P2d 95 (1989) (lawyer suspended for 35 days when he interlineated a lease to include language favorable to his client and then informed the other party to the lease that there was no need to consult with their lawyer about the change). However, the parties agree that the conduct of the Accused in this case is less aggravated because the Accused correctly identified himself and his purpose toward the end of the conversation with Wagner.

13.

The Accused agrees to accept a public reprimand for the violation of DR 1-102(A)(3) described in this Stipulation for Discipline.

14.

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

EXECUTED this 1st day of April 2002.

/s/ Arthur B. Cummins, Jr.

Arthur B. Cummins, Jr.

OSB No. 66032

EXECUTED this 4th day of April 2002.

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. 02-83, 02-84
)
MARK J. GEIGER,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: August 1, 2002

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).

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Mark J. Geiger, 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, Mark J. Geiger, 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 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 May 18, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Morales Matter

Case No. 02-83

Facts

5.

On or about November 22, 1999, the Accused was appointed to represent Robin Morales (hereinafter "Morales") in the appeal of a judgment denying postconviction relief. In July 2000, the Accused submitted a Balfour Brief on Morales' behalf. In November 2000, the State filed a response brief which the Accused timely forwarded to Morales.

6.

On January 17, 2001, the Oregon Court of Appeals issued a memorandum decision denying Morales postconviction relief. The court forwarded its decision to the Accused. The Accused neglected to forward a copy of the court's decision to Morales.

7.

On March 20, 2001, the Oregon Court of Appeals issued an appellate judgment on the *Morales* matter and forwarded the same to the Accused. The Accused neglected to forward the judgment to Morales.

8.

Some time prior to August 2001, the Accused relocated his law office. The Accused did not advise Morales of his new office address, and so the Accused did not receive an August 2001 letter from Morales requesting information regarding the status of his legal matter. After hearing nothing from the Accused, Morales, with the assistance of a prison legal advisor, contacted the Court of Appeals and learned that a judgment in his case had been issued in March 2001.

Violations

9.

The Accused stipulates that, by engaging in the conduct described in paragraphs 6 through 8 herein, he violated DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Christenson Matter

Case No. 02-84

Facts

10.

Some time prior to 1997, the Accused was appointed to represent Keith Christenson in a state habeas corpus action. In 1997, the Marion County Circuit Court dismissed Christenson's petition for habeas corpus. The Accused appealed the dismissal on Christenson's behalf and in February 1999, the Oregon Court of Appeals affirmed the circuit court's decision. Thereafter, at Christenson's request, the Accused filed a petition for review with the Oregon Supreme Court.

11.

In July 1999, the Oregon Supreme Court issued an order placing Christenson's petition and numerous others raising similar legal issues in abeyance pending the court's decision in another case. (*Hamel v. Johnson*). On April 6, 2000, the Oregon Supreme Court decided *Hamel* and in so doing, sent *Hamel* back to the Oregon Court of Appeals for further proceedings. On July 13, 2000, the Oregon Supreme Court, in light of its decision in *Hamel*, remanded Christenson's case to the Oregon Court of Appeals. The Accused received notice from the court that Christenson's case had been remanded to the Court of Appeals and that his case was going to be assigned to a panel for disposition on the merits.

12.

In August 2000, the respondent in Christenson's habeas case, filed a supplemental memorandum. As of September 6, 2000, the Accused had failed to advise Christenson of the *Hamel* decision, the remand of Christenson's case to the Oregon Court of Appeals, or the court's proposed action, and failed to provide Christenson with a copy of the memorandum. On September 6, 2000, Christenson, with the assistance of a prison legal advisor, contacted the Court of Appeals and learned that his case had been remanded, and that the respondent had filed a supplemental memorandum.

13.

On September 11, 2000, the Accused wrote Christenson acknowledging that he had postponed sending Christenson copies of recent activity in his case (in part because he was waiting for the court's decision in *Hamel*), had misplaced Christenson's file, and apologized for his inattention. Thereafter, the Accused located the Christenson file and, with court permission, filed a response on Christenson's behalf. In August 2001, the Court of Appeals reversed the circuit court's dismissal in the Christenson case and remanded it for a trial on the merits.

Violations

14.

The Accused stipulates that, by engaging in the conduct described in paragraphs 11 through 13, he violated DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Sanction

15.

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 failing to timely provide his clients with documents relevant to their representation or adequately communicate with them, the Accused violated his duty to both clients. *Standards*, § 4.4.

B. *Mental State.* "Negligence" is the failure of a lawyer to heed a stipulated 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 when he failed to insure

that important information regarding the status of his clients' cases was not routinely provided to them.

C. *Injury*. In *Morales*, the Accused's failure to timely advise his client of the court's action on his case denied the client the opportunity to timely file a petition for review with the Oregon Supreme Court.

In *Christenson*, the Accused's failure to communicate the court's activities and responses by opposing counsel denied Christenson information relevant to his legal matter.

D. *Aggravating Factors*. Aggravating factors include:

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

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
3. Full and free disclosure and cooperative attitude toward the disciplinary proceeding. *Standards*, § 9.32(e).
4. Remorse. *Standards*, § 9.32(l).

16.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client. *Standards*, § 4.43. Oregon case law is in accord. See *In re Brownlee*, 9 DB Rptr 85 (1995).

17.

Consistent with the *Standards* and Oregon case law, the Accused shall receive a public reprimand for violating DR 6-101(B) of the Code of Professional Responsibility. The sanction will be effective the date this Stipulation is approved by the Disciplinary Board.

18.

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

EXECUTED this 5th day of July 2002.

/s/ Mark J. Geiger

Mark J. Geiger

OSB No. 840473

EXECUTED this 3rd day of July 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 833144

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 00-61
)
KATHRYN E. JACKSON,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Bradley F. Tellam, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: August 1, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline between Kathryn E. Jackson and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation entered into between the parties is approved. Kathryn E. Jackson is publicly reprimanded for violation of DR 1-102(A)(4) of the Code of Professional Responsibility.

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kathryn E. Jackson (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 17, 1987, and has been a member of the Oregon State Bar continuously since that time. This proceeding arose out of events that occurred 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 Rule of Procedure 3.6(h).

4.

At its November 20, 2000, meeting, the State Professional Responsibility directed that the Accused be charged with violation of DR 1-102(A)(3) and DR 1-102(A)(4) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(3) as set forth in the Bar’s Formal Complaint, should be and, upon the approval of this stipulation, is dismissed. 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 represented Dawn Chase in the matter of *Dawn Chase v. Connie Reyes and Jack Dugger*, Lane County Circuit Court Case No. 169821086 (hereinafter “Court Action”). Dugger and Reyes were represented by counsel. Trial of the Court Action was scheduled to commence on September 17, 1999. The Accused’s expert witness was unavailable to testify and the parties agreed to perpetuate his testimony by deposition. The Accused took the deposition of her expert witness, which was also videotaped. During the deposition, the Accused asked the witness questions about his prior employment by the defendants’ attorneys. The defendants’ attorneys objected, and the court thereafter sustained the objection. The defendants’ attorneys asked the

witness questions about his prior employment by the Accused. The Accused did not object.

6.

The transcript of the deposition was not available at the commencement of the trial. The defendants' counsel informed the court that the Accused had a videotape of the deposition that would be played for the jury. In the interests of time, the court ruled on certain of the parties' objections by issue, without viewing the videotape. The court sustained the defendants' counsel's objections about the witness's prior employment by the defendants' attorneys. The court did not rule on the issue as it applied to the defendants' attorneys' questions about the Accused's prior employment of the witness. The Accused instructed the videographer to delete portions of the videotape, including portions that the court did not order be excluded. The Accused played the videotape of the deposition for the jury without further disclosure to the court.

7.

The Accused admits that the aforementioned conduct violated DR 1-102(A)(4) of the Code of Professional Responsibility.

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* and Oregon case law should be considered. The *Standards* require that the Accused's conduct be analyzed by the following factors: (1) the ethical duty violated; (2) the attorney's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, p. 7.

A. *Duty*. In violating DR 1-102(A)(4), the Accused violated duties to the legal system. *Standards*, § 6.0.

B. *State of Mind*. The Accused's conduct demonstrates that she 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 thought she had a standing objection and that the court had ruled on the issue as it applied to the defendants' attorneys' questions, but failed to understand the scope or to seek clarification of the court's rulings and to fully identify those portions of the videotape that she directed be deleted.

C. *Injury*. The Accused's conduct resulted in potential injury to the court and the parties to the case. The Accused's error was remedied by the court during the trial.

D. *Aggravating Factors*. Aggravating factors include:

The Accused has substantial experience in the practice of law having been admitted to practice in 1987. *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 did not act with dishonest or selfish motives. *Standards*, § 9.32(b).
3. The Accused cooperated with the disciplinary authorities during the investigation and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).
4. The Accused is remorseful. *Standards*, § 9.32(l).

9.

The *Standards* provide that a “reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with the legal proceeding.” *Standards*, § 6.23. Oregon case law is in accord. *In re McCurdy*, 13 DB Rptr 107 (1999) (reprimand for violations for DR 1-102(A)(4) and DR 5-101(A)).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that a reprimand is an appropriate sanction. The Accused agrees to accept a reprimand for the violation of DR 1-102(A)(4).

11.

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

DATED this 28th day of May 2002.

/s/ Kathryn E. Jackson

Kathryn E. Jackson
OSB No. 87053

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. 98-109, 98-110,
) 98-111
KENNETH MONTGOMERY,)
)
Accused.)

Bar Counsel: John M. Junkin, Esq.
Counsel for the Accused: Stephen R. Moore, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3) (two counts), DR 1-102(A)(4), DR 2-106(A), and DR 7-102(A)(3).
Stipulation for Discipline. Six-month suspension.
Effective Date of Order: August 4, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Kenneth M. Montgomery and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended for six months, effective three business days after the date of this order for violation of DR 1-102(A)(3) (two counts), DR 1-102(A)(4), DR 2-106(A), and DR 7-102(A)(3) of the Code of Professional Responsibility.

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kenneth Montgomery, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Kenneth Montgomery, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1976, and has been a member of the Oregon State Bar since that time, having his office and place of business in Clackamas 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.

The State Professional Responsibility Board directed that a formal disciplinary proceeding be instituted against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(3), DR 7-102(A)(5), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility, and ORS 9.527(4). The Bar filed an Amended Formal Complaint on July 27, 2000. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed upon sanction as a final disposition of this proceeding.

Miller Matter

Facts

5.

In 1994, Martha Fidanzo (hereinafter “Martha”) owned certain real property, which was occupied by her son, William Fidanzo (hereinafter “William”) (collectively “Fidanzos”). The Fidanzos had commenced the process for a minor partition to enable Martha sell a portion of the property.

6.

John and Patricia Miller (hereinafter “Millers”) wanted to purchase one of the lots that would result from the partition of the Fidanzo property. The Millers, who were represented by a real estate agent, approached the Fidanzos about purchasing

a portion of the property. The Fidanzos lacked the funds to complete the partition process. Because the Millers wanted to purchase one of the lots, they agreed to loan funds to the Fidanzos to complete the partition process that was then underway. In June 1994, the Accused prepared an agreement and letter, which the Millers and Martha signed. The Accused also prepared a promissory note and a trust deed to secure Martha's loan obligation to the Millers. Martha signed the note and trust deed and the Accused delivered the documents to the Millers.

7.

At the time of the Miller transaction, Fidanzo intended a portion of the funds to be paid to the Accused for work he had already performed concerning the partition process. At the time of the transaction, Fidanzo had previously given two trust deeds on the property to secure other Fidanzo obligations. Both obligations were in default, with one of the trust deeds in foreclosure. The Accused represented Martha in the foreclosure. The Accused used a preprinted trust deed form for the Miller transaction. The trust deed form included a representation that Martha had valid, unencumbered title to the property. This representation was false. The Accused did not correct the trust deed form or otherwise disclose the preexisting trust deeds. The Millers and their real estate agent did not request a breakdown of how the loan funds would be used in the partition process or inquire or otherwise investigate the status of the title to the Fidanzo property before entering into the loan transaction.

Violations

8.

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

Marshall Matter

9.

Thomas Marshall (hereinafter "Marshall"), an officer and sole shareholder Keystone Equity Group, Inc. (hereinafter "Keystone"), retained the Accused in or about December 1994, to file and pursue a Chapter 11 bankruptcy case for Keystone. Marshall paid the Accused a \$5,000 retainer and personally guaranteed the payment of Keystone's legal fees. Marshall signed a written fee agreement, which provided that the Accused be paid \$120 per hour, subject to the approval of the Bankruptcy Court. The Accused deposited the Keystone retainer into his lawyer trust account.

10.

Thereafter, the Accused prepared and filed Keystone's Chapter 11 bankruptcy case in the United States Bankruptcy Court for the District of Oregon. The Accused also prepared and filed an application for his appointment as attorney for Keystone, debtor-in-possession, and an affidavit of disinterestedness in which he represented

that he was a disinterested person within the meaning of 11 USC §101(14) of the United States Bankruptcy Code, that he had no interest adverse to the debtor or debtor's estate, other than representing debtor in this case, and that he had no connection with debtor, creditors, or any other party of interest, their respective attorneys, the United States Trustee (hereinafter "Trustee"), or any person employed by the Office of the Trustee.

11.

The Accused also filed a statement disclosing his compensation as required by 11 USC §329 and Bankruptcy Rule 2016(b). In the statement, the Accused disclosed the \$5,000 retainer that he had received from Marshall and acknowledged that his fees would be paid as the court approved. The court relied on the Accused's representations and approved the Accused's employment as Keystone's attorney in the bankruptcy case. The court's order provided: "The compensation of the attorney for his services on behalf of the debtor shall be determined upon application for allowance of compensation after such notice and hearing as required by applicable rules."

12.

Thereafter, Marshall retained the Accused to defend a claim made against him in state court on a promissory note given by Marshall to purchase Keystone stock from a former shareholder. Marshall paid the Accused for the legal services. The Accused failed to disclose the representation and the payment to the court or the Trustee.

13.

On or about January 3, 1995, the Accused withdrew \$2,640 from the retainer in his lawyer trust account and applied the funds to his fees for Keystone without notice, application to or order of the court. On or about January 19, 1995, the Accused withdrew an additional \$2,360 from his lawyer trust account and applied the funds to his fees for Keystone without notice, application to or order of the court.

14.

On or about February 14, 1995, the Accused filed a fee application with the court in which he sought the court's approval of his attorney fees in the amount of \$8,304.94. The Accused did not disclose that he had already disbursed the \$5,000 to pay his fees or otherwise mention the retainer. The Trustee filed an objection to the application because the Accused failed to discuss the disposition of the \$5,000 retainer.

15.

On or about March 10, 1995, the Accused filed an amended statement of disclosure of compensation in which he represented to the court and Trustee:

Debtor and Debtor's attorney's agreement was that the \$5,000 provided by debtor's sole shareholder, Thomas J. Marshall, individually, would act as a guaranty fund of compensation to debtor's attorney; debtor and debtor's attorneys agreed that the debtor's attorney's fees would be paid by the estate, as approved by the court.

The Accused did not disclose to the court and the Trustee and they did not otherwise know that he had disbursed the retainer to pay his attorney fees. The Trustee relied on the Accused's representations and withdrew the objection.

16.

As of late April 1995, prior to obtaining the court's written order and confirming the amount the court approved for attorney fees and expenses, the Accused collected \$8,304.94 from Keystone for his attorney fees, and reimbursed Marshall for the fees that he had paid for the Keystone bankruptcy case. On or about May 1, 1995, the court filed its order approving attorney fees and expenses for the Accused in the amount of \$6,649.94. The Accused refunded the overpayment to Keystone. The Accused did not disclose to the Trustee or the court that he had collected fees and expenses from Keystone and reimbursed Marshall without obtaining the court's approval.

17.

On or about May 15, 1995, at Marshall's request, the Accused loaned funds to Marshall's wife for Marshall's business purposes. The Accused also required and was paid a loan fee. The Accused did not file a statement identifying the Accused's loan or that the loan funds would be used for Marshall's benefit, a party of interest in the Keystone bankruptcy case, or otherwise disclose to the bankruptcy court and the Trustee that he was a creditor of a party of interest in the Keystone bankruptcy case.

18.

Thereafter, information about the Accused's conduct was brought to the Trustee's and the court's attention. The Trustee commenced an investigation concerning the Accused's conduct. Ultimate action by the Trustee, approved by the bankruptcy court, resulted in the settlement of claims against the Accused and his disgorging a substantial portion of the fees he had received for the Keystone bankruptcy case as a result of his failure to disclose information to the Trustee and the court, and failure to obtain the court's approval prior to receiving payment of those fees.

Violations

19.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), and DR 7-102(A)(3) of the Code of Professional Responsibility.

Other Issues

20.

On further review of the facts, the DR 7-102(A)(5) and ORS 9.527(4) charges alleged in the Bar's First and Third Causes of Complaint and the charges alleged in the Bar's Second Cause of Complaint authorized by the SPRB should be and, with the approval of this stipulation, will be dismissed.

Sanction

21.

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

A. *Duty Violated.* In violating DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), and DR 7-102(A)(3), the Accused violated his duties to his clients, the public, the legal system, and the profession. *Standards*, §§ 4.1, 5.0, 6.1, 6.2, 7.0.

B. *Mental State.* The Accused's conduct demonstrates negligence and knowledge. "Negligence" is the failure to head 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. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7.

The Accused knew that the Fidanzo property was not free of liens. As an experienced real estate lawyer, he should have known that the trust deed form he completed for the Miller transaction contained a representation concerning the title of the property and should have taken steps to correct the representation that the property was free and clear of liens.

The Accused also knew that the bankruptcy rules required that he have no interest adverse to the debtor or debtor's estate (other than representing debtor), and

no connection with debtor, creditors, or any other party of interest, their respective attorneys, the Trustee, or any person employed by the Office of the Trustee. The Accused knew he was required to file a statement of disinterestedness with the court, and that he should file an amended statement if circumstances changed. The Accused also knew that the bankruptcy rules and the court's order approving his employment required him to file an application for approval of his fees and that the court would rule on his application as required by applicable rules before he was paid for his services and expenses claimed in representing the bankruptcy debtor. The Accused also knew that he had disbursed the \$5,000 retainer without court approval and that he did not disclose that disbursement when the Trustee inquired about its disposition.

C. *Injury*. The Accused caused actual and potential injury to the bankruptcy court, the Trustee, Marshall, the Millers, and the Fidanzos. The Accused caused potential injury to the Fidanzos. The Millers attempted to rescind the loan transaction and threatened the Fidanzos with litigation. The Millers settled and compromised their alleged claims against Fidanzos and the Accused. The Trustee and the court devoted substantial time to the review of the Accused's conduct in the Marshall matter because Accused failed to disclose information concerning his relationships and transactions with the bankruptcy debtor, the debtor's sole shareholder and his wife, and the payment of his fees.

D. *Aggravating Factors*. Aggravating factors include:

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

2. The bankruptcy court and the Trustee were vulnerable in that they relied on the Accused to perform his duties consistent with the provisions of the Bankruptcy Code. *Standards*, § 9.22(h).

3. The Accused was admitted to practice in Indiana in 1969 and Oregon in 1976 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

4. The Accused's conduct reflects aspects of dishonest and selfish motives. He placed his interests in receiving payment for legal services before his obligations to the court, the Trustee, the public, and his clients. *Standards*, § 9.22(b).

5. The Accused has a prior record of discipline. *Standards*, § 9.22(a). In 1982, the Accused was reprimanded for violation of DR 5-104(A) when he entered into a business transaction with a client without making full disclosure. *In re Montgomery*, 292 Or 796, 643 P2d 338 (1982). In 1984, he was suspended for seven months for again violating DR 5-104(A). *In re Montgomery*, 297 Or 738, 687 P2d 157 (1984). The court also reprimanded the Accused in 1984 for violating DR 5-105. *In re Montgomery*, 297 Or 752, 667 P2d 156 (1984). However, given that the record of misconduct is about 17 years ago and involves different rule violations, it is given little weight.

E. *Mitigating Factors.* Mitigating factors include:

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

2. The events in this proceeding are remote in time and there has been delay in the disciplinary proceeding. *Standards*, § 9.32(i).

3. Other penalties have been imposed with the Accused disgorging a substantial portion of the fees he received in the Keystone bankruptcy case. *Standards*, § 9.32(k).

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

22.

The *Standards* provide that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.12. 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, and 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*, §§ 6.22, 7.2.

23.

Oregon case law provides some guidance in determining the appropriate sanction in this case. In *In re Benson*, 317 Or 164, 854 P2d 466 (1993), the lawyer was suspended for six months for violation of DR 1-102(A)(3), DR 7-102(A)(5), DR 7-102(A)(7), and DR 1-103(C) when he prepared and recorded trust deeds and supporting promissory notes without consideration, placing illegitimate roadblocks in the way of a property foreclosure proceeding. In *In re MacMurray*, 12 DB Rptr 115 (1998), the lawyer was suspended for six months for violating DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4). With the lawyer's assistance, his client sold bankruptcy estate property and distributed the sale proceeds to his law firm and others without the approval of the bankruptcy trustee or the court, which acts were prohibited by the bankruptcy rules. In *In re Hiller*, 298 Or 526, 694 P2d 540 (1985), the lawyers were suspended for four months for violating DR 1-102(A)(3) and ORS 9.460(3). The lawyers failed to disclose in an affidavit in support of a summary judgment motion the actual consideration for a reported sale of real property. In *In re Hockett*, 303 Or 150, 734 P2d 877 (1987), the lawyer was suspended for 63 days for violation of DR 1-102(A)(3), DR 7-102(A)(7), and ORS 9.460(3) and (4). The lawyer handled a divorce proceeding in a manner that

was designed to preclude the husband's creditors from obtaining assets and satisfaction of lawful debts through the use of fraudulent conveyances. The lawyer had no prior record of discipline. *See also In re Johnson*, 9 DR Rptr 151 (1995) (lawyer was suspended for 90 days for violation of DR 1-102(A)(3), DR 7-102(A)(7), and DR 2-110(B)).

In contrast is *In re Claussen*, 322 Or 466, 909 P3d 862 (1996), where the lawyer intentionally misrepresented facts and documents submitted to the bankruptcy court, failed to disclose to the bankruptcy court his prior relationship with the bankruptcy debtor and a creditor, and failed to reveal that he had settled the debtor's dispute with the creditor. The court found that his conduct violated DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3) (two counts), DR 7-102(A)(5), DR 5-105(E), and ORS 9.460(2). In imposing a one-year suspension, the court noted that the lawyer changed his story during the course of the proceeding.

24.

Based on 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 six months for violation of DR 1-102(A)(3) (two counts), DR 1-102(A)(4), DR 2-106(A), and DR 7-102(A)(3). In addition, the Accused shall pay the Bar's costs and disbursements in the amount of \$1,874.20.

25.

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 suspended from the practice of law, effective three business days after the date of the order approving Stipulation for Discipline.

DATED this 30th day of May 2002.

/s/ Kenneth Montgomery
Kenneth Montgomery
OSB No. 76020

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. 02-16
)
DANIEL Q. O'DELL,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: August 1, 2002

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 5-101(A) and DR 6-101(B).

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Daniel Q. O'Dell, 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 Q. O'Dell, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 14, 1989, and has been a member of the Oregon State Bar continuously since that time, currently having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On January 19, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A) 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.

At all times material hereto, the Accused was employed by the State Public Defenders Office. In November or December of 1998, the State Public Defenders Office was appointed to represent Richard O. Coym (hereinafter "Coym") to handle the appeal of his criminal conviction. The Accused was designated as the attorney to process the appeal.

6.

Over the next two years, the Accused did not timely file a brief, and made six requests for extensions of time, to file a brief on behalf of Coym. On November 2, 2000, the Accused requested another extension that was denied. In December 2000, the Accused filed a motion asking the court to reconsider its refusal to extend the briefing deadline but the motion was denied. Sometime after the motion was denied,

the Accused met with Coym and discussed the court's action. The Accused did not advise Coym he had sought extensions of time to file the brief. The Accused left the State Public Defenders Office on February 28, 2001. Thereafter, the State Public Defender's Office, acting through another staff attorney, filed a second motion to reconsider the refusal to extend the briefing deadline. This motion was also denied. On April 26, 2001, the Court of Appeals dismissed Coym's appeal for failure to file an opening brief.

7.

The Accused continued to represent Coym after he was aware of a potential legal malpractice claim Coym might have against the Accused, when his professional judgment on behalf of Coym may have been affected by his own personal interests. At no time did the Accused advise Coym that Coym had a possible claim for legal malpractice against the Accused and advise Coym to seek independent counsel.

Violations

8.

The Accused admits, that by engaging in the conduct described in this stipulation, he neglected a legal matter in violation of DR 6-101(B). In failing to advise Coym of the potential legal malpractice claim and failing to get his client's consent to continue after full disclosure, the Accused violated DR 5-101(A).

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.* By neglecting a legal matter entrusted to him and by failing to avoid a conflict of interest, the Accused violated his duty to his client. *Standards*, §§ 4.3, 4.4.

B. *Mental State.* The Accused acted negligently. "Negligence" is a failure to heed a substantial risk that circumstances exist or a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation. *Standards*, p. 7.

C. *Injury.* The Accused's conduct caused actual injury to his client in that the appeal was dismissed, although the client had additional postconviction remedies available to him. Regardless of whether the appeal had merit, Coym suffered frustration in delay of the appeal.

D. *Aggravating Factors.* Aggravating factors include:

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. The Accused has displayed a cooperative attitude in resolving this matter. *Standards*, § 9.32(e).
3. Remorse. *Standards*, § 9.32(l).

10.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests and causes injury or potential injury to a client. *Standards*, § 4.33. The *Standards* also provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, § 4.43.

11.

Oregon case law also suggests that a public reprimand is appropriate in this case. In *In re Brownlee*, 9 DB Rptr 85 (1995), a lawyer was appointed to represent a criminal defendant in a postconviction proceeding. The lawyer failed to communicate with his client regarding the appeal, failed to respond to the client's attempts to communicate with the lawyer, and failed to promptly return trial court transcripts and other documents to the client, in violation of DR 6-101(B) and DR 9-101(C)(4). The lawyer was reprimanded. Similarly, in *In re Hall*, 10 DB Rptr 19 (1996), a lawyer who failed to timely prepare a QDRO and respond to the client's numerous inquiries concerning the status of the case was reprimanded for violating DR 6-101(B). Lawyers who fail to advise their clients of potential claims of malpractice and continue with the representation without full disclosure and consent have been reprimanded. See *In re McCurdy*, 13 DB Rptr 107 (1999); *In re Lafky*, 13 DB Rptr 114 (1999).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A) and DR 6-101(B), the sanction to be effective upon approval of this Stipulation for Discipline by the Disciplinary Board.

13.

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 27th day of February 2002.

/s/ Daniel Q. O'Dell

Daniel Q. O'Dell

OSB No. 89102

EXECUTED this 4th day of March 2002.

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 Nos. 02-11, 02-12
)
JOHN E. STORKEL,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Marc D. Blackman, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-101(A), DR 6-101(A), and DR 6-101(B). Stipulation for Discipline. Public reprimand.
Effective Date of Order: August 1, 2002

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 5-101(A), DR 6-101(A), and DR 6-101(B), effective the date of this order.

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

John E. Storkel, 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 E. Storkel, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 19, 1985, 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 January 19, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A), DR 6-101(A), 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.

Canell Matter

Case No. 02-11

Facts

5.

Alvin Canell (hereinafter “Canell”) was indicted in two separate criminal proceedings and provided counsel in both. Canell pled guilty in one matter and pled no contest in the other. Thereafter, Canell wanted to pursue postconviction relief, alleging that trial counsel in both matters provided him with ineffective assistance of counsel. On February 9, 1999, the court appointed the Accused to represent Canell in the two postconviction matters.

6.

