

DISCIPLINARY BOARD REPORTER

VOLUME 17

January 1, 2003, to December 31, 2003

Report of Attorney Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2003



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BOARD
REPORTER**

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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 2003 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 17 DB Rptr ____ (2003).

In 2003, a decision of the Disciplinary Board was final if the charges against the accused were dismissed, a public reprimand was imposed, or the accused was suspended from the practice of law for up to six months, and neither the Bar nor the accused sought review by the Oregon Supreme Court. See Title 10 of the Bar Rules of Procedure (page 51 of the OSB 2004 Membership Directory) and ORS 9.536. (Amendments were made to this process for 2004.)

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, 2004, 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

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IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 01-157, 01-187
)
VALERIE B. DOHERTY,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Jonel K. Ricker
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(2) (two counts) and
DR 6-101(B) (two counts). Stipulation for
Discipline. 30-day suspension.
Effective Date of Order: January 10, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Valerie B. Doherty 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 from the practice of law for 30 days for violation of DR 2-110(A)(2) (two counts), improper withdrawal, and DR 6-101(B) (two counts), neglect of a legal matter entrusted to a lawyer, effective January 10, 2003.

DATED this 6th day of January 2003.

/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

Valerie B. Doherty, 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 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Umatilla County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, 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 May 18, 2002, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(3), DR 2-110(A)(2) (two counts), DR 5-101(A), DR 6-101(B) (two counts) 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.

Claphan Matter

Case No. 01-157

Facts and Violations

5.

On August 10, 1999, Carl D. Claphan (hereinafter “Claphan”) filed a petition for postconviction relief in the Circuit Court of the State of Oregon for the County of Marion, *Carl D. Claphan v. Mitch Morrow, Superintendent, Oregon Correctional Institution, Case No. CV 99C16411* (hereinafter “Claphan Case”). On April 20, 2000, the Marion County Circuit Court filed an order transferring the Claphan Case to the Umatilla County Circuit Court.

6.

NECO Consortium was a group of lawyers organized to represent indigent clients (hereinafter “NECO”) in Umatilla and Malheur counties. The Accused was a NECO lawyer. On May 11, 2000, the court appointed NECO to represent Claphan. The Accused was assigned and responsible for the Claphan Case.

7.

On July 17, 2000, the court filed and served a notice of intent to dismiss the Claphan Case for want of prosecution unless the Accused filed a written response showing good cause why the case should be continued. The Accused took no action and on August 24, 2000, the court dismissed the case.

8.

Between about May 2000 and November 2000, the Accused (a) failed to provide Claphan with copies of notices, pleadings and orders filed in his case; (b) failed to monitor the Claphan Case; (c) failed to maintain adequate communication with Claphan; (d) failed to file a motion to reinstate the Claphan Case; (e) failed to notify the court and Claphan that she had constructively withdrawn from the representation; (f) failed to file a motion to withdraw as Claphan’s lawyer; and (g) failed to deliver Claphan’s file and original documents to Claphan.

9.

The Accused admits that the aforesaid conduct constituted improper withdrawal and neglect of a legal matter entrusted to her in violation of DR 2-110(A)(2) and DR 6-101(B) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(3) and DR 5-101(A) as set forth in the Bar’s Formal Complaint, should be and, upon the approval of this stipulation, are dismissed.

Hall Matter

Case No. 01-187

10.

On July 20, 2000, Edward J. Hall (hereinafter “Hall”) filed a petition for post conviction relief in the Circuit Court of the State of Oregon for the County of Umatilla, *Edward J. Hall v. Jean Hill, Superintendent, Eastern Oregon Correctional Institution, Case No. CV 00-0826* (hereinafter “Hall Case”). On July 21, 2000, the court appointed NECO to represent Hall. The Accused was assigned and responsible for the Hall Case. The Accused was required to file a formal petition for post conviction relief by August 21, 2000.

11.

Between about July 2000 and October 9, 2000, the Accused (a) failed to file a formal petition for post conviction relief; (b) failed to investigate and actively pursue the Hall Case; (c) failed to provide Hall with copies of notices and orders filed in his case; (d) failed to file a motion with the court to withdraw as Hall's lawyer; (e) failed to notify Hall that she had constructively withdrawn from the representation; and (f) failed to deliver Hall's file and original documents to Hall. On October 9, 2000, the court on its own motion removed the Accused as Hall's lawyer and appointed new counsel to represent Hall.

12.

The Accused admits that the aforesaid conduct constituted improper withdrawal and neglect of a legal matter entrusted to her in violation of DR 2-110(A)(2) and DR 6-101(B) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 9-101(C)(4) as set forth in the Bar's Formal Complaint, 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 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 her duties to her clients and the profession. *Standards*, §§ 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 ultimate dispositions of their respective cases were delayed.

D. *Aggravating Factors*. Aggravating factors include:

1. There are multiple client matters and a pattern of misconduct. *Standards*, § 9.22(c).

2. There are multiple rule violations. *Standards*, § 9.22(d).

3. The Accused's clients were vulnerable in that they were in custody and relied on the Accused to actively investigate and pursue their claims. *Standards*, § 9.22(h).

4. 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 formal discipline. *Standards*, § 9.32(a).

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).

14.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2. Case law is in accord. *See, e.g., In re Bourcier*, 7 DB Rptr 115 (1993) (suspension for violation of DR 6-101(B), DR 7-101(A)(1), and DR 2-110(A)(2)).

15.

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 30 days for violation of DR 2-110(A)(2) (two counts), improper withdrawal, and DR 6-101(B) (two counts), neglect of a legal matter entrusted to a lawyer. In addition, the Accused shall pay the Bar's costs and disbursements in the amount of \$202.50.

16.

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.

Cite as *In re Doherty*, 17 DB Rptr 1

DATED this 24th day of December 2002.

/s/ Valerie B. Doherty

Valerie B. Doherty

OSB No. 81210

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. 02-156
)	
CARL J. GAUL III,	)	SC S49952
)	
Accused.)	

AMENDED 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 Carl J. Gaul III (OSB no. 76144) be suspended from the practice of law in Oregon for 60 days, effective 30 days from the date of this order.

DATED this 23rd day of January 2003.

Nunc pro tunc January 22, 3004.

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

Riggs, J., contra

SUMMARY FROM OREGON STATE BAR BULLETIN

Effective February 21, 2003, the Oregon Supreme Court suspended Carl J. Gaul III from the practice of law for 60 days, pursuant to BR 3.5 (Reciprocal Discipline). The Supreme Court of Washington had previously imposed the same sanction.

Gaul represented husband and wife in the defense of several lawsuits. Gaul delayed depositing client funds into his lawyer trust account and then refused to release the funds without the clients agreeing to secure his fees. Gaul obtained two trust deeds from his clients as security, but failed to advise his clients to seek independent counsel.

During the representation, Gaul also obtained in his own name an assignment of a judgment that his clients had purchased. Prior to obtaining the assignment, Gaul did not advise his clients as to their adversity of interest or counsel them to seek the advice of independent counsel.

In one of the underlying cases, Gaul filed a third-party complaint. The court ruled that the complaint had been filed in bad faith and assessed Gaul monetary sanctions. Gaul failed to advise his clients that he was personally obligated and paid the sanction with client funds.

Finally, the Washington State Bar Association performed an audit of Gaul's trust account. The audit revealed that Gaul routinely failed to record receipt of client disbursements and deposits, routinely deposited earned and unearned fees into his trust account, and did not routinely balance his trust account statements against individual client summaries.

For engaging in the above referenced misconduct, Gaul was found to have violated Washington Rules of Professional Conduct 1.14(a), 1.14(b), 1.14(b)(2), 1.14(b)(3), 1.14(b)(4), and 1.8(a).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 00-17, 00-18
)
GARY E. NORMAN,)
)
Accused.)

Counsel for the Bar: Richard A. Cremer; Chris Mullmann
Counsel for the Accused: Peter R. Jarvis
Disciplinary Board: Daniel Glode (Chair); Dwayne R. Murray; Alfred
Willstatter (Public Member)
Disposition: Trial Panel Opinion. Dismissed.
Effective Date of Opinion: February 25, 2003

OPINION OF TRIAL PANEL

Introduction

The Accused is Albany attorney Gary E. Norman.

The trial in this matter was held on April 29, 2002, in Albany, Oregon.

The Oregon State Bar (“Bar”) was represented by Richard A. Cremer and Assistant Disciplinary Counsel Chris L. Mullmann.

The Accused was present and represented by Peter R. Jarvis. The trial panel heard testimony from Gary E. Norman, Esq., Keith Goodridge, Marjorie Goodridge, Gregory J. Christensen, Esq., Bryan K. Churchill, Esq., and Mark A. Taleff, Esq.

The Bar has charged the Accused with violations of DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 7-102(A)(7) (counseling or assisting a client in conduct that the lawyer knows to be illegal or fraudulent), DR 5-101(A)(1) (conflict on interest), and DR 5-104(A) (business transaction with client without full disclosure).

The alleged violations arise from the client’s representation of Keith Goodridge and Total, Inc., doing business as Homes Services, who are defendants in a Linn County Circuit Court action instituted by Melvin and Glenda Scott (“the Scotts”). After the trial but prior to the entry of a judgment against his clients, the Accused, counseled Goodridge and his wife regarding the effect of the judgment against his

and the corporation's assets. The accused prepared two deeds that transferred Goodridge's interest in two parcels of real property to his wife. At the same time the Accused prepared and took a promissory note secured by a trust deed in one of the properties to secure the payment of his legal fees.

Findings of Fact

1. The Accused represented Keith Goodridge and his company Total, Inc. dba Homes Services in a lawsuit brought by Melvin and Glenda Scott. That lawsuit resulted in an adverse judgment against Goodridge and Total, Inc., entered August 26, 1998, for \$8,875 plus costs of \$1,505.75.

2. The Accused has never represented Keith Goodridge's wife, Marjorie Goodridge.

3. The Accused advised Keith Goodridge of the adverse effects of a judgment against him and his company between the time of the trial verdict and the entry of judgment. He also advised that the Goodridge residence was in no immediate danger of execution because title was held as tenancy by the entirety with Goodridge's wife.

4. The Accused prepared a trust deed on a second property at the direction of Goodridge to secure the payment of the Accused's attorney fees due from Goodridge.

5. The property subject to the trust deed had no equity available for recovery by unsecured creditors at the time of the creation of the security interest.

Conclusions of Law

The Oregon State Bar in an amended complaint filed September 24, 2001, charged the Accused with violations of DR 1-102(A)(3), DR 7-102(A)(7) (dishonest conduct and assisting a client in conduct that the lawyer knows to be illegal or false), and DR 5-101(A)(1) (conflict of interest). The Bar alleges the Accused acted illegally by assisting his clients to violate ORS 95.230, i.e., the statute that governs fraudulent transfers of property and/or money to avoid present creditors and those reasonably likely to become creditors. ORS 95.230(1)(a) provides a transfer is fraudulent if the creditor's claim arose before or after the transfer was made or obligation incurred and the transfer was made with the intent to hinder, delay, or defraud a creditor of the debtor. To determine intent within the confines of the statute, consideration may be given to whether before or after the transaction the debtor was sued or threatened with a suit. ORS 95.230(2)(d) also allows consideration of whether the transfer occurred shortly before or after a substantial debt was incurred.

The case cited by both the Accused and the Bar is *In re Hockett*, 303 Or 150, 734 P2d 877 (1987). In *Hockett*, the accused had represented two individuals, and their spouses, for a number of years in various business transactions including the formation of a corporation. He was also personal friends with all four individuals.