Canell's deposition was scheduled for November 19, 1999. Prior to his deposition, Canell wrote the Accused and asked him to obtain copies of the court files and the trial transcripts so Canell could review them before his deposition. The Accused failed to obtain or provide the requested information to Canell prior to Canell's deposition on November 19, 1999. Canell's deposition was taken but not completed on November 19, 1999.

7.

On December 5, 1999, Canell sent the Accused a letter, asking if the Accused had obtained the court files and inquiring when Canell could review them. In December 1999, the court scheduled trial in both postconviction matters for February 20, 2000. As of February 15, 2000, the Accused had not obtained or provided Canell with copies of the court files. The court rescheduled the trial for March 7, 2000. Canell's deposition was completed on February 29 and March 1, 2000. At the time, Storkel had not obtained copies of the trial court files and transcripts or provided them to Canell.

8.

Hearing on both postconviction matters occurred on March 7, 2000. On the morning of the hearing, the Accused provided Canell with the trial court files that he had been requesting since November 1999. On the morning of the hearing, the Accused filed a partial trial memorandum and exhibits in one case, but no trial memorandum or exhibits in the second. The Accused requested, and the court allowed him, 10 additional days to submit the remaining memorandum and exhibits. Canell also requested that he be allowed to submit some additional evidence in affidavit form. The court granted Canell's request and, on or about March 10, 2000, Canell provided three affidavits to the Accused for inclusion in the court record.

9.

The Accused failed to submit the additional materials to the court within the 10 days allotted by the court. Thereafter, on May 9, 2000, the court issued a letter opinion denying postconviction relief. Upon receipt of the opinion, the Accused submitted an amended memorandum and additional exhibits. The court treated the submissions as a request for reconsideration of its May 9, 2000 letter opinion, granted the request, and affirmed the May 9, 2000 letter opinion denying postconviction relief in both matters.

Violations

10.

The Accused stipulates that, by engaging in the conduct described in paragraphs 6 through 9 herein, he violated DR 6-101(A) (competent representation)

and DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Newcomb Matter

Case No. 02-12

Facts

11.

On June 24, 1998, the court appointed the Accused to represent Shawn Newcomb in a habeas corpus proceeding. On his client's behalf, Storkel filed a replication. Thereafter, the State of Oregon filed a motion to dismiss. The trial court granted the State's motion on December 23, 1998. On January 26, 1999, the Accused filed a notice of appeal on Newcomb's behalf and timely filed an opening brief on Newcomb's behalf. The State filed a motion for summary affirmance on October 28, 1999, and on January 3, 2000, the Accused filed a response to the State's motion. On June 1, 2000, the Court of Appeals issued an order summarily affirming the circuit court's dismissal. By court rule, the Accused had 35 days from June 1, 2000, to file a petition for review in the Oregon Supreme Court. The Accused did not timely file a petition for review. On August 16, 2000, the Court of Appeals entered an appellate judgment in the matter.

12.

Between July 1999 and October 2000, the Accused failed to provide Newcomb with a copy of the brief filed on Newcomb's behalf, copies of the motion for summary affirmance and the Accused's response thereto, a copy of the Court of Appeals' order of summary affirmance, and a copy of the appellate judgment.

13.

As of October 2000, Newcomb did not know that the Court of Appeals had granted the State's motion, the Accused had failed to file a petition for review, or that the court had entered an appellate judgment. In October 2000, Newcomb wrote the Accused requesting an explanation of the Accused's accomplishments in the case, and copies of any legal documents that the Accused had filed or was planning to file. Shortly after receiving Newcomb's letter, the Accused and Newcomb met. After the meeting, the Accused reviewed Newcomb's file and realized that the Court of Appeals had granted the State's motion, entered judgment against his client, and that the time to file a petition for review to the Oregon Supreme Court had passed. After realizing that he had failed to timely file a petition for review on Newcomb's behalf, the Accused prepared and filed a motion in the Court of Appeals seeking to set aside the August 2000 appellate judgment. Prior to filing the motion to set aside the judgment, the Accused did not discuss the circumstances surrounding the missed filing, the potential ramifications of his failure to do so, or the affect that the missed deadline may have on the Accused's professional judgment on behalf of Newcomb.

Moreover, the Accused did not seek Newcomb's consent to the continued representation.

Violations

14.

The Accused stipulates that, by engaging in the conduct described in paragraphs 11 through 13 herein, he violated DR 5-101(A) (self-interest conflict) and DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Sanction

15.

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 analyzing the Accused's conduct 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 failing to timely provide his client with documents relevant to the representation and to ensure that pleadings were timely filed, the Accused violated his duty to both clients. *Standards*, §§ 4.4, 4.5. By failing to determine whether his continued representation of a client may have been affected by his own interest, the Accused violated a duty owed to his client. *Standards*, § 4.3.

B. *Mental State.* The Accused acted negligently as to all violations.

C. *Extent of Injury.* In *Canell*, Accused's failure to timely provide documents and other materials to Canell and the court adversely affected Canell's opportunity to participate in the presentation of his case.

In *Newcomb*, the Accused's failure to ensure that documents were timely provided to his client ultimately denied Newcomb the opportunity to seek review of the Court of Appeals determination.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
3. Remorse. *Standards*, § 9.32(l).

16.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and when a lawyer is negligent in determining whether the representation of a client may be affected by the lawyer's own interest. *Standards*, §§ 4.33, 4.44. Oregon case law is in accord. See *In re Lawrence*, 332 Or 502, 513, 31 P3d 1078 (2001) (reprimand would be appropriate sanction for DR 5-101(A) violation, were it not for additional violations by lawyer); *In re Brownlee*, 9 DB Rptr 85 (1995).

17.

Consistent with the *Standards* and Oregon case law, the Accused shall receive a public reprimand for violating DR 5-101(A), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility. The sanction will be effective the date this Stipulation is approved by the Disciplinary Board.

18.

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

EXECUTED this 18th day of June 2002.

/s/ John E. Storkel

John E. Storkel
OSB No. 850871

EXECUTED this 3rd day of June 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan
OSB No. 833144
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 01-174
)
BRIAN J. SUNDERLAND,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Bradley F. Tellam, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: August 1, 2002

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).

DATED this 1st day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Brian J. Sunderland, 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, Brian J. Sunderland, 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 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 September 15, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In August 1999, Kimberly Holcombe and her husband (“the Holcombes”) met with the Accused to arrange, among other things, for Mr. Holcombe to adopt Mrs. Holcombe’s teenage birth daughter Christine. The Accused was advised that Christine’s birth father had not been involved in her life for more than 12 years and his whereabouts, social security number, date of birth, and true last name were not known to the Holcombes. The Accused was also advised that since the birth father and Mrs. Holcombe were not married, his name was not on Christine’s birth certificate.

6.

The Accused timely filed the petition for adoption. Three months passed before the Accused sent to a newspaper of general circulation the legal notice for publication of the petition. The Accused failed to get court approval for the petition to be published. Upon learning this fact, the Accused subsequently filed a motion and affidavit for alternative service with the court on April 12, 2000, that was approved on July 10, 2000. Service by publication was completed August 8, 2000.

7.

On September 12, 2000, an affidavit of service by publication was executed by the newspaper in which publication had been effected, and on September 12, 2000, the Accused served a request for waiver of home study on the State Office for Services to Children and Families. In October 2000, the Accused forwarded the remaining documents requiring the Holcombes' signatures to the Holcombes. The Holcombes returned the signed documents to the Accused at the end of November 2000. Thereafter, the Accused himself had no further contact with Services to Children and Families. On January 10, 2001, the Accused filed a petition for an order of default. On May 24, 2001, Services to Children and Families finally granted the waiver of home study. The adoption was completed June 4, 2001. The Accused timely completed the other matter unrelated to the adoption.

Violations

8.

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

Sanction

9.

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

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

C. *Injury.* The Accused's conduct resulted in actual injury to his clients in that the case was delayed, although the adoption was ultimately completed by the Accused. *Standards*, p. 7.

D. *Aggravating Factors.* Aggravating factors include:

The Accused was admitted to practice in 1992 and 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 dishonest or selfish motives. *Standards*, § 9.32(b).
 2. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and resolving this disciplinary proceeding. *Standards*, § 9.32(e).
 3. The Accused is remorseful. *Standards*, § 9.32(l).

10.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to the client. *Standards*, § 4.4. Oregon case law is in accord. See *In re Jackson*, 11 DB Rptr 23 (1997), and *In re Riedlinger*, 10 DB Rptr 193 (1996), in which a public reprimand was imposed for violation of DR 6-101(B).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that a public reprimand is an appropriate sanction. The Accused agrees to accept a public reprimand for violation of DR 6-101(B), the sanction to be effective upon the Disciplinary Board's approval of this Stipulation for Discipline.

12.

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

EXECUTED this 29th day of May 2002.

/s/ Brian J. Sunderland

Brian J. Sunderland

OSB No. 92478

EXECUTED this 5th day of June 2002.

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 Nos. 02-76, 02-77, 02-113
)
THEODORE C. CORAN,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: August 8, 2002

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 5-101(A) and DR 6-101(B).

DATED this 8th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, 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 July 25, 2002, 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 5-101(A) (three counts) and DR 6-101(B). 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 Donnie Browder Matter

Case No. 02-76

Facts

5.

The Accused was appointed to represent Donnie Browder (“Browder”) on an appeal of a criminal conviction. The appellant’s brief was due January 24, 2001. Browder wrote his own brief and forwarded it to the Accused for review on January 5, 2001. The Accused failed to file the brief until February 1, 2001. Thereafter, the Court of Appeals rejected the brief because it was untimely filed and did not comply with the court’s rules.

6.

After February 1, 2001, when he was aware of a potential malpractice claim against him by Browder based on the above-described conduct, the Accused continued to represent Browder without Browder's consent to the continued representation after full disclosure.

The Robert E. Goodlette Matter

Case No. 02-77

Facts

7.

In November 1997, the Accused was appointed to represent Robert Goodlette ("Goodlette") in a Marion County habeas corpus matter. The state moved to dismiss the petition. Thereafter, the Accused failed to timely file a response to the motion to dismiss, and the court dismissed Goodlette's petition with prejudice on March 4, 1998.

8.

On March 4, 1998, when he was aware of a potential legal malpractice claim against him by Goodlette based on the above-described conduct, the Accused agreed to represent Goodlette to appeal the dismissal of his petition, without Goodlette's consent to the continued representation after full disclosure.

The Duane E. Nichols Matter

Case No. 02-113

Facts

9.

The Accused was retained by Duane E. Nichols ("Nichols") in late 1999 to file a Writ of Habeas Corpus in Marion County. The Petition was timely filed on February 4, 2000. The State timely filed a Motion to Dismiss the Petition. Nichols' response to the motion was due May 29, 2000. The Accused failed to file the Response until May 30, 2000, and the court dismissed the petition as untimely.

10.

After May 30, 2000, when he was aware of a potential legal malpractice claim against him by Nichols based on the above-described conduct, the Accused continued to represent Nichols without Nichols' consent to the continued representation after full disclosure.

Violations

11.

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

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.* By failing to avoid a conflict of interest and by neglecting a legal matter, the Accused violated his duty to his clients. *Standards*, §§ 4.3, 4.4.

B. *Mental State.* The Accused acted negligently, that 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.

C. *Injury.* Each of the clients suffered some injury in that the court dismissed their post conviction claims.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offense. The Accused was reprimanded in 2000 for a conflict of interest in violation of DR 5-105(C) and (E). *In re Coran*, 14 DB Rptr 136 (2000). *Standards*, § 9.22(a);

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

3. 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. Timely effort to rectify the consequences of the misconduct. *Standards*, § 9.22(d);

3. Cooperative attitude toward disciplinary proceeding. *Standards*, § 9.32(e); and

4. Remorse. *Standards*, § 9.32(l).

13.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in determining if a conflict of interest will or reasonably may affect his professional judgment, or is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, §§ 4.3, 4.4.

14.

Oregon case law is in accord. Failure to advise a client of a potential malpractice claim against the lawyer and obtain the client's consent to continued representation after full disclosure is a violation of DR 5-101(A). See *In re McCurdy*, 13 DB Rptr 107 (1999) (lawyer reprimanded for failing to advise client of malpractice claim and engaging in conduct prejudicial to the administration of justice); *In re Lafky*, 13 DB Rptr 114 (1999) (lawyer reprimanded for failing to advise client of potential malpractice claim and improperly withdrawing from employment). See also *In re Lawrence*, 332 Or 502, 31 P3d 1078 (2001), where the lawyer was suspended for 60 days for, among other things, continuing to represent a domestic relations client after committing legal malpractice in the client's matter, without full disclosure to, and informed consent from, the client.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A) and DR 6-101(B), the sanction to be effective upon approval by the Disciplinary Board.

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) on July 20, 2002. 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 July 2002.

/s/ Theodore C. Coran

Theodore C. Coran

OSB No. 82226

EXECUTED this 31st day of July 2002.

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. 01-206
)
VICTORIA E. HATCH,)
)
Accused.)

Bar Counsel: J. Michael Dwyer, Esq.
Counsel for the Accused: Christopher Hardman, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: August 12, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Victoria E. Hatch (hereinafter “Accused”) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is reprimanded for violation of DR 1-102(A)(4) of the Code of Professional Responsibility.

DATED this 12th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Victoria E. Hatch, 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, Victoria E. Hatch, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1988, and has been a member of the Oregon State Bar since that time, having her office and place of business in Clackamas County, Oregon.

3.

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

4.

On November 17, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(3) and DR 1-102(A)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

In or about 1996, the Accused provided legal services to Rebecca Loprinzi (hereinafter “Loprinzi”) for which Loprinzi owed the Accused attorney fees. In or about February 1997, the Accused filed a lawsuit against Loprinzi, *Victoria Hatch & Associates v. Rebecca Loprinzi*, Multnomah County Circuit Court Case No. 97C892164, for the attorney fees Loprinzi owed to the Accused (hereinafter “Attorney Fee claim”).

6.

The Accused and Loprinzi submitted the Attorney Fee claim to arbitration. The arbitrators entered an award in favor of the Accused (hereinafter “Arbitration Award”). On or about April 15, 1998, Loprinzi submitted an objection to the Arbitration Award (hereinafter “Objection”) with the court in Case No. 97C892164

and served a copy of the Objection on the Accused. Loprinzi did not praecipe or otherwise schedule the Objection for hearing.

7.

A clerk of the court advised the Accused that she should commence a new proceeding to file and obtain a money judgment on the Arbitration Award. On or about August 4, 1998, the Accused filed the Arbitration Award and notified Loprinzi of the new proceeding, *Rebecca Loprinzi v. Victoria Hatch PC*, Multnomah County Circuit Court Case No. 980805739. On or about September 22, 1998, the Accused filed an affidavit for money judgment and a form of money judgment in the new proceeding. The Accused represented to the court in the affidavit that no objection to the Arbitration Award had been filed in the new proceeding.

8.

The Accused did not tell the court that Loprinzi had filed or submitted an objection to the Arbitration Award in *Victoria Hatch & Associates v. Rebecca Loprinzi*, Multnomah County Circuit Court Case No. 97C892164, or that she had commenced a new proceeding to file the Arbitration Award. The court signed and filed the money judgment in favor of the Accused and against Loprinzi in *Rebecca Loprinzi v. Victoria Hatch PC*, Multnomah County Circuit Court Case No. 980805739.

9.

Based on the foregoing, the Accused admits that her conduct constituted conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(4) of the Code of Professional Responsibility. 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, is dismissed.

Sanction

10.

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

A. *Duty Violated.* The Accused violated her duties to the legal system and the profession. *Standards*, §§ 6.1, 7.0.

B. *Mental State.* “Negligence” is defined as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in

the situation. *Standards*, p. 7. The Accused acted negligently when she failed to clarify that her statements to the court, while technically correct, did not present a complete account of Loprinzi's position in the dispute.

C. *Injury*. Injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused actual injury to court. After the Accused's money judgment was filed and the court was notified that Loprinzi had filed an objection to the Arbitration Award in the original case, the court was required to utilize valuable court time and resources to resolve the matter. The court held a hearing to set aside the judgment. The court also held a hearing on the objection, but determined that it was without merit and again entered a money judgment in favor of the Accused for the Arbitration Award.

D. *Aggravating Factors*. Aggravating factors include:

The Accused was admitted to practice in 1988 and has substantial experience in the practice of law. *Standards*, § 9.22(a).

E. *Mitigating Factors*. Mitigating factors include:

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

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

11.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.13. Oregon case law is in accord. *See, e.g., In re McCurdy*, 13 DB Rptr 107 (1999).

12.

Consistent with 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).

13.

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.

DATED this 7th day of August 2002.

/s/ Victoria E. Hatch

Victoria E. Hatch

OSB No. 88338

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. 99-29
)	
CHARLES M. GUDGER III,)	
)	
Accused.)	

Bar Counsel:	Stephen J.R. Shepard, Esq.
Counsel for the Accused:	Gregory L. Gudger, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C), DR 5-105(E), and DR 6-101(A). Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	August 31, 2002

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 120 days, effective three days after approval of this stipulation, for violations of DR 5-105(C), DR 5-105(E), and DR 6-101(A) of the Code of Professional Responsibility.

DATED this 28th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Gregory E. Skillman
Gregory E. Skillman, Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Charles M. Gudger III, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Charles M. Gudger III, 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, except as noted herein, having his office and place of business in Lane County, Oregon. The Accused has been suspended from the practice of law since July 13, 1999, for failing to pay his PLF assessment.

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 18, 2002, 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 5-105(C), DR 5-105(E), and DR 6-101(A) 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.

Hunt Family Trust

Facts

5.

On March 14, 1994, sisters Nelda Hunt (hereinafter “Nelda”) and Emily Hunt (hereinafter “Emily”) retained the Accused to assist them in estate planning. It was Nelda’s intent that Emily’s financial needs be taken care of should she predecease Emily. As a result of his consultation with them, the Accused recommended that Nelda create a revocable living trust with a pour over will. He also recommended that the living trust contain a supplemental needs trust for the benefit of Emily, should Nelda predecease Emily. In connection with his recommendation, the Accused

informed Nelda that as a result of the supplemental needs trust, Emily would have access to trust funds.

6.

The Accused prepared a revocable living trust agreement (hereinafter "Hunt Family Trust"), naming Nelda as trustee and Ernest Lundeen (hereinafter "Lundeen") as successor trustee and residual beneficiary. The Accused also prepared a will for Nelda, naming Lundeen as personal representative. Nelda executed both documents on March 17, 1994. She died on March 27, 1994.

7.

The terms of the supplemental needs trust prepared by the Accused did not give Emily access to any funds, allowed for distribution of funds for Emily's benefit only if she did not have sufficient funds to pay her own basic living expenses, allowed for funds to be used only to pay Emily's basic living expenses, and gave the trustee absolute discretion to determine the extent to which Emily must use her own income, support or property before any funds could be distributed for her benefit.

8.

In early April 1994, the Accused was retained by Lundeen to represent him as the personal representative of Nelda's estate.

9.

In late April 1994, Emily informed the Accused that she did not want to manage her own funds and that she wanted her funds to be managed by Lundeen as trustee of the Hunt Family Trust. Emily delivered her funds to the Accused. He placed those funds into his lawyer trust account and wrote a check from that account for the same amount payable to Hunt Family Trust, Ernest Lundeen, its Trustee. The Accused delivered these funds to Lundeen. Lundeen deposited those funds into the Hunt Family Trust.

10.

Beginning on July 2, 1994, Lundeen refused to distribute any funds from the Hunt Family Trust to Emily or to others for Emily's benefit. Lundeen also refused to return to Emily the funds the Accused had delivered to him in April 1994.

11.

With regard to the supplemental needs trust, the Accused admits that he did not act with the thoroughness and preparation reasonably necessary for the representation in that he: did not prepare a trust document that conformed with Nelda's intent that Emily's financial needs be taken care of should she predecease Emily; did not prepare a trust that conformed with Nelda's intent that Emily have

access to trust funds; and did not inquire of Lundeen whether he had the experience and knowledge necessary to be a trustee of a supplemental needs trust.

12.

With regard to the funds delivered to Lundeen in April 1994, the Accused admits that he did not act with the skill and thoroughness reasonably necessary for the representation in that he: failed to identify the source of the funds; and failed to inform Lundeen that the funds belonged to Emily.

Representation of Emily

13.

The Accused's representation of Lundeen, as personal representative of Nelda's estate, terminated on July 6, 1994.

14.

In September 1994, the Accused undertook to represent Emily in claims against Lundeen for reformation or rescission of the Hunt Family Trust, and for return of the funds the Accused transferred to Lundeen in April 1994, as described in paragraph 9.

15.

The Accused failed to obtain consent after full disclosure from Lundeen and Emily before undertaking to represent Emily as described in paragraph 14, even though the interests of Lundeen and Emily with regard to the claims described in paragraph 14 were adverse and those matters were significantly related to the Accused's prior representation of Lundeen.

Lee Larson

16.

On April 27, 1994, Walter Hunt (hereinafter "Walter") retained the Accused to represent him in estate planning. Walter was Nelda and Emily's brother. At that meeting, Walter informed the Accused that he used the name Lee Larson as an alias.

17.

Before April 27, 1994 the Accused discovered assets jointly owned by Nelda and Lee Larson.

18.

The Accused failed to obtain consent after full disclosure from Lundeen and Walter before undertaking to represent Walter as described in paragraph 16, even though the interests of Lundeen, as personal representative of Nelda's estate, and

Walter with regard to the assets jointly owned by Nelda and Lee Larson were adverse.

Violations

19.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 18, he violated DR 5-105(C), DR 5-105(E), and DR 6-101(A) of the Code of Professional Responsibility.

Sanction

20.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following 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 Nelda and Emily to provide them with competent representation, and his duty to Emily, Lundeen, and Walter to avoid conflicts of interest. *Standards*, §§ 4.3, 4.4.

B. *Mental State.* “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, 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 undertook to represent Emily in September 1994 knowing that her interests with regard to the Hunt Family Trust and the funds in that trust were adverse to Lundeen. The Accused also knew that the dispute concerned the language of the trust he prepared and the circumstances surrounding the funds he delivered to Lundeen in April 1994.

The Accused negligently failed to provide competent representation to Nelda and Emily, and negligently undertook to represent Walter when his interests with regard to the assets owned jointly by Nelda and Lee Larson were adverse to Lundeen’s interests.

C. *Injury.* Injury may be either actual or potential. The Accused’s incompetence caused actual injury to Nelda because the trust did not fulfill her intentions with regard to Emily. The Accused’s incompetence also caused actual injury to Emily because she lost the use of her own funds and incurred expenses pursuing Lundeen for the return of those funds. Those funds were never returned to her or her estate.

Walter, Emily, and Lundeen sustained potential injury as a result of the Accused's improper conflicts of interest. Because of the undisclosed conflicts of interests, they did not understand or consent to the Accused's divided loyalty.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offenses. In 1987, the Accused was admonished for violating DR 5-105(B), now DR 5-105(E). In 1991, the Accused was admonished for violating DR 5-105(C). In 1993, the Accused stipulated to a 90-day suspension, 60 of which was stayed pending two years of probation, for violating DR 6-101(B) in three matters, and DR 1-102(A)(4) in one matter. *In re Gudger*, SC S40449 (1993). *Standards*, § 9.22(a).

2. Multiple offenses. *Standards*, § 9.22(d).

3. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1973. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. Cooperative attitude toward proceedings. *Standards*, § 9.32(e).

3. Remorse. *Standards*, § 9.32(l).

21.

The *ABA Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, §§ 4.53, 4.32, 8.32.

22.

Although no Oregon case contains the exact violations described herein, various cases provide guidance in each of the areas of violation. When the violations committed by the Accused are taken together as a whole, and in light of his prior disciplinary record, Oregon case law suggests that a term of suspension is warranted. *See In re Hockett*, 303 Or 150, 734 P2d 877 (1987); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (patent violation of DR 5-105 justifies a 30-day suspension); *In re Rudie*, 294 Or 740, 662 P2d 321 (1983) (lawyer who had been reprimanded two years earlier for neglect, was suspended for seven months for failing to provide competent representation, neglect, and intentionally failing to carry out a contract of employment).

23.

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 120 days, to commence three days after approval of this stipulation by the Disciplinary Board.

24.

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 1st day of August 2002.

/s/ Charles M. Gudger

Charles M. Gudger III

OSB No. 73114

EXECUTED this 7th day of August 2002.

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. 01-119
)
PAUL D. GEAR,)
)
Accused.)

Bar Counsel: Gerald Henry Itkin, Esq.
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), and DR 7-101(A)(2). Stipulation for Discipline. 180-day suspension.
Effective Date of Order: September 2, 2002

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 a period of 180 days, effective three days after approval of the stipulation for violation of violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), and DR 7-101(A)(2).

DATED this 30th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Paul D. Gear, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Paul Douglas Gear, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, and has been a member of the Oregon State Bar continuously since that time, except as noted herein, 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 September 26, 2001, 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), DR 1-102(A)(4), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), and DR 7-101(A)(2) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On April 2, 1999, Sunflower Apartments (hereinafter “Sunflower”) filed a complaint in Washington County Circuit Court against Patric Callahan (hereinafter “Callahan”) for forcible entry and detainer. On April 23, 1999, the court set aside a judgment evicting Callahan on the condition that he pay one month’s rent of \$465.00 into court. Callahan paid those funds into court.

6.

In late April 1999, the Accused undertook to represent Callahan in the matter and filed a motion for directed verdict and money judgment on Callahan’s behalf. In

May 1999, the court granted the motion and on June 5, 1999, the court entered a money judgment in favor of Callahan.

7.

Beginning shortly after the judgment was signed and until July 2000, Callahan made numerous attempts to contact the Accused about return of the funds he had paid into court. The Accused failed to respond to Callahan and failed to take any action to have the funds returned to him.

8.

On July 21, 2000, the court, in response to a July 14, 2002, letter from Callahan requesting return of the funds, sent a letter to the Accused and to Warren Wadsworth (hereinafter “Wadsworth”), the lawyer representing Sunflower, encouraging them to confer and agree upon the distribution of the funds held by the court. On August 17, 2000, Wadsworth reported to the court that he attempted to confer with the Accused, but none of his telephone calls had been returned. He requested that some of the funds held by the court be distributed to Sunflower. The Accused failed to respond to the court’s July 21, 2000, letter, failed to respond to Wadsworth’s attempts to contact him, and failed to take any action on the matter.

9.

The court set a hearing in the matter for October 9, 2000. On October 6, 2000, the Accused informed Wadsworth that he would personally compensate Sunflower for the amount Wadsworth had requested on August 17, 2000. The Accused then represented to the court that the matter was settled. At the time the Accused made this representation he knew that it was false because he had not communicated with Callahan about the settlement.

10.

After the Accused reported the matter settled, the court instructed him to submit settlement documents to the court. The Accused failed to submit settlement documents to the court and failed to take any action on the matter.

11.

On January 29, 2001, because the Accused did not submit anything to the court, the matter was set for hearing on March 2, 2001. After the Accused received notice of the March 2, 2001, hearing he failed to submit settlement documents to the court and failed to take any action on the matter.

12.

On March 2, 2001, the court held a hearing and ordered distribution of the funds. The Accused did not appear at that hearing.

13.

On February 7, 2001, the Oregon State Bar received a complaint regarding the Accused's conduct, as described in paragraphs 7 through 11. On April 19, 2001, in the course of investigating that complaint, Disciplinary Counsel's Office requested that the Accused provide additional information regarding the matter by May 3, 2001. The Accused did not respond to that request. On May 9, 2001, Disciplinary Counsel's Office again requested the Accused respond by May 16, 2001. On May 17, 2001, the Accused was given an extension until May 25, 2001, to respond. The Accused failed to respond on May 25, 2001, or thereafter.

Violations

14.

The Accused admits that, by engaging in the conduct described in paragraphs 7 through 13, he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), and DR 7-101(A)(2) of the Code of Professional Responsibility.

Sanction

15.