Both individuals (but not their spouses) became personally indebted to a bank. He went on to represent one of the individuals and his spouse in a separate foreclosure action. He also represented the corporation in settling some logger's liens. He accompanied both individuals to an appointment to see another attorney about the possibility of filing bankruptcy on behalf of the corporation. The next day he conferred with one of the spouses regarding divorce proceedings and conferred with both individuals regarding business matters. The day after he filed a divorce proceeding on behalf of one of the spouses and secured a signature on a waiver of the waiting period. Three days later he filed another divorce petition and waiver on behalf of the other spouse. Seven days later he took a decree of dissolution on behalf of one spouse which awarded her all the real and personal property of the parties save some personal effects and stock in the corporation. Six days later he repeated this with the other spouse. Between the time the dissolution documents were filed and the decree was finalized, the accused met with the creditor bank and were notified action was to be taken to collect the delinquent loans. The trial panel found, despite the testimony of the accused, that the accused had an ongoing attorney/client relationship and was fully advised of the corporation's financial difficulty and this relationship and knowledge existed when he represented their spouses in a divorce proceeding.

The instant case can be distinguished from *Hockett*. The Accused represented Mr. Goodridge but at no time represented Ms. Goodridge. In a meeting held in his office on August 21, 1998, he discussed the effects of a judgment (Tr 127-33). He was informed they did not have sufficient funds to pay the judgment in its entirety. They discussed the real property, and he believed that since it was encumbered, they owned as tenants in the entirety, and it was subject to a homestead exemption, there was little chance they would lose it since the property was unsaleable. During that conference he also took a trust deed in the subject property to secure the payment of his fees. He testified he did not suggest taking the deed and made no inquiry as to its value (Tr 135-6). He informed them the judgment would have to be paid and described what would or could happen after the judgment was entered. (Tr 138.) The Accused testified he thought no illegality had occurred, and he had been advising them in how to manage the debt to minimize its consequences without doing anything illegal (Tr 134-5). Under the right circumstances this can be considered good practice (Tr 98-9). While in *Hockett* it appeared there was a systematic attempt to defraud creditors, the trial panel in the instant case was not convinced to the clear and convincing level the Accused acted knowingly or intentionally in trying to defraud creditors.

Another perplexing problem with the Bar's case is that under the 1998 version of ORS 95.230, the property in question does not appear to be an asset since fully encumbered property is not an asset and therefore not subject to the provisions of the statute. (Tr 101-2.) There was no evidence presented by the Bar that the property was not fully encumbered. This being the case, no fraudulent transfer could have occurred since there was no transfer of an asset.

Regarding conflict of interest, the Accused took a trust deed to secure a fee. As far as he was concerned, there was little value in the deed since it was held as a tenancy of the entirety and subject to a homestead exemption, and he did it at the suggestion of the client. Taking an interest in property to secure a fee is something which is done on some occasions. It does not appear to be part of a business relationship beyond the normal attorney-client relationship.

Sanction Analysis

No analysis is required.

Conclusion

The Bar has not met its burden of proof to the clear and convincing level. We therefore find no violations of DR 1-102(A)(3), DR 7-102(A)(7), DR 5-101(A)(1), or DR 5-104(A). In the *Complaint as to the Conduct of Gary E. Norman*, Case Nos. 00-17 and 00-18 are dismissed.

DATED this 15th day of January 2003.

/s/ Daniel S. Glode

Daniel S. Glode
Trial Panel Chair

/s/ Dwayne R. Murray

Dwayne R. Murray
Trial Panel Member

/s/ Alfred Willstatter

Alfred Willstatter
Trial Panel Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-167
)
MARK HENDERSHOTT,)
)
Accused.)

Counsel for the Bar: Chris L. Mullmann
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-105(E) and DR 9-101(A).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: March 10, 2003

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) and DR 9-101(A).

DATED this 10th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Mark Hendershott, 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 22, 1972, 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. 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).

3.

On November 16, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(E) and 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

4.

On August 2, 2000, a brush fire occurred on property rented by Terry Mayo (“Mayo”) and Bill Compher (“Compher”). The Fair Oaks Rural Fire Protection District Fire Department (“Fair Oaks”) was the first agency to arrive on the scene. Thereafter, the Douglas Forest Protective Association (“Douglas Forest”) arrived and assumed control of the scene. The Chief of Fair Oaks, Jim King (“King”) interviewed Compher and Mayo before leaving the scene and prepared a report of his investigation of the fire.

5.

On February 6, 2001, Compher was arrested on two counts of arson. Compher and Mayo retained the Accused shortly after the arrest. The Accused required payment of a flat fee of \$7,500 that was paid by Mayo. The Accused had no written fee agreement with Compher. The Accused deposited the fee into his lawyer trust account on February 15, 2001. On February 16, 2001, the Accused withdrew \$3,000. Shortly thereafter the Accused withdrew an additional \$4,000. By the time the

Accused had withdrawn the \$7,000, he had only done enough work on the case to earn approximately \$1,400.

6.

By withdrawing funds before they were earned without a written fee agreement providing that the fee was a flat fee earned upon receipt, the Accused failed to maintain client funds in his lawyer trust account.

7.

In March 2001, Compher and Mayo received copies of the police reports and the fire investigation prepared by King. Compher and Mayo advised the Accused that King's report did not accurately reflect statements Compher and Mayo made to King and tended to support the prosecution. The Accused advised Compher and Mayo that he could not challenge King's credibility at trial because he also represented Fair Oaks.

8.

The Accused represented Fair Oaks at the same time he represented Compher in the arson investigation. When the Accused learned that King's report may not have accurately reflected Compher's and Mayo's statements, the Accused had a duty to challenge King's report and his credibility as a witness on behalf of Compher, which conflicted with his duties to his client, Fair Oaks.

Violations

9.

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

Sanction

10.

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

A. *Duty Violated.* By engaging in a client conflict of interest and by failing to maintain client funds in trust, the Accused violated his duty to his client. *Standards*, § 4.0.

B. *Mental State*. In engaging in the conflict of interest and in failing to maintain client funds in trust, 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*. By engaging in a conflict of interest, the Accused caused injury to Compher in that his ability to effectively protect Compher’s interest during trial was compromised. By failing to maintain client funds in trust, the Accused caused potential injury in that Compher may have been denied the right to recover any unearned fee if the Accused did not earn the full fee. *Standards*, p. 7. As it turned out, the Accused did earn the full fee eventually.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior disciplinary offense in that he received an admonition in 1987 for a current client conflict of interest. *Standards*, § 9.22(a). See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000).

2. Compher was a vulnerable victim. *Standards*, § 9.22(h).

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

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. The Accused’s prior disciplinary offense is remote in time and entitled to little weight. *Standards*, § 9.32(m). See also *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

11.

The *Standards* provide that:

Suspension is generally appropriate when a lawyer knows or should have known that he is dealing improperly with client property and causes injury or potential injury to a client.

Standards, § 4.12.

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.

The *Standards* also provide that:

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Standards, § 4.32.

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.

12.

Oregon case law suggests that under the facts of this case, a reprimand is an appropriate sanction. *In re Long*, 14 DB Rptr 33 (2000) (public reprimand for violating DR 5-105(E), DR 9-101(A), and DR 9-101(C)(3)); *In re Robertson*, 16 DB Rptr 104 (2002) (public reprimand for a single violation of DR 5-105(E) with a prior disciplinary record); *In re Campbell*, 16 DB Rptr 186 (2002) (reprimand for a single violation of DR 9-101(A)).

13.

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) and DR 9-101(A), the sanction to be effective upon approval by the Disciplinary Board.

14.

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

EXECUTED this 2nd day of January 2003.

/s/ Mark Hendershott

Mark Hendershott

OSB No. 72118

EXECUTED this 6th day of January 2003.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 03-09
)
BETTY JO WHITE,)
)
Accused.)

Counsel for the Bar: Scott A. Morrill
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-104(A). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: March 17, 2003

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 5-104(A).

DATED this 17th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Betty Jo White, 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 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion County, Oregon.

3.

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

4.

On January 18, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 5-104(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 August 3, 2000, the Accused borrowed \$20,000 from her client, Phyllis Fossholm. As borrower and lender, the Accused and her client had differing interests and the client expected the Accused to protect the client's interests in the transaction. While the Accused did sign a promissory note, the loan was not secured.

6.

The Accused failed to obtain her client's consent after full disclosure to the conflict of interest between them, as defined by DR 10-101(B). While the Accused did verbally discuss the potential adverse impact of the loan with her client and did verbally discuss that the transaction created a conflict of interest, she did not do so in writing.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 5-104(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.* In violating DR 5-104(A), Accused violated her duty to avoid a conflict of interest with her client. *Standards*, § 4.3.

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 this situation. *Standards*, p. 7. The Accused was negligent in determining and following the requirements for full disclosure.

C. *Injury.* The Accused’s conduct resulted in actual and potential injury to the client. The client had borrowed the \$20,000 from another source to lend to the Accused. Thereafter, the client expressed concern about repayment to her family members. The Accused failed to stay current with payments on the loan and the client’s estate ultimately paid off the original source of the \$20,000. The Accused has yet to satisfy the debt.

D. *Aggravating Factors.* Aggravating factors include:

1. Substantial experience in the practice of law. The Accused has been practicing since 1973. *Standards*, § 9.22(i).

2. The client was trusting of the Accused due to their long-term relationship. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record in 30 years as a lawyer. *Standards*, § 9.32(a).

2. Full and free disclosure and cooperative attitude. *Standards*, § 9.32(e).

3. Remorse. *Standards*, § 9.32(l).

9.

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. Oregon case law is in accord. See *In re Peterson*, 11 DB Rptr 99 (1997); *In re Moore*, 13 DB Rptr 51 (1999).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-104(A), the sanction to be effective upon the approval of this stipulation 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 4th day of March 2003.

/s/ Betty Jo White

Betty Jo White
OSB No. 73324

EXECUTED this 10th day of March 2003.

OREGON STATE BAR

By: /s/ Scott A. Morrill

Scott A. Morrill
OSB No. 91380
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-136
)
MICHAEL T. MULLEN,)
)
Accused.)

Counsel for the Bar: Mary A. Cooper
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 17, 2003

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 17th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6,
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused, Michael T. Mullen, was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1993, 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 21, 2002, 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.

The Accused represented Thomas Stuck in a dissolution or marriage. On October 27, 2000, the trial judge heard child support and custody issues, after which he assigned the Accused the task of preparing the order. The Accused did not take any action to do so until early December 2000, at which time he thought he mailed a proposed order to opposing counsel, Mr. Hart. However, the Accused's billing records do not reflect that he mailed a proposed order to Mr. Hart, and Mr. Hart never received a proposed order from the Accused, nor did Mr. Hart receive a reply to phone messages left for the Accused in November.

6.

Mr. Hart became impatient and so, on November 22, 2000, prepared his own proposed order. He forwarded this to the Accused on November 22, 2000. When Mr. Hart did not hear back from the Accused, Mr. Hart went ahead and filed his proposed order with the court, sending the Accused a copy of both the transmittal letter and the order. The Accused does not recall receiving these documents from Mr. Hart.

7.

On December 14, 2000, the trial judge signed Mr. Hart's proposed order. On December 19, 2000, the court sent counsel a notice of entry of judgment, but the Accused does not recall receiving the notice.

8.

On January 18, 2001, the Accused's client retained new counsel—Elaine Smith—who discovered that an order had been entered in the case by Mr. Hart, but that the order was not accurate. When Ms. Smith contacted the Accused about this inaccurate order in April 2001, he told her that at the time he substituted out of the case, he thought Mr. Hart was still considering his proposed order. He was unaware that the court had already signed a form or order. At no time in December 2000 or January 2001, did the Accused follow up with Mr. Hart about the proposed order he thought he had sent, or take any other action to ensure that an order was filed.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he 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 client to act with reasonable diligence and promptness. *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 Accused's client was injured in that the judge filed an incorrect order that required him to pay additional sums. Also, he had to pay a new attorney (and pay for a copy of the transcript from the October 27, 2000, hearing) in order to correct the erroneous judgment/order. The client was frustrated by the delay.

D. *Aggravating Factors.* There are no aggravating factors in this case.

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. He had no dishonest or selfish motive. *Standards*, § 9.32(b).
3. He fully cooperated in a disciplinary investigation. *Standards*, § 9.32(e).

11.

Standards § 4.33 suggests that a reprimand is generally appropriate when the lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to the client. *Standards*, § 4.43.