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 various duties in this matter. He violated his duty to act with reasonable diligence and promptness and intentionally failed to pursue Callahan's legal matter. *Standards*, § 4.4. He also violated his duty to be candid with the court and to avoid engaging in conduct prejudicial to the administration of justice. *Standards*, § 6.1. Finally, he violated his duty to respond to inquiries from Disciplinary Counsel's Office. *Standards*, § 7.0.

B. *Mental State.* "Intent" is the conscious objective or purpose to accomplish a particular result. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7.

The Accused intentionally failed to seek Callahan's lawful objectives and intentionally failed to carry out his contract of employment with Callahan. The Accused knowingly (1) made a misrepresentation to the court, (2) engaged in conduct prejudicial to the administration of justice, (3) neglected a legal matter entrusted to him, and (4) failed to respond to inquiries from Disciplinary Counsel's Office.

C. *Injury*. Injury may be either actual or potential. The Accused's conduct caused actual injury to Callahan because there was a significant delay in his receipt of the funds he had paid into court. There was also actual harm to the judicial system because it expended time and resources pursuing the matter to completion. The Accused's failure to cooperate with the Bar's investigation of his conduct caused actual harm to both the legal profession and to the public, because he delayed the Bar's investigation and, consequently, the resolution of the complaint against him. *In re Miles*, 324 Or 218, 322, 923 P2d 1219 (1996).

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. Effective September 17, 2001, the Accused was suspended from the practice of law for six months. *In re Gear*, 15 DB Rptr 200 (2001). However, the prior discipline is given little weight in determining the appropriate sanction in this matter because it was imposed after the Accused engaged in the conduct underlying the present proceeding. *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

2. A pattern of misconduct. The Accused's misdeeds occurred over the course of 19 months. *Standards*, § 9.22(c).

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

4. Bad-faith obstruction of the disciplinary proceeding by failing to respond to numerous inquiries by Disciplinary Counsel's Office. *Standards*, § 9.22(e).

5. Vulnerability of victim. Callahan relied upon the Accused to complete his legal matter. *Standards*, § 9.22(h).

E. *Mitigating Factors*. Mitigating factors include:

1. Personal and emotional problems. *Standards*, § 9.32(c).

2. Remorse. *Standards* § 9.32(l).

16.

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *See Standards*, §§ 4.42, 6.12, 7.2.

17.

Oregon case law suggests that the Accused should be suspended for a period of six months. *See In re Purvis*, 306 Or 522, 760 P2d 254 (1988) (lawyer who failed to pursue a child support matter even though he told his client that papers had been prepared and action had been taken and who failed to cooperate with the Bar's inquiry into the matter was suspended for six months); *In re Boland*, 288 Or 133, 602 P2d 1078 (1979) (six-month suspension for lawyer who failed to appear in court on behalf of clients and thereby permitted lawsuit to be dismissed for lack of prosecution, intentionally failed to carry out contracts of employment, intentionally

prejudiced or damaged client, and permitted default judgment to be entered against client).

18.

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 six months, to commence three days after approval of this stipulation by the Disciplinary Board.

19.

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 9th day of August 2002.

/s/ Paul D. Gear

Paul D. Gear
OSB No. 96293

EXECUTED this 12th day of August 2002.

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. 99-137
)
NEAL C. LEMERY,)
)
Accused.)

Bar Counsel: Douglas G. Combs, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A)(1). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: August 30, 2002

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 5-101(A)(1).

DATED this 30th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Janice Krem
Janice Krem, Esq., Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Neal C. Lemery, 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, Neal C. Lemery, 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 Tillamook County, Oregon.

3.

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

4.

On March 17, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A)(1) and DR 7-101(A)(1) of the Code of Professional Responsibility. The Bar filed its formal complaint against the Accused on June 27, 2001; on September 25, 2001, the Accused filed his answer. On May 22, 2002, the trial panel of the Disciplinary Board was appointed to hear the matter. On that same date, Disciplinary Counsel took the Accused’s deposition.

5.

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

Facts

6.

Richard Hurley (“Hurley”) was the successor trustee of the John and Martha Pahjola Revocable Living Trust (“Pahjola Trust”). Hurley had also been appointed to serve as conservator of Martha Pahjola’s estate (“Pahjola estate”). In July 1996, Hurley retained the Accused to represent his interests as trustee and conservator. Hurley sought the Accused’s assistance in achieving the following objectives:

- (a) removing and replacing Susan Youngren (“Youngren”), the existing guardian of Martha Pahjola;
- (b) disputing a claim by the Nichols Nursing Home arising from care given to Martha Pahjola against her wishes; and
- (c) preparing and filing a conservatorship accounting with the Clatsop County Circuit Court.

In August 1996, the Accused recommended to Hurley that Candace Wilkins (“Wilkins”) be appointed to replace Youngren as guardian. The Accused also recommended that Wilkins replace Hurley as successor conservator of the Pahjola estate. At that time, the Accused and Wilkins were friends and the Accused employed Wilkins part-time as a paralegal in his office. Furthermore, Wilkins, the Accused, and another employee of the Accused’s office were directors and incorporators of Coastal Guardian-Conservator Services, Inc. (“Coastal Guardian”), a nonprofit corporation. Wilkins operated Coastal Guardian out of office space she shared with the Accused’s law office.

7.

Wilkins was appointed to serve as Martha Pahjola’s guardian and as conservator of the Pahjola estate. Thereafter, Wilkins failed to properly manage the Pahjola estate and, by order dated September 16, 1998, the Clatsop County Circuit Court surcharged her \$10,437 as a result of her payment of fees to a third-party case manager.

8.

The exercise of the Accused’s professional judgment on behalf of Hurley was or reasonably may have been affected by his close professional and personal relationship with Wilkins. When the Accused recommended to Hurley that Wilkins be appointed to serve as Pahjola’s guardian and conservator of the Pahjola estate, he did not disclose to Hurley that his professional and personal relationship with Wilkins might reasonably affect the exercise of his professional judgment on behalf of Hurley. Furthermore, the Accused did not recommend that Hurley seek independent legal advice to determine whether Hurley should consent to the Accused’s continued representation of him.

Violations

9.

The Accused stipulates that, by continuing to represent Hurley when the exercise of his professional judgment may or may reasonably have been affected by his own interests, without obtaining Hurley’s consent after full disclosure, he violated DR 5-101(A)(1) of the Code of Professional Responsibility. Upon further factual

investigation, the parties agree that the alleged violation of DR 7-101(A)(1) should be and, upon approval of this stipulation, will be 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* (“Standards”). *Standards* requires 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 to Hurley, his client, to avoid conflicts of interest. *Standards*, § 4.3.

B. *Mental State.* The Accused was negligent in determining whether his representation of Hurley may be materially affected by his own interests.

C. *Injury.* The Accused’s conduct did not cause an actual injury directly to Hurley. However, the Pahjola estate suffered significant injury as a result of mismanagement by Wilkins, who the Accused had recommended to Hurley without disclosing his conflict of interest.

D. *Aggravating Factors.* Aggravating factors include:

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

2. The Accused received a public reprimand in 1993 for violating DR 5-109(B) (representing a private client when he participated in the same matter while a public officer or employee) and DR 7-104(A)(1) (communicating with a represented party). *In re Lemery*, 7 DB Rptr 125 (1993). *Standards*, § 9.22(a).

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 has been cooperative during the investigation and formal proceedings. *Standards*, § 9.32(e).

3. The Accused is of good moral character and has a good reputation in his community. *Standards*, § 9.32(g).

4. The Accused’s prior discipline is remote in time and not similar to the present violation. *Standards*, § 9.32(m).

11.

The *Standards* provide that a reprimand is generally appropriate when an attorney is negligent in determining whether his representation of a client may be

materially affected by his own interests and causes a potential injury to a client. *Standards*, § 4.33. Oregon case law is in accord. See *In re Carey*, 307 Or 315, 767 P2d 438 (1989); *In re Magar*, 296 Or 799, 681 P2d 93 (1984); *In re Redden*, 15 DB Rptr 148 (2001).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A)(1), the sanction to be effective the date this stipulation is approved by the Disciplinary Board.

13.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herewith was approved by the State Professional Responsibility Board (SPRB) on July 20, 2002. 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 August 2002.

/s/ Neal C. Lemery

Neal C. Lemery

OSB No. 80072

EXECUTED this 20th day of August 2002.

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. 01-166
)
THOMAS J. LEKAS,)
)
Accused.)

Bar Counsel: David L. Slader, Esq.
Counsel for the Accused: Thomas E. Cooney, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(A).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: August 30, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Thomas J. Lekas (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is reprimanded for violation of DR 5-101(A) and DR 6-101(A) of the Code of Professional Responsibility.

DATED this 30th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Janice Krem
Janice Krem, Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Thomas J. Lekas, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

The 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 J. Lekas, 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 Washington County, Oregon.

3.

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

4.

On October 20, 2001, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 5-101(A) and DR 6-101(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.

Alan J. Fraser (hereinafter “Fraser”), a native of Canada, immigrated to the United States in 1955. The United States Immigration and Naturalization Service (hereinafter “INS”) initiated a proceeding to remove Fraser from the United States. Fraser appeared *pro se* at the first master calendar hearing in August 2000, in Seattle, Washington. The immigration proceeding was continued and venue changed to Portland, Oregon. The immigration court scheduled another master calendar hearing in Portland for September 26, 2000, and notified Fraser of the hearing date. Thereafter, Fraser’s brother-in law, an inactive Oregon lawyer, asked the Accused to represent Fraser. Fraser retained the Accused to represent him.

6.

On or about September 18, 2000, the Accused filed a notice of appearance with the Executive Office for Immigration Review. The Accused also filed a motion to continue the case, which was denied. The Accused failed to make any inquiry to determine the status of the motion and did not appear at the September 26, 2000, master calendar hearing. 8 CFR §3.26 provides that in any removal proceeding before an Immigration Judge in which the alien fails to appear, the immigration court shall order the alien removed *in absentia* if certain conditions are met. As a courtesy, the immigration judge telephoned the Accused and an *in absentia* order was avoided. The case was continued until October 19, 2000. The Accused did not inform Fraser that the court had denied his motion to continue the case, that he had not appeared at the scheduled hearing, or that an *in absentia* order had been avoided because the immigration judge telephoned him. The Accused appeared with Fraser in the immigration court on October 19, 2000. The court granted the Accused's request that Fraser be excused from appearance at the next scheduled master calendar hearing, December 19, 2000. The Accused appeared at the December hearing, but delayed informing Fraser of what had occurred.

7.

The immigration court next scheduled Fraser's immigration case for a master calendar hearing on February 22, 2001. The Accused received notice of the hearing, but failed to send a copy of the notice to Fraser or otherwise notify him about the hearing. Fraser did not know about the hearing date. Neither the Accused nor Fraser appeared at the February 22, 2001, hearing. The immigration court entered an *in absentia* order, which ordered Fraser removed from the United States. The Accused received a copy of the order on or about February 26, but did not provide Fraser with a copy of the order or otherwise notify him that the immigration court had ordered him removed from the United States.

8.

The Accused continued to represent Fraser when the exercise of his professional judgment on Fraser's behalf was likely to be or reasonably may have been affected by the Accused's own financial, business, property, or personal interests. The Accused did not obtain Fraser's consent to his continued representation, after full disclosure.

9.

On receipt of the removal order and without Fraser's knowledge and consent, the Accused filed a motion for reconsideration of the *absentia* order in the form of a letter dated February 27, 2001. The Accused reported that he had miscalendared the February hearing. 8 CFR §3.22 provides for motions to reopen or for reconsideration, with express requirements. The Accused did not review and was otherwise unfamiliar with the requirements of a motion for reconsideration before he

submitted the motion to the court. The letter the Accused sent to the immigration court did not establish exceptional circumstances or otherwise comply with the requirements of the law in form or substance. The court denied the motion for reconsideration on March 1, 2001, and sent a copy of the order to the Accused. Thereafter, the Accused failed to timely provide Fraser with a copy of the motion for reconsideration and order denying the motion or otherwise timely notify Fraser about such matters. On or about March 9, 2001, the Accused notified the Professional Liability Fund (hereinafter “PLF”) about the circumstances of the case. The Accused did not notify Fraser about the *absentia* order, the motion for reconsideration, or the court’s order denying the motion for reconsideration until about March 22, 2001.

10.

Based on the foregoing, the Accused admits that he violated DR 5-101(A) and DR 6-101(A) of the Code of Professional Responsibility.

Sanction

11.

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.* The Accused violated his duties to his client and the profession. *Standards*, §§ 4.3, 4.5, 7.0.

B. *Mental State.* The Accused’s conduct demonstrates that he 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.

C. *Injury.* The Accused’s conduct resulted in actual and potential injury to the Accused’s client. Because the Accused failed to appear, the court entered an order directing that Fraser be removed from the United States. The Accused delayed notifying his client about the *absentia* order and action taken in the case for about a month. During that time, the client was not aware that the immigration court had ordered that he be removed from the country. The Accused incorrectly assumed that the *absentia* order would be easily set aside. He failed to allege the existence of exceptional circumstances when he sought reconsideration of the order. The Accused cooperated fully with Fraser’s new lawyer, who was retained by the PLF. Fraser’s new lawyer was able to obtain the agreement of the INS and the Court of Immigration Appeals to vacate the *absentia* order and remand the case to the immigration court for further proceedings because the Bar had authorized a disciplinary proceeding against the Accused concerning his handling of Fraser’s case.

The order was signed on January 9, 2002. This action returned Fraser to the same position that existed before the *absentia* order and allowed him to adjudicate whether he is entitled to remain in the United States.

D. *Aggravating Factors*. Aggravating factors include:

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

2. The Accused's client was vulnerable. *Standards*, § 9.22(h).

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. The Accused made a good-faith effort to rectify the consequences of his conduct by reporting the matter to the PLF and cooperating with counsel retained by the PLF to attempt to repair Fraser's immigration case. The Accused also refunded all fees paid for his legal services. *Standards*, § 9.32(d).

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

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

12.

The *Standards* provide that 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. *Standards*, § 4.33. Reprimand is also appropriate when a lawyer (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client, or (b) is negligent in determining whether he is competent to handle a legal matter and causes injury or potential injury to a client. *Standards*, § 4.53. Oregon case law is in accord. *In re Odman*, 297 Or 744, 687 P2d 153 (1984) (reprimand for violation of DR 6-101(B), DR 6-101(A), and DR 5-105(C)); *In re Boland*, 12 DB Rptr 43 (1998) (reprimand for violation of DR 6-101(A) and DR 6-101(B)); *In re Deguc*, 11 DB Rptr 201 (1997) (reprimand for violation of DR 6-101(A), DR 6-101(B), and DR 9-101(A)); *In re Redden*, 15 DB Rptr 148 (2001) (reprimand for violation for DR 5-101(A) and DR 5-105(E)).

13.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that a reprimand is an appropriate sanction. The Accused agrees to accept a reprimand for violation of DR 5-101(A) and DR 6-101(A) of the Code of Professional Responsibility.

14.

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

DATED this 14th day of August 2002.

/s/ Thomas J. Lekas

Thomas J. Lekas

OSB No. 60049

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. 01-57
)	
HERB WEISSER,)	
)	
Accused.)	

Bar Counsel:	Timothy Miller, Esq.
Counsel for the Accused:	Christopher Hardman, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	August 30, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Herb Weisser and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 5-101(A) of the Code of Professional Responsibility.

DATED this 30th day of August 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Herb Weisser, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

The 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 20, 1985, 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 for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On November 17, 2001, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation of DR 5-101(A) and DR 5-110(A) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 5-110(A) as set forth in the Bar’s Formal Complaint, should be and, upon the approval of this stipulation, is dismissed. 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.

Beginning December 1999 through the present time, the Accused represented Jacqueline Hegnauer (hereinafter “Hegnauer”) concerning dissolution of marriage and postdissolution matters, *Jacqueline S. Hegnauer and David A. Hegnauer*, Clackamas County Case No. 99-04-494. During the Accused’s representation and in or about and after May 2000, the Accused and Hagnauer acknowledged a mutual personal interest in one another and engaged in a personal relationship.

6.

The Accused continued employment as Hegnauer's attorney when the exercise of his professional judgment on her behalf was likely to be or may reasonably have been affected by his own personal interests. The Accused failed to obtain Hegnauer's consent to his representation after full disclosure as defined by DR 10-101(B).

7.

The Accused admits that the aforesaid conduct constituted violation of DR 5-101(A), lawyer self-interest conflict.

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 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*. The Accused violated his duty to his client. *Standards*, § 4.3.

B. *Mental State*. The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious awareness to accomplish a particular result. "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. The Accused recognized that rules existed prohibiting certain conduct. However, he failed to provide the client with the disclosures he was required to make under DR 10-101(B). *Standards*, p. 7.

C. *Injury*. The Accused's professional judgment on the client's behalf does not appear to 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:

The Accused has substantial experience in the practice of law having been admitted to practice in 1985. *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 did not act with dishonest or selfish motives. *Standards*, § 9.32(b).

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

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

9.

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

10.

Case law is in accord. *See, e.g., In re Escobar*, 14 DB Rptr 84 (2000) (public reprimand for violation of DR 5-101(A)); *In re McCurdy*, 13 DB Rptr 107 (1999) (public reprimand for violation of DR 1-102(A)(4) and DR 5-101(A)).

11.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A). The Accused shall also pay the Bar's costs in the amount of \$525.

12.

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

DATED this 20th day of August 2002.

/s/ Herb Weisser

Herb Weisser

OSB No. 85361

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. 02-20
)
BEA ANNE ALLAIRE,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 9-101(C)(3).
Stipulation for Discipline. 90-day suspension.
Effective Date of Order: September 18, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Bea Anne Allaire and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended for 90 days, effective three business days after the date of this order for violation of DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 13th day of September 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Bea Anne Allaire, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to 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, Bea Anne Allaire, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1999, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On June 14, 2002, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts and Violations

5.

In October 2000, Pat Lawson (hereinafter “Lawson”) retained the Accused to prepare a simple will, an advance directive for health care decisions, and a durable power of attorney (hereinafter “Estate Planning Documents”). The terms of a written fee agreement provided that Lawson would pay the Accused \$100 per hour for the legal services to be performed and the Accused would provide Lawson with monthly statements detailing her time and services. Lawson paid a \$200 retainer to the Accused.

6.

The Accused prepared drafts of the Estate Planning Documents and transmitted them to Lawson on or about March 13, 2001. On April 11, 2001, Lawson reported that the documents contained some errors and returned them to the Accused. The

Accused prepared new drafts of the documents, which she presented to Lawson on or about May 30, 2001. Lawson again reviewed the documents and found that some of the errors remained. Lawson returned the documents to the Accused for correction on or about June 8, 2001. Thereafter, the Accused failed to complete the legal services she had agreed to perform and failed to communicate with her client.

7.

After hearing nothing from the Accused, in August 2001, Lawson attempted to contact the Accused by telephone. Lawson left a message for the Accused on one occasion, but was unable to do so on other occasions because the Accused's answering machine was not operating. On August 20, 2001, Lawson sent a letter to the Accused in which she informed the Accused that she had contacted the Bar and wanted the final documents. The Accused received Lawson's telephone message and letter, but did not respond. Thereafter, Lawson retained the services of another lawyer to perform the legal services the Accused failed to perform.

8.

Lawson filed a complaint with the Bar on September 21, 2001. On October 3 and October 25, 2001, the Bar asked the Accused to provide an explanation. The Accused received the Bar's correspondence, but did not respond. The matter was referred to the Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. The Accused cooperated with the LPRC in the investigation of the complaint.

9.

At no time during the representation or after Lawson filed a complaint with the Bar did the Accused provide Lawson with a statement of her time and services or otherwise account to her client for the funds paid for legal services.

10.

The Accused admits that the aforesaid conduct constituted violation of DR 1-103(C), failure to cooperate with disciplinary authorities; DR 6-101(B), neglect of a legal matter entrusted to a lawyer; DR 7-101(A)(1), intentional failure to seek the lawful objectives of the client; DR 7-101(A)(2), intentional failure to carry out a contract of employment; and DR 9-101(C)(3), failure to account for client funds.

Sanction

11.

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 the following factors: (1) the ethical duty violated; (2) the attorney's

mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty*. In violating DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 9-101(C)(3), the Accused violated duties to her client and the profession. *Standards*, §§ 4.1, 4.4, 4.6, 7.0.

B. *Mental State*. The Accused's conduct demonstrates knowledge. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious awareness to accomplish a particular result. *Standards*, p. 7.

C. *Injury*. The Accused's client and the profession were injured. The Accused did not complete the legal services she had agreed to perform. She also failed to provide the client with an accounting of the funds paid for the legal services and the client was therefore uncertain that the Accused actually earned the funds that were paid. The profession was also injured in that additional time and resources were required to investigate the Accused's conduct because she failed to respond to the inquires of the Disciplinary Counsel's Office.

D. *Aggravating Factors*. Aggravating factors include:

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

2. The Accused obstructed the investigation of her conduct by failing to respond to the inquiries of the Disciplinary Counsel's Office. *Standards*, § 9.22(e).

3. The Accused's client was vulnerable in that she did not have a will and relied on the Accused to promptly complete the legal services she agreed to perform. *Standards*, § 9.22(h).

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. The Accused had some emotional problems. *Standards*, § 9.32(c).

4. The Accused cooperated with the Local Professional Responsibility Committee and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

5. The Accused was inexperienced in the practice of law. *Standards*, § 9.32(f).

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

12.

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

causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension also is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2. Oregon case law is in accord. *See, e.g., In re Contois*, 15 DB Rptr 77 (2001) (60-day suspension for violation of DR 1-103(C) and DR 6-101(B)); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension for violation of DR 1-103(C) and DR 6-101(B)); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for two violations of DR 1-103(C)); *In re Mitchell*, 15 DB Rptr 206 (2001) (120-day suspension for violation of DR 1-103(C) (two charges) and DR 6-101(B)).

13.

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 90 days for violation of DR 1-103(C), DR 6-101(B), DR 7-101(A)(1), DR 7-101(A)(2), and DR 9-101(C)(3).

14.

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

DATED this 6th of September 2002.

/s/ Bea Anne Allaire

Bea Anne Allaire
OSB No. 99465

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. 97-189, 99-30, 99-31,
) 99-65
) SC S49777
JAMES DODGE,)
)
Accused.)

Bar Counsel: Gregory J. Miner, Esq.
Counsel for the Accused: Timothy Daly Smith, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),
DR 1-103(C), DR 2-106(A), DR 2-110(A)(2),
DR 2-110(B)(4), DR 6-101(A), DR 6-101(B),
DR 7-101(A)(2), DR 9-101(C)(3), and
DR 9-101(C)(4). Stipulation for Discipline.
Two-year suspension (21 months stayed; two-year
probation).
Effective Date of Order: October 15, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The Oregon State Bar and James Dodge have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved.

DATED this 20th day of September 2002.

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, James Dodge, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1983, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On July 15, 1999, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board. A copy of the Amended Formal Complaint is attached hereto and incorporated by reference herein. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

First Cause of Complaint

Facts

5.

The Accused represented Larry Delfs on a workers’ compensation claim, which was scheduled for hearing in May 1997. One month prior to the hearing date, Delfs instructed the Accused to postpone the hearing, but the Accused neither did so nor advised Delfs that the hearing was still scheduled. The Accused failed to prepare for the hearing and, on the hearing date, withdrew Delfs’ request for hearing. The opposing attorney moved to dismiss Delfs’ claim with prejudice, and the Accused took no action in response. Instead, the Accused falsely represented to opposing counsel that he had been forced to withdraw the hearing request because Delfs had not cooperated with him. One week later, the Accused withdrew from representing Delfs without disclosing to Delfs that he had failed to postpone the hearing, that he had withdrawn the request for hearing, or that the opposing counsel had sought

dismissal with prejudice. The Accused took no steps to avoid foreseeable prejudice to Delfs' rights.

Violations

6.

The Accused admits that by engaging in the conduct described in paragraph 5 herein, he violated DR 1-102(A)(3), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2).

Second Cause of Complaint

Facts

7.

During the course of Disciplinary Counsel's investigation of his conduct in the Delfs matter, the Accused again stated to the Bar that he had withdrawn Delfs' workers' compensation hearing request because he had received an adverse medical report shortly before the hearing.

Violations

8.

The Accused admits that by engaging in the conduct described in paragraph 7 herein, he violated DR 1-103(C).

Third Cause of Complaint

Facts

9.

In 1996, the Accused represented Randall Adolfs in a workers' compensation claim, which was pending before the Workers' Compensation Board, and in Adolfs' effort to obtain a disability pension through PERS. Adolfs paid the Accused a \$3,000 retainer. The Accused billed Adolfs for his legal work on both the workers' compensation and the PERS disability matter. The Accused did not obtain approval from an administrative law judge of the Workers' Compensation Board to charge or bill Adolfs legal fees in the workers' compensation claim, as required by ORS 656.386(1).

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraph 9 herein, he violated DR 2-106(A).

Fourth Cause of Complaint

Facts

11.

The Accused represented Jeanne Wells in her workers' compensation claim, which was scheduled for a contested case hearing on September 23, 1997. For a period of over two months prior to the hearing date, the Accused failed to respond to the employer's discovery demands; 12 days before the hearing date, the employer filed a motion to compel production and to postpone the hearing. The Accused did not respond and failed to appear for the hearing on September 23. When contacted by the judge, the Accused misrepresented the reasons he failed to appear and withdrew Wells' request for a hearing without her knowledge or consent. Wells' case was dismissed with prejudice. Two days later, the Accused requested that Wells' case be reinstated and justified his failure to appear at the September 23, 1997, hearing with a false claim that he believed the hearing had been set over. Wells terminated the Accused's employment and requested her file. The Accused did not return her file promptly. The following month, without Wells' knowledge or consent, the Accused filed a request to abate the dismissal of her claim, repeating his claim that he believed the Wells hearing had been set over.

Violations

12.

The Accused admits that by engaging in the conduct described in paragraph 11 herein, he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 2-110(B)(4), DR 6-101(B), DR 7-101(A)(2), and DR 9-101(C)(4).

Fifth Cause of Complaint

Facts

13.

The Accused represented Cesar Brabo in a workers' compensation claim, which was scheduled for a contested case hearing on July 23, 1998. The Accused failed to file an attorney retention agreement, failed to adequately prepare for the hearing, failed to appear at the hearing and failed to advise Brabo that he had not appeared at the hearing. After July 23, the Accused failed to take any action on Brabo's behalf, and Brabo's claim was dismissed with prejudice on August 7. Thereafter, the Accused moved to reinstate Brabo's claim, despite the fact that the claim was moot. The Accused failed to acquire the legal knowledge or apply the skill, thoroughness, or preparation reasonably necessary to represent Brabo.

Violations

14.

The Accused admits that in engaging in the conduct described in paragraph 13 herein, he violated DR 6-101(A) and DR 6-101(B).

Sixth Cause of Complaint

Facts

15.

In September 1996, the Accused undertook to represent Duane Fandrem to obtain Social Security benefits, unemployment compensation, and long-term disability insurance benefits. Fandrem paid the Accused a \$1,000 retainer. From September 1996 to June 1998, the Accused took no substantial action to advance Fandrem's interests, failed to advise Fandrem of the status of his claims, failed to respond to Fandrem's inquiries, and failed to read documents he received from Fandrem. The Accused also failed to account to Fandrem for his retainer.

Violations

16.

The Accused admits that in engaging in the conduct described in paragraph 15 herein, he violated DR 6-101(B) and DR 9-101(C)(3).

Sanction

17.

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 duties to his clients to preserve their property, to represent them diligently and competently, and to be candid with them. *Standards*, §§ 4.1, 4.4, 4.5, 4.6. The Accused also violated his duty to the public to maintain his personal integrity. *Standards*, § 5.1. Finally, the Accused violated his duties to the legal system and as a professional to avoid conduct prejudicial to the administration of justice, to refrain from charging improper fees, and to avoid improperly withdrawing from representation. *Standards*, §§ 6.0, 7.0.

B. *Mental State.* The Accused acted knowingly, i.e., with conscious awareness of the nature or attendant circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result. During all relevant times, the Accused was suffering from the effects of addiction to the benzodiazepine

drug, Klonopin; Hashimoto's thyroiditis; depression; and untreated obsessive/compulsive disorder. These physical and mental conditions were factors that contributed to the Accused's conduct but did not affect his ability to appreciate the wrongfulness of his conduct. *Standards* § 9.32(h); *Standards*, p. 6.

C. *Injury*. Three of the Accused's clients were actually harmed by his conduct in that their workers' compensation claims were dismissed with prejudice. The investigation of the Accused's conduct by the Bar was also impeded by his misstatements to Disciplinary Counsel's Office.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused engaged in a pattern of misconduct, which involved multiple offenses. *Standards*, § 9.22(c)–(d).

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

3. The Accused has a prior record of discipline, having been publicly reprimanded for violation of DR 7-104(A)(1) in August 1997. *Standards*, § 9.22(a).

E. *Mitigating Factors*. Mitigating factors include:

1. During all relevant times, the Accused was suffering from the effects of addiction to the benzodiazepine drug, Klonopin; Hashimoto's thyroiditis; depression; and untreated obsessive/compulsive disorder. These physical and mental conditions were factors that contributed to the Accused's conduct. *Standards*, § 9.32(h).

2. The disciplinary proceedings have been delayed. *Standards*, § 9.32(i).

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

4. The Accused has displayed a cooperative attitude toward the disciplinary proceedings. *Standards*, § 9.32(e).

5. The Accused's treating physicians find him presently physically and mentally capable of engaging in the practice of law.

18.

Standards §§ 4.41(b) and 4.62 suggest that a period of suspension is appropriate. Oregon case law is in accord. See *In re Eads*, 303 Or 111, 126–127, 734 P2d 340 (1987); *In re Gregg*, 252 Or 174, 446 P2d 123 (1968).

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of two years for violation of DR 1-102(A)(3) (two counts), DR 1-102(A)(4), DR 1-103(C), DR 2-106(A), DR 2-110(A)(2), DR 2-110(B)(4), DR 6-101(A), DR 6-101(B) (four counts),

DR 7-101(A)(2) (two counts), DR 9-101(C)(3), and DR 9-101(C)(4), beginning on October 15, 2002. However, all but three months of the suspension shall be stayed pending the Accused's completion of a two-year probation period, which shall commence the day the Accused is reinstated to active membership in the Oregon State Bar. Upon the expiration of the Accused's three-month period of suspension, he shall not be reinstated to active membership in the Oregon State Bar without first undergoing examinations by Dr. Rod D. Michaels and Dr. Ronald Hofeldt and presenting certifications by those physicians that the Accused continues to be physically and mentally capable of engaging in the practice of law.

20.

During the two-year probation period, the Accused will satisfy the following requirements:

a. The Accused shall comply with all the provisions of this stipulation, the Code of Professional Responsibility, and ORS Chapter 9. The Bar will commence proceedings to revoke the Accused's probation if the State Professional Responsibility Board (hereinafter "SPRB") finds probable cause to believe that he has not complied with this Stipulation, the Code of Professional Responsibility, or ORS Chapter 9 by conduct that occurred during the period of his suspension. Should the Accused's probation be revoked, he shall serve the remaining 21 months of his suspension.

b. The Accused shall continue in treatment with Dr. Ronald Hofeldt for psychiatric or mental disorders, including depression, anxiety, and obsessive/compulsive disorder, throughout the entire term of his probation and suspension, unless such treatment is terminated sooner by Dr. Hofeldt, and the termination of treatment is acceptable to the Bar. The Accused shall waive any and all medical privileges necessary so that the Bar will have full access to information concerning the Accused's treatment by Dr. Hofeldt.

c. The Accused shall continue treatment with Dr. Rod D. Michaels for medical and physical conditions, including hypothyroidism or Hashimoto's thyroiditis throughout the term of his probation and suspension, unless such treatment is terminated sooner by the treating physician and the termination of treatment is approved by a physician acceptable to the Bar. The Accused shall waive any and all medical privileges necessary so that the Bar will have full access to information concerning the Accused's treatment by Dr. Michaels.

d. The Accused has met with a practice management advisor from the Professional Liability Fund (hereinafter "PLF"), who has reviewed the Accused's office systems to identify areas for improvement and has made recommendations. The Accused has provided Disciplinary Counsel's Office with written verification of the PLF's recommendations, a copy of which is attached hereto and incorporated by reference herein as Exhibit 1. The Accused will follow those recommendations and adopt all procedures recommended by the PLF.

e. Compliance with the PLF's office management plan will be monitored by the Accused's probation supervisor and shall continue for so long as the Disciplinary Counsel's Office and the probation supervisor deem appropriate.

f. The Accused hereby waives any privilege applicable to the treatments, counseling, or other services required herein. The Accused further consents to the disclosure to the Bar and the probation supervisor of all information concerning him by those persons who provide evaluation services, medical services, counseling, advice, or supervision as required by this stipulation.

g. Within 90 days of the effective date of this stipulation, the Accused shall cause the medical and treatment providers described herein to render written reports to Disciplinary Counsel's Office of his progress and compliance with their treatment plans. Every 90 days thereafter, and continuing until the termination of the Accused's probation, the medical and treatment providers described herein shall render similar written reports to Disciplinary Counsel's Office.

h. The Bar appoints Raymond J. Bradley, Esq. to supervise the Accused's probation. The Accused hereby waives any privilege or obligation of confidentiality which may exist between him and the probation supervisor. Additionally, the Accused acknowledges that his probation supervisor is required immediately to report to the Bar any noncompliance by the Accused with the terms of his probation.

i. In addition to the responsibilities described in paragraph (h), within 30 days of the Accused's reinstatement to active membership in the Bar, the probation supervisor will meet with the Accused and review his existing caseload. At the direction of the probation supervisor, the Accused will remedy or refer out to other counsel all cases in need of immediate attention. This review and referral process shall recur every 90 days throughout the term of the Accused's probation.

j. Within 10 days of each review described in paragraph (i), the Accused shall submit to Disciplinary Counsel's Office a written report, signed by the Accused and approved as to substance by his probation supervisor which indicates that the Accused has:

- (1) conducted a complete review of existing cases;
- (2) brought all cases to a current status or referred them out to other counsel;
- (3) complied with all other terms of probation since the last report or acknowledges that he has not fully complied, describe the nature of his noncompliance and state the reasons for the noncompliance.

k. Within 30 days of the Accused's reinstatement to active membership in the Bar, and every 90 days thereafter for the duration of the probation, the Accused shall submit to Disciplinary Counsel's Office a written report from his employer which shall report on the Accused's productivity, personal appearance, timeliness, ability to concentrate, and physical complaints.

l. The probation supervisor has authority to request that the Accused undertake additional remedial action to protect his clients beyond the steps expressly required by this stipulation. The Accused agrees to cooperate with all reasonable requests of his probation supervisor.

m. The Accused shall not determine the appropriate amounts of any medication prescribed for him in connection with the treatment of any of the conditions described herein or in connection with any of the treatment plans provided for herein. The amount of medication the Accused shall take for any of the conditions described in paragraph 20(c) herein or as required by the treatment plans described herein shall be determined only by the medical treatment provider who prescribes the medication, and any changes in dosage shall be made only by the medical treatment provider, and not the Accused.

21.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The State Professional Responsibility Board (SPRB) approved the sanction provided for herein on July 19, 2002. 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 2nd day of August 2002.

/s/ James Dodge

James Dodge

OSB No. 83033

EXECUTED this 5th day of August 2002.

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 Nos. 00-101, 01-22
	)	SC S49783
DOUGLAS S. SNYDER,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-105(E), DR 6-101(A), and DR 6-101(B). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	November 23, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The Oregon State Bar and Douglas S. Snyder (OSB No. 95161) have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved. The Accused shall be suspended from the practice of law in the State of Oregon for one year, effective 60 days from the date of this order.

DATED this 24th day of September 2002.

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

STIPULATION FOR DISCIPLINE

Douglas S. Snyder, 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, Douglas S. Snyder, was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 17, 1995, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On May 15, 2002, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”) for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-105(E), DR 6-101(A), and DR 6-101(B) (two counts) of the Code of Professional Responsibility. A copy of the Formal Complaint is attached as Exhibit A. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Violations

5.

The Accused admits all of the facts as they are alleged in the Formal Complaint and admits that by engaging in the conduct described in the complaint, he violated DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-105(E), DR 6-101(A), and DR 6-101(B).

Sanction

6.

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.* By neglecting legal matters entrusted to him and by failing to provide competent representation to a client, the Accused violated his duty to his clients. *Standards*, §§ 4.4, 4.5. By failing to avoid a conflict of interest between two clients, the Accused violated his duty to his clients. *Standards*, § 4.3. By misleading his clients as to the settlement of their claim and making false statements to the clients, the Accused violated his duty to his clients. *Standards*, § 4.6. By knowingly violating a court order, the Accused violated his duty to the legal system. *Standards*, § 6.22. By failing to cooperate with an authority empowered to investigate his conduct, the Accused violated his duty to the legal profession. *Standards*, § 7.0.

B. *Mental State.* In violating each of the rules as admitted 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.

C. *Injury.* The Accused's failure to prepare the judgment order as directed by the court, and allowing the case to be dismissed in the Brown matter, resulted in the client suffering actual injury. In addition, the profession suffered potential injury in that his inaction diminishes the reputation of lawyers in general. The Accused's misrepresenting the status of the settlement agreement and lying to the client about settlement proceeds in the Garrett matter, resulted in the clients suffering serious injury in that they were deprived of anticipated settlement proceeds. In failing to cooperate in the investigation of his conduct in the Brown matter, the Accused caused actual injury in that the investigation of his conduct was delayed.

D. *Aggravating Factors.* Aggravating factors include:

1. A pattern of misconduct. *Standards*, § 9.22(c).
2. Multiple offenses. *Standards*, § 9.22(d).
3. Vulnerability of the victims. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a selfish motive. *Standards*, § 9.32(b).
3. Inexperience in the practice of law. *Standards*, § 9.32(f).
4. Remorse. *Standards*, § 9.32(l).

7.

The *Standards* provide that, considering all of the factors listed above, a period of suspension is an appropriate sanction in this case. *Standards* § 4.32 provides:

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 § 4.42(b) provides:

Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standards § 4.52 provides:

Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

Standards § 4.62 provides:

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client.

Standards § 6.22 provides:

Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Standards § 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.

8.

Oregon case law is in accord that under all the circumstances of this case, a suspension from the practice of law is an appropriate sanction. In *In re Recker*, 309 Or 633, 789 P2d 663 (1990), a two-year suspension was imposed for failing to prepare a will for a client after being retained to do so and failing to return her documents after being requested to do so, failing to communicate with a client in a criminal matter after being appointed to represent the client, and failing to cooperate with the Bar's investigation of her conduct. In the criminal matter the accused also misrepresented to the court that it was the client that had failed to keep in contact with the accused when, in fact, the client had attempted to do so on at least 12 occasions. The lie resulted in a bench warrant being issued for the client's arrest.

In *In re McKee*, 316 Or 114, 849 P2d 509 (1993), an 18-month suspension was imposed for misrepresenting the client's readiness to settle, neglect of a legal matter, failure to inform the client of the progress of the case, and failure to disclose to the parties a possible conflict of interest.

In *In re Butler*, 324 Or 69, 921 P2d 401 (1996), the court imposed a one-year suspension for failing to avoid dismissal of the client's case on the statute of limitations, failing to keep the client fully apprised of the case, and misleading the client by representing that the accused was working on the case when he knew it had been dismissed.

9.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for one year for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-105(E), DR 6-101(A), and DR 6-101(B). The sanction is to be effective 60 days after approval by the Oregon Supreme Court.

10.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction 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 15th day of August 2002.

/s/ Douglas S. Snyder

Douglas S. Snyder

OSB No. 95161

EXECUTED this 22nd day of August 2002.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

Cite as 334 Or 599 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In the)
)
Matter of the Application of)
)
ORRIN R. ONKEN,)
)
Applicant,)
)
for Reinstatement as an Active)
Member of the Oregon State Bar.)

(SC S47801)

En Banc

Application for reinstatement to the practice of law in Oregon.

Argued and submitted September 5, 2002. Decided September 26, 2002.

Stacy J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the briefs for the Oregon State Bar.

Orrin R. Onken, Portland, argued the cause and filed the brief for himself.

PER CURIAM

Conditional reinstatement approved.

SUMMARY OF SUPREME COURT OPINION

In this contested reinstatement proceeding, the trial panel recommended that applicant be reinstated conditionally to the practice of law. *Held*: Conditional reinstatement approved.

Cite as 334 Or 628 (2002)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
JAMES JOSEPH McLAUGHLIN,)
)
Accused.)

(OSB Nos. 00-107, 01-123, 01-124, 01-125, 01-126, 01-141, 01-142,
01-143, 01-144, 01-145, 01-211, 01-223; SC S49577)

En Banc

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

Submitted on the record August 20, 2002. Decided September 26, 2002.

Stacy J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, filed the
Sanction Memorandum for the Oregon State Bar.

No appearance contra.

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar alleged that the Accused violated the following Code of Professional Responsibility Disciplinary Rule (DR) 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(4) (engaging in conduct prejudicial to administration of justice); DR 1-103(C) (failing to cooperate with disciplinary investigation); DR 2-110(A)(2) (withdrawing from employment without taking reasonable steps to avoid foreseeable prejudice to client); DR 2-110(B)(2) (knowingly engaging in employment that lawyer knows violates disciplinary rules); DR 6-101(A) (providing incompetent representation to client); DR 6-101(B) (neglecting legal matter entrusted to lawyer); DR 7-101(A)(2) (failing to carry out contract entered into with client for professional services); DR 7-101(A)(3) (prejudicing or damaging lawyer’s client during course of professional relationship);

Cite as *In re McLaughlin*, 16 DB Rptr 293

DR 7-102(A)(2) (knowingly advancing claim or defense that is unwarranted under existing law); DR 7-106(A) (disregarding or advising client to disregard standing rule of tribunal); and ORS 9.527(3) (willfully disobeying court order). *Held*: The Accused is disbarred.

Cite as 334 Or 602 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
VIRGIL E. DUGGER,)
)
Accused.)

(OSB Nos. 98-52, 00-65; SC S48634)

En Banc

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

Argued and submitted May 13, 2002. Decided September 26, 2002.

Thomas H. Tongue, Dunn Carney Allen Higgins & Tongue LLP, Portland, argued the cause and filed the brief for the Accused. With him on the brief was Brenda K. Baumgart.

Jane E. Angus, Assistant Disciplinary Council, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was John M. Junkin, Bullivant Houser Bailey PC, Bar Counsel, Portland.

PER CURIAM

The Accused is suspended from the practice of law for nine months, effective 60 days from the date of the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with multiple violations of the Disciplinary Rules for conduct related to the representation of clients in three matters. A trial panel of the Disciplinary Board concluded that the appropriate sanction for the violations it found was a nine-month suspension from the practice of law. *Held*: (1) The Accused violated Disciplinary Rule (DR) 1-102(A)(3); DR 1-102(A)(4); and DR 7-110(B)(2) and (3); (2) the Accused is suspended from the practice of law for nine months.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-105
)
KEITH L. HAYES,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Robert M. Elliott, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: October 4, 2002

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).

DATED this 4th day of October 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Keith Hayes, 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, Keith L. Hayes, 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 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 July 20, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On August 27, 2001, Rachael and Kevin McDowell (hereinafter “the McDowells”) retained the Accused to represent them in a Chapter 13 bankruptcy proceeding.

6.

When the Accused was retained, he knew the McDowells were in arrears in making payments to Thomason Honda (hereinafter “Thomason”). He also knew that a primary concern for the McDowells was to avoid repossession of the vehicle that secured the debt to Thomason. Despite his knowledge, the Accused failed to file the Chapter 13 petition until September 14, 2001. As a result of the delay, Thomason repossessed the McDowells’ vehicle. The Accused thereafter prevented Thomason from selling the vehicle and provided for it to be returned to the McDowells.

7.

On November 30, 2001, the lawyer representing Thomason filed a motion to terminate the automatic stay. The Accused failed to file a response to that motion and failed to take any other substantive action to protect the McDowells’ legal interests.

8.

On December 18, 2001, the lawyer representing Thomason submitted to the court a proposed order terminating the automatic stay. The Accused failed to object to that proposed order and failed to take any other substantive action to protect the McDowells' legal interests.

9.

On December 20, 2001, the court signed the order terminating the automatic stay. On or about January 2, 2002, Thomason repossessed the McDowells' vehicle.

10.

After the lawyer representing Thomason filed the motion to terminate the automatic stay, the McDowells left telephone messages for the Accused inquiring about the matter. The Accused failed to return their calls. He also failed to inform the McDowells that he had not filed a response to the motion and that the court had terminated the automatic stay.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated DR 6-101(B) of the Code of Professional Responsibility.

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

B. *Mental State.* "Negligence" is defined in the *Standards* as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused acted with negligence in failing to timely file the McDowells' Chapter 7 proceeding, in failing to respond to the motion for termination of the automatic stay, and in failing to communicate with the McDowells about the status of their legal matter.

C. *Injury*. Injury can be either actual or potential. In this case, the Accused's conduct caused actual injury to the McDowells because their vehicle was repossessed on two occasions. The Accused did not intend for the McDowells to be injured.

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. In August 2001, the Accused received a letter of admonition for violating DR 9-101(C)(4). Even though that matter involved a different disciplinary rule than is at issue in this matter, in both matters the Accused was unable to timely and diligently respond to his clients and their legal needs. See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000). *Standards*, § 9.22(a).

2. Vulnerability of victim. The McDowells were having significant financial difficulties and relied upon the Accused to diligently pursue their legal interests. *Standards*, § 9.22(h).

3. Substantial experience in the practice of law. The Accused was admitted to practice law in Oregon in 1990. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

2. Timely, good-faith effort to rectify consequences of misconduct. On both occasions, the Accused took immediate steps to have the vehicle returned to the McDowells. *Standards*, § 9.32(d).

3. Cooperative attitude toward proceeding. *Standards*, § 9.32(e).

4. Remorse. *Standards*, § 9.32(l).

13.

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.

14.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Coulter*, 15 DB Rptr 220 (2001); *In re Brownlee*, 9 DB Rptr 85 (1995).

15.

The Accused agrees to accept a public reprimand for the violations described in the Stipulation for Discipline.

16.

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 that the Stipulation will be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of September 2002.

/s/ K. L. Hayes

Keith L. Hayes
OSB No. 90295

EXECUTED this 17th day of September 2002.

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. 02-98
)	
GARELD J. GEDROSE,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Robert M. Elliott, 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:	October 8, 2002

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

DATED this 8th day of October 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Gareld J. Gedrose, 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, Gareld J. Gedrose, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 14, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) 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.

Michael Guillory (hereinafter “Guillory”) was arrested on criminal charges. The Accused was appointed to represent him. A plea agreement was reached which took into account the credit Guillory would receive for good behavior. The court accepted the plea and Guillory was sentenced to 19 months incarceration on February 7, 2001. Unbeknownst to the court, prosecution, or the Accused at the time of sentencing, a statutory provision prohibiting any reduction for good behavior (hereinafter “Denny Smith”) was applicable to Guillory’s case. Because the application of the Denny Smith provision was not recognized, it was not discussed in preplea negotiations, the presentence investigation, or the presentence report. The Accused did not advise Guillory of the affects of this rule on Guillory’s sentence prior to Guillory entering his plea.

6.

When the Department of Corrections (hereinafter “DOC”) received Guillory’s sentence, it notified Deputy District Attorney Thomas Cleary (hereinafter “Cleary”) and Hon. Janice Wilson (hereinafter “Judge Wilson”) that DOC policy requires final court orders to reflect the application of the Denny Smith provision, and therefore requested that the judgment be amended. Cleary notified the Accused on February 27, 2001, that he was preparing an amended sentencing judgment to address the Denny Smith issue. In response, the Accused attempted to persuade Cleary to reduce Guillory’s sentence by the amount he otherwise would have received in good time credit had Denny Smith not applied. Cleary refused. The Accused did not notify Guillory of these communications.

7.

On February 28, 2001, Judge Wilson sent a letter requesting responses from the Accused and Cleary on the Denny Smith issue. Thereafter, Cleary sent a copy of the proposed amended judgment to Judge Wilson as well as to the Accused, to allow the Accused an opportunity to set a hearing to address any objections. The Accused did not respond to Judge Wilson or request a hearing. Judge Wilson signed the amended judgment on March 14, 2001. The Accused did not provide a copy of Judge Wilson’s correspondence, the proposed amended judgment, or the final order to Guillory. The Accused did not notify Guillory that his sentence had been amended.

8.

In August 2001, Guillory was notified by his counselor at the DOC that an amended judgment had been received which changed his release date from December 6, 2001, to March 31, 2002. After obtaining a copy of the amended judgment directly from the DOC, Guillory sent the Accused a letter on September 5, 2001. Guillory provided the Accused his original copy of the temporary sentencing order and requested that the Accused return the same in conjunction with an explanation for the change in his sentence. The Accused did not respond.

9.

Although he did not communicate with his client, from the time the amendment was entered the Accused researched alternatives to assist Guillory. The Accused was convinced that Guillory would be able to obtain a hearing until he realized that the amended judgment did not impose any new conditions on the sentence, but merely restated the sentence terms in language that was agreeable to the DOC. This information was finally communicated to Guillory by the Accused in a letter dated January 19, 2002. However, the Accused did not return Guillory’s original temporary sentencing order until after Guillory had been released from custody.

Violations

10.

The Accused admits that the aforementioned conduct constitutes neglect of a legal matter entrusted to a lawyer and failure to promptly deliver client property as requested by the client in violation of DR 6-101(B) and DR 9-101(C)(4) 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 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)(4), the Accused violated his duty of diligence and his duty to maintain client property. *Standards*, §§ 4.1, 4.4.

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

C. *Injury.* The Accused’s conduct caused his client actual injury when the Accused failed to communicate with him regarding his case. Guillory had to independently obtain information relevant to his case and thereafter had to coax a response and assistance from the Accused. Guillory was also injured by being denied access to the document the Accused held in his possession.

D. *Aggravating Factors.* Aggravating factors include:

The Accused was admitted to practice in Oregon in 1980 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a);
2. The Accused did not have a dishonest or selfish motive. *Standards*, § 9.32(b);
3. The Accused has made full and free disclosure to the Disciplinary Counsel and has demonstrated a cooperative attitude toward resolving this matter. *Standards*, § 9.32(e).

12.

The Standards provide that a public reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13. A public reprimand is also generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, causing injury or potential injury to a client. *Standards*, § 4.43. Oregon case law is in accord. See *In re Brownlee*, 9 DB Rptr 85 (1995) (lawyer reprimanded for violating DR 6-101(B) and DR 9-101(C)(4) for failing to communicate with court-appointed client, failing to respond to client's inquiries, and failing to promptly return client documents); *In re Derby*, 16 DB Rptr 82 (2002) (lawyer reprimanded for violating DR 6-101(B) and DR 9-101(C)(4) when he failed to perform services, failed to respond to his client, and failed to promptly return client's money); see also *In re Wine*, 16 DB Rptr 159 (2002); *In re Moore*, 14 DB Rptr 129 (2000); *In re Stimac*, 14 DB Rptr 42 (2000); *In re Jennings*, 12 DB Rptr 190 (1998); *In re Holden*, 12 DB Rptr 49 (1998) (public reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)).

13.

Consistent with the Standards and Oregon case law, the Accused shall be publicly reprimanded for violating DR 6-101(B) and DR 9-101(C)(4). The sanction will be effective the date this Stipulation is approved 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 23rd day of September 2002.

/s/ Gareld J. Gedrose

Gareld J. Gedrose

OSB No. 80236

EXECUTED this 25th day of September 2002.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-143
)
TAMI S. P. CARROLL,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Bradley F. Tellam, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(2). Stipulation for
Discipline. 120-day suspension.
Effective Date of Order: October 18, 2002

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 a period of 120 days, effective October 18, 2002, for violation of DR 1-102(A)(2).

DATED this 11th day of October 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Gregory E. Skillman
Gregory E. Skillman, Esq., Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Tami S. P. Carroll, 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, Tami S. P. Carroll, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1996, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

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

4.

On September 21, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Federal law requires taxpayers to file income tax returns at specified times. A willful failure to file income tax returns constitutes a misdemeanor. 26 USC §7203.

6.

The Accused was required to file federal income tax returns for tax years 1998 and 1999. The Accused willfully failed to file those returns as required by law.

7.

In January 2002, the Accused filed federal tax returns for 1998 and 1999 and established a payment plan for back taxes owed. Since negotiating the plan, the Accused has complied with its terms.

8.

In April 2002, the Accused advised the Disciplinary Counsel's Office of the Oregon State Bar of her failure to timely file her 1998 and 1999 federal income tax returns.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 1-102(A)(2) 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.* The Accused violated her duty to the public to maintain her personal integrity when she willfully violated 26 USC §7203 by not filing her tax returns by the time or times required by law. *Standards*, § 5.1.

B. *Mental State.* The Accused acted with intent. She was aware of her legal duty to file tax returns at the time required by law and failed to timely file.

C. *Injury.* The Accused's failure to timely file returns caused actual injury by hindering the federal government in its ability to administer the tax system and collect tax revenue.

D. *Aggravating Factors.* Aggravating factors include:

The Accused engaged in a pattern of misconduct by failing to file tax returns for two years. *Standards*, § 9.22(c).

E. *Mitigating Factors.* Mitigating factors include:

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

2. Between 1998 and 2001, the Accused had personal and emotional problems. *Standards*, § 9.32(c).

3. The Accused made a timely, good-faith effort to make restitution and to rectify the consequences of her conduct. *Standards*, § 9.32(d).

4. The Accused made full and complete disclosure to the Bar, including voluntarily reporting her misconduct. *Standards*, § 9.32(e).

5. The IRS has subjected the Accused to other penalties and sanctions. *Standards*, § 9.32(g).

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

11.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously reflects on the lawyer's fitness to practice. *Standards*, § 5.12. Oregon case law is in accord. In *In re DesBrisay*, 288 Or 625, 606 P2d 1148 (1980), the court noted that a suspension of six months to two years is the appropriate sanction in most cases involving a lawyer's failure to file tax returns. In *DesBrisay*, the court suspended the attorney for four years due to extenuating circumstances. Recently, the court reaffirmed the general formula outlined in *DesBrisay*, but found that mitigating factors outweighed aggravating factors and imposed a 60-day suspension for a lawyer's failure to timely file income tax returns. *In re Lawrence*, 332 Or 502, 31 P3d 1078 (2001). *See also In re Seidel*, 12 DB Rptr 201 (1998) (lawyer who failed to timely file tax returns for four years suspended for 120 days).

12.

Consistent with the Standards and Oregon case law, the parties agree that the Accused shall be suspended for 120 days for violation of DR 1-102(A), the sanction to be effective October 18, 2002.

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 2nd day of October 2002.

/s/ Tami S. P. Carroll

Tami S. P. Carroll

OSB No. 96473

EXECUTED this 30th day of September 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 83314

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 01-163
)
MARK G. PASSANNANTE,)
)
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 9-101(A), and DR 9-101(C)(3). Stipulation for Discipline. Public reprimand.
Effective Date of Order: October 21, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Mark G. Passannante (hereinafter "Accused") and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is reprimanded for violation of DR 2-110(A)(2), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 21st day of October 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Mark G. Passannante, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused is, and at all times mentioned herein was, and attorney at law, duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Oregon State Bar, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 21, 2002, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 2-110(A)(2), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3) 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 and Violations

5.