12.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Hayes*, 16 DB Rptr 296 (2002); *In re Coulter*, 15 DB Rptr 220 (2001); *In re Brownlee*, 9 DB Rptr 85 (1995).

13.

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

14.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board (SPRB). 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 30th day of December 2002.

/s/ Michael T. Mullen

Michael T. Mullen
OSB No. 93377

EXECUTED this 8th day of January 2003.

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper
OSB No. 91001
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 02-78, 02-79
)
JAMES I. MITCHELL,)
)
Accused.)

Counsel for the Bar: Chris L. Mullmann
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-106(A) and DR 2-110(A)(2).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: March 18, 2003

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 2-106(A) and DR 2-110(A)(2).

DATED this 18th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

James I. Mitchell, 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 I. Mitchell, 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 Multnomah County, Oregon, until the spring of 2002, when he moved to Morro Bay, California.

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 30, 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 2-106(A) and DR 2-110(A)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

The Marjorie Perciso Matter

Case No. 02-78

Facts

5.

In about December 2001, the Accused undertook to represent the guardians of Marjorie Perciso. In the course of the representation of the guardians, the Accused charged or collected from the Perciso estate attorney fees without first having obtained approval of the fees by the court as required by ORS 125.095(3).

Violations

6.

By engaging in the above-described conduct, the Accused charged or collected an illegal fee in violation of DR 2-106(A) of the Code of Professional Responsibility.

The Lloyd M. Ostrander Matter

Case No. 02-79

Facts

7.

On or about September 4, 1998, Lloyd M. Ostrander and his wife (“the clients”) retained the Accused to represent them in a claim for unlawfully being detained by Bi-Mart security personnel on September 1, 1998.

8.

On March 2, 1999, the Accused filed a complaint of behalf of the clients in circuit court. The complaint was amended and discovery was undertaken. On January 19, 2001, the Accused filed a motion to withdraw as counsel for the clients without giving the clients any notice of his intent to do so, without advising opposing counsel that he was doing so, without serving the motion on the clients or opposing counsel, and without discussing the matter with the clients before filing the motion.

Violations

9.

By engaging in the above-described conduct, the Accused withdrew from employment without taking reasonable steps to avoid foreseeable prejudice to the rights of the clients, including giving reasonable notice of his intent to withdraw, in violation of DR 2-110(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.* By charging an illegal fee and by improperly withdrawing from employment, the Accused violated his duties to the clients and to the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State*. In charging an illegal fee and by improperly withdrawing, the Accused acted with negligence, 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 the Perciso matter, the estate suffered no injury in that the Accused promptly returned the fee when he learned he had improperly collected the fee in violation of ORS 125.095(3). In the Ostrander matter, the clients suffered little or no injury in that they were able to resolve their claim without the services of another lawyer and had sufficient time to obtain substitute counsel.

D. *Aggravating Factors*. Aggravating factors include:

1. The Ostranders were vulnerable clients because of their age. *Standards*, § 9.22(h).

2. The Accused has substantial experience in the practice of law having been admitted in 1990, although he had little experience in matters similar to the Ostrander matter. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

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

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

4. The Accused has expressed remorse for his conduct. *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. According to the *Standards*, 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.

12.

Oregon case law is consistent with the *Standards*. See *In re Ash*, 15 DB Rptr 12 (2001) (reprimand for violating DR 2-110(B)(2) and DR 5-105(C)), *In re Baldwin*, 15 DB Rptr 171 (2001) (reprimand for violating DR 2-106(A) and DR 5-105(C)); *In re Gruber*, 15 DB Rptr 38 (2001) (reprimand for violating DR 2-106(A)).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 2-106(A) and DR 2-110(A)(2), the sanction to be effective upon approval by the Disciplinary Board.

14.

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

EXECUTED this 16th day of January 2003.

/s/ James I. Mitchell

James I. Mitchell

OSB No. 90342

EXECUTED this 23rd day of January 2003.

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. 02-171
)
SHERRILL L. DYE,)
)
Accused.)

Counsel for Bar: Lia Saroyan
Counsel for the Accused: Christopher R. Hardman
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(2) and DR 1-102(A)(3).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: March 18, 2003

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)(2) and DR 1-102(A)(3).

DATED this 18th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Sherrill L. Dye, 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 15, 1997, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On November 16, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2) (criminal act reflecting adversely on honesty, trustworthiness and fitness) and DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation) 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 2000 and 2001, the Accused and her husband experienced marital difficulties. Their difficulties subsided in late October 2001. In early 2002, the Accused again began experiencing fears and anxieties regarding her marriage. The Accused decided to obtain and review telephone records for her home phone from September 2001 through February 2002. The Accused contacted the telephone company about retrieving a copy of the phone records. A company representative told the Accused that she needed to subpoena them.

6.

On or about March 1, 2002, the Accused modified a form of subpoena from her law firm's computer. She used a fictitious probate case name in the court caption and her law firm's address. After printing the subpoena, the Accused used personal funds to pay the witness and postage fees. The telephone company honored the subpoena.

7.

ORS 162.355 provides that a person commits the crime of simulating legal process if the person knowingly issues or delivers to another person any document that in form and substance falsely simulates civil or criminal process. "Civil process" includes a subpoena filed for the purpose of directing a person to perform or refrain from performing a specific act. ORS 162.355(2)(a).

Violations

8.

The Accused admits that, for knowingly creating and issuing a subpoena that contained false statements and falsely simulated civil process, she violated DR 1-102(A)(2) and 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 her duty owed to the public for failing to maintain her personal integrity. She also violated her duty owed to the legal system by abusing the legal process. *Standards*, §§ 5.1, 6.2.

B. *Mental State.* The Accused acted with knowledge when she prepared and issued the subpoena, but she was negligent in recognizing that her conduct, in addition to being dishonest, was also criminal.

C. *Injury.* The Accused's conduct caused no actual injury. In fact, the telephone company representative was wrong to require a subpoena from the Accused. She was entitled to access to the phone records without subpoena.

D. *Aggravating Factors.*

None.

- E. *Mitigating Factors*. Mitigating factors include:
1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
 2. The Accused was experiencing personal and emotional problems at the time she engaged in the conduct. *Standards*, § 9.32(c).
 3. The Accused disclosed her conduct to the disciplinary authorities and exhibited full and free disclosure to Disciplinary Counsel, and a cooperative attitude toward this proceeding. *Standards*, § 9.32(e).
 4. The Accused is remorseful. *Standards*, § 9.32(l).

10.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly engages in certain, lower level types of criminal conduct, and a reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation. Oregon law is in accord. *In re Kimmel*, 332 Or 480, 31 P3d 414 (2002) (lawyer suspended for stealing item of clothing from retailer; *In re Flannery*, 334 Or 224, 47 P3d 891 (2002) (lawyer reprimanded for making a false application for a driver's license); *In re Carstens*, 297 Or 155, 683 P2d 992 (1984) (lawyer reprimanded for misdemeanor theft arising from lawyer's own divorce under circumstances that were not likely to be repeated). The parties stipulate that the Accused's conduct, after taking into account the circumstances of the violations, is more similar to those cases in which a reprimand was imposed.

11.

Consistent with the *Standards* and Oregon case law, the Accused shall receive a public reprimand for violating DR 1-102(A)(2) and DR 1-102(A)(3). The sanction will be effective the date this Stipulation is approved by the Disciplinary Board.

12.

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

EXECUTED this 6th day of March 2003.

/s/ Sherrill L. Dye

Sherrill L. Dye

OSB No. 97254

EXECUTED this 10th day of March 2003.

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. 02-36
)
GEOFFREY J. GOKEY,)
)
Accused.)

Counsel for the Bar: Chris L. Mullmann
Counsel for the Accused: Susan D. Isaacs
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 18, 2003

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 18th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Gary L. Hedlund
Gary L. Hedlund, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On May 30, 2002, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 6-101(B) 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.

In May 1999, Sylvia R. Davila and her husband (“the Davilas”) retained the Accused to represent them with regard to a fire that destroyed their business in March 1999. Part of the representation included a civil claim against the insurance company that had denied payment of the Davilas’ claim on the basis of fraud.

6.

The Accused negotiated with the insurance company and received partial settlement payment in late September 2000. Thereafter, the Davilas contacted the Accused and advised him that they wanted to apply a portion of the settlement proceeds to an outstanding tax debt listed in their pending Chapter 13 bankruptcy to avoid liquidation of their business.

7.

In the fall of 2000, the Accused confirmed the debt to the Internal Revenue Service and instructed his secretary to determine the appropriate account on which to render payment and to prepare the necessary trust account check. The trust account check and letter were not prepared or forwarded to the Internal Revenue Service. The Accused took no further action to tender the money to the Internal Revenue Service until February 2001.

8.

On February 23, 2001, the Accused requested permission from the bankruptcy trustee to transmit the funds as requested by the Davilas. On March 15, 2001, the bankruptcy trustee consented to the disbursement of the payment. The money was not disbursed to the Internal Revenue Service until May 4, 2001.

9.

In May 2001, the Davilas retained Karen Steele (“Steele”) to take over their representation from the Accused. On or about May 23, 2001, Steele requested that the Accused turn over all of the Davilas’ files to her. On or about May 23, 2001, the Davilas filed a complaint with the Oregon State Bar concerning the Accused’s conduct. The Accused did not turn over the files until November 2001.

10.

Even though he provided extensive legal services to the Davilas, by failing to timely disburse settlement proceeds and delaying disbursement of the funds to the Internal Revenue Service, the Accused neglected a legal matter entrusted to him. In delaying return of the Davilas’ files, the Accused failed to promptly deliver to the clients property in his possession that the clients were entitled to receive.

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) 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.* By failing to promptly return client property and by neglecting a legal matter entrusted to him, the Accused violated his duty to his clients. *Standards*, §§ 4.1, 4.4.

B. *Mental State.* The Accused acted with negligence, 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.* The Davilas suffered some actual injury in that they suffered anxiety and frustration over the delay in disbursing the monies to the Internal Revenue Service and feared that they might have to liquidate their business if the tax liability was not paid.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary record, having been admonished in 2000 for neglecting a legal matter in violation of DR 6-101(B). *Standards*, § 9.22(a). See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (admonition letter is aggravating factor if conduct is similar to present violation).

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

E. *Mitigating Factors.* Mitigating factors include:

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

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

13.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13. According to the *Standards*, reprimand is also 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 in accord. For instance, in *In re Cohen*, 330 Or 489, 8 P3d 953 (2000), the accused received a public reprimand for violating DR 6-101(B) and had two prior admonitions for violating DR 6-101(B). See also *In re Toth-Fejel*, 12 DB Rptr 65 (1998), where the lawyer was reprimanded for failing to utilize a settlement received on behalf of a client to resolve outstanding state and federal tax claims against the client that needed to be paid before the end of 1996.

15.

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) and DR 9-101(C)(4), the sanction to be effective the day the sanction is approved by the Disciplinary Board.

16.

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

EXECUTED this 8th day of January 2003.

/s/ Geoffrey J. Gokey

Geoffrey J. Gokey

OSB No. 89049

EXECUTED this 14th day of January 2003.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-104
)
BRITT NELSON,)
)
Accused.)

Counsel for the Bar: Chris L. Mullmann
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-103(C) and DR 3-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: March 18, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded, for violation of DR 1-103(C) and DR 3-101(B).

DATED this 18th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1982, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Clackamas County, Oregon. Although an active member of the Bar, the Accused is not currently engaged in the private practice of law.

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 3-101(B) and DR 1-103(C) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On or about April 2, 2002, the Accused prepared and filed a petition for bankruptcy on behalf of Diane Alicia Abbott (“Abbott”) in the United States Bankruptcy Court for the Western District of Washington. The petition included a disclosure evidencing that the Accused was being compensated as attorney for Abbott.

6.

On May 10, 2002, Abbott attended the first meeting of creditors in the state of Washington, with the Accused as her lawyer. After the hearing, the Accused signed a reaffirmation agreement for a creditor as attorney for Abbott.

7.

The Accused was not admitted to practice law in Washington or before the United States Bankruptcy Court for the Western District of Washington when she represented Abbott.

8.

On or about May 13, 2002, Disciplinary Counsel's Office received a complaint from a Washington lawyer and not a client of the Accused's, concerning the conduct of the Accused as described above. The complaint was forwarded to the Accused on May 15, 2002, and her response was requested not later than June 5, 2002. The Accused spoke with Bar staff on May 21, 2002, and was advised to contact Disciplinary Counsel's Office if she needed additional time to respond in writing to the complaint. Other than one phone message, the Accused did not contact Disciplinary Counsel's Office to request an extension and did not file her response by June 5, 2002.

9.

On June 12, 2002, Disciplinary Counsel's Office wrote the Accused inquiring as to the status of her response. The Accused did not timely respond to that letter.

10.

On June 18, 2002, Disciplinary Counsel's Office sent a certified letter and first class mail letter to the Accused indicating that her failure to respond by June 25, 2002, would result in the matter being referred to the Local Professional Responsibility Committee ("LPRC") for investigation. The Accused's mother died June 19, 2002, while the Accused was with her out of state.

11.

On June 27, 2002, the Accused left Disciplinary Counsel's Office a message indicating that she would respond in the near future. The Accused did not respond, and the matter was referred to the Clackamas County LPRC on July 17, 2002. The Accused filed a response with the Bar on August 9, 2002, and the LPRC returned the file material to the Bar without investigation.

Violations

12.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 3-101(B) and DR 1-103(C) 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 practicing law in a jurisdiction where she was not admitted to do so in violation of the regulations of the profession in that jurisdiction, the Accused violated her duty to the profession. By failing to timely comply with reasonable inquiries from an authority empowered to investigate her conduct, the Accused also violated her duty to the profession. *Standards*, § 7.0.

B. *Mental State*. The Accused acted with negligence, that is, 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 conduct of the Accused could have resulted in injury or potential injury to Abbott in that the Bankruptcy Court could have taken action to refuse to proceed with the matter until Abbott obtained counsel authorized to appear in the court or represent herself. The failure to respond to Bar staff also caused injury or potential injury in that the completion of the investigation was delayed.

D. *Aggravating Factors*. An aggravating factor is:

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

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. Personal and emotional problems, in that the Accused’s mother died June 19, 2002, and the Accused was out of state attending to her mother’s care and affairs, and she was in the process of winding down her practice while completing education studies to begin a career in teaching. *Standards*, § 9.32(c).

4. The Accused has expressed remorse for any injury she may have caused Abbott or the disciplinary process. *Standards*, § 9.32(l).

14.

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.

15.

Oregon case law is in accord. See *In re Black*, 10 DB Rptr 25 (1996) (lawyer reprimanded for violating DR 3-101(B) and DR 1-102(A)(3) for misrepresenting his PLF exemption status while representing private criminal clients); *In re Kimmell*, 10 DB Rptr 175 (1996) (lawyer reprimanded for DR 3-101(B) and DR 2-101(A) for practicing law in California while inactive and allowing firm letterhead to represent that he was admitted to practice in California while an inactive member of the California Bar).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-103(C) and DR 3-101(B), the sanction to be effective upon approval of this stipulation for discipline.

17.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction has been approved by the State Professional Responsibility Board (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 January 2003.

/s/ Britt Nelson

Britt Nelson
OSB No. 82094

EXECUTED this 14th day of January 2003.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann
OSB No. 72311
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 01-131, 02-05
)
KURT CARSTENS,)
)
Accused.)

Counsel for the Bar: Nicole M. Putnam; Martha M. Hicks
Counsel for the Accused: Susan D. Isaacs
Disciplinary Board: None
Disposition: Violation of DR 5-101(A), DR 5-103(B), and
DR 5-105(C). Stipulation for Discipline. 30-day
suspension.
Effective Date of Order: March 26, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective the 7th day after this stipulation is approved by the Disciplinary Board, for violation of DR 5-101(A), DR 5-103(B), and DR 5-105(C).

DATED this 19th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kurt Carstens, 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 provision of ORS Chapter 9, relating to the discipline of attorneys.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon in September 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln County, Oregon.

3.

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

4.

On July 21, 2001, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused in Case No. 01-131 for alleged violation of DR 5-101(A) and DR 5-103(B) of the Code of Professional Responsibility. On January 19, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused in Case No. 02-05 for alleged violation of DR 5-105(C). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Sullivan-Prest Matter

Case No. 01-131

Facts

5.

In 1998, Marcia Buckley, an associate attorney at the Accused’s law firm, represented Mary Sullivan-Prest in a marital dissolution proceeding. In October 1998, pursuant to a Stipulated Judgment and Decree of Dissolution, Sullivan-Prest and her husband, Richard Prest, agreed to sell the marital residence and, until it was sold, to equally divide the cost of maintaining the house, including payment of the mortgage, insurance, and utilities. Per their agreement, Sullivan-Prest would receive the first

\$100,000 of the net proceeds of the house sale, and the parties would then divide the remaining funds equally. Also, Prest's child support obligation payable to Sullivan-Prest would be deferred until the house sold. Thereafter, Sullivan-Prest continued to reside in the family home.

6.

In about October 1999, the Accused undertook representation of Sullivan-Prest to assist in the facilitation of the sale of the house and to secure her former husband's cooperation in marketing the house and in paying the ongoing house and incidental expenses.

7.

The house had not sold as of May 2000, and Prest was not paying his full share of expenses. In the spring of 2000, Sullivan-Prest lost her job. During several months of 2000, the Accused negotiated with Richard Prest and his attorney regarding a proposed agreement relating to payment of the house and incidental expenses. The Accused also maintained an accounting of the payments of house and incidental expenses made by the parties during this period. By August 2000, Prest stopped making any payments towards the house expenses. The Accused and Sullivan-Prest discussed bringing contempt proceedings against Prest for his failure to pay.

8.

In May 2000, the Accused and Buckley agreed to loan money to Sullivan-Prest to ensure that she did not lose her house. They agreed to the following terms: (1) the Accused and Buckley would advance funds to Sullivan-Prest to pay the expenses to maintain the house and would continue to advance money to her until a sale of the house closed; (2) the advancement of funds would bear 10 percent interest from the date of the advancement; (3) Sullivan-Prest would repay the principal and accrued interest upon the closing of the house sale; (4) Sullivan-Prest would continuously market the house and sell it at a reasonable price; (5) the Accused would assist Sullivan-Prest in obtaining her ex-husband's cooperation to the extent necessary to sell the house; and (6) Sullivan-Prest would execute a standard recordable document on the house securing the debt to the Accused and Buckley, if requested.

9.

The Accused advised Sullivan-Prest orally to consult with an attorney of her choice about the loan from the Accused and Buckley, but she indicated that she understood the proposal and declined to obtain independent advice. On May 5, 2000, Sullivan-Prest accepted the Accused's offer to assist her in paying her household expenses. By a letter dated May 17, 2000, the Accused wrote to Sullivan-Prest confirming their agreement and its terms, and Sullivan-Prest signed a copy of the letter as her acknowledgment.

10.

In the fall of 2000, the Accused represented Sullivan-Prest in a proceeding brought by her former husband, who sought enforcement of the visitation proceedings or modification of the custody provisions of the parties' Stipulated Judgment and Decree of Dissolution.

11.

Despite several requests, Sullivan-Prest failed to execute a trust deed on her house as required by her agreement with the Accused and Buckley. From May 2000 through December 2000, when the house sold, the Accused and Buckley loaned Sullivan-Prest \$11,744.

12.

By loaning money to Sullivan-Prest and agreeing to accept repayment of the loan from the proceeds of the sale of the house, the Accused and Buckley became creditors of their client, Sullivan-Prest.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 12 of this stipulation, he violated: DR 5-101(A), by failing to secure the consent of his client after full disclosure reduced to writing regarding the possible effect of the Accused's financial interest, under these circumstances, upon the exercise of his professional judgment; and DR 5-103(B) by advancing financial assistance to his client.

Hudson Matter

Case 02-05

Facts

14.

On May 3, 1999, Martin Runyan, the Accused's former client, contacted the Accused regarding possible custody modification proceedings against his former wife, Laura Sue Hudson. No action was taken at that time.

15.

In about late May or early June 1999, Buckley undertook representation of Hudson in her dissolution of marriage proceeding from Tom Ruddiman.

16.

On October 13, 1999, Runyon, through other counsel, instituted proceedings against Hudson seeking custody of their child or modification of his child support

obligation to Hudson. Hudson conferred with Buckley regarding the Runyon proceeding.

17.

Hudson disclosed information to Buckley during the course of their professional relationship regarding the conduct alleged by Runyon as grounds for the change in custody.

18.

In early November 1999, when the Accused learned that Buckley had agreed to represent Hudson against Runyon, he directed Buckley not to represent Hudson and Buckley did not do so.

19.

The Judgment of Dissolution of Marriage between Hudson and Ruddiman was signed on or about January 18, 2000. Buckley's representation of Hudson ceased shortly thereafter.

20.

On about March 20, 2000, the Accused undertook representation of Runyon against Hudson in the custody proceeding, in which the interests of Runyon and Hudson were adverse. The Accused did not make full disclosure or obtain Hudson's consent to his representation of Runyon.

21.

Knowledge of the confidences and secrets Hudson provided to Buckley, the use of which could have inflicted injury or damage upon Hudson in the course of the custody proceeding, is imputed to the Accused due to his professional association with Buckley.

Violations

22.

The Accused admits that, by engaging in the conduct described in paragraphs 14 through 20, he violated DR 5-105(C).

Sanction

23.

The Accused and the Bar agree that, in fashioning an appropriate sanction in this case, the Supreme Court considers 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 factors.

A. *Duty Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards*, § 4.3.

B. *Mental State.* With respect to the Sullivan-Prest case, the Accused acted knowingly, i.e., with the conscious awareness of the nature and attendant circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. With respect to Hudson, the Accused acted negligently, i.e., he failed to heed a substantial risk that circumstances existed or that a result would follow. *Standards*, p. 7.

C. *Injury.* Sullivan-Prest was not actually harmed. As a result of her receipt of the loan proceeds from the Accused, she was able to maintain her marital residence and preserve her equity in it, rather than lose it to foreclosure, until the house could be sold and the proceeds distributed pursuant to the Stipulated Judgment and Decree of Dissolution. Sullivan-Prest was exposed to potential injury, however, in that the Accused's status as a creditor could have affected his professional judgment on Sullivan-Prest's behalf. However, on May 5, 2000, Sullivan-Prest wrote the Accused a letter thanking him for the loan and indicating she appreciated his offer of help. Hudson was not actually harmed because the Accused did not obtain any actual knowledge of any of the confidences or secrets she may have conveyed to Buckley. However, Hudson was exposed to potential harm because knowledge of her secrets was imputed to the Accused, potentially giving his firm an advantageous position to oppose her in litigation.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused was publicly reprimanded in *In re Carstens*, 297 Or 155, 683 P2d 992 (1984). *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 has displayed a cooperative attitude towards the proceedings and has made full and free disclosure to the Disciplinary Counsel's office. *Standards*, § 9.32(e).
2. The Accused's prior discipline is remote in time. *Standards* § 9.32(m).

24.

Standards § 4.32 suggests that a suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes potential injury to a client. Oregon case law is in accord. *In re Gant*, 293 Or 130, 645 P2d 23 (1982); *In re Robertson*, 290 Or 639, 624 P2d 603 (1981); *In re Strange*, 15 DB Rptr 245 (2001).

25.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused will be suspended for 30 days for violation of DR 5-101(A), DR 5-103(B), and DR 5-105(C). The suspension will be effective on March 12, 2003, or on the seventh day after this stipulation is approved by the Disciplinary Board, whichever first occurs.

26.

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

EXECUTED this 17th day of February 2003.

/s/ Kurt Carstens

Kurt Carstens

OSB No. 72048

EXECUTED this 21st day of February 2003.