On or about August 11, 1999, Paula Wingfield and Lisa Hammond (hereinafter collectively “clients”) retained the Accused to pursue claims against a bar for alleged personal injuries sustained during a bar fight on August 7, 1999. The clients delivered \$500 to the Accused for costs, which the Accused deposited in a lawyer trust account in the state of Washington, when his office was situated in Oregon.

6.

Between about August 1999 and March 2000, the Accused investigated his clients’ claims and incurred costs of \$200, which were paid from the clients’ funds

in his lawyer trust account. On or about March 15, 2000, the bar's insurer notified the Accused that his clients' claims were denied.

7.

Between about March 2000 and March 2001, the Accused failed to pursue his clients' claims and failed to respond to his clients' attempts to communicate with him. In or about March 2001, the Accused reviewed the matter and concluded that the clients' claims were not well founded.

8.

On or about March 8, 2001, the Accused prepared and sent a letter to the clients informing them of his conclusion and advising that he declined to further pursue the claims. The Accused failed to deliver a copy of the clients' file and the funds remaining in his lawyer trust account to his clients, and failed to account to his clients for the funds they had delivered to him.

9.

The Accused admits that the aforementioned conduct constitutes neglect of a legal matter entrusted to a lawyer, improper withdrawal, failure to maintain client funds in a lawyer trust account in Oregon, and failure to account for client funds in violation of DR 2-110(A)(2), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

Sanction

10.

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

A. *Duty*. In violating DR 2-110(A)(2), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3), the Accused violated duties to his clients and the profession. *Standards*, §§ 4.1, 4.4, 7.0.

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

C. *Injury*. The Accused's conduct resulted in potential and actual injury to his clients. The clients did not have the use of the unused portion of the funds held by the Accused, which should have been returned to them when the Accused determined not to proceed with the case. The Accused failed to confirm that the

clients received the letter in which he advised that he would not pursue the matter further. According to the clients, they were unaware of his decision until after they filed a complaint with the Bar.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. The Accused has established a lawyer trust account in the state of Oregon, the state in which his law office is situated, and has accounted for the clients' funds and returned the unused portion of their funds to the clients. *Standards*, § 9.32(d).

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

5. The Accused was admitted to practice in 1994 and did not have substantial experience in the practice of law at the time he handled the clients' claims. *Standards*, § 9.32(f).

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

11.

The Standards provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property, or does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, §§ 4.13, 4.43. Reprimand is also 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. *Standards*, § 7.3. Oregon case law is in accord. *See, e.g., In re Holden*, 12 DB Rptr 49 (1998) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Brownlee*, 9 DB Rptr 85 (1995) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Hanson*, 16 DB Rptr 64 (2002) (reprimand for violation of DR 2-110(A)(2) and DR 6-101(B)).

12.

Consistent with the Standards and case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for the violations specified herein, the sanction to be effective the day this stipulation is approved by the Disciplinary Board.

13.

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

DATED this 11th day of October 2002.

/s/ Mark G. Passannante

Mark G. Passannante

OSB No. 94403

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. 01-99, 02-24
)
CRAIG C. COYNER,)
)
Accused.)

Bar Counsel: Bernard S. Moore, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(2) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: October 21, 2002

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 2-110(A)(2) and DR 6-101(B).

DATED this 21st day of October 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Craig C. Coyner, 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, Craig C. Coyner, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 10, 1974, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

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

4.

On June 15, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-103(C), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility in the Kuhlman matter (Case No. 01-99). On February 15, 2002 the SPRB authorized formal disciplinary proceedings against the Accused for alleged violations of DR 2-110(A)(1) and DR 2-110(A)(2) of the Code of Professional Responsibility in the Rodvelt matter (Case No. 02-24). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Kuhlman Matter

Case No. 01-99

Facts

5.

On December 3, 1998, the law firm of Crabtree and Rahmsdorff was appointed to represent Jonathan Kuhlman (hereinafter “Kuhlman”) on a variety of criminal charges. The matter was assigned to the Accused, who was employed as a lawyer at Crabtree and Rahmsdorff. On January 22, 1999, Kuhlman entered a not guilty plea and the matter was set for trial on March 31, 1999.

6.

Between January 23, 1999 and March 31, 1999, the Accused failed to communicate with Kuhlman about the status of his legal matter.

Violations

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he neglected a legal matter in violation of DR 6-101(B). Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(3), DR 1-103(C), and DR 6-101(A) should be and, upon the approval of this stipulation, are dismissed.

Rodvelt Matter

Case No. 02-24

Facts

8.

On March 13, 2000, Ilauna Rodvelt (hereinafter “Rodvelt”) retained the Accused to represent her in connection with a juvenile dependency proceeding and criminal charges that had been brought against her.

9.

The juvenile dependency proceeding went to hearing in April 2000. The hearing was continued until September 20, 2000.

10.

The criminal matter went to trial on August 29, 2000. Rodvelt was acquitted on all charges.

11.

Sometime after August 29, 2000, the Accused withdrew from representing Rodvelt. He did not notify Rodvelt or the court that he was withdrawing. He did not appear at the September 20, 2000, hearing.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 8 through 11, he improperly withdrew from the representation of Rodvelt in violation of DR 2-110(A)(2) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 2-110(A)(1) 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 his duty to act with reasonable diligence and promptness in the Kuhlman matter. *Standards*, § 4.4. He also violated his duty to properly withdraw from representing Rodvelt. *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. “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 negligently failed to maintain adequate communications with Kuhlman. The Accused did not believe that any communication with Kuhlman was necessary because he and Kuhlman had already discussed and decided their trial strategy. However, the Accused knew that Kuhlman was trying to contact him during the two months before the scheduled trial date.

The Accused knowingly failed to properly withdraw from representing Rodvelt. While the Accused believed he had been discharged by Rodvelt’s husband, he made no effort to confirm that with Rodvelt and no effort to inform the court that he was withdrawing and would not appear at the September 20, 2000, hearing.

C. *Injury.* Injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

Kuhlman sustained actual injury as a result of the Accused’s failure to communicate with him. Kuhlman lost confidence in the Accused’s ability to properly defend him and on March 31, 1999, he requested that the court provide him with a new lawyer. The court appointed him a new lawyer and reset the trial date for July 7, 1999. Although Kuhlman was acquitted of all charges on July 7, 1999, he was incarcerated between March 31, 1999, and July 7, 1999.

Rodvelt sustained potential injury as a result of the Accused’s conduct. At the September 20, 2000, hearing, Rodvelt was surprised when the Accused did not appear on her behalf. The court continued the matter and ordered that a new lawyer be assigned to represent Rodvelt.

D. *Aggravating Factors*. Aggravating factors include:

1. Multiple offenses. *Standards*, § 9.22(d).
2. Substantial experience in the practice of law: the Accused has been licensed 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).
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
3. Cooperative attitude toward proceedings. *Standards*, § 9.32(e).

14.

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. *Standards*, § 4.43. Reprimand is also generally appropriate with 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.

15.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (lawyer who violated DR 2-110(B)(2) and DR 5-105(E) reprimanded); *In re Collier*, 295 Or 320, 667 P2d 481 (1983) (lawyer who failed to file a reply to counterclaim, which resulted in default judgment being entered against his client, was reprimanded); *In re Schoen*, 294 Or 68, 652 P2d 989 (1982) (lawyer who failed to file brief when due and failed to respond to notice of default resulting in dismissal of appeal was reprimanded).

16.

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

17.

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

EXECUTED this 9th day of October 2002.

/s/ Craig C. Coyner

Craig C. Coyner

OSB No. 74068

EXECUTED this 10th day of October 2002.

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. 99-93, 99-109,
	)	99-136, 99-143
SHANA PAVITHRAN,	)	SC S49842
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violations of DR 1-102(A)(3), DR 1-103(C), DR 2-110(B)(2), DR 3-101(B), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(4). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	December 21, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The Oregon State Bar and Shana Pavithran (OSB No. 95107) have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved. The Accused shall be suspended from the practice of law in the State of Oregon for one year and pay the Bar’s costs in the amount of \$472.50, effective 60 days from the date of this order.

DATED this 22nd day of October 2002.

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

STIPULATION FOR DISCIPLINE

Shana Pavithran, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters pursuant to 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, Shana Pavithran, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 1995, and has been a member of the Oregon State Bar continuously since that time, except as noted herein, having her office and place of business in Washington County, Oregon. The Accused has been suspended from the practice of law since July 13, 1999, for failing to pay the Professional Liability Fund assessment.

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 March 17, 2002, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(3), DR 1-103(C), DR 2-110(B)(2), DR 3-101(B), DR 6-101(B), DR 9-101(A), 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 the proceeding.

Facts and Violations

Kress Matter

Case No. 99-93

5.

On or about June 22, 1998, the Accused undertook to represent Katie Kress (hereinafter “Kress”) in a marital dissolution and child custody case (hereinafter “Kress Case”). After a period of time, the Accused failed to respond to Kress’s telephone calls and otherwise failed to communicate with her. The Accused postponed trial dates without advising Kress, and also failed to notify Kress that she was required to attend a parent evaluation appointment. As a result, Kress missed the appointment.

6.

The Kress Case proceeded to trial. On or about March 17, 1999, the Accused received a copy of the court’s decision and was instructed to submit the form of

judgment. The Accused failed to do so. In June 1999, Kress discovered that the Accused had not filed a form of judgment with the court. Kress attempted to contact the Accused on numerous occasions. The Accused failed to return Kress' calls and failed to file a form of judgment.

7.

On or about June 1, 1999, Kress filed a complaint with the Bar concerning the Accused's conduct. By letters dated June 8, 1999, and July 1, 1999, Disciplinary Counsel's Office forwarded a copy of Kress's complaint to the Accused and requested her response. The Accused did not respond. As a result of the Accused's failure to respond to its inquiries, Disciplinary Counsel's Office referred the complaint to the Multnomah County Local Professional Responsibility Committee for investigation.

8.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to her and failure to cooperate with the disciplinary authorities, in violation of DR 6-101(B) and DR 1-103(C) of the Code of Professional Responsibility.

Jespersen/Dorsay Matter

Case No. 99-109

9.

On or about October 30, 1998, A-Rey Jespersen retained the Accused to arrange for amendment of Jespersen's birth certificate and to establish her readmission to the Black Feet Indian Tribe of Montana. The Accused took some action but did not complete the matter. In or about August 1999, Jespersen retained attorney Craig Dorsay (hereinafter "Dorsay") to represent her. By letter dated September 2, 1999, Dorsay requested that the Accused deliver Jespersen's file and other material in the Accused's possession. The Accused did not respond. Thereafter, Dorsay and his staff made several telephone calls to the Accused and left messages requesting that she deliver Jespersen's file. The Accused did not respond.

10.

On or about November 8, 1999, Dorsay filed a complaint with the Bar concerning the Accused's conduct. By letter dated November 23, 1999, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested her response. The Accused did not respond. As a result of the Accused's failure to respond to its inquiry, Disciplinary Counsel's Office referred the complaint to the Multnomah County Local Professional Responsibility Committee for investigation.

11.

The Accused admits that the aforesaid conduct constituted failure to promptly deliver client property as requested by the client and failure to cooperate with the disciplinary authorities, in violation of DR 9-101(C)(4) and DR 1-103(C) of the Code of Professional Responsibility.

Pande Matter

Case No. 99-136

12.

In or about May 1999, Sunile Pande (hereinafter “Pande”) retained the Accused to represent him concerning claims for damages for unpaid wages, breach of contract, and other claims against Amisoft Corporation. On or about May 28, 1999, the Accused filed a civil complaint in the Multnomah County Circuit Court, Sunil Pande v. Amisoft Corporation, et al.

13.

Prior to July 13, 1999, the Professional Liability Fund (hereinafter “PLF”) notified the Accused that she would be suspended from the practice of law if she failed to pay her PLF assessment. The Accused did not pay her assessment and on or about July 13, 1999, she was suspended from the practice of law. Thereafter, the Accused continued to hold herself out as a lawyer and performed legal services, including engaging in settlement negotiations with and causing a summons, complaint, and request for production of documents to be served upon Amisoft Corporation’s lawyers. The Accused was required to know her status and did not inform Pande or Amisoft Corporation’s lawyers that she was suspended and not authorized to practice law. By continuing to perform legal services for Pande after she was suspended, the Accused represented that she was authorized to practice law when she was not; engaged in the practice of law in violation of the regulations of the profession; and failed to withdraw from employment when it was obvious that her continued employment would violate a disciplinary rule.

14.

On or about September 1, 1999, Amisoft Corporation’s lawyers filed a complaint with the Bar concerning the Accused’s conduct. By letters dated September 2, 1999, and September 29, 1999, Disciplinary Counsel’s Office forwarded a copy of the complaint to the Accused and requested her response. The Accused did not respond. As a result of the Accused’s failure to respond to its inquiries, Disciplinary Counsel’s Office referred the complaint to the Multnomah County Local Professional Responsibility Committee for investigation.

15.

The Accused admits that the aforesaid conduct constituted misrepresentation; failure to withdraw from employment when it was obvious that her continued practice of law would violate a disciplinary rule; the unauthorized practice of law; and failure to cooperate with the disciplinary authorities in violation, of DR 1-102(A)(3), DR 2-110(B)(2), DR 3-101(B), and DR 1-103(C) of the Code of Professional Responsibility.

Elrod Matter
Case No. 99-143

16.

On or about November 2, 1998, Gayle Elrod (hereinafter “Elrod”) retained the Accused to pursue a sexual discrimination claim. The Accused agreed to represent Elrod for a contingency fee, plus costs. Elrod delivered \$1,000 to the Accused for costs to be incurred in the case (hereinafter “Cost Advance”). The Accused deposited the Cost Advance in her lawyer trust account. The Accused prepared one letter on Elrod’s behalf on November 27, 1998. Over the next seven months, the Accused took no substantive action on Elrod’s case. Elrod left numerous telephone messages for the Accused and made numerous personal visits to the Accused’s office in an attempt to discuss her case with the Accused. The Accused did not respond to or otherwise attempt to communicate with Elrod. By letter dated July 2, 1999, Elrod terminated the Accused’s employment and requested that she return funds remaining from the Cost Advance.

17.

Pande (see paragraphs 12–15 above) delivered a check in the amount of \$167 for the filing fee for the civil complaint. The Accused placed the check in her client’s file and failed to deposit the funds in her lawyer trust account. On or about May 28, 1999, the Accused prepared a check for \$167, drawn on her lawyer trust account, payable to the Multnomah County Circuit Court, for Pande’s filing fee. At the time the Accused prepared and tendered the check to the court, and when the bank paid the check, the Accused’s trust account held no funds that belonged to Pande. The payment of the check resulted in a disbursement of Elrod’s funds from the Accused’s lawyer trust account. By disbursing Elrod’s funds for the benefit of another client, the Accused failed to maintain Elrod’s funds in her lawyer trust account.

18.

On or about September 13, 1999, Elrod filed a complaint with the Bar concerning the Accused’s conduct. By letters dated September 29, 1999 and October 27, 1999, Disciplinary Counsel’s Office forwarded a copy of the complaint to the Accused and requested her response. The Accused did not respond and the matter

was to the Multnomah County Local Professional Responsibility Committee for investigation.

19.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to her; failure to withdraw when it was obvious that her continued employment would result in violation of a disciplinary rule; failure to deposit and maintain client funds in trust; failure to promptly deliver client property as requested by the client; and failure to cooperate with the disciplinary authorities, in violation of DR 6-101(B), DR 2-110(B)(2), DR 9-101(A), DR 9-101(C)(4), and DR 1-103(C) of the Code of Professional Responsibility.

Other Issue

20.

On further review of the facts, the DR 1-102(A)(3) charge alleged in the Elrod Matter, Case No. 99-143, should be and, with the approval of this stipulation, will be dismissed.

Sanction

21.

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*. In violating DR 1-102(A)(3), DR 1-103(C), DR 2-110(B)(2), DR 3-101(B), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(4), the Accused violated duties to her clients and the profession. *Standards*, §§ 4.1, 4.4, 4.6, 7.0.

B. *State of Mind*. The Accused’s conduct demonstrates knowledge and negligence. “Knowledge” is the conscious awareness of the nature or attendant circumstances of her conduct but without the conscious awareness to accomplish a particular result. “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.

C. *Injury*. The Accused’s clients and the profession were injured. All of the clients’ matters were delayed. The dissolution of Kress’s marriage was not finalized and she was required to reschedule her wedding. Jespersen and Dorsay were not able to obtain the Accused’s file to determine what, if anything, she had done on Jespersen’s legal matter. Pande’s case was dismissed for want of prosecution. Elrod’s

funds were used for Pande's benefit. The Accused did not file Elrod's lawsuit and her claims were barred by the statute of limitations. The profession was also injured in that additional time and resources were required to investigate the Accused's conduct because she failed to respond to the inquires of the Disciplinary Counsel's Office.

In December 1999, the Accused, through the assistance of counsel, reimbursed Elrod for the funds she used for Pande's filing fees; refunded the \$1,000 Elrod had delivered to her for court costs; returned Pande's check to him; and delivered Jespersen's file to Dorsay.

D. *Aggravating Factors.* Aggravating factors include:

1. This stipulation involves multiple disciplinary rule violations and multiple client matters. *Standards*, § 9.22(d).

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

3. The Accused's clients were vulnerable. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.22(a).

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

3. The Accused cooperated with the Local Professional Responsibility Committee and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

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

5. The Accused had some emotional problems. *Standards*, § 9.32(h).

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

22.

The *Standards* provide that suspension is appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and an causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension also 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.

23.

Oregon case law is in accord. *See, e.g., In re Elissa Ryan*, 16 DB Rptr 19 (2002) (lawyer suspended for 18 months for violation of DR 1-102(A)(3), DR 3-101(B), DR 7-102(A)(5), ORS 9.160, and ORS 9.527(4)); *In re T. Michael Ryan*, 15

DB Rptr 87 (2001) (lawyer suspended for six months for violation DR 1-102(A)(3), DR 3-101(B), DR 1-103(C), DR 6-101(B), DR 9-101(C)(1), and DR 9-101(C)(4)); *In re Koliha*, 330 Or 402, 9 P3d 102 (2000) (lawyer suspended for one-year for violation of DR 1-102(A)(3), DR 1-102A(4), DR 3-101(B), and DR 1-103(C)); *In re Purvis*, 306 Or 522, 760 P2d 254 (1988) (lawyer suspended for six months for violation of DR 1-103(C) and DR 6-101(B)).

24.

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 one year for violation of DR 1-102(A)(3), DR 1-103(C), DR 2-110(B)(2), DR 3-101(B), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(4). In addition, the Accused shall pay the Bar's costs in the amount of \$472.50.

25.

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

DATED this 9th of September 2002.

/s/ Shana Pavithran

Shana Pavithran
OSB No. 95107

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. 02-120
)	
MARK A. ERIKSON,	)	SC S49691
)	
Accused.)	

ORDER IMPOSING DISCIPLINE

Upon consideration by the court.

This matter is before the court on the notice of discipline in another jurisdiction with a recommendation of a 60-day suspension brought by Disciplinary Counsel of the Oregon State Bar on behalf of the Oregon State Bar State Professional Responsibility Board. The court orders that Mark A. Erikson (OSB No. 93044) be suspended from the practice of law in Oregon for 30 days, effective 60 days from the date of this order.

Dated this 22nd day of October 2002.

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

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-144
)
STEPHEN C. P. CARROLL,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(2). Stipulation for
Discipline. 120-day suspension.
Effective Date of Order: November 1, 2002

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 a period of 120 days, effective October 26, 2002, for violation of DR 1-102(A)(2).

DATED this 24th day of October 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Gregory E. Skillman
Gregory E. Skillman, Esq., Region 2
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Stephen C. P. Carroll, 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 C. P. Carroll, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1994, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On September 21, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Federal law requires taxpayers to file income tax returns at specified times. A willful failure to file income tax returns constitutes a misdemeanor. 26 USC §7203.

6.

The Accused was required to file federal income tax returns for tax years 1998 and 1999. The Accused willfully failed to file those returns as required by law.

7.

In January 2002, the Accused filed federal tax returns for 1998 and 1999.

8.

In June 2002, the Accused advised the Disciplinary Counsel's Office of the Oregon State Bar of his failure to timely file his 1998 and 1999 federal income tax returns.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(2) 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.* The Accused violated his duty to the public to maintain his personal integrity when he willfully violated 26 USC §7203 by not filing his tax returns by the time or times required by law. *Standards*, § 5.1.

B. *Mental State.* The Accused acted with intent. He was aware of his legal duty to file tax returns at the time required by law and failed to timely file.

C. *Injury.* The Accused's failure to timely file returns caused actual injury by hindering the federal government in its ability to administer the tax system and collect tax revenue.

D. *Aggravating Factors.* Aggravating factors include:

The Accused engaged in a pattern of misconduct by failing to file tax returns for two years. *Standards*, § 9.22(c).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. Between 1998 and 2001, the Accused had personal and emotional problems. *Standards*, § 9.32(c).
3. The Accused made full and complete disclosure to the Bar, including voluntarily reporting his misconduct. *Standards*, § 9.32(e).
4. The Accused is remorseful. *Standards*, § 9.32(l).

11.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously reflects on the lawyer's fitness to practice. *Standards*, § 5.12. Oregon case law is in accord. In *In re DesBrisay*, 288 Or 625, 606 P2d 1148 (1980), the court noted that a suspension of six months to two years is the appropriate sanction in most cases involving a lawyer's failure to file tax returns. In *DesBrisay*, the court suspended the attorney for four years due to extenuating circumstances. Recently, the court reaffirmed the general formula outlined in *DesBrisay*, but found that mitigating factors outweighed aggravating factors and imposed a 60-day suspension for a lawyer's failure to timely file income tax returns. *In re Lawrence*, 332 Or 502, 31 P3d 1078 (2001). *See also In re Seidel*, 12 DB Rptr 201 (1998) (lawyer who failed to timely file tax returns for four years suspended for 120 days).

12.

Consistent with the Standards and Oregon case law, the parties agree that the Accused shall be suspended for 120 days for violation of DR 1-102(A)(2), the sanction to be effective October 26, 2002.

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 14th day of October 2002.

/s/ Stephen C. P. Carroll

Stephen C. P. Carroll

OSB No. 964738

EXECUTED this 9th day of October 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 833144

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 01-77, 01-78, 01-94,
) 02-43
SAMUEL J. NICHOLLS,) SC S49912
)
Accused.)

Bar Counsel: Kathryn Pratt, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation for Discipline. Two-year suspension, all but 90 days of which shall be stayed, with two-year probation.
Effective Date of Order: January 1, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

Consistent with the terms of the Stipulation for Discipline, the Accused is suspended from the practice of law in the State of Oregon beginning January 1, 2003.

DATED this 19th day of November 2002.

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

STIPULATION FOR DISCIPLINE

Samuel J. Nicholls, 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, Samuel J. Nicholls, was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 1, 1981, and has been a member of the Oregon State Bar continuously since that time, currently having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On March 19, 2002, a Second Amended Complaint was filed against the Accused, pursuant to the authorization of the State Professional Responsibility Board, for alleged violations of DR 1-103(C), 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. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Templeton/Swearingen Matter

Case No. 01-77

Facts

5.

In or about March 1998, the Accused was retained by Willard and Zula Templeton (hereinafter “the Templetons”) and Karen Swearingen (hereinafter “Swearingen”) to pursue claims for unpaid services against Fugates Pilot Services. The Accused received a retainer of \$500 on or about March 9, 1998.

6.

Between March 1998 and January 1999, the Accused took little or no action to pursue the claims of his clients. In January 1999, the Accused filed a civil complaint on behalf of his clients in Marion County Circuit Court. Thereafter, the Accused took no action to pursue the litigation or advance his clients’ claims. In July 1999, the court issued a notice of intent to take default for lack of prosecution. The Accused took no action in response to the notice. The case has been dormant in Marion County ever since.

7.

From time to time, the Templetons attempted to contact the Accused to inquire about the status of their legal matter, but the Accused was not communicative with them and did not return many of their calls.

8.

The Accused failed to provide the clients with an appropriate written accounting regarding how the retainer had been applied.

9.

In September 2000, the Templetons complained to the Bar regarding the Accused's conduct. Although the Accused provided some information to the Bar's Disciplinary Counsel and to the Clackamas/Linn/Marion County Local Professional Responsibility Committee ("LPRC") in response to the clients' complaint, he failed to respond fully to the inquiries of Disciplinary Counsel and the LPRC and failed to produce documents requested of him in connection with the investigation. The Disciplinary Counsel and the LPRC are empowered to investigate or act upon the conduct of lawyers.

Violations

10.

By engaging in the aforesaid conduct, the Accused admits that he violated DR 1-103(C), DR 6-101(B), and DR 9-101(C)(3) of the Code of Professional Responsibility. Upon further inquiry and discovery, the parties agree that the charge of DR 9-101(A) should be, and upon the approval of this stipulation, will be dismissed.

Smith Matter

No. 01-78

Facts

11.

In or about June and July, 1999, the Accused represented Daniel and Nancy Smith (hereinafter "the Smiths") in incorporating their business, ComputerSmiths, Inc.

12.

On January 23, 2001, the Smiths requested of the Accused in writing that the Accused return all corporate records and files to the Smiths or their new lawyer. Through counsel, the Smiths made a second written demand, on or about February 15, 2001, for the Accused to return the corporate records and files. The Smiths' new lawyer also made inquiries of the Accused by telephone in an attempt to obtain the

records. The Accused failed to return the corporate records and files to the Smiths or their new lawyer.

13.

On February 28, 2001, the Smiths complained to the Oregon State Bar regarding the Accused's conduct. The Accused did not respond to written inquiries from the Bar and the matter was referred to the Clackamas/Linn/Marion County LPRC for investigation. Although the Accused provided some information orally to Disciplinary Counsel and to the LPRC in response to the Smiths' complaint, he failed to respond fully to the inquiries of the LPRC in connection with the investigation. The Disciplinary Counsel and the LPRC are empowered to investigate or act upon the conduct of lawyers.

Violations

14.

By engaging in the aforesaid conduct, the Accused admits that he violated DR 1-103(C) and DR 9-101(C)(4) of the Code of Professional Responsibility.

Pennington Matters

No. 01-94

Facts

15.

In or about 1985, the Accused began to represent Karyn and Terry Pennington (hereinafter "the Penningtons") and their corporation, Strategic Advertising, Inc. (hereinafter "Strategic Advertising"), in various legal matters.

16.

In or about September 1998, the Accused undertook to represent Strategic Advertising in litigation against Ultimate Manufacturing, Inc. in Multnomah County Circuit Court. The Accused filed a civil complaint, but thereafter took little or no action to pursue the litigation or advance his client's claims. Ultimately, the litigation was dismissed by the court for lack of prosecution in March 1999.

17.

In September 1999, the Accused undertook to represent the Penningtons in litigation against Joseph Cusick, doing business as Skyline Painting, in Clackamas County Circuit Court. The Accused filed a civil complaint, which was referred to arbitration. Thereafter, the Accused took little or no action to pursue the litigation or advance his clients' claims. In December 1999, the court gave notice that the case would be dismissed within 28 days because no action had been taken in the matter.

Despite this notice, the Accused took little or no action to pursue the litigation. Ultimately, the court dismissed the litigation for lack of prosecution in January 2000.

18.

Commencing in October 2000, the Penningtons or their lawyer made several written requests of the Accused that the Accused return all personal and business files that the Accused maintained for the Penningtons and their corporation. Although the Accused returned many of the requested files, he failed to return other files to the Penningtons or their new lawyer.

19.

On or about April 24, 2001, the Penningtons, through their new lawyer, complained to the Bar regarding the Accused's conduct. The Accused did not respond to written inquiries from the Bar and the matter was referred to the Clackamas/Linn/Marion County LPRC for investigation. Although the Accused provided some information orally to Disciplinary Counsel and to the Clackamas/Linn/Marion County LPRC in response to the Pennington complaint, he failed to respond fully to the inquiries of the LPRC and failed to produce documents requested of him in connection with the investigation. The Disciplinary Counsel and the LPRC are empowered to investigate or act upon the conduct of lawyers.