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. 02-103, 02-107
)
RONALD G. GUERRA,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: John C. Fisher
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 2-110(A)(2), and
DR 6-101(B). Stipulation for Discipline. 30-day
suspension.
Effective Date of Order: March 21, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Ronald G. Guerra 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 from the practice of law for 30 days for violation of DR 1-103(C), DR 2-110(A)(2) (two counts), and DR 6-101(B) (two counts) of the Code of Professional Responsibility, effective two days after the date of this order.

DATED this 19th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Ronald G. Guerra, 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 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, 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 July 20, 2002, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused in Case No. 02-103 for alleged violation of DR 6-101(B), and on January 18, 2003, authorized a formal disciplinary proceeding against the Accused in Case No. 02-107 for alleged violations of DR 1-103(C), DR 2-110(A)(2), and DR 6-101(B). The Board directed that the two proceedings be consolidated. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Smith Matter

Case No. 02-107

Facts and Violations

5.

In or about August 1998, Richard and Karen Smith (hereinafter “Smiths”) retained the Accused to file a complaint with the Bureau of Labor and Industries (hereinafter “BOLI”) and to pursue other claims to recover damages from their former employer.

6.

Between about August 1999 and August 2001, the Accused failed to take action to accomplish his clients' objectives and did not pursue their claims. On or about August 20, 2001, the Accused sent a letter of demand to the Smiths' former employer. Thereafter, the Accused did little on the case until about March 2002, when he prepared, but did not file, a civil complaint. Thereafter, the Accused withdrew from the representation.

7.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to him in violation of DR 6-101(B). Upon further factual inquiry, the parties agree that the alleged violation of DR 7-101(A)(2) should be and, upon the approval of this stipulation, is dismissed.

VanDiviner Matter

Case No. 02-103

8.

In or about June 1998, Dave VanDiviner retained the Accused concerning a claim for wrongful termination against his former employer. Between about June 1998 and June 2000, the Accused failed to actively pursue his client's claim, but on June 8, 2000, filed a civil complaint against the employer.

9.

Defendant's counsel took VanDiviner's deposition in or about April 2001. Among other information, the Accused learned that VanDiviner had lied in his employment application concerning his criminal record, which included convictions for theft and other crimes. The Accused notified VanDiviner that the case had been substantially compromised and that he would likely not prevail at trial. The Accused did not believe he could in good faith continue to represent VanDiviner and recommended that VanDiviner authorize settlement negotiations. The Accused told VanDiviner that he would withdraw from the representation if the case was not settled.

10.

The Accused obtained a settlement offer from the defendant's counsel. VanDiviner rejected the offer. Thereafter, and on or about June 18, 2001, the Accused filed a motion to withdraw and also asked the court to reschedule the trial date. He instructed his assistant to send a copy of the motion to withdraw to VanDiviner, but she mistakenly failed to do so. VanDiviner did not receive a copy of the motion and did not know that it had been filed. The court granted the Accused's motion on June 21, 2002, and rescheduled the case for trial.

11.

At the time the Accused withdrew from the representation, he failed to refund the unused portion of the cost retainer VanDiviner had paid and failed to deliver a copy of his file to VanDiviner.

12.

VanDiviner's case was scheduled for trial for October 30, 2001. In or about early October 2001, VanDiviner learned that the Accused had filed a motion and that the court had allowed him to withdraw. VanDiviner had insufficient time to secure new counsel. The court rescheduled the case for trial at a later date.

13.

On or about January 7, 2002, VanDiviner filed a complaint with the Bar concerning the Accused's conduct. The Bar requested the Accused's explanation. The Accused provided an initial explanation to the Bar's inquiry. Thereafter, and on or about May 9, 2002, the Bar asked the Accused to provide some additional information. The Accused requested and was granted an extension of time until June 13, 2002, to provide the information, but then failed to do so. On June 17, 2002, the Bar again asked the Accused to provide his response to its May 9, 2002, letter and asked that he do so by June 24, 2002. The Accused did not respond and the matter was referred to the Local Professional Responsibility Committee for further investigation.

14.

The Accused admits that the aforesaid conduct constituted failure to cooperate with the disciplinary authorities, improper withdrawal and neglect of a legal matter entrusted to him in violation of DR 1-103(C), DR 2-110(A)(2), and DR 6-101(B) of the Code of Professional Responsibility.

Sanction

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by 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*. The Accused violated his duties to his clients and the profession. *Standards*, §§ 4.1, 4.4, 7.0.

B. *Mental State*. The Accused's conduct demonstrates negligence and knowledge. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to

accomplish a particular result. “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 knew that he was not attending to the clients’ matters. He was negligent in that he failed to confirm that VanDiviner knew that he had withdrawn from the representation and in failing to review his trust account records to refund the unused portion of the cost retainer. The Accused was also negligent in failing to respond to the Bar’s inquiry. At the same time his response was due in the VanDiviner case, his response was due in another matter that was being investigated by the Bar. The Accused confused the cases and thought he had responded when he had not.

C. *Injury*. There was actual and potential injury to the clients and the Bar. The dispositions of the clients’ cases and the Bar’s investigation of the Accused’s conduct were delayed. In the Smiths’ case, some of their claims were barred by the statute of limitations. The Bar’s investigation in the VanDiviner’s case was delayed and the matter referred to the Local Professional Responsibility Committee for further investigation because the Accused did not respond.

D. *Aggravating Factors*. Aggravating factors include:

1. There are multiple client matters and a pattern of misconduct. *Standards*, § 9.22(c).
2. There are multiple rule violations. *Standards*, § 9.22(d).
3. The Accused has substantial experience in the practice of law. He was admitted to practice in Michigan in 1992, and in Oregon in 1994. *Standards*, § 9.22(i).

E. *Mitigating factors*. Mitigating factors include:

1. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a).
2. There is an absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
3. The Accused cooperated with the Local Professional Responsibility Committee in Case No. 02-103, and with the Disciplinary Counsel’s Office in Case No. 02-107 in the investigation of his conduct and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).
4. During times relevant to the conduct that is the subject of the complaints, the Accused suffered a serious physical impairment that caused him to

be absent from the office for periods of time and interfered with his ability to concentrate on client matters. He suffered substantial pain and eventually underwent neurological surgery. *Standards*, § 9.32(h).

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

16.

The *Standards* provide suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2. Case law is in accord. *See, e.g., In re Schaffner*, 325 Or 421, 425, 939 P2d 39 (1997); *In re Doherty*, 17 DB Rptr 1 (2003).

17.

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 30 days for violation of DR 2-110(A)(2), improper withdrawal, DR 1-103(C), failure to cooperate with disciplinary authorities, and DR 6-101(B), neglect of a legal matter entrusted to a lawyer. The suspension shall be effective two days after the date the stipulation is approved by the Disciplinary Board.

18.

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 13th day of March 2003.

/s/ Ronald G. Guerra

Ronald G. Guerra
OSB No. 94327

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. 03-15
)
GRIFFITH C. STEINKE HEALY,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of ORS 9.527(2). Stipulation for
Discipline. 60-day suspension.
Effective Date of Order: March 28, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Griffith C. Steinke Healy 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 from the practice of law for 60 days for violation of ORS 9.527(2), effective five business days after the date of this order.

DATED this 21st day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Griffith C. Steinke Healy, 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 12, 1980, and has been a member of the Oregon State Bar continuously since that time.

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 18, 2003, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation of ORS 9.527(2). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

On or about June 19, 2002, the Accused was charged in the Circuit Court of the State of Oregon for the County of Clatsop with violating ORS 163.465, Public Indecency (Count I) and ORS 163.467, Private Indecency (Count II), *State of Oregon v. Griffith C. Steinke Healy*, Case No. 02-6198. The criminal complaint alleged as follows:

Count I

The defendant, on or about November 7, 2000, in Clatsop County, State of Oregon, did unlawfully and knowingly expose his genitals while in view of a public place, with the intent of arousing the sexual desire of himself.

Count II

The defendant, on or about October 5, 2000, in Clatsop County, being in a place where another person has a reasonable expectation of privacy, did

unlawfully, and with the intent of arousing the sexual desire of the defendant expose his genitals while in view of another person and defendant knew that person did not consent to the exposure and the exposure would be expected to alarm and annoy that person.

6.

The Accused admits that he committed the acts alleged in Count I of the criminal complaint, and does not contest the allegations of Count II of the criminal complaint. On or about June 24, 2002, the Accused was convicted of the crimes alleged in the criminal complaint.

7.

The Accused admits that the aforesaid conduct constitutes the conviction of misdemeanors involving moral turpitude in violation of ORS 9.527(2).

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 duties to the public and the profession. *Standards*, §§ 5.0, 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 or potential injury resulting from the Accused’s conduct.

D. *Aggravating Factors*. Aggravating factors include:

1. There is more than one incident and a pattern of misconduct. *Standards*, § 9.22(c)–(d).

2. The Accused was admitted to practice 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 record of formal discipline. *Standards*, § 9.32(a).

2. The Accused cooperated with the disciplinary authorities during the investigation of his conduct and the resolution of this disciplinary proceeding. *Standards*, § 9.32(e).

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

9.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in *Standards* § 5.11, and seriously adversely reflects on the lawyer's fitness to practice. *Standards*, § 5.12. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to the public. *Standards*, § 7.2. Case law is in accord. *See, e.g., In re Joiner*, 9 DB Rptr 209 (1995); *In re Wolf*, 312 Or 655, 826 P2d 628 (1992).

10.

The Accused and the Bar agree that the Accused shall be suspended from the practice of law for 60 days for violation of ORS 9.527(2). The suspension shall be effective five business days after the date this stipulation is approved by the Disciplinary Board.

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 12th day of March 2003.

/s/ Griffith C. Steinke Healy
Griffith C. Steinke Healy
OSB No. 80379

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. 02-172
)	
STANLEY N. WAX,)	
)	
Accused.)	

Counsel for Bar:	Jane E. Angus
Counsel for the Accused:	Thomas G. Karter
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(E). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 24, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Stanley N. Wax 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 5-105(E) of the Code of Professional Responsibility.

DATED this 24th day of March 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Stanley N. Wax, 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 24, 1976, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, 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 December 13, 2002, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 5-105(C) and DR 5-105(E) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

In December 2001, Visual Advertising Technology, Inc. (hereinafter “Visual”) held a general organizational meeting. The company was also known by the acronym “VAT.” As an accommodation for Visual, Karl Wetzel, an employee, director and shareholder of Visual registered the assumed business name “Virtual Automated Technology, Inc” (hereinafter “Virtual”) The name was to be assigned to Visual.

6.

In or about January 2002, Wetzel retained the Accused to prepare subscription agreements, stock certificates, and a buy-sell agreement for Visual. The Accused prepared the documents. Visual’s and Wetzel’s relationship was thereafter terminated. The termination required Wetzel to sell his shares pursuant to the terms of the buy-sell agreement the Accused prepared.

7.

In late January 2002, Visual appointed the Accused to serve as its corporate counsel. In mid to late February 2002, without Visual's consent, the Accused agreed to represent Wetzel concerning the formation of another company, "Virtual Automated Technology, Inc.," the assumed business name that Visual claimed to belong to it. Litigation between Visual and Wetzel thereafter occurred. The Accused accepted and continued his employment by Wetzel and Visual without first having obtained their consent to the representation after full disclosure.

8.

The Accused admits that the aforesaid conduct constituted a current client conflict in violation of DR 5-105(E) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 5-105(C) should be and, upon the approval of this stipulation, is dismissed.

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the 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 duties to his clients and the profession. *Standards*, §§ 4.3, 7.0.

B. *Mental State*. The Accused's conduct demonstrates negligence, or 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*. There was potential injury to the clients. Because the Accused failed to make disclosure and obtain consent from each of the clients, Visual understood that the Accused represented its interests with undivided loyalty. The Accused no longer represents Wetzel or Virtual concerning matters related to Visual.

D. *Aggravating Factors*. Aggravating factors include:

The Accused was admitted to practice in 1976 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

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).

10.

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. Case law is in accord. *See, e.g., In re Covert*, 16 DB Rptr 87 (2002); *In re Bryant*, 16 DB Rptr 40 (2000); *In re Carey*, 307 Or 315, 767 P2d 438 (1989).

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 5-105(E).

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 12th day of March 2003.

/s/ Stanley N. Wax

Stanley N. Wax
OSB No. 76376

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. 01-137
)	
DAVID K. WINTER,	)	SC S50087
)	
Accused.)	

ORDER IMPOSING PUBLIC REPRIMAND

Upon consideration by the court.

This matter is before the court on the notice of discipline in another jurisdiction with a recommendation of a public reprimand of the Accused brought by Disciplinary Counsel of the Oregon State Bar on behalf of the Oregon State Bar Professional Responsibility Board. The court accepts the recommendation and the Accused is publicly reprimanded.

DATED this 25th day of March 2003.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.
Chief Justice

SUMMARY FROM OREGON STATE BAR BULLETIN

Effective March 25, 2003, the Oregon Supreme Court reprimanded Tillamook lawyer David K. Winter, pursuant to BR 3.5 (reciprocal discipline). The State of Nevada had previously imposed the same sanction.

Winter represented a client in connection with her husband's estate and business. The client received funds from various insurance policies and the sale of assets. Those funds were deposited into Winter's trust account.

Winter owned and operated an investment company. Without obtaining consent after full disclosure from his client, Winter, through the investment company, invested some of his client's funds in trust deeds, and other real estate, and made loans to his family and friends.

Winter obtained title to a house on behalf of his client. He then used client funds to pay members of his family who had cleaned the house. Winter failed to obtain consent after full disclosure from his client before incurring the cleaning charge and disbursing those funds to his family members.

For engaging in the above-referenced misconduct, Winter was found to have violated Nevada Rules of Professional Conduct SCR 157 and SCR 158(1).

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 99-48
)
JAMES D. HUGHES,)
)
Accused.)

Counsel for the Bar: Chris L. Mullmann
Counsel for the Accused: Bradley F. Tellam
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4), DR 6-101(B),
DR 7-101(A)(1), and DR 9-101(C)(4). Stipulation
for Discipline. Six-month suspension.
Effective Date of Order: April 1, 2003

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 six months, effective April 1, 2003, or upon approval by the Disciplinary Board, whichever is later, for violation of DR 1-102(A)(4), DR 6-101(B), DR 7-101(A)(1), and DR 9-101(C)(4).

DATED this 1st day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

James D. Hughes, attorney at law (“the Accused”), and the Oregon State Bar (“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 24, 1982, and, except as noted herein, has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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 10, 2000, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (“SPRB”), alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), DR 7-101(A)(1), DR 7-102(A)(5), 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

5.

On February 23, 1995, the Accused was suspended from the practice of law for 30 days for neglecting a legal matter and failing to cooperate with an authority empowered to investigate his conduct. The suspension was stayed during a two-year period of probation with a number of conditions. The order of suspension and probation, *In re Hughes*, 9 DB Rptr 37 (1995) (“*Hughes I*”), is attached hereto as Exhibit 1.

6.

As part of the conditions of probation, the Accused agreed to work with an attorney (“the probation monitor”) to monitor his caseload to ensure that the Accused’s cases were properly attended to and timely processed.

7.

In early March 1996, Tom and Joan O’Keefe (“the O’Keefes”), who were residents of California, retained the Accused to represent them in a proceeding to determine dischargability in bankruptcy of a judgment they had obtained in California against James and Clydelle Kane (“the Kanes”). On his clients’ behalf, the Accused filed an Amended Complaint in the United States Bankruptcy Court for the District of Oregon on April 19, 1996.

8.

On July 16, 1996, a notice of hearing was sent setting the case for trial on October 28, 1996. The Accused did not notify the O’Keefes or their California attorney that the case was set for trial. On October 15, 1996, the Kanes offered to settle the case. The Accused communicated the offer to the O’Keefes’ California attorney, and the offer was rejected.

9.

The O’Keefes’ California attorney advised the Accused that the case would no longer be pursued given the Kane’s settlement offer. The Accused agreed he would send a letter to the O’Keefes explaining the bases for that decision. The Accused failed and neglected to send the letter.

10.

During the period of probation arising from *Hughes I*, the Accused was handling the O’Keefe matter. In a meeting with the probation monitor in early October 1996, the Accused advised the probation monitor that he needed to review discovery received from the O’Keefes’ California attorney, and that the case had an October 28, 1996 trial date.

11.

In a January 1997 meeting with his probation monitor, the Accused did not advise the probation monitor that he had not followed through and provided the O’Keefes a letter explaining why the case was not being pursued.

12.

After January 28, 1997, the Accused did not respond to attempts by the Kanes’ lawyer to contact him about the case. In August 1997, the Kanes filed a motion to

dismiss for failure to prosecute. The Accused took no action in response to the motion, nor did he advise the O'Keefes that it had been filed.

13.

On or about December 16, 1997, the O'Keefes terminated the Accused's employment. Thereafter, until or about June 3, 1998, the O'Keefes requested that the Accused return their file and execute a substitution of attorney. The Accused did not respond to these requests and, on or about August 7, 1998, the O'Keefes filed a complaint with the Oregon State Bar concerning the Accused's conduct and his continued failure to return their file.

14.

Between August 7, 1998, and November 3, 1998, the Bar and the Accused communicated regarding the O'Keefes' complaint and his continued failure to return their file. The Accused returned portions of the file to the O'Keefes between November 20 and November 30, 1998.

Violations

15.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(4), DR 6-101(B), DR 7-101(A)(1), and DR 9-101(C)(4). Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(3) and DR 7-102(A)(5) should be, and upon approval of this stipulation, are dismissed.

Sanction

16.

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 failing to advise the O'Keefes as to why the case was not being pursued, by failing to respond to the O'Keefes' inquiries about the status of the case and by failing to carry out his contract of employment with the O'Keefes, the Accused violated his duty to his clients. By failing to advise the O'Keefes of the Kanes' motion to dismiss and by failing to respond to the motion, the Accused violated his duty to his clients. By failing to promptly return the O'Keefes' file after being terminated, the Accused violated his duty to his clients. *Standards*, §§ 4.4, 4.6. By negligently failing to provide the probation monitor with full information

regarding the status of the O’Keefe matter, the Accused violated his duty to the profession. *Standards*, § 7.2.

B. *Mental State*. In violating his duty to 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. By failing to promptly return his client’s file, the Accused acted with knowledge as defined above. By failing to provide the probation monitor with full information regarding the status of the O’Keefe matter, the Accused acted with negligence, which is defined as the 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 follow.

C. *Injury*. The O’Keefes suffered some actual injury in that resolution of their case was delayed. The Kanes suffered some actual injury in that resolution of the case was delayed and they were forced to incur additional attorney fees to file the motion to dismiss the case for want of prosecution. The judicial system suffered some actual injury in that the case was delayed and additional judicial time was required to hear and rule upon the motion to dismiss for want of prosecution.

D. *Aggravating Factors*. Aggravating factors include:

1. A prior disciplinary record. *Standards*, § 9.22(a).
2. Multiple offenses. *Standards*, § 9.22(d).
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. Cooperative attitude towards the proceedings. *Standards*, § 9.32(e).
3. Delay in disciplinary proceedings. *Standards*, § 9.32(i).
4. Remorse. *Standards*, § 9.32(l).

17.

Drawing together the factors of duty, mental state, and injury, but before examining aggravating and mitigating factors, the Standards generally indicate imposition of a suspension is an appropriate sanction in this case. *See Standards*, § 4.42.

Oregon case law is in accord that a suspension is an appropriate sanction to be imposed in this case. *See In re Purvis*, 306 Or 522, 760 P2d 254 (1988) (six months’ suspension for similar violation); *In re Gear (I)*, 16 DBR 252 (2002) (180-day suspension for 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)).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for six months for violation of DR 1-102(A)(4), DR 6-101(B), DR 7-101(A)(1), and DR 9-101(C)(4), the sanction to be effective April 1, 2003, or upon approval by the Disciplinary Board, whichever is later.

19.

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 January 18, 2003. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 17th day of March 2003.

/s/ James D. Hughes

James D. Hughes
OSB No. 82287

EXECUTED this 21st day of March 2003.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann
OSB No. 72311
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-25
)
JON FRITZLER,)
)
Accused.)

Counsel for the Bar: Bruce A. Rubin; Martha M. Hicks
Counsel for the Accused: Mark M. Williams
Disciplinary Board: None
Disposition: Violation of DR 3-101(B) and ORS 9.160.
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: May 31, 2003

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 60 days, effective on the 60th day after the Stipulation is approved by the Disciplinary Board, for violation of DR 3-101(B) and ORS 9.160.

DATED this 1st day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Jon M. Fritzler, 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 August 22, 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 March 22, 2002, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 3-101(B) and ORS 9.160. 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.

ORS 9.160 prohibits the practice of law by a person who is not an active member of the Oregon State Bar. ORS 9.200 provides that default by a lawyer in payment of membership fees to the Oregon State Bar shall result in the lawyer’s suspension from membership in the bar.

6.

In 2001, the Accused failed timely to pay his membership fees to the Oregon State Bar and, after proper notice, was suspended from active membership in the Bar on July 3, 2001. On September 4, 2001, the Accused was reinstated to active membership in the Bar.

7.

Between July 3, 2001 and September 4, 2001, the Accused practiced law while he was not an active member of the Oregon State Bar.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 3-101(B) and ORS 9.160.

Sanction

9.

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

A. *Duty Violated.* The Accused violated a duty he owed as a professional to maintain his active membership in the Bar. *Standards*, § 7.2.

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

C. *Injury.* The legal profession and the public were exposed to potential harm from the Accused’s continuing to practice law while failing to maintain his eligibility to do so. *Standards*, p. 6.

D. *Aggravating Factors.* There are no aggravating factors properly attributable to the Accused.

E. *Mitigating Factors.* Mitigating factors include:

1. The absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused has displayed a cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
3. The Accused is of good character and has a good reputation. *Standards*, § 9.32(g).
4. The Accused has demonstrated remorse for his conduct. *Standards*, § 9.32(l).

10.

Drawing together the factors of duty, mental state, and injury, *Standards* § 7.2 suggests that a suspension is generally appropriate when a lawyer knowingly engages

in conduct that is a violation of a duty owed to the profession, and causes potential injury to a client, the public, or the legal system.

Oregon case law is in accord. See *In re Fitting*, 304 Or 143, 742 P2d 609 (1987) (90-day suspension for violation of DR 3-101(B) and DR 6-101(B)); *In re Stater*, 15 DB Rptr 216 (2001).

11.

Consistent with the *Standards* and Oregon case law, and considering the mitigating factors properly attributable to the Accused, the parties agree that the Accused shall be suspended from the practice of law for a period of 60 days for violation of DR 3-101(B) and ORS 9.160, the sanction to be effective beginning on the 60th day after the Stipulation is approved by the Disciplinary Board.

In addition, on or before the 60th day of his suspension from the practice of law, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$403, incurred for a deposition appearance fee and transcript. Should the Accused fail to pay \$403 in full by the date specified herein, the Accused shall not be reinstated and 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.

12.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein has been approved by the State Professional Responsibility Board (SPRB). If approved by 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 17th day of March 2003.

/s/ Jon M. Fritzler

Jon M. Fritzler
OSB No. 95266

EXECUTED this 21st day of March 2003.

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. 02-160
)
JAMES T. WILKERSON,)
)
Accused.)

Counsel for the Bar: Chris L. Mullmann
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A), DR 6-101(A), and
DR 6-101(B). Stipulation for Discipline. 30-day
suspension.
Effective Date of Order: May 1, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective 30 days from the date of this order for violation of DR 5-101(A), DR 6-101(A), and DR 6-101(B).

DATED this 1st day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

James T. Wilkerson, 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 November 1, 1993, and has been a member of the Oregon State Bar since that time with an office in Yamhill County. The Accused also is duly admitted by the Supreme Court of the State of California to practice law in that state, and is a member of the California Bar, having his office and place of business in San Mateo County, California.

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 25, 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 5-101(A), DR 6-101(A), 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.

Facts

5.