Violations

20.

By engaging in the aforesaid conduct, the Accused violated DR 1-103(C), DR 6-101(B), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Gamba Matter

No. 02-43

21.

In or about June 1999, the Accused undertook to represent Mark Gamba, dba Mark Gamba Photographs, (hereinafter "Gamba") to pursue a claim against Columbia Sportswear Company for failing to return certain photographic transparencies taken by Gamba in a photo shoot for the company. The Accused filed a civil complaint for Gamba in or about September 1999, but thereafter took little or no action to pursue the litigation or advance his client's claim. In September 2000, the court issued a notice that the lawsuit would be dismissed because no action had been taken in the matter. Ultimately, the litigation was dismissed by the court for lack of prosecution in or about November 2000.

22.

At various times after January 2000, Gamba attempted to communicate with the Accused to learn the status of the litigation. The Accused was not responsive to Gamba's inquiries. In September 2001, Gamba gave written notice of his intent to file a complaint with the Bar if the Accused did not provide Gamba with a status report. Although the Accused promised such a report immediately, none was forthcoming.

23.

On or about December 4, 2001, Gamba complained to the Bar regarding the Accused's conduct. The Accused failed to respond to the inquiries of Disciplinary Counsel regarding the Gamba complaint. Disciplinary Counsel is empowered to investigate or act upon the conduct of lawyers.

Violations

24.

By engaging in the aforesaid conduct, the Accused violated DR 1-103(C) and DR 6-101(B) of the Code of Professional Responsibility.

Sanction

25.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the 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 his clients to act with reasonable diligence and promptness in representing them, *Standards*, § 4.4; and his duty to the clients to account for their funds and handle their property in an appropriate manner, *Standards*, § 4.1. The Accused also violated his duty to the legal profession to respond to disciplinary inquiries. *Standards*, § 7.0.

B. *Mental State.* With respect to the Accused's neglect and failure to return client file material, he was acting with "knowledge"—that is, he had the conscious awareness of the nature or attendant circumstances of his inaction on behalf of his clients, even if he did not have a conscious objective or purpose to neglect their legal matters or requests for file material. *Standards*, p. 7. With respect to the Accused's failure to cooperate with the Bar investigations, he also was acting with knowledge: he was aware of the obligation to cooperate and the consequences of not doing so.

There is evidence that, during the events relevant to this proceeding, the Accused was affected by a form of depression that was a contributing factor to his failure to respond to his clients and the Bar.

C. *Injury*. Injury in the context of a sanction analysis in a lawyer disciplinary proceeding may be either actual *or* potential. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

There was both actual and potential injury of consequence arising from the Accused's conduct. The Templetons and Ms. Swearingen were substantially delayed, and may have lost their ability to collect on their civil claim for unpaid services from Fugates Pilot Services.

Daniel and Nancy Smith were frustrated in their attempts to retrieve their corporate records from the Accused, and were required to have new counsel attempt to communicate with the Accused, which attempts were not successful.

The Penningtons lost their opportunity to pursue two separate civil claims that the Accused allowed to be dismissed for lack of prosecution. They, too, were frustrated in their attempts to retrieve file materials from the Accused, as was their subsequent lawyer.

Mark Gamba's civil claim also was dismissed for lack of prosecution and he was required to retain new counsel to salvage what he could from the litigation. Gamba also experienced great frustration trying to communicate with the Accused.

Finally, the Bar was required to go to great efforts to investigate the complaints filed by the Accused's aggrieved clients. His nonresponsiveness resulted in delays and required referrals to the local professional responsibility committee (LPRC). *See In re Gastineau*, 317 Or 545, 558, 857 P2d 136 (1993) (noting injury to Bar from noncooperation, including the need to conduct a more time-consuming investigation and the diminished public respect resulting from not being able to provide a timely and informed response to clients' complaints).

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offense. *Standards*, § 9.22(a). The Accused was admonished for a violation of DR 6-101(B) (neglect of a legal matter) in February 1991. A prior admonition for like conduct to the present charges is given weight as an aggravating factor. *See In re Cohen*, 330 Or 489, 500–501, 8 P3d 953 (2000).

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

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

4. Delaying the disciplinary process. *Standards*, § 9.22(e).

5. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused has practiced since 1981.

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a dishonest or selfish motive. *Standards* § 9.32(b).
2. Personal or emotional problems. *Standards*, § 9.32(c).

26.

The ABA *Standards* applicable to this case are:

4.12 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.

4.42 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.

7.2 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.

27.

Oregon case law also points to a suspension for conduct similar to that engaged in by the Accused. Terms of suspension generally are imposed when a lawyer engages in a pattern of neglecting client legal matters in violation of DR 6-101(B). The length of suspension often will depend on the extent of the neglect and the number of clients affected. In *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996), 60 days of a 120-day suspension were attributable to the lawyer's neglect of one legal matter. When additional instances of neglect by the same lawyer were brought before the court, he was suspended for two years. *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997). *See also In re Parker*, 330 Or 541, 9 P3d 107 (2000) (court recounts other serious neglect cases that resulted in suspensions ranging from two years to four years); *In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (one year suspension of previously disciplined lawyer who neglected one domestic relations matter over a period of just two months).

Regarding the failure of a lawyer to account for the retainer (DR 9-101(C)(3)) or to return client property (DR 9-101(C)(4)), sanctions vary depending on the seriousness of the violation. Some term of suspension is typical. *See In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension for mistaken removal of client funds from trust, failure to maintain adequate trust records and failure to deliver client property to client); *In re Starr*, 326 Or 328, 952 P2d 1017 (1998) (six-month suspension for trust account violations not involving dishonesty); *In re Gildea*, *supra* (120-day suspension for DR 9-101(C)(3) violations, among others); *In re Arbuckle*, 308 Or 135, 775 P2d 832 (1989) (two-year suspension in large part because lawyer

failed to return property to client under DR 9-101(C)(4) [then numbered DR 9-101(B)(4)] and failed to respond to Bar inquiries).

Finally, violations of DR 1-103(C) alone have been held by the court to be sufficient to warrant significant suspension, even when no other substantive violations were alleged or proven against the accused. *See In re Miles*, 324 Or 218, 223, 923 P2d 1219 (1996) (“[i]n most cases, either a single, significant failure to cooperate with a disciplinary investigation or lesser, multiple failures to cooperate warrant a lengthy suspension from the practice of law”).

28.

Consistent with the *Standards* and Oregon case law, the parties agree that, for the violations set forth in this stipulation, the Accused shall be suspended from the practice of law for a period of two years, all but 90 days of which shall be stayed, subject to a two year term of probation to commence after the 90-day suspension is served and he is reinstated to active membership status with the Bar. The terms of the Accused’s reinstatement after 90 days, and the terms of his two-year probation, are as follows:

a. The Accused shall immediately go through all his existing files, open and closed, locate any and all file material relating to the Templetons, Ms. Swearingen, the Smiths or their corporation, the Penningtons or their corporation, and Mr. Gamba, and return those file materials, if any, to the clients or their new counsel.

b. The Accused recently was evaluated by a licensed psychologist who concluded that the Accused suffers from a form of depression, that the depression is being treated appropriately, that the current level of intensity of the depression does not significantly impede the Accused’s capability to practice law, and that the Accused currently is mentally capable of engaging in the practice of law. Upon the expiration of the Accused’s 90-day period of imposed suspension, he shall not be reinstated to active membership in the Oregon State Bar without first undergoing an updated examination by a licensed mental health professional acceptable to the Bar and presenting certification by that professional that the Accused continues to be mentally capable of engaging in the practice of law.

c. During the two-year probation period, the Accused shall comply with all the provisions of this stipulation, the Code of Professional Responsibility, and ORS Chapter 9. The Bar will commence proceedings to revoke the Accused’s probation if the State Professional Responsibility Board (hereinafter “SPRB”) finds probable cause to believe that he has not complied with this Stipulation, the Code of Professional Responsibility, or ORS Chapter 9 by conduct that occurred during the period of his suspension or probation. Should the Accused’s probation be revoked, he shall serve the remaining 21 months of his suspension.

d. The Accused shall participate in treatment with a licensed mental health professional acceptable to the Bar throughout the entire term of his suspension and probation, unless such treatment is terminated sooner by the licensed professional,

and the termination of treatment is acceptable to the Bar. The Accused shall waive any and all privileges necessary so that the Bar will have full access to information concerning the Accused's compliance with this treatment condition, without invading the substance of what the Accused shares with his treatment provider.

e. During the term of probation, the Accused shall take any and all medications prescribed by his licensed medical or treatment provider for the condition for which he is being treated. The amount of medication the Accused shall take shall be determined only by the licensed treatment provider who prescribes the medication, and any changes in dosage shall be made only by the treatment provider, and not the Accused.

f. Within 90 days of the effective date of this stipulation, the Accused shall cause the treatment provider described herein to render a written report to Disciplinary Counsel's Office of the Accused's progress and compliance with their treatment plan. Every 90 days thereafter, and continuing until the termination of the Accused's probation, the treatment provider described herein shall render similar written reports to Disciplinary Counsel's Office.

g. Within 90 days of the effective date of this stipulation, and every 90 days thereafter during the term of the Accused's probation, the Accused shall submit to Disciplinary Counsel's Office a written report, signed by the Accused, which indicates that the Accused has:

- (1) conducted a complete review of existing client matters in his office;
- (2) brought all matters to a current status or referred them out to other counsel;
- (3) complied with all other terms of probation since the last report or acknowledges that he has not fully complied, describe the nature of his noncompliance, and state the reasons for the noncompliance.

(4) Late submissions of these reports will be grounds for revocation of probation.

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

i. In the event the Accused fails to comply with the conditions of his probation, the Bar may initiate proceedings to revoke the Accused's probation pursuant to Rule of Procedure 6.2(d) and impose the stayed period of probation. In the event the Accused successfully completes his probation, he shall be reinstated unconditionally after the expiration of the probationary term, without further order of the Disciplinary Board or the Supreme Court.

29.

The parties agree that, should this Stipulation for Discipline be acceptable to the Supreme Court, it shall become effective January 1, 2003, which shall be the first day of the Accused's term of imposed suspension.

30.

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

EXECUTED this 28th day of October 2002.

/s/ Samuel J. Nicholls

Samuel J. Nicholls

OSB No. 81086

EXECUTED this 28th day of October 2002.

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. 98-143; SC S49296
)	
F. WILLIAM HONSOWETZ,)	
)	
Accused.)	

Bar Counsel:	Victor C. Pagel, Esq.
Counsel for the Accused:	William G. Wheatley, Esq.
Disciplinary Board:	Laurence E. Thorp, Esq. (Chair); Gregory E. Skillman, Esq.; Richard Hansen (Public Member)
Disposition:	Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	November 19, 2002

**ORDER APPROVING STIPULATION FOR DISCIPLINE
AND DISMISSING REVIEW**

Upon consideration by the court.

The Oregon State Bar and F. William Honsowetz (OSB No. 72124) have entered into a Stipulation for Discipline. The Stipulation for Discipline is approved. The Accused shall be publicly reprimanded, effective the date of this order. The request for review under Bar Rule 10.3 that was filed by the Oregon State Bar on February 22, 2002, is dismissed as moot.

DATED this 19th day of November 2002.

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

STIPULATION FOR DISCIPLINE

F. William Honsowetz, 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, F. William Honsowetz, 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 July 17, 1999, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused. On March 20, 2001, an Amended Formal Complaint was filed, alleging violations of DR 7-106(C)(7), DR 7-110(B), DR 1-102(A)(4), and DR 6-101(B) of the Code of Professional Responsibility. A hearing on the Amended Formal Complaint was held on December 19, 2001, and on January 14, 2002, the trial panel issued its opinion dismissing the Amended Formal Complaint. The Oregon State Bar has petitioned the Supreme Court for review of the trial panel opinion.

5.

The parties intend by this stipulation that the trial panel opinion be set aside; that this stipulation set forth all relevant facts, stipulated violations, and the agreed-upon sanction as a final disposition of this appeal and proceeding; and that, upon the approval of this stipulation by the Supreme Court, all alleged disciplinary rule violations in the Amended Formal Complaint, other than those referred to below, shall be dismissed.

Facts

6.

On or about January 31, 1997, the Accused undertook to represent Stephen Baze (hereinafter “husband”) in a proceeding to dissolve his short-term marriage to Kristen Baze (hereinafter “wife”). The dissolution of marriage proceeding went to arbitration on or about March 11, 1997, and the court signed the decree of dissolution of marriage and judgment on or about April 23, 1997. At various times herein, wife was represented by counsel; at other times, she represented herself.

7.

At all relevant times herein, UTCR 5.100 required service of a proposed order upon an opposing party a certain number of days (the number depending on whether the opposing party was represented or not) before submission of the order to the court. On three occasions between January 1997 and June 1998, the Accused presented orders or judgments to the court for signature without first having sent copies of these orders or judgments to wife. At least one order the Accused submitted to the court did not accurately reflect the court's ruling from the bench, and subsequent proceedings were required to correct the provisions of that order.

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 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 the legal system to avoid abuse of the legal process. *Standards*, § 6.2.

B. *Mental State.* The Accused did not act knowingly or intentionally. *Standards*, p. 7.

C. *Injury.* The Accused caused actual or potential injury to the legal system in that the court was required to expend additional time to review and correct the provisions of one of the orders the Accused had submitted to it. The Accused caused potential, not actual, injury to wife in that the incorrect order directed wife to do certain things that the court had not ordered, and she could have been subject to sanctions, or at least been required to defend herself, for failing to take those actions.

D. *Aggravating Factors.* Aggravating factors include:

The Accused has substantial experience in the practice of law, having been admitted to the Oregon State Bar in 1972. *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 is of good character and enjoys an excellent reputation in his community. *Standards*, § 9.32(g).

3. The Accused has demonstrated remorse. *Standards*, § 9.32(l).

4. Lengthy delay in the disciplinary proceedings. *Standards*, § 9.32(i).

10.

ABA *Standards* § 6.23 suggests that reprimand is generally appropriate when a lawyer fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.

11.

Oregon case law also suggests that a public reprimand would be the appropriate sanction in this case.

Prior cases involving violations of DR 1-102(A)(4) are not similar to the facts in this proceeding. In *In re Rex Q. Smith*, 316 Or 55, 848 P2d 612 (1993), for example, the lawyer, without legal basis, threatened to sue a physician who was a potential witness in a workers' compensation matter if the opinion the physician reported to the insurer differed from that of the claimant's treating chiropractor. As a result of the threat, the physician declined to examine the lawyer's client and render an opinion. Because the lawyer in *Smith* acted intentionally, the court found that a 35-day suspension for violation of DR 1-102(A)(4) was warranted under the ABA *Standards*. A sanction similar to that in *Smith* is not appropriate in this case. The Accused's conduct in this case was not knowing or intentional, and his violation of DR 1-102(A)(4) was thus much less egregious than that in *Smith*.

The Disciplinary Board has considered a number of cases more factually similar to this case than *In re Smith*, where the lawyer engaged in conduct that constituted a sole violation of DR 1-102(A)(4). In those cases, the Disciplinary Board found a public reprimand to be appropriate for such conduct. See, for example, *In re Ehmman*, 8 DB Rptr 123 (1994), where the lawyer was publicly reprimanded for violation of DR 1-102(A)(4) when he failed to respond to communications from the probate court directing him to inform the court of the status of the estate and to file accountings. See also *In re Wehmeyer*, 14 DB Rptr 188 (2000), where the lawyer was reprimanded for suggesting to a witness who he did not know had been subpoenaed to a hearing that the lawyer was hoping that the witness would not appear at the hearing.

The court should also consider *In re Egan*, 13 DB Rptr 96 (1999), where the lawyer was publicly reprimanded for violations of DR 1-102(A)(4), DR 7-102(A)(2), and DR 7-106(A) when she twice filed motions for reconsideration, despite being informed by the trial court that such motions were prohibited by local rule.

As further guidance for a sanction, the Accused's conduct in this proceeding can be likened to impermissible contact with an opposing party or the court. *In re Lewelling*, 296 Or 702, 678 P2d 1229 (1984), *In re Burrows*, 291 Or 135, 629 P2d 820 (1981), and *In re McCaffrey*, 275 Or 23, 549 P2d 666 (1976), therefore, are also appropriate guidelines for determining the sanction in this case. In *Lewelling, supra*, 296 Or at 707, the court stated that a public reprimand would be an appropriate sanction for an improper contact with a represented party, in violation of DR 7-104(A)(1), where the lawyer acted on impulse. In *Burrows*, the lawyer was reprimanded for an impermissible contact with an opposing party and with the court, in violation of DR 7-104(A)(1) and DR 7-110(B). In *McCaffrey*, the court found it appropriate to reprimand a lawyer for a single, negligent contact with a represented party, in violation of DR 7-104(A)(1).

12.

Consistent with the Standards and Oregon case law, the parties agree that the Accused shall accept a public reprimand for violation of DR 1-102(A)(4), the sanction to be effective immediately on the court's approval of this stipulation and the dismissal of the Bar's petition for review. The parties further stipulate that neither party shall be awarded costs and disbursements.

13.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the State Professional Responsibility Board (SPRB) on July 20, 2002. 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 9th day of October 2002.

/s/ F. William Honsowetz

F. William Honsowetz

OSB No. 72124

EXECUTED this 24th day of October 2002.

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. 98-153
)
NANCY F. A. CHAPMAN,)
)
Accused.)

Bar Counsel: John F. Adlard, Esq.
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None.
Disposition: Violation of DR 1-102(A)(4). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: November 21, 2002

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)(4).

DATED this 21st day of November 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Nancy F. A. Chapman, 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, Nancy A. Chapman, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 15, 1988, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business at all times relevant to this complaint 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 formal disciplinary proceedings against the Accused for alleged violations of DR 7-104(A)(1), DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) 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.

The Marvin Lewis Matter

Facts

5.

On or about December 17, 1996, the Accused undertook to represent Marvin Lewis (hereinafter “Lewis”) in a workers’ compensation claim. Cigna, the insurance company that insured Lewis’ employer (hereinafter “Cigna”), retained Bradley R. Scheminske, Esq. (hereinafter “Scheminske”) to represent it.

6.

On December 17, 1996, Cigna issued a partial denial of Lewis’s workers’ compensation claim. A hearing on the denial was scheduled for March 28, 1997. On February 12, 1997, on behalf of Lewis, the Accused filed additional claims for compensation with Cigna. On February 12, 1997, the Accused also requested that the

March 28, 1997, hearing be reset in order to allow time for Cigna to act on Lewis's additional claims for compensation and to permit all of Lewis's claims to be consolidated for hearing.

7.

On or about April 3, 1997, Cigna sent Lewis a letter that directed him to undergo a medical examination on April 28, 1997. The Accused advised her client of his options regarding whether he should attend the April 28, 1997, medical examination. The options about which the Accused advised Lewis included his not attending the examination. Before the Accused advised Lewis that he had the option not to attend the April 28, 1997, medical examination, she failed to adequately determine that he might be required to attend additional medical examinations or be subject to penalties for failing to do so.

8.

Scheminske scheduled Lewis's deposition for April 30, 1997. Before Scheminske had completed his examination of Lewis, the Accused terminated the deposition and caused Lewis to leave the deposition.

9.

As a result of the Accused's conduct described in paragraphs 7 and 8 herein, Scheminske, on Cigna's behalf, filed a motion that requested the Workers' Compensation Division ("WCD") to grant Cigna the authority to suspend payment of workers' compensation benefits to Lewis because Lewis had failed to cooperate with Cigna's investigation of his claim. Scheminske also filed a motion that requested WCD to assess a civil penalty against the Accused for her conduct described in paragraph 8 herein. On or about May 20, 1997, the Sanctions Unit of WCD notified the Accused of its intent to grant Scheminske's motions absent documentation that the Accused's and Lewis's conduct was reasonable.

10.

On or about May 21, 1997 and June 2, 1997, the Accused filed responses to Cigna's requests for suspension of Lewis's benefits and for the assessment of a civil penalty against the Accused. In her May 21, 1997, response, the Accused represented to the Sanctions Unit of WCD that Cigna had filed a motion to set over the March 28, 1997, hearing described in paragraph 6 herein. The Accused corrected this representation in her June 2, 1997, response. In the June 2, 1997, response, however, the Accused represented that at the time she had requested a setover of the March 28, 1997, hearing, Scheminske's office had inquired of her office about a setover, as well. These representations were inaccurate, and the Accused failed to verify their accuracy before she made them.

11.

By letter dated May 27, 1997, the Accused represented to WCD that Cigna had scheduled Lewis for eight medical examinations, and that Lewis had attended four medical examinations. These representations were inaccurate in the context of a workers' compensation proceeding, and the Accused recklessly failed to verify the basis for her representations.

12.

A hearing on the motions for the assessment of a civil penalty against the Accused described in paragraph 9 herein was set for October 13, 1997. At the hearing, the Accused represented that (1) someone in her office had spoken to an employee of Cigna, rather than to Scheminske's office, regarding the setover she requested in her February 12, 1997, letter described in paragraph 6, and (2) she had obtained an advisory opinion from the Oregon State Bar regarding whether the disciplinary rules permitted her to contact Cigna directly as described in paragraph 6. These representations were inaccurate. The Accused failed to verify the accuracy of the statement regarding the setover and was careless in her characterization of the content of her communication with the Oregon State Bar.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 herein, she engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4) of the Code of Professional Responsibility.

Cordeiro Matter

Facts

14.

At all relevant times herein, the Accused represented Mary Cordeiro (hereinafter "Cordeiro") in a workers' compensation claim. At all relevant times, CNA, the insurance company that insured Cordeiro's employer, was represented by Scheminske.

15.

On or about May 25, 1994, WCD issued a Determination Order closing Cordeiro's claim. On Cordeiro's behalf, the Accused requested that WCD reconsider this order. WCD dismissed the Accused's request for reconsideration, and the Accused requested a hearing. The hearing officer affirmed the dismissal, and the Accused appealed to the Workers' Compensation Board, which also affirmed the dismissal. The Accused filed an appeal with the Oregon Court of Appeals, which affirmed the decision of the Workers' Compensation Board without opinion. The

Accused then filed a petition for review with the Oregon Supreme Court, and the court denied the Accused's petition without opinion.

16.

After the Supreme Court denied the Accused's petition for review, by letter dated July 25, 1997, the Accused requested that WCD reissue its May 25, 1994, Determination Order. In this letter, the Accused made the following representation: "This case has been to the Supreme Court of Oregon and it appears that the appeal language in this Determination Order was not properly set forth." The representation in the July 25, 1997, letter was awkwardly stated and ambiguous so that it could be read to mean that the Supreme Court had ruled that the language of the Determination Order regarding the appeal rights in the Cordeiro case was not properly set forth. The Supreme Court had, in fact, declined to consider the case, and no court had ruled on the propriety of the language of the Determination Order. The Accused carelessly failed to clarify the language she used in the July 25, 1997, letter.

Violations

18.

The Accused admits that, by engaging in the conduct described in paragraphs 14 through 16 of this stipulation, she engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4).

19.

After further factual investigation, the parties agree that the following charges should be dismissed: the DR 1-102(A)(3) charges in the Second and Fourth Causes of Complaint in the Formal Complaint; the DR 7-102(A)(5) charge in the Second Cause of Complaint in the Formal Complaint; and the DR 7-104(A)(1) charges in the First and Third Causes of Complaint in the Formal Complaint.

Sanction

20.

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

A. *Duty Violated.* The Accused violated her duty to the legal system to refrain from causing interference or potential interference with a legal proceeding. *Standards*, § 6.2.

B. *Mental State.* In the two client matters described herein, the Accused did not act intentionally or knowingly. *Standards*, p. 7.

C. *Injury*. The Accused's conduct caused the WCD to terminate workers' compensation benefits for Marvin Lewis. The Accused's conduct also resulted in additional hearings in the Lewis matter, and Cigna incurred additional legal fees in responding to the Accused's conduct and representations. In the Cordeiro matter, the Accused's conduct had the potential to cause significant harm to the insurer in that it could have resulted in reopening a claim that had been closed.

D. *Aggravating Factors*. Aggravating factors include:

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

21.

ABA *Standards* § 6.23 suggests that a reprimand is generally appropriate where a lawyer causes interference or potential interference with legal proceedings. Prior Oregon disciplinary case resolutions and the aggravating and mitigating factors in this case suggest that a public reprimand is the appropriate sanction. See *In re Van Loon*, 15 DB Rptr 61 (2001); *In re McCurdy*, 13 DB Rptr 107 (1999).

22.

Consistent with the *Standards* and prior disciplinary case resolution, the parties agree that the Accused shall be publicly reprimanded for two counts of violation of DR 1-102(A)(4), the sanction to be effective on the date this stipulation is approved.

23.

In addition, on or before November 30, 2002, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$481.20, incurred for deposition costs and transcript. Should the Accused fail to pay \$481.20 in full by November 30, 2002, 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.

24.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the Chair of the State Professional Responsibility Board (SPRB) on July 29, 2002. 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 28th day of October 2002.

/s/ Nancy A. Chapman

Nancy A. Chapman

OSB No. 88019

EXECUTED this 13th day of November 2002.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

Cite as 335 Or 71 (2002)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
MICHAEL L. SPENCER,)
)
Accused.)

(OSB Nos. 00-49, 00-51; SC S49362)

En Banc

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

Argued and submitted September 9, 2002. Decided November 22, 2002.

Michael L. Spencer, Klamath Falls, argued the cause and filed the brief for himself.

Chris Mullmann, Assistant Disciplinary Counsel, 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 60 days, commencing 60 days from the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar (“Bar”) charged the Accused with engaging in dishonest conduct, assisting a client in illegal or fraudulent conduct, and failing to return to a client property belonging to that client. A trial panel of the Disciplinary Board concluded that the Accused had engaged in dishonest conduct, but had not assisted a client in such conduct or failed to return client property, and suspended the Accused from the practice of law for 60 days. *Held*: The Accused engaged in dishonest conduct when he assisted a friend in registering a motor home in Oregon when the friend was not eligible to register the vehicle here. The Bar failed to prove by clear and convincing evidence that that friend was a client of the Accused. The Accused failed to return client property when a person had delivered property to the Accused while he considered whether to represent her and the Accused then failed to return that property to her on request.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 01-8
)
T. MICHAEL RYAN,)
)
Accused.)

Bar Counsel: Maureen McCormach, Esq.
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 6-101(B), and
DR 9-101(C)(4). Stipulation for Discipline. 30-day
suspension.
Effective Date of Order: December 1, 2002

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, effective December 1, 2002, for violation of DR 1-103(C), DR 6-101(B), and DR 9-101(C)(4).

DATED this 25th day of November 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

T. Michael Ryan, 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, T. Michael Ryan, was admitted by the Oregon Supreme Court to the practice of law in Oregon on March 1, 1991, and has been a member of the Oregon State Bar continuously since that time, currently 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 September 26, 2001, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-103(C), DR 6-101(B), and DR 9-101(C)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

The Accused was retained by John Martin and Kathryn Anne Lanning to file a Chapter 7 bankruptcy petition for them. The Accused filed the petition May 4, 1998, and named the Internal Revenue Service (“IRS”) and the Oregon Department of Revenue (“ODR”) as unsecured priority claims. Both the IRS and ODR received notice of the petition and filed proofs of claim.

6.

On August 13, 1998, the bankruptcy court entered an order of discharge, and both the IRS and ODR were paid the full amount of the claim they filed against the bankruptcy estate.

7.

After entry of the order of discharge, the ODR pursued penalty amounts that it had claimed before the discharge. Upon learning that the ODR was pursuing the penalty amounts, Mrs. Lanning attempted to contact the Accused on numerous occasions up to and including August 2000. At no time did the Accused return Mrs. Lanning's letters or telephone calls.

8.