On or about April 24, 1998, the Accused filed a complaint for personal injuries on behalf of Marlene and Ronald Mills (“the Mills”) in Curry County Circuit Court. The Accused did not serve the defendants within 60 days as required by ORS 12.020.

6.

On August 20, 1998, the defense lawyer wrote the Accused a letter advising the Accused of his failure to timely serve the defendants. The Accused did not respond to the letter and did not advise the Mills about the mistake. The defense

lawyer wrote the Accused again on September 18, 1998, threatening to seek enhanced prevailing party fees unless the Accused dismissed the case. The Accused did not respond to the letter and did not advise the Mills of the letter or the threat of the enhanced prevailing party fees.

7.

On October 18, 1998, the defense lawyer filed an answer raising the statute of limitations as a defense. The Accused did not file a reply or contact the defense lawyer regarding the defense and did not advise the Mills of the answer and defense.

8.

On November 23, 1998, the defense lawyer filed a motion for summary judgment based on the statute of limitations. The Accused did not advise the Mills of the motion and did not file any response to the motion or take any other action to prosecute the case.

9.

After November 23, 1998, the Accused took no action on the case until January 1999, when he advised the Mills of the statute of limitations defense. The case was dismissed on February 18, 1999, and the court awarded prevailing fees and costs to the defendants.

10.

In January 1999, the Accused offered to settle any potential malpractice claim the Mills might have had against him. The Accused did not provide the Mills with an explanation sufficient to apprise them of the potential adverse impact of the service mistake on the Accused's professional judgment or of the consequences of entering into a settlement agreement he prepared. The Accused did suggest that the Mills consult another lawyer about the agreement, and they did so. A copy of the agreement is attached hereto as Exhibit 1.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-101(A)(1), DR 6-101(A), 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*. By failing to provide competent representation to his clients, neglecting their legal matter, and by failing to avoid a conflict of interest, the Accused violated his duty to his clients. *Standards*, § 4.0.

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

C. *Injury*. By allowing the statute of limitations to expire and by failing to timely serve the defendants, the Accused caused actual injury to the clients. *Standards*, p. 7. Furthermore, the Accused has not paid to the Mills the sums called for by the agreement attached as Exhibit 1.

D. *Aggravating Factors*. Aggravating factors include:

1. Vulnerability of the victims. *Standards*, § 9.22(h).
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. Full and free disclosure during the disciplinary investigation. *Standards*, § 9.32(e).

13.

The *Standards* suggest that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards*, § 4.32. Suspension is also generally appropriate when a lawyer (a) knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42.

Finally, as to lack of competence, the *Standards* provide:

4.52 Suspension is generally appropriate when a lawyer engages in an area of practice which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

4.53 Reprimand is generally 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 or she is competent to handle a legal matter and causes injury or potential injury to a client.

14.

Oregon case law is in accord. *See In re Fitting*, 304 Or 143, 742 P2d 609 (1987) (attorney suspended for 90 days stayed subject to two years probation where he allowed his client's lawsuit to be dismissed for failing to pursue the case). *See also In re McCallie*, 16 DB Rptr 33 (2002) (90-day suspension for violating DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(A), and DR 6-101(B)); *In re MacNair*, 16 DB Rptr 98 (2002) (60-day suspension for violating DR 6-101(A), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3)).

15.

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 5-101(A), DR 6-101(A), and DR 6-101(B), the sanction to be effective 30 days from the date this Stipulation is approved 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). 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 March 2003.

/s/ James T. Wilkerson

James T. Wilkerson
OSB No. 93522

EXECUTED this 27th day of March 2003.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann
OSB No. 72311
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-168
)
WILLIAM A. ALLEN,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Michael D. Fernety
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),
DR 5-101(A), and DR 9-101(C)(4). Stipulation for
Discipline. 60-day suspension.
Effective Date of Order: April 30, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by William A. Allen 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 from the practice of law for 60 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), and DR 9-101(C)(4) of the Code of Professional Responsibility, effective April 30, 2003. It is further

ORDERED that the Accused shall deliver the funds he obtained from Cameron Ross's Charles Schwab account to Cameron Ross, in care of the Bar for delivery to Cameron Ross, not later than the effective date of his suspension. The delivery of these funds shall be without prejudice to any claim he may have for payment of attorney fees and costs from his client.

DATED this 8th day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William A. Allen, 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 23, 1994, 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, 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 16, 2002, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), and DR 9-101(C)(4). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

In or about August 2000, Cameron Ross, fka Janet Carver-Bergamo (hereinafter “Ross”), retained the Accused to represent her interests in a dissolution of marriage matter, *Matter of the Marriage of Janet H. Carver-Bergamo and Charles A. Bergamo*, Marion County Circuit Court Case No. 00C 30382.

6.

Trial of the case was held on March 15, 2001. On or about March 28, 2001, the court filed its decision, which among other terms provided that Ross be awarded a Charles Schwab (hereinafter “Schwab”) investment account. After further consideration and on or about April 18, 2001, the court declined to award attorney fees to Ross. The Accused prepared a proposed form of judgment, a copy of which he provided to Ross.

7.

The Accused notified Ross that the court denied her request for the award of her attorney fees. He also informed Ross that they needed to discuss the payment of his fees and proposed that she use the Schwab investment account to pay the obligation. The Accused told Ross that he would notify Schwab that the proceeds of account should not be disbursed without authorization from his office. Ross did not agree to the Accused’s proposal.

8.

Thereafter, as described herein, the Accused continued the employment when the exercise of his professional judgment on behalf of his client was or reasonably may have been affected by the Accused’s own financial, business, property, or personal interests, without making full disclosure and obtaining his client’s consent.

9.

Thereafter, without notice to or the consent of his client, the Accused prepared a new form of judgment, which added a provision directing that a portion of the client’s Schwab account be disbursed to his law firm to satisfy his claim for attorney fees and costs. The Accused filed the form of judgment with the court, but did not provide Ross with a copy or otherwise inform her about the added provision.

10.

After filing the revised form of judgment with the court, the Accused prepared a motion and proposed order allowing him to withdraw as Ross’s attorney. On or about May 25, 2001, the Accused sent Ross a copy of the motion and a copy of a letter to the court purporting to submit it to the court. After sending Ross a copy of the motion to withdraw and before he submitted it to the court, the Accused was

contacted by a Schwab representative who informed him that the form of judgment needed to be amended because the language was not sufficient to authorize Schwab to liquidate the investment to provide the funds he requested.

11.

The Accused decided not to file the motion to withdraw, but did not notify his client that he had not withdrawn from the representation. Without Ross's knowledge, he prepared a proposed amended judgment, which incorporated language to satisfy Schwab's requirements and submitted it to the court. The Accused did not provide Ross with a copy of the amended judgment or inform her that the judgment had been amended to add a provision to liquidate a portion of her Schwab investment account to pay the Accused's attorney fees. The Accused did not inform the court that Ross had not authorized and otherwise did not know about the provision. The court signed the amended judgment on July 19, 2001.

12.

The Accused delivered a copy of the amended judgment to Schwab, but did not provide Ross with a copy. Thereafter, Schwab liquidated a portion of the investment account and delivered a check, payable to the Accused's law firm, in the amount of \$8,864.09, to the Accused. The check was deposited and the funds held in the Accused's lawyer trust account. After learning what had occurred, Ross demanded that the Accused deliver the funds to her. The Accused refused to do so, but continued to hold the funds in his lawyer trust account.

13.

The Accused admits that the aforesaid conduct constituted violation of DR 1-102(A)(3), dishonesty and misrepresentation, DR 1-102(A)(4), conduct prejudicial to the administration of justice, DR 5-101(A), lawyer self-interest conflict, and DR 9-101(C)(4), failure to promptly deliver client property as requested by the client.

Sanction

14.

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

A. *Duty*. The Accused violated duties to his client, the legal system, and the profession. *Standards*, §§ 4.1, 4.3, 4.6, 6.1, 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 objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused knew that his client had not agreed to deliver her investment funds to him and was not aware that he had modified the judgment to so provide.

C. *Injury*. There was actual injury to the client and the court. The Accused withheld material information from his client and the court. He obtained possession of the client's property without her consent and knowledge, thereby denying her the opportunity to object or to be heard concerning the added provision and disputed fees, and withheld the funds when the client demanded that they be returned.

D. *Aggravating Factors*. Aggravating factors include:

1. Although the Accused had a claim against the client for attorney fees, he acted with selfish motives. *Standards*, § 9.22(b).

2. There are multiple rule violations. *Standards*, § 9.22(d).

3. 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 record of formal discipline. *Standards*, § 9.32(a).

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

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

15.

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property, when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, or when a lawyer knowingly deceives a client, and causes injury or potential injury to a client. *Standards*, §§ 4.12, 4.32, 4.62. Suspension is 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; or 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*, §§ 6.12, 7.2. Case law is in accord. *See, e.g., In re Stauffer*, 327 Or 44, 956 P2d 967 (1998); *In re Adams*, 293 Or 727, 652 P2d 787 (1982); *In re Morris*, 326 Or 493, 953 P2d 387 (1998); *In re Busby*, 317 Or 213, 855 P2d 156 (1993); *In re Shaw*, 9 DB Rptr 189 (1995).

16.

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 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), and DR 9-101(C)(4). The suspension shall be effective April 30, 2003, or three days after the date the stipulation is approved by the Disciplinary Board, whichever is later. The Accused also agrees to promptly deliver the funds he obtained from Ross's Schwab investment account to Ross, in care of the Bar for delivery to Ross, not later than the effective date of his suspension. The delivery of these funds shall be without prejudice to any claim he may have for payment of attorney fees and costs from Ross.

17.

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 27th day of March 2003.

/s/ William A. Allen

William A. Allen

OSB No. 94236

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

Cite as 335 Or 326 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

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

(OSB No. 98-23; SC S49334)

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

Submitted on the record November 7, 2002. Decided April 10, 2003.

David R. Kluge, Portland, filed the briefs for himself.

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

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices. (Leeson, J., resigned January 31, 2003, and did not participate in the decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for two years, with that period of suspension to run consecutively to the period of suspension imposed upon the Accused in *In re Kluge*, 332 Or 251, 27 P3d 102 (2001).

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 1-102(A)(4) (conduct prejudicial to administration of justice); DR 1-103(C) (noncooperation with disciplinary investigation); DR 5-101(A) (conflict of interest with lawyer’s self-interest); DR 5-102(C) (lawyer as witness other than in behalf of own client); DR 7-110(B) (contact with officials in adversary proceeding); and ORS 9.460(2) (lawyer shall employ only truthful means and not mislead court). A trial panel of the Disciplinary Board concluded that the Accused had committed the alleged violations and suspended him from the practice of law for five years. *Held:* (1) The accused lawyer violated DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-101(A), DR 5-102(C), and DR 7-110(B); and (2) a two-year suspension is the appropriate

sanction for these violations. The Accused is suspended from the practice of law for two years, with that period of suspension to run consecutively to the period of suspension imposed upon the Accused in *In re Kluge*, 332 Or 251, 27 P3d 102 (2001).

Cite as 335 Or 306 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
MAGAR E. MAGAR,)
)
Accused.)

(OSB Nos. 94-178, 94-210; SC S29172)

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

Submitted on the record May 9, 2000. Decided April 10, 2003.

Magar E. Magar, Portland, filed the briefs for himself.

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

Before Carson, Chief Justice, and Gillette, Durham, 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; Leeson, J., resigned January 31, 2003, 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

Complaint dismissed.