After learning that the ODR was pursuing penalty amounts and being unable to contact the Accused, Mrs. Lanning made demand for return of her file documents, but the Accused failed to return them upon her request.

9.

On or about August 29, 2000, Mrs. Lanning filed a complaint with Disciplinary Counsel's Office of the Oregon State Bar concerning the conduct of the Accused. On September 7, 2000, Disciplinary Counsel's Office forwarded the complaint to the Accused for response. The Accused did not respond and a second letter was sent to him on September 29, 2000, reminding him of his duty to respond to inquires from the Bar. The Accused did not respond to that letter and the matter was referred to the Washington County Local Professional Responsibility Committee ("LPRC") for investigation. The Accused did cooperate with the LPRC investigation.

Violations

10.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-103(C), DR 6-101(B), and DR 9-101(C)(4).

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 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)(4), the Accused violated his duties to his clients. *Standards*, §§ 4.1, 4.4. In violating DR 1-103(C), the Accused violated his duty to the profession. *Standards*, § 7.0.

B. *Mental State.* The Accused's conduct was negligent, defined in the *Standards* as a failure to heed a substantial risk that circumstances exist or that a

result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.

C. *Injury*. The Accused's conduct resulted in actual and potential injury to the client and to the Bar. The conduct delayed Mrs. Lanning in resolving the dispute with ODR and the Accused's failure to respond to Disciplinary Counsel's Office required additional investigation by the LPRC resulting in delay of the investigation.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior disciplinary record having been suspended from the practice of law in 2001 for 180 days. *In re Ryan*, 15 DB Rptr 87 (2001). *Standards*, § 9.22(a).

2. The Accused has substantial experience in the practice of law having been admitted to the Oregon Bar in 1991.

E. *Mitigating Factors*. Mitigating factors include:

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

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

12.

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. Suspension is also appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client. *Standards*, §§ 4.12, 4.42(a). The *Standards* also 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.

13.

Oregon cases also suggest that a suspension is an appropriate sanction in this case. See *In re Medonich*, 14 DB Rptr 54 (2000) (attorney suspended for 30 days for violating DR 1-103(C), DR 9-101(A), and DR 9-101(C)(4)); *In re Edelson*, 13 DB Rptr 72 (1999) (public reprimand for violating only DR 1-103(C)); *In re McKenzie*, 13 DB Rptr 12 (1999) (public reprimand for single violation of DR 6-101(B)); *In re Steves*, 12 DB Rptr 185 (1988) (30-day suspension for violating DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4)).

14.

Consistent with the Standards and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 30 days for violation of

DR 1-103(C), DR 6-101(B), and DR 9-101(C)(4), the sanction to be effective December 1, 2002.

15.

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

EXECUTED this 20th day of November 2002.

/s/ T. Michael Ryan

T. Michael Ryan

OSB No. 91011

EXECUTED this 18th day of November 2002.

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 Nos. 02-141, 02-142
)
LELAND R. BERGER,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Christopher R. Hardman, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: December 5, 2002

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 5-101(A) and DR 6-101(B), effective the date of this order.

DATED this 5th day of December 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Leland R. Berger, 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, Leland R. Berger, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1983, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 21, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A) 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.

Salser Matter

Case No. 02-141

Facts

5.

Sometime prior to April 1999, William Salser (“William”) pleaded guilty to rape. On April 22, 1999, William’s mother, Diane Salser (“Salser”) retained the Accused to represent William in an appeal from judgment and sentence. The Accused also agreed to determine if William had any viable postconviction claims. William delegated the monitoring of his appeal to Salser and a family friend, Diana Blythe (“Blythe”). The Accused timely filed a notice of appeal. As of November 1999, the Accused determined that, as a matter of Oregon law, William had no grounds to pursue a direct appeal. The Accused told Salser and Blythe of his finding. He further advised that due to state and federal statute of limitations concerns, he would not

dismiss the appeal, but would allow the court to do so, which would give him additional time to review the record for possible postconviction claims.

6.

Between November 1999 and December 26, 2000, the Accused did not complete review of the trial court file. On December 26, 2000, the Oregon Court of Appeals dismissed William's appeal. Between December 26, 2000, and February 2002, the Accused had not completed his review of the trial court file to determine if William had any viable postconviction claims.

Violation

7.

The Accused admits that, for failing to timely determine if his client had any viable postconviction claims, he violated DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Orton Matter

Case No. 02-142

Facts

8.

Sometime after June 1999, Robert Orton retained the Accused to file an appeal in connection with two criminal convictions. The matters were interrelated, and on October 19, 1999, the Accused filed a notice of appeal on one. In November 1999, the Accused filed a notice of appeal in the second matter and a motion to consolidate both.

9.

Between November 1999 and June 2000, the Accused was diligent in obtaining all relevant files, tapes, transcripts, evidence, and other information needed to evaluate Orton's potential appellate issues.

10.

In the spring of 2000, the Court of Appeals set a briefing schedule. Orton's brief was due June 15, 2000. Prior to June 15, 2000, the Accused filed a motion to extend the time to file Orton's brief. This motion sought an additional 30 days to submit Orton's brief. Between June and late September 2000, the Accused continued to review the materials. During this period of time, the Accused sought four additional extensions from the Court of Appeals.

11.

As of September 26, 2000, the Accused had completed his review. He and Orton met and the Accused provided Orton with his analysis of the issues and his prognosis for success. After the September meeting, the Accused sought seven more extensions of time to file Orton's brief. The court granted the Accused's requests. In its May 2001 order, the court set June 28, 2001, as the due date for Orton's brief and indicated that it would grant no further extensions of time.

12.

The Accused failed to file Orton's brief on June 28, 2001. On August 10, 2001, the Court of Appeals entered an order of default, dismissed Orton's appeal, and issued an appellate judgment.

13.

Sometime after August 10, 2001, the Accused and Orton discussed the situation. The Accused offered to assist Orton in getting the case reinstated. The Accused also provided Orton with options if the court denied his reinstatement request. Orton told the Accused he wanted the Accused to continue on the case and the Accused prepared a rough draft of the brief.

14.

After Orton's appeal was dismissed, the Accused failed to discuss the attorney self-interest conflict created as a result of the Accused's failure to timely file Orton's brief, or the affect that the missed deadline may have on the Accused's professional judgment on Orton's behalf.

Violations

15.

The Accused admits that, for failing to timely attend to Orton's matter and by continuing to represent Orton after his appeal had been dismissed without complying with the full disclosure provisions of DR 10-101(B), the Accused violated DR 5-101(A) (self-interest conflict) and DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Sanction

16.

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 failing to timely attend to both clients' legal matters, the Accused violated his duty to both clients. *Standards*, § 4.4. By failing to determine whether his continued representation of a client may have been affected by his own interest, the Accused violated a duty owed to his client. *Standards*, § 4.3.

B. *Mental State.* The Accused acted negligently.

C. *Extent of Injury.* In Salsler, the Accused's failure to timely pursue a postconviction claim, or to advise his client that none was viable, delayed the timely resolution of William's legal matter. In Orton, the Accused's failure to timely file Orton's brief resulted in Orton's case being dismissed.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
3. Remorse. *Standards*, § 9.32(l).

17.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and when a lawyer is negligent in determining whether the representation of a client may be affected by the lawyer's own interest. *Standards*, §§ 4.33, 4.44. Oregon case law is in accord. See *In re Lawrence*, 332 Or 502, 513, 31 P3d 1078 (2001) (reprimand would be appropriate sanction for DR 5-101(A) violation, were it not for additional violations by lawyer); *In re Brownlee*, 9 DB Rptr 85 (1995).

18.

Consistent with the *Standards* and Oregon case law, the Accused shall receive a public reprimand for violating DR 5-101(A) and DR 6-101(B) of the Code of Professional Responsibility. The sanction will be effective the date this stipulation is approved by the Disciplinary Board.

19.

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 November 2002.

/s/ Leland R. Berger

Leland R. Berger
OSB No. 830201

EXECUTED this 27th day of November 2002.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan
OSB No. 833144
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 02-123
)	
D. ERIC WOODARD,)	
)	
Accused.)	

Bar Counsel:	None
Counsel for the Accused:	Susan D. Isaacs, Esq.
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	December 5, 2002

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).

DATED this 5th day of December 2002.

/s/ Paul E. Meyer
 Paul E. Meyer
 State Disciplinary Board Chairperson

/s/ Mary Mertens James
 Mary Mertens James, Region 6
 Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

D. Eric Woodard, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, D. Eric Woodard, 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 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 August 16, 2002, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In May 1996, Philip Megdal (hereinafter “Megdal”) brought suit against G.C. Kolve Co., alleging that it breached a lease agreement with a business owned by Megdal. On May 12, 1997, the court signed a document entitled “Stipulated Order Abating Matter and Transferring to Arbitration,” which had been executed by the lawyers for both parties. The stipulation provided that, pursuant to ORS 36.305, the parties had entered into an arbitration agreement. However, the parties never executed that agreement. In October 1997, the parties chose an arbitrator, who thereafter set the arbitration for February 1 and 2, 1999.

6.

In December 1997, Megdal discharged his first lawyer and retained Richard Ligon of Woodard and Associates to represent him in the matter. A year later the Accused took over primary responsibility from Ligon for handling Megdal’s legal matter.

7.

On January 4, 1999, the Accused filed with the court a document entitled “Motion to Dismiss/Motion to Reinstate” in which he requested that the court reinstate the case to the circuit court docket or dismiss it, so that he could refile it. On January 7, 1999, the arbitrator denied the motion to reinstate and granted the motion to dismiss, despite the Accused’s assertion that the arbitrator was not empowered to rule on those motions. The arbitrator also informed the parties that he would award attorneys fees to the defendant payable by Megdal.

8.

The parties then submitted pleadings regarding the attorneys fees issue and on February 2, 1999, after oral argument, the arbitrator awarded the defendant \$20,000 in attorney fees. The arbitrator’s award was filed in the circuit court on March 29, 1999, and on April 9, 1999, the court signed a judgment in favor of the defendant.

9.

On April 20, 1999, the Accused filed a document entitled “Notice of Appeal and Request for Trial De Novo.” Even though neither party requested oral argument, the court scheduled a May 24, 1999, hearing to consider those issues. The Accused did not appear at the hearing and on June 9, 1999, the court signed an order denying the request for trial de novo. On June 16, 1999, the Accused filed a motion to reconsider the June 9, 1999, order.

10.

The Accused did not inform Megdal until the end of September 1999, after Megdal called the Accused and informed him that some of his tenants had been served with writs of garnishment that (1) the arbitrator had awarded \$20,000 in attorneys fees to the defendant on February 2, 1999, (2) a judgment had been taken against his business on April 9, 1999, and (3) the request for trial de novo had been denied on June 9, 1999.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated DR 6-101(B) of the Code of Professional Responsibility.

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

B. *Mental State.* "Negligence" is defined in the *Standards* as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused acted with negligence in failing to communicate with Megdal between February and September 1999.

C. *Injury.* Injury can either be actual or potential. In this case, the Accused's conduct caused actual injury to Megdal. Interest accrued on the judgment between the time it was entered and when Megdal learned about it. Megdal also had to pay attorney fees incurred by the defendant in pursuing collection of the judgment.

D. *Aggravating Factors.* Aggravating factors include:

Substantial experience in the practice of law: 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 dishonest or selfish motive. *Standards*, § 9.32(b).
2. Cooperative attitude toward proceeding. *Standards*, § 9.32(e).
3. Remorse. *Standards*, § 9.32(l).

13.

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

14.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Coulter*, 15 DB Rptr 220 (2001); *In re McKenzie*, 13 DB Rptr 12 (1999).

15.

The Accused agrees to accept a public reprimand for violating DR 6-101(B).

16.

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

EXECUTED this 21st day of November 2002.

/s/ D. Eric Woodard

D. Eric Woodard

OSB No. 74348

EXECUTED this 22nd day of November 2002.

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. 01-127
)
B. RUPERT KOBLEGARDE,)
)
Accused.)

Bar Counsel: Timothy M. Bowman, Esq.
Counsel for the Accused: Bradley F. Tellam, Esq.
Disciplinary Board: None
Disposition: Violation of DR 6-101(A). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: December 10, 2002

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 10th day of December 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

B. Rupert Koblegarde, 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, B. Rupert Koblegarde, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1970, 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 August 29, 2001, 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 6-101(A) of the Code of Professional Responsibility. The parties intend that this stipulation for discipline set forth all relevant facts, violations, and the agreed upon sanction as a final disposition of the proceeding.

Facts

5.

On December 16, 1985, John Koenig (hereinafter "John") and Julia Koenig (hereinafter "Julia") executed wills. On July 28, 1986, John, who was having health problems, executed a general power of attorney in favor of his son, Charles Koenig (hereinafter "Charles"). In November 1987, John was admitted into a nursing home.

6.

In 1988, the Accused began representing Julia and Charles, as attorney-in-fact for John, regarding estate-planning matters. By then, John was incapacitated and not capable of carrying on a meaningful conversation. The Accused never met or spoke with John.

7.

Based upon conversations with Julia, the Accused concluded that the 1985 wills did not meet the estate planning goals she identified. Other than speaking with Julia and Charles, the Accused made no attempt to ascertain John's estate planning

goals. The Accused recommended that Julia and John execute revocable living trusts and pour-over wills.

8.

On John's behalf, the Accused prepared a revocable living trust and pour-over will. The will was to be used only to the extent that John's property had not been transferred into the revocable living trust before his death. On July 27, 1988, the Accused had Charles, as attorney-in-fact for John, execute both the trust documents and the will.

9.

In September 1988, May 1990, and September 1990, as a result of additional conversations with Julia, the Accused prepared and had Charles, as attorney-in-fact for John, execute amendments to John's revocable living trust. Between 1990 and 1992, the Accused assisted Charles, as attorney-in-fact for John, in making gifts to Charles and his wife. In December 1993, as a result of additional conversations with Julia, the Accused prepared and had Charles, as attorney-in-fact for John, execute a restatement of John's revocable living trust.

10.

The Accused admits that at the time he took the actions described in paragraphs 8 and 9, he did not act with the thoroughness and preparation reasonably necessary for the representation in that he did not fully consider the effect or consequences of Charles executing the documents on John's behalf.

Violations

11.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 10, he violated DR 6-101(A) of the Code of Professional Responsibility.

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 provide competent representation. *Standards*, § 4.5.

B. *Mental State*. “Negligence” is defined as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused acted with negligence in that he failed to determine whether the advice he gave and actions he took on behalf of John were authorized by John, and failed to consider fully the effect or consequences of his actions under the circumstances. The Accused did not intend to harm or injure anyone.

C. *Injury*. Injury may be either actual or potential. At least by the time of the events described in paragraph 9, the Accused knew that Charles’ siblings did not trust Charles. The Accused’s advice to Julia and Charles, and the actions he took on behalf of John exacerbated that distrust. In addition, after John died, Charles’ three siblings brought suit against Julia, Charles, and Charles’ wife to set aside the trust, will and gifts. Julia, Charles, and Charles’ wife incurred attorney fees associated with that lawsuit.

D. *Aggravating Factors*. Aggravating factors include:

Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1970. *Standards* § 9.22(a);

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(a).
3. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
4. Character or reputation. *Standards*, § 9.32(g).
5. Remorse. *Standards*, § 9.32(l).

13.

The *Standards* provide that reprimand is generally appropriate when a lawyer demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client, or a lawyer is negligent in determining whether her or she is competent to handle a legal matter and causes injury or potential injury to a client. *Standards*, § 4.53.

14.

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 Haws*, 15 DB Rptr 56 (2001); *In re Finlayson*, 14 DB Rptr 228 (2000).

15.

The Accused agrees to accept a public reprimand for violating DR 6-101(A).

16.

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

EXECUTED this 25th day of October 2002.

/s/ B. Rupert Koblegarde

B. Rupert Koblegarde

OSB No. 70079

EXECUTED this 29th day of October 2002.

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. 02-68
)
DAVID W. JAMES,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: Bradley F. Tellam, Esq.
Disciplinary Board: None
Disposition: Violation of DR 5-105(E), DR 6-101(B), and
DR 9-101(C)(3). Stipulation for Discipline. 60-day
suspension.
Effective Date of Order: December 14, 2002

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by David W. James and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended for 60 days, effective three business days after the date of this order for violation of DR 5-105(E), DR 6-101(B), and DR 9-101(C)(3) of the Code of Professional Responsibility.

DATED this 11th day of December 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

/s/ Michael R. Levine
Michael R. Levine, Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

The 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 17, 1971, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On May 18, 2002, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 5-105(E), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 9-101(A) as set forth in the Bar’s Formal Complaint, should be and, upon the approval of this stipulation, is dismissed. 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 January 2001, Deborah Jones and Joe Jones (hereinafter collectively “the Joneses”) retained the Accused to prepare the documents necessary to dissolve their marriage. They paid the Accused \$600, \$300 for the legal services to be performed and \$300 for costs to be incurred. The Accused represented to the Joneses that additional fees would be required to prepare a Qualified Domestic Relations Order (“QDRO”) for the division of funds in Joe Jones’ 401(k) plan account. Thereafter, the Accused prepared the necessary documents, including the petition and stipulated judgment and decree of dissolution of marriage, which he filed with the court. The court signed the judgment and decree of dissolution of marriage on May 3, 2001.

6.

Between about July 2001 and early November 2001, the Accused failed to respond to Deborah Jones' attempts to contact him and otherwise failed to communicate with the Joneses concerning the matter.

7.

On or about November 14, 2001, the Accused prepared a final draft of the QDRO and requested an additional \$350 for the legal services associated with its preparation. Deborah Jones paid the additional fee. On or about November 20, 2001, the Accused filed the QDRO with the court, but failed thereafter to notify the Joneses that the order had been filed and Joe Jones' retirement funds could then be distributed according to its terms.

8.

In simultaneously representing the interests of Deborah Jones and Joe Jones, the Accused represented multiple current clients in a matter when their interests were adverse.

9.

The Accused failed to account to the Joneses for the funds he received for legal services and costs.

10.

The Accused admits that the aforesaid conduct constituted violation of DR 5-105(E), current client conflict of interest; DR 6-101(B), neglect of a legal matter entrusted to him; and DR 9-101(C)(3), failure to account for client funds.

Sanction

11.

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 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.* The Accused violated his duties to his clients and the profession. *Standards*, §§ 4.1, 4.3, 4.4, 7.0.

B. *Mental State.* The Accused's conduct demonstrates knowledge, or the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious awareness to accomplish a particular result. *Standards*, p. 7.

C. *Injury*. There was actual and potential injury to the clients. The clients' did not have independent legal advice and the preparation of the QDRO and division of the clients' assets was delayed. By failing to provide the clients with an accounting of the funds paid for costs, they were uncertain how the funds been distributed.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior record of discipline, including a public reprimand for violation of DR 2-106(A), DR 6-101(B), and DR 9-101(A) in 1996, *In re James*, 10 DB Rptr 63 (1996), and a letter of admonition for violation of DR 5-105(C) in 1998.

2. There are multiple rule violations. *Standards*, § 9.22(d).

3. The Accused was admitted to practice in 1971 and 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 dishonest or selfish motives. *Standards*, § 9.32(b).

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

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

12.

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 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 fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42.

13.

Case law is in accord. *See, e.g., In re Jans*, 295 Or 289, 666 P2d 830 (1983) (30-day suspension for violation of DR 5-105); *In re Rudie*, 294 Or 740, 662 P2d 321 (1983) (seven-month suspension for violation of DR 6-101(A)(2) [current DR 6-101(A)], DR 6-101(A)(3) [current DR 6-101(B)], and DR 7-101(A)(2), after having been previously disciplined for similar rule violations).

14.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 5-105(E), DR 6-101(B), and DR 9-101(C)(3) of the Code of Professional Responsibility.

15.

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

DATED this 4th day of December 2002.

/s/ David W. James

David W. James

OSB No. 71090

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. 02-152
)
ARTHUR P. KLOSTERMAN,)
)
Accused.)

Bar Counsel: None
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: December 16, 2002

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 5-101(A) and DR 6-101(B).

DATED this 16th day of December 2002.

/s/ Paul E. Meyer
Paul E. Meyer, Esq.
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Arthur P. Klosterman, 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, Arthur P. Klosterman, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 25, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 October 18, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A) 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.

In 1998, William A. Olsen (“Olsen”) retained the Accused to represent him regarding a Social Security claim. On August 27, 1999, the Accused attended a Social Security hearing on behalf of Olsen before an administrative law judge (ALJ) in Portland, Oregon. On October 1, 1999, the ALJ mailed a written copy of his denial of the claim to Olsen and the Accused.

6.

Olsen subsequently met with the Accused to discuss options that might be available to him. Olsen developed a rebuttal to the denial and asked that the Accused submit the rebuttal to the Social Security Review Committee, which the Accused did on November 11, 1999. On December 15, 1999, Olsen and the Accused were advised that the rebuttal had been received and included in the record.

7.

On December 12, 2000 and January 3, 2001, Olsen and the Accused received letters from the Social Security Administration advising that, if Olsen wanted court review of the ALJ's denial, he had 60 days from the date of the letter to file a civil complaint in United States District Court.

8.

Shortly after receipt of the letter of January 3, 2001, Olsen met with the Accused and instructed the Accused to file suit in United States District Court. The Accused agreed to do so and asked Olsen to allow him to have an attorney more familiar with District Court proceeding to review the case. Olsen agreed to have the Accused do so.

9.

After the January meeting, Olsen wrote the Accused on March 21, 2001, September 4, 2001, and September 20, 2001. The Accused failed and neglected to respond to any of these letters. Olsen called the Accused on October 1, 2001. The Accused's receptionist returned the call to advise Olsen that the Accused wanted to meet with him on October 10, 2001.

10.

During the October 10, 2001, meeting, the Accused informed Olsen that he had failed to forward the file to another attorney for review and had failed to timely file the appeal in Federal District Court. The Accused advised Olsen of available options and informed Olsen that he was willing to continue as his lawyer. At no time did the Accused advise Olsen that Olsen had a potential malpractice claim against the Accused, did not advise Olsen to seek independent counsel, and did not assist Olsen in finding another attorney.

Violations

11.

By failing to file the appeal and forward the file to another attorney for review and allowing the time to appeal to expire, the Accused neglected a legal matter entrusted to him. By agreeing to continue to represent Olsen after he was aware that he had allowed the time to appeal to lapse, the Accused continued to represent Olsen when his professional judgment on Olsen's behalf was likely to be or reasonably may have been affected by his own financial, business, property, or personal interests, and did not obtain Olsen's consent to the continued representation after full disclosure.

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(B) and DR 5-101(A) of the Code of Professional Responsibility.

Sanction

13.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the 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 failing to avoid a conflict of interest and by neglecting a legal matter, the Accused violated his duty to his client. *Standards*, §§ 4.3, 4.4.

B. *Mental State.* The Accused’s conduct demonstrates that he 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.

C. *Injury.* The Accused’s conduct resulted in actual and potential injury in that had the Accused timely filed the appeal, and had it been successful, Olsen would have been entitled to significantly greater benefits. Because of the Accused’s neglect, Olsen lost his opportunity to contest the decision of the ALJ.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has substantial experience in the practice of law having been admitted to practice in 1986. *Standards*, § 9.22(i).

2. The Accused’s client was vulnerable. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

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

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

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

14.

The *Standards* provide that 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, and causes injury or potential injury to a

client. *Standards* § 4.33. The *Standards* also provide that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards* § 4.43.

15.

Oregon case law is in accord. *In re Odman*, 297 Or 744, 687 P2d 153 (1984) (reprimand for violation of DR 6-101(A), DR 6-101(B), and DR 5-105(C)); *In re Lafky*, 13 DB Rptr 114 (1999) (reprimand for violation of DR 2-110(A)(2) and DR 5-101(A)); *In re McCurdy*, 13 DB Rptr 107 (1999) (reprimand for violation of DR 1-102(A)(4) and DR 5-101(A)).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A) and DR 6-101(B), the sanction to be effective immediately upon approval of the Disciplinary Board.

17.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) on October 18, 2002. 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 December 2002.

/s/ Arthur P. Klosterman

Arthur P. Klosterman

OSB No. 86058

EXECUTED this 10th day of December 2002.

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. 02-151
)	
BOB PANGBURN,	)	SC S49855
)	
Accused.)	

ORDER IMPOSING PUBLIC REPRIMAND

Upon consideration by the court.

The Oregon State Bar has notified this court that the Accused has been disciplined by the Professional Conduct Board of the Idaho State Bar. The Oregon State Bar on behalf of the State Professional Responsibility Board recommended a public reprimand. The court accepts the recommendation and the Accused is publicly reprimanded.

Dated this 17th day of December 2002.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.
Chief Justice

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-95
)
PAUL D. GEAR,)
)
Accused.)

Bar Counsel: Gerald Henry Itkin, Esq.
Counsel for the Accused: Susan D. Isaacs, Esq.
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4) and DR 6-101(B).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: December 30, 2002

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 60 days, for violation of DR 1-102(A)(4) and DR 6-101(B). The suspension will run consecutively to the suspension imposed in *In re Gear (I)*, 16 DB Rptr 252 (2002).

DATED this 30th day of December 2002.

/s/ Paul E. Meyer
Paul E. Meyer
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Paul D. Gear, attorney at law (hereinafter “the Accused”), and the Oregon State Bar (hereinafter “the Bar”) hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused, Paul Douglas Gear, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, and has been a member of the Oregon State Bar continuously since that time, except as noted herein, 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 August 13, 2002, 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)(4) and DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation for discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On October 2, 2000, the Pendleton Public Defender’s Office was appointed to represent Donald Gilkison (hereinafter “Gilkison”) in a criminal matter. Shortly thereafter, the case was assigned to the Accused, who was employed as a lawyer in that office.

6.

On November 1, 2000, the Accused attended a pretrial conference. On November 6, 2000, the court scheduled a trial for March 12, 2001. Between November 2, 2000, and March 11, 2001, the Accused took no substantive action to pursue Gilkison’s legal matter and failed to maintain adequate communications with Gilkison.

7.

On March 12, 2001, the court rescheduled trial for April 13, 2001. Between March 13, 2001, and April 12, 2001, the Accused took no substantive action to pursue Gilkison's legal matter and failed to maintain adequate communications with Gilkison.

8.

On April 23, 2001, the court rescheduled trial for May 14, 2001. Between April 24, 2001, and May 9, 2001, the Accused took no substantive action to pursue Gilkison's legal matter. He also failed to maintain adequate communications with Gilkison between April 24, 2001, and May 14, 2001.

9.

On May 14, 2001, Gilkison requested that the court appoint another lawyer to represent him because he had not spoken with the Accused about his trial testimony and did not believe the Accused was prepared. The Accused represented to the court that he was prepared and the court denied Gilkison's request.

10.

The court then heard evidence regarding a motion to suppress that had been filed by the Accused on May 10, 2001. After hearing the testimony of Gilkison and the police officer that arrested him, the court denied the motion to suppress. The Accused thereafter informed the court that he was not prepared for trial and requested permission to withdraw. The court found the Accused in contempt of court for failing to be prepared, assigned a new lawyer to represent Gilkison, and rescheduled trial for September 6, 2001.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated DR 1-102(A)(4) and DR 6-101(B) of the Code of Professional Responsibility.

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 act with reasonable diligence and promptness and his duty to avoid conduct prejudicial to the administration of justice. *Standards*, §§ 4.4, 6.1.

B. *Mental State.* “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 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 knowingly engaged in conduct prejudicial to the administration of justice. He was aware of the fact that he had not spoken with Gilkison for six months and specifically had not prepared him to testify at trial or in connection with the motion to suppress. Despite this knowledge, the Accused informed the court that he was prepared to adequately represent Gilkison.

The Accused negligently failed to act with reasonable diligence and promptness in representing Gilkison.

C. *Injury.* Injury may be either actual or potential. The Accused’s conduct caused actual harm to the judicial system because the court expended time and resources sanctioning him for contempt, finding a new lawyer to represent Gilkison, and postponing the trial. Gilkison also sustained actual injury because there was significant delay in the resolution of the criminal charges pending against him. He also sustained potential injury in that a lawyer who was better prepared may have prevailed on the motion to suppress.

D. *Aggravating Circumstances.* Aggravating circumstances include:

1. Prior disciplinary offenses. Effective September 17, 2001, the Accused was suspended from the practice of law for six months. *In re Gear*, 15 DB Rptr 200 (2001). On September 2, 2002, the Accused was suspended from the practice of law for another six months. *In re Gear (I)*, 16 DB Rptr 252 (2002). However, the prior discipline is given little weight in determining the appropriate sanction in this matter because it was imposed after the Accused engaged in the conduct underlying the present proceeding. *In re Jones*, 326 Or 195, 951 P2d 149 (1997). *Standards*, § 9.22(a).

2. Multiple offenses. *Standards*, § 9.22(d).

3. Vulnerability of victim. Gilkison was charged with engaging in criminal conduct. He was relying on Gear to represent him diligently and adequately. *Standards*, § 9.22(h).

E. *Mitigating Circumstances.* Mitigating circumstances include:

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

2. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

3. Imposition of other penalties or sanctions in that the Accused was found in contempt of court. *Standards*, § 9.32(k).

13.

The ABA *Standards* provide that a period of suspension is appropriate in this matter. *Standards*, §§ 4.42(b), 6.12.

14.

Oregon case law suggests that the Accused should be suspended for a period of 60 days. See *In re Thompson*, 325 Or 467, 940 P2d 512 (1997) (lawyer received a 63-day suspension for conduct prejudicial to the administration of justice arising out of an ex parte contact with an appellate judge on the merits of a matter pending before the court); *In re Bourcier*, 325 Or 429, 939 P2d 604 (1997) (lawyer who neglected a legal matter, among other violations, suspended for 60 days); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (lawyer was suspended from practice of law for 120 days, 60 of which resulted from knowingly neglecting one legal matter).

15.

Consistent with the *Standards* and Oregon case law, the Accused agrees to accept a suspension from the practice of law for a period of 60 days, for violations of DR 1-102(A)(4) and DR 6-101(B). Said suspension will run consecutively to the suspension imposed in *In re Gear (I)*, 16 DB Rptr 252 (2002).

16.

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

EXECUTED this 10th day of December 2002.

/s/ Paul D. Gear

Paul D. Gear
OSB No. 96293

EXECUTED this 18th day of December 2002.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

TABLE OF CASES

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

In re Always, 11 DB Rptr 153 (1997)	108
In re Arbuckle, 308 Or 135, 775 P2d 832 (1989)	341
In re Barrett, 15 DB Rptr 72 (2001)	67, 78, 167
In re Bassett, 12 DB Rptr 14 (1998)	193
In re Benett, 331 Or 270, 14 P3d 66 (2000)	59, 123
In re Benson, 317 Or 164, 854 P2d 466 (1993)	217
In re Benson, 12 DB Rptr 167 (1998)	96
In re Berg, 14 DB Rptr 100 (2000)	50, 108, 117
In re Biggs, 318 Or 281, 864 P2d 1310 (1994)	126, 143
In re Binns, 322 Or 584, 910 P2d 382 (1996)	146
In re Black, 10 DB Rptr 25 (1996)	30, 193
In re Boland, 288 Or 133, 602 P2d 1078 (1979)	256
In re Boland, 12 DB Rptr 43 (1998)	267
In re Bourcier, 322 Or 561, 909 P2d 1234 (1996)	25, 146
In re Bourcier, 325 Or 429, 939 P2d 604 (1997)	394
In re Brandsness, 299 Or 420, 702 P2d 1098 (1985)	117
In re Brown, 298 Or 285, 692 P2d 107 (1985)	28
In re Brownlee, 9 DB Rptr 85 (1995)	78, 86, 163, 183, 204, 222, 229, 299, 305, 313, 367
In re Bryant, 12 DB Rptr 69 (1998)	117
In re Burrows, 291 Or 135, 629 P2d 820 (1981)	349
In re Butler, 324 Or 69, 921 P2d 401 (1996)	290
In re Butler, 15 DB Rptr 195 (2001)	189
In re Campbell, 10 DB Rptr 97 (1996)	188
In re Carey, 307 Or 315, 767 P2d 438 (1989)	44, 262
In re Chambers, 292 Or 670, 642 P2d 286 (1982)	146
In re Claussen, 322 Or 466, 909 P3d 862 (1996)	178, 218
In re Cohen, 316 Or 657, 853 P2d 286 (1983)	44, 91, 117
In re Cohen, 9 DB Rptr 229 (1995)	15
In re Cohen, 330 Or 489, 8 P3d 953 (2000)	299, 340
In re Collier, 295 Or 320, 667 P2d 481 (1983)	146, 319
In re Contois, 15 DB Rptr 77 (2001)	277
In re Coran, 14 DB Rptr 136 (2000)	237
In re Coulter, 15 DB Rptr 220 (2001)	67, 299, 372
In re Dale, 10 DB 73 (1996)	30
In re Davenport, 334 Or 298, 49 P3d 91 (2002)	158
In re Deguc, 11 DB Rptr 201 (1997)	267
In re Derby, 16 DB Rptr 82 (2002)	305
In re DesBrisay, 288 Or 625, 606 P2d 1148 (1980)	309, 333
In re Ditton, 16 DB Rptr 69 (2002)	154

Table of Cases

In re Durbin, 9 DB Rptr 71 (1995)	96
In re Eads, 303 Or 111, 734 P2d 340 (1987)	283
In re Eakin, 334 Or 238, 48 P3d 147 (2002)	341
In re Edelson, 13 DB Rptr 72 (1999)	361
In re Egan, 13 DB Rptr 96 (1999)	348
In re Ehmann, 8 DB Rptr 123 (1994)	348
In re Escobar, 14 DB Rptr 84 (2000)	272
In re Finlayson, 14 DB Rptr 228 (2000)	377
In re Fuller, 284 Or 273, 586 P2d 1111 (1978)	30
In re Gallagher, 332 Or 173, 26 P3d 131 (2001)	112
In re Garvey, 325 Or 34, 932 P2d 549 (1998)	28
In re Gastineau, 317 Or 545, 857 P2d 136 (1993)	144, 340
In re Gatti, 330 Or 517, 8 P3d 966 (2000)	124, 198
In re Gear, 15 DB Rptr 200 (2001)	256, 393
In re Gear (I), 16 DB Rptr 252 (2002)	390, 393, 394
In re Gerttula, 12 DB Rptr 105 (1998)	30
In re Gildea, 325 Or 281, 936 P2d 975 (1997)	178
In re Goff, 14 DB Rptr 70 (2000)	67
In re Greene, 276 Or 1117, 557 P2d 644 (1976)	146, 377
In re Greene (II), 290 Or 291, 620 P2d 1379 (1980)	60
In re Gregg, 252 Or 174, 446 P2d 123 (1968)	55, 283
In re Gresham, 318 Or 162, 864 P2d 360 (1993)	38, 148
In re Griffith, 304 Or 575, 748 P2d 86 (1987)	96
In re Gudger, SC S40449 (1993)	250
In re Gustafson, 327 Or 636, 968 P2d 367 (1998)	7
In re Hall, 10 DB Rptr 19 (1996)	78, 222
In re Hanson, 16 DB Rptr 64 (2002)	313
In re Haws, 310 Or 741, 801 P2d 818 (1990)	9
In re Haws, 15 DB Rptr 56 (2001)	377
In re Hedges, 313 Or 618, 836 P2d 119 (1992)	143
In re Hiller, 298 Or 526, 694 P2d 540 (1985)	60, 123, 217
In re Hockett, 303 Or 150, 734 P2d 877 (1987)	217, 250
In re Holden, 12 DB Rptr 49 (1998)	86, 134, 163, 305, 313
In re Holm, 275 Or 178, 590 P2d 233 (1979)	148
In re Holmes, 290 Or 173, 619 P2d 1284 (1980)	91
In re Howser, 329 Or 404, 987 P2d 496 (1999)	91, 117, 319
In re Huffman, 331 Or 209, 13 P3d 994 (2000)	29
In re Hughes, 9 DB Rptr 37 (1995)	15
In re Jackson, 11 DB Rptr 23 (1997)	233
In re James, 10 DB Rptr 63 (1996)	382
In re Jans, 295 Or 289, 666 P2d 830 (1983)	382
In re Jayne, 295 Or 16, 663 P2d 405 (1983)	117
In re Jennings, 12 DB Rptr 190 (1998)	85, 305

In re Johnson, 9 DR Rptr 151 (1995)	218
In re Jones, 326 Or 195, 951 P2d 149 (1997)	44, 50, 60, 112, 256, 393
In re Jordan, 295 Or 142, 665 P2d 341 (1983)	25
In re Kafoury, 15 DB Rptr 188 (2001)	67, 134, 167
In re Kelly, 12 DB Rptr 58 (1998)	108, 117
In re Kent, 9 DB Rptr 175 (1995)	134
In re Kerrigan, 271 Or 1, 530 P2d 26 (1975)	125
In re Koliha, 330 Or 402, 9 P3d 102 (2000)	328
In re Lafky, 13 DB Rptr 114 (1999)	222, 238, 388
In re Lawrence, 332 Or 502, 31 P3d 1078 (2001) ..	183, 229, 238, 309, 333, 367
In re Lemery, 7 DB Rptr 125 (1993)	261
In re Leonard, 308 Or 560, 784 P2d 95 (1989)	198
In re Lewelling, 296 Or 702, 678 P2d 1229 (1984)	349
In re Long, 14 DB Rptr 35 (2000)	73
In re MacMurray, 12 DB Rptr 115 (1998)	31, 217
In re Magar, 296 Or 799, 681 P2d 93 (1984)	146, 262
In re Mannis, 295 Or 594, 668 P2d 1224 (1983)	73, 189
In re McCaffrey, 275 Or 23, 549 P2d 666 (1976)	349
In re McCurdy, 13 DB Rptr 107 (1999)	112, 209, 222, 238, 243, 272, 355, 388
In re McGraw, 12 DB Rptr 110 (1998)	124
In re McKee, 316 Or 114, 849 P2d 509 (1993)	290
In re McKenzie, 13 DB Rptr 12 (1999)	361, 372
In re Medonich, 14 DB Rptr 54 (2000)	361
In re Melmon, 322 Or 380, 908 P2d 822 (1995)	30
In re Meyer, 328 Or 220, 970 P2d 647 (1999)	26, 146, 341
In re Michaels, 10 DB Rptr 69	102
In re Miles, 324 Or 218, 923 P2d 1219 (1996)	256, 277, 342
In re Mitchell, 15 DB Rptr 206 (2001)	277
In re Montgomery, 292 Or 796, 643 P2d 338 (1982)	216
In re Montgomery, 297 Or 738, 687 P2d 157 (1984)	216
In re Montgomery, 297 Or 752, 667 P2d 156 (1984)	216
In re Moore, 14 DB Rptr 129 (2000)	73, 85, 154, 305
In re Morin, 319 Or 547, 878 P2d 393 (1994)	28
In re Morris, 326 Or 493, 953 P2d 387 (1998)	30, 178
In re Morrison, 14 DB Rptr 234 (2000)	103
In re Mumford, 285 Or 559, 591 P2d 1377 (1979)	117
In re Nealy, 14 DB Rptr 79 (2000)	50
In re Odman, 297 Or 744, 687 P2d 153 (1984)	267, 388
In re Page, 326 Or 572, 955 P2d 239 (1998)	30, 60
In re Parker, 330 Or 541, 9 P3d 107 (2000)	341
In re Penz, 14 DB Rptr 198 (2000)	171
In re Poling, 15 DB Rptr 83 (2001)	189

Table of Cases

In re Porter, 320 Or 692, 890 P2d 1377 (1995)	198
In re Purvis, 306 Or 522, 760 P2d 254 (1988)	256, 328
In re Recker, 309 Or 633, 789 P2d 663 (1990)	290
In re Redden, 15 DB Rptr 148 (2001)	262, 267
In re Reid, 10 DB Rptr 45 (1996)	78
In re Rex Q. Smith, 316 Or 55, 848 P2d 612 (1993)	348
In re Rich, 13 DB Rptr 67 (1999)	50
In re Riedlinger, 10 DB Rptr 193 (1996)	233
In re Roberts, 15 DB Rptr 133 (2001)	38
In re Robertson, 290 Or 639, 624 P2d 603 (1981)	107
In re Robertson, 8 DB Rptr 229 (1994)	107
In re Rudie, 294 Or 740, 662 P2d 321 (1983)	250, 382
In re Elissa Ryan, 16 DB Rptr 19 (2002)	327
In re T. Michael Ryan, 15 DB Rptr 87 (2001)	328
In re Ryan, 15 DB Rptr 87 (2001)	361
In re Sassor, 299 Or 720, 705 P2d 736 (1985)	125
In re Sawyer, 331 Or 240, 13 P3d 112 (2000)	31
In re Schaffner, 323 Or 472, 918 P2d 803 (1996)	148, 277, 341, 394
In re Schenck, 320 Or 94, 879 P2d 863 (1994)	172
In re Schmidt, 2 DB Rptr 97 (1988)	30
In re Schoen, 294 Or 68, 652 P2d 989 (1982)	319
In re Seidel, 12 DB Rptr 201 (1998)	309, 333
In re Snyder, 276 Or 897, 559 P2d 1273 (1976)	134
In re Sousa, 323 Or 137, 915 P2d 408 (1996)	192
In re Spies, 316 Or 530, 852 P2d 831 (1993)	126
In re Starr, 326 Or 328, 952 P2d 1017 (1998)	341
In re Steves, 12 DB Rptr 185 (1988)	361
In re Steves, 14 DB Rptr 11 (2000)	102
In re Stimac, 14 DB Rptr 42 (2000)	67, 85, 163, 305
In re Stodd, 279 Or 565, 568 P2d 665 (1977)	55
In re Taylor, 319 Or 595, 878 P2d 1103 (1994)	25, 123
In re Thomas, 294 Or 505, 659 P2d 960 (1983)	145
In re Thompson, 325 Or 467, 940 P2d 512 (1997)	394
In re Trukositz, 312 Or 621, 825 P2d 1369 (1992)	117
In re Unrein, 323 Or 285, 917 P2d 1022 (1996)	30
In re Van Leuven, 8 DB Rptr 203 (1994)	30
In re Van Loon, 15 DB Rptr 61 (2001)	355
In re Walker, 293 Or 297, 647 P2d 468 (1982)	60
In re Wehmeyer, 14 DB Rptr 188 (2000)	348
In re Wettland, 12 DB 245 (1998)	102
In re Williams, 314 Or 530, 840 P2d 1280 (1992) ...	67, 112, 193, 243, 318, 340
In re Wine, 16 DB Rptr 159 (2002)	305
In re Wittemyer, 328 Or 458, 980 P2d 148 (1999)	178

Table of Cases

In re Wren, 13 DB Rptr 101 (1999)	124
In re Wyllie, 327 Or 177, 957 P2d 1222 (1998)	27
In re Wyllie, 331 Or 606, 19 P3d 338 (2001)	148, 250
In re Yacob, 318 Or 10, 860 P2d 811 (1993)	28

TABLE OF DISCIPLINARY RULES AND STATUTES

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

- DR 1-102(A) *Misconduct: definitions* — 309
- DR 1-102(A)(1) *Misconduct: lawyer shall not knowingly violate rules* — 46
- DR 1-102(A)(2) *Misconduct: lawyer shall not commit a criminal act* — 62–63, 80–81, 136, 156–157, 306–308, 330–333
- DR 1-102(A)(3) *Misconduct: lawyer shall not engage in dishonest conduct* — 19, 21, 25, 32–34, 36, 38, 46, 52–55, 57–60, 62–63, 80–81, 99, 101, 110–111, 119–120, 123–124, 129, 136–137, 150, 156–157, 173–174, 177–178, 195–198, 207, 210–212, 215, 217–218, 241–242, 252–253, 255, 278, 280–281, 283, 287–288, 291, 293, 295, 316–317, 321–322, 325–328, 351, 354
- DR 1-102(A)(4) *Misconduct: conduct prejudicial to administration of justice* — 3–7, 9, 33–34, 36, 38, 57–60, 62–63, 109–111, 137, 150, 156–157, 173–174, 177–178, 206–211, 215, 217–218, 240–243, 250, 252–253, 255, 272, 278, 281, 283, 287–288, 291, 293, 295, 328, 345–346, 347–351, 353–355, 388, 390, 391–392, 394
- DR 1-103(C) *Disclosure/Duty to Cooperate: lawyer shall respond fully and truthfully* — 10–13, 15, 150, 217, 252–253, 255, 273–278, 280, 283, 287–288, 291, 293, 316–317, 321–326, 328, 334–339, 342, 358–362
- DR 2-106 *Fees for Legal Services* — 144
- DR 2-106(A) *Fees: lawyer shall not charge and illegal or excessive fee* — 59, 102, 119–120, 125, 129, 137, 139, 145, 210–211, 215, 217–218, 278, 280, 283, 382
- DR 2-110(A)(1) *Withdrawal from Employment: in general: permission* — 87–88, 90, 316–317
- DR 2-110(A)(2) *Withdrawal from Employment: in general: avoid prejudice* — 10–12, 15, 64–67, 278, 280, 283, 293, 310–313, 315–317, 388
- DR 2-110(B) *Withdrawal from Employment: mandatory* — 218
- DR 2-110(B)(2) *Withdrawal from Employment: mandatory: will result in violation* — 293, 319, 321–322, 325–326, 328
- DR 2-110(B)(4) *Withdrawal from Employment: mandatory: is discharged* — 278, 281, 283
- DR 3-101(A) *Unlawful Practice of Law: lawyer shall not aid nonlawyer in* — 21, 94–95
- DR 3-101(B) *Unlawful Practice of Law: lawyer shall practice in jurisdiction* — 19, 21, 25, 32, 190, 192–193, 321–322, 325–328
- DR 3-102(A) *Dividing Legal Fees with Nonlawyer: lawyer shall not share in* — 93–96
- DR 4-101(B) *Preserving Client Confidences and Secrets: lawyer shall not knowingly reveal* — 1

- DR 5-101(A) *Conflict of Interest: Lawyer's Self-Interest: except with client's consent* — 40–41, 43–44, 173–174, 177–178, 180–183, 209, 219–222, 224–225, 228–229, 234–235, 237–238, 263–264, 266–272, 363–364, 366–367, 384–385, 387–388
- DR 5-101(A)(1) *Conflict of Interest: Lawyer's Self-Interest: except with client's consent: affecting lawyer's judgment* — 258–259, 262
- DR 5-101(B) *Conflict of Interest: Lawyer's Self-Interest: except with client's consent: preparing wills* — 44
- DR 5-103(B) *Conflict of Interest: Avoiding Acquisition of Interest in Litigation* — 119–120, 125–126, 129
- DR 5-104(A) *Limiting Business Relations with Client: full disclosure* — 173–174, 177–178, 216
- DR 5-105 *Conflicts of Interest: Former and Current Clients* — 216, 382
- DR 5-105(B) *Conflicts of Interest: Former and Current Clients: knowledge* — 250
- DR 5-105(C) *Conflicts of Interest: Former and Current Clients: former clients* — 40–41, 43–44, 87–88, 90, 108, 237, 245–246, 249–250, 267, 382, 388
- DR 5-105(E) *Conflicts of Interest: Former and Current Clients: current clients* — 40–41, 43–44, 47–50, 73, 87–88, 90, 104–106, 108, 114–116, 118, 178, 218, 237, 245–246, 249–250, 267, 287–288, 291, 319, 379–381, 383
- DR 5-109(B) *Conflicts of Interest: Public Employment* — 261
- DR 5-110(A) *Sexual Relations with Client: existing consensual relationship* — 270
- DR 6-101 *Competence and Diligence* — 145
- DR 6-101(A) *Competence and Diligence: lawyer shall provide competent representation* — 33–34, 36, 38, 98–103, 134, 139, 145–146, 180–183, 224–226, 229, 245–246, 249, 263–264, 266–268, 278, 282–283, 287–288, 291, 293, 316–317, 374–377, 382, 388
- DR 6-101(B) *Competence and Diligence: lawyer shall not neglect a legal matter* — 10–15, 33–34, 36, 38, 64–67, 75–78, 82, 84–86, 98–103, 131–134, 139, 145–146, 159–161, 163–167, 200–204, 219–222, 224–225, 227–235, 237–238, 250, 252–253, 255, 267, 273–278, 280–283, 287–288, 291, 293, 296–298, 301–302, 304–305, 310–313, 315–317, 321–323, 326, 328, 334–336, 338–341, 346, 358–367, 369–372, 379–385, 387–388, 390–392, 394
- DR 7-101(A)(1) *Representing Client Zealously: lawyer shall not intentionally fail to seek lawful objectives of client* — 252–253, 255, 259, 261, 273–277
- DR 7-101(A)(2) *Representing Client Zealously: lawyer shall not intentionally fail to carry out contract of employment* — 10–12, 14–15, 252–253, 255, 273–278, 280–281, 284, 293–294, 348, 382
- DR 7-102(A)(3) *Representing Client Within Bounds of Law: lawyer shall not knowingly conceal or fail to disclose* — 178, 210–211, 215, 218, 293

Table of Rules and Statutes

- DR 7-102(A)(5) *Representing Client Within Bounds of Law: lawyer shall not knowingly make a false statement* — 19, 21, 25, 32, 57–60, 62–63, 150, 156–157, 178, 211, 215, 217–218, 327, 351, 354
- DR 7-102(A)(7) *Representing Client Within Bounds of Law: lawyer shall not knowingly assist client in illegal conduct* — 80–81, 217–218
- DR 7-102(A)(8) *Representing Client Within Bounds of Law: lawyer shall not knowingly engage in illegal conduct* — 62–63, 81–80
- DR 7-104(A)(1) *Communicating with Person Represented by Counsel: lawyer shall not communicate subject of representation* — 261, 283, 349, 351, 354
- DR 7-106(A) *Trial Conduct: lawyer shall not disregard rule or ruling of tribunal* — 62–63, 294, 348
- DR 7-106(C)(7) *Trial Conduct: in appearing before tribunal, lawyer shall not intentionally violate rules of procedure* — 346
- DR 7-110(B) *Contact with Officials: lawyer shall not communicate as to merits of cause with judge* — 34, 36, 169–172, 295, 346, 349
- DR 9-101 *Preserving Identity of Funds and Client Property* — 142
- DR 9-101(A) *Preserving Identity of Funds and Client Property: all client funds shall be deposited into lawyer trust account, with no lawyer funds deposited in it* — 69–73, 81, 98–103, 137–139, 142, 144, 154, 186–189, 211, 267, 310–312, 321–322, 326, 328, 335–336, 361, 380, 382
- DR 9-101(B) *Preserving Identity of Funds and Client Property: lawyer shall inform financial institution of lawyer trust account name and account number* — 81, 342
- DR 9-101(C)(1) *Preserving Identity of Funds and Client Property: lawyer shall promptly notify client of receipt of client's funds* — 151–154, 328
- DR 9-101(C)(3) *Preserving Identity of Funds and Client Property: lawyer shall identify and label client's property on receipt* — 44, 69–73, 81, 98–103, 137–139, 142, 144, 154, 188, 211, 273–278, 282, 284, 310–312, 334–336, 341, 361, 379–381, 383
- DR 9-101(C)(4) *Preserving Identity of Funds and Client Property: lawyer shall maintain complete records of all funds of client* — 15, 59, 69–70, 72–73, 78, 82, 84–86, 102, 134, 137–139, 142, 145, 151–154, 159–161, 163, 222, 278, 281, 284, 299, 301–302, 304–305, 313, 321–322, 324, 326, 328, 334–335, 337–338, 341–342, 358–362
- DR 9-102(B)(3) *Trust Account Overdraft Notification Program: overdraft notification, account number* — 44
- DR 10-101(B) *"Full disclosure" defined* — 107, 116, 271, 366

Table of Rules and Statutes

ORS ch 9 — 11, 41, 48, 53, 58, 65, 70, 76, 83, 88, 94, 99, 105, 110, 115, 132, 152, 160, 165, 170, 174, 181, 187, 191, 196, 201, 207, 211, 220, 225, 231, 235, 241, 246, 253, 259, 264, 270, 274, 279, 284, 288, 297, 302, 307, 311, 316, 322, 331, 335, 342, 346, 351, 359, 364, 370, 375, 380, 385, 391	ORCP 7 D(3)(a)(iii) — 5 ORCP 7 D(6)(a) — 4 ORCP 27 B — 5 ORCP 69 A — 3–5 ORCP 69 B — 5
ORS 9.080(2)(a) — 22, 191	Oregon Formal Ethics Op No 1998- 151 — 143–145
ORS 9.160 — 19, 21, 25, 32, 190, 192–193, 327	UTCR 5.100 — 347 UTCR 8.010(1) — 111
ORS 9.200(3) — 22	LR 83.11 — 89
ORS 9.257(4) — 30	11 USC §101 — 213
ORS 9.460(1) — 81	11 USC §329 — 213
ORS 9.460(2) — 156, 178, 218	18 USC §1623 — 158
ORS 9.460(3) — 1, 217	26 USC §7203 — 307, 332, 331
ORS 9.460(4) — 217	8 CFR §3.22 — 265
ORS 9.527(1) — 81	8 CFR §3.26 — 265
ORS 9.527(2) — 136	Bankruptcy Rule 2016(b) — 213
ORS 9.527(3) — 294	
ORS 9.527(4) — 19, 21, 25, 31–32, 46, 81, 156–157, 185, 211, 215, 217, 327	
ORS 9.534 — 142	
ORS 14.070 — 110–111	
ORS 87.555 — 120	
ORS 109.720 — 146	
ORS 114.355(1)(a) — 175	
ORS 125.005 — 5, 8–9	
ORS 161.360(2) — 8	
ORS 426.295(1) — 5, 8	
ORS 656.386(1) — 280	

TABLE OF BAR RULES OF PROCEDURE

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

- BR 3.6 *Discipline by Consent*— 17, 38, 44, 50, 55, 60, 67, 73, 78, 86, 91, 97, 103, 108, 113, 118, 134, 154, 163, 167, 172, 179, 183, 189, 193, 198, 204, 209, 218, 223, 229, 233, 238, 243, 251, 257, 262, 268, 272, 277, 286, 291, 300, 305, 309, 314, 319, 328, 333, 344, 349, 355, 362, 367, 372, 378, 383, 388, 394
- BR 3.6(c) *Discipline by Consent; Stipulation for Discipline* — 11, 34, 41, 47, 52, 58, 65, 70, 75, 83, 88, 93, 99, 104, 109, 114, 131, 152, 160, 165, 170, 174, 181, 187, 191, 195, 200, 207, 211, 220, 225, 230, 235, 241, 246, 253, 259, 264, 270, 274, 279, 287, 296, 302, 307, 311, 316, 321, 331, 334, 345, 351, 359, 364, 369, 374, 380, 385, 391
- BR 3.6(h) *Discipline by Consent: Confidentiality* — 11, 41, 48, 53, 65, 70, 83, 88, 94, 99, 105, 110, 115, 132, 152, 160, 165, 170, 181, 187, 191, 196, 201, 207, 211, 220, 225, 231, 235, 241, 246, 253, 259, 264, 270, 274, 279, 288, 297, 302, 307, 311, 316, 322, 331, 335, 346, 351, 359, 370, 375, 380, 385, 391
- BR 5.2 *Burden of Proof* — 25, 123
- BR 6.2(d) *Probation: Revocation* — 17, 343
- BR 8.1 *Reinstatement: Formal Application* — 2, 60
- BR 10.3 *Request for Review* — 345
- BR 10.7(a) *Costs and Disbursements: defined* — 130
- BR 10.7(b) *Allowance of Costs and Disbursements* — 129
- BR 10.7(c) *Recovery After Offer of Settlement* — 129