SUMMARY OF SUPREME COURT OPINION

In two causes of complaint, the Oregon State Bar charged the Accused with violating DR 7-102(A)(1) (knowingly asserting position to harass or maliciously injure another); DR 7-102(A)(2) (knowingly advancing claim or defense unwarranted under existing law); DR 6-101(A) (incompetent representation); and DR 6-101(B) (neglect of legal matter). A trial panel of the Disciplinary Board determined that the Accused had not violated DR 7-102(A)(1), but had violated DR 7-102(A)(2), DR 6-101(A), and DR 6-101(B), and imposed a one-year suspension. *Held*: The Bar did not prove the alleged violations of DR 7-102(A)(2), DR 6-101(A), and DR 6-101(B) by clear and convincing evidence. Complaint dismissed.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 02-37
)	
WILLIAM KENT,)	
)	
Accused.)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	John W. Billington
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	April 10, 2003

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 10th day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 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 March 16, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4) 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 June 21, 1999, the Accused undertook to represent Philip M. Sharpe (hereinafter “Sharpe”), who was the respondent in a Douglas County dissolution of marriage proceeding and had previously represented himself *pro se*. Shortly after the Accused undertook to represent Sharpe, the Sharpe dissolution was set for a July 20, 1999 arbitration hearing because the petition for dissolution of marriage raised only property division issues, and Sharpe had not requested spousal support in his response.

6.

At all relevant times, ORS 36.405(1)(b) and Douglas County Supplemental Local Rule 13.005(3) (hereinafter “SLR 13.005(3)”) required the circuit court to refer to arbitration any domestic relations action “in which the only contested issue is the division or other disposition of property between the parties.”

7.

The Accused was unable to appear at the July 20, 1999, arbitration hearing and so advised Sharpe. Sharpe and the Accused agreed that the Accused would

continue to represent Sharpe and assist and advise him in preparing for the arbitration. They further agreed that Sharpe would appear alone at the arbitration hearing.

8.

When the Accused and Sharpe met to prepare for the arbitration hearing, Sharpe informed the Accused that he wanted to make a claim for spousal support. Sharpe's desire to seek spousal support rendered the domestic relations action ineligible for mandatory arbitration under ORS 36.405(1)(b) and SLR 13.005(3).

9.

The Accused prepared spousal support calculations and other evidence relevant to Sharpe's claim for spousal support for his use in the arbitration proceeding. However, the Accused failed to determine or advise Sharpe that the spousal support issue rendered the dissolution of marriage proceeding ineligible for arbitration under ORS 36.405 and SLR 13.005(3).

10.

As a result of the Accused's failure to know and advise Sharpe of the jurisdictional requirements of ORS 36.405(1)(b), the July 20, 1999, arbitration hearing went forward even though the arbitrator had no jurisdiction to hear Sharpe's matter; the parties, their counsel, and the arbitrator expended unnecessary time in conducting a hearing where the arbitrator was without jurisdiction; and the opposing party incurred unnecessary expense in participating in the hearing.

Violations

11.

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

Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 6-101(A) 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 the public not to engage in conduct prejudicial to the administration of justice. *Standards*, § 5.2.

B. *Mental State.* The Accused acted negligently, i.e., 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. *Standards*, p. 7.

C. *Injury.* There was actual injury to the opposing party and the public in that the arbitrator conducted, and the opposing party attended, a hearing the arbitrator had no jurisdiction to conduct. The opposing party incurred unnecessary legal expenses in participating in the arbitration hearing, and the resolution of her petition for dissolution was delayed pending the arbitration hearing.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a record of prior disciplinary offenses, having been publicly reprimanded for violation of DR 6-101(B) in 1995 (*In re Kent*, 9 DB Rptr 175 (1995)). *Standards*, § 9.22(a).

2. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1978. *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 has made full and free disclosures to the Bar and has displayed a cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

13.

Standards § 6.23 suggests that reprimand is generally appropriate when a lawyer negligently fails to comply with a court rule and causes injury or potential injury to the other party or causes interference or potential interference with a legal proceeding.

This is consistent with the Disciplinary Board's recent resolution of cases involving violations of DR 1-102(A)(4) only. See *In re Chapman*, 16 DB Rptr 350 (2002) (public reprimand for two violations of DR 1-102(A)(4)); *In re Honsowetz*, 16 DB Rptr 345 (2002) (public reprimand for violation of DR 1-102(A)(4)).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(4).

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 (SPRB) on February 19, 2003. 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 April 2003.

/s/ William Kent

William Kent

OSB No. 78052

EXECUTED this 4th day of April 2003.

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. 03-11
)
CLIFFORD I. LEVENSON,) SC S50223
)
Accused.)

ORDER IMPOSING RECIPROCAL DISCIPLINE

Upon consideration by the court.

The Oregon State Bar's recommendation that the Accused be suspended from the practice of law for one year is allowed. Clifford I. Levenson (OSB no. 95036) is suspended from the practice of law in Oregon for one year, effective the date of this order.

DATED this 15th day of April 2003.

/s/ Wallace P. Carson, Jr.,

Wallace P. Carson, Jr.

Chief Justice

SUMMARY FROM OREGON STATE BAR BULLETIN

On April 15, 2003, the Supreme Court suspended Arizona lawyer Clifford I. Levenson for a period of one year effective April 15, 2003, pursuant to BR 3.5 (reciprocal discipline).

On December 4, 2002, the Arizona Supreme Court filed an order approving a tender of admissions and agreement for discipline by consent between the Arizona State Bar and Levenson. The agreement for discipline by consent involved four separate client matters. In the agreement, Levenson admitted that he had violated the following Arizona Rules of Professional Conduct: ER 1.2 (abiding by a client's decision concerning the objectives of representation), ER 1.3 (lack of diligence), ER 1.4 (keeping a client reasonably informed), ER 1.5 (unreasonable fee), ER 1.16(d) (improper withdrawal), ER 3.4 (knowingly disobeying an obligation under the rules of a tribunal), ER 8.1(b) (failure to respond to the Bar), ER 8.4(d) (conduct prejudicial to the administration of justice), Supreme Court Rule 51(h) (failure to respond to the Bar), and Supreme Court Rule 51(i) (evading service or refusing to cooperate with the Bar). The Arizona Supreme Court suspended Levenson for a period of one year and placed him on probation for a period of two years.

Levenson was admitted to practice in Oregon in 1995. During the times relevant to the client matters described in his agreement with the Arizona State Bar, Levenson suffered from a chemical dependency but he did not act with a dishonest or selfish motive. He had no prior disciplinary record in Oregon.

Cite as 335 Or 357 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
WILLIAM S. LaBAHN,)
)
Accused.)

(OSB No. 99-2; SC S48901)

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

Argued and submitted January 7, 2003. Decided April 17, 2003.

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

John C. Fisher, Eugene, argued the cause and filed the brief for the Accused.

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices.

PER CURIAM

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

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating DR 6-101(B) (neglect of legal matter) and DR 1-102(A)(3) (misrepresentation) for causing a client's case to be dismissed by failing to timely serve the defendants and failing to file proof of service with the court and for failing to inform the client of that dismissal for over one year. A trial panel of the Disciplinary Board concluded that the Accused had violated DR 6-101(B), but not DR 1-102(A)(3), and suspended the Accused for 90 days. *Held:* The Bar proved by clear and convincing evidence that the Accused neglected a legal matter entrusted to him by failing to timely serve the defendants, failing to file proof of service with the court, and failing to inform the client of the status of the case for over a year. Because the court was equally divided as to whether the Bar proved the Accused had violated DR 1-102(A)(3), that charge was dismissed. The Accused is suspended from the practice of law for 60 days, commencing 60 days from the date of filing of this decision.

Cite as 335 Or 368 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
LISA D. NUSS,)
)
Accused.)

(OSB No. 00-93; SC S48966)

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

Argued and submitted May 14, 2002. Decided April 17, 2003.

Wayne Mackeson, Birmingham & Mackeson, LLP, Portland, argued the cause and filed the brief for the Accused.

Jeffrey D. Sapiro, Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices. (Leeson, J., resigned January 31, 2003, and did not participate in the decision of this case.)

PER CURIAM

Complaint dismissed.

SUMMARY OF SUPREME COURT OPINION

In this lawyer disciplinary proceeding, the Oregon State Bar (Bar) alleged that the Accused committed a “misdemeanor involving moral turpitude,” subjecting her to discipline under ORS 9.527(2), because she had pleaded guilty to one count of harassment under ORS 166.065(1)(a)(A). A trial panel of the Disciplinary Board agreed with the Bar and imposed a public reprimand. *Held*: A conviction for harassment under ORS 166.065(1)(a)(A) does not “announce” that the misdemeanor involved moral turpitude, and the facts actually and necessarily resolved in convicting the Accused did not show moral turpitude. Complaint dismissed.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 02-159
)
CATHERINE DIXON,)
)
Accused.)

Counsel for the Bar: Lia Saroyan
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 3-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: April 21, 2003

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 3-101(B).

DATED this 21st day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Catherine Dixon, 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 December 14, 1990, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion County, Oregon.

3.

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

4.

On October 18, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 3-101(B) (practice law in violation of regulations) 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.

Oregon lawyers are required to pay annual membership fees on or before February 1 of each year. ORS 9.191(1). Any member in default in payment of membership fees for a period of 90 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the Bar pursuant to ORS 9.200(1).

6.

In December 2001, the Bar sent the Accused her annual dues statement. The statement advised the Accused that her 2002 membership fees were due in full no later than January 31, 2002. The Accused did not pay her dues by January 31, 2002. Thereafter, the Bar provided the Accused timely written notice of her delinquency. When payment was not received by July 1, 2002, the Accused was suspended from membership in the Bar.

7.

Between July 2, 2002, and July 10, 2002, the Accused continued to practice law. On July 10, 2002, the Accused submitted a statement in support of her

application for reinstatement. In the statement, the Accused acknowledged that she had practiced law between July 2 and July 10.

Violations

8.

The Accused admits that, for continuing to practice law during a period of time in which she was suspended, she violated DR 3-101(B) (practice law in violation of regulations) 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 her duty to the legal profession by acting contrary to the statutory regulations concerning the practice of law. *Standards*, § 7.0.

B. *Mental State.* The Accused acted with negligence when she failed to realize that she was suspended effective 5:00 p.m. July 1, 2002, and continued to practice law until she was reinstated on July 10, 2002.

C. *Injury.* The Accused’s conduct caused no actual injury. However, any time a lawyer continues to practice law during any period of suspension there is the potential for injury to that lawyer’s existing clients.

D. *Aggravating Factors.* Aggravating factors include:

1. Substantial experience in the practice of law. *Standards*, § 9.22(i).
2. The Accused was publicly reprimanded in 2001 for violating DR 1-103(C).

E. *Mitigating Factors.* Mitigating factors include:

1. Full and free disclosure to Disciplinary Counsel and cooperative attitude toward proceeding. *Standards*, § 9.32(e).
2. Remorse. *Standards*, § 9.32(l).

10.

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

Oregon law is in accord. *In re William Bassett*, 16 DB Rptr 190 (2002); *In re Black*, 10 DB Rptr 25 (1996); *In re Kimmel*, 10 DB Rptr 175 (1996).

11.

Consistent with the *Standards* and Oregon case law, the Accused shall receive a public reprimand for violating DR 3-101(B). The sanction will be effective the date this Stipulation is approved by the Disciplinary Board.

12.

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

EXECUTED this 8th day of April 2003.

/s/ Catherine Dixon

Catherine Dixon
OSB No. 90480

EXECUTED this 14th day of April 2003.

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. 02-10
)
JASON D. CASTANZA,)
)
Accused.)

Counsel for the Bar: Steven T. Wax; Stacy J. Hankin
Counsel for the Accused: Thomas M. Cooney
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3) and DR 1-103(C).
Stipulation for Discipline. 120-day suspension.
Effective Date of Order: May 28, 2003

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 30 days from the date of this order, for violations of DR 1-102(A)(3) and DR 1-103(C).

DATED this 28th day of April 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 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 January 19, 2002, 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 1-103(C) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On October 18, 1999, the Accused undertook to represent Amanda Witter (hereinafter “Witter”) in a claim for personal injuries she sustained in a car accident. The Accused did some work on the matter in October and early November 1999. In January and February 2000, Witter telephoned the Accused inquiring about the status of her legal matter and the fact that she had just recently completed receiving medical treatment for her injuries. The Accused did not respond to those inquiries and did not pursue Witter’s legal matter. On March 20, 2000, the Accused met with Witter to discuss her legal matter. At that meeting, Witter informed the Accused she was anxious to resolve her claim.

6.

On March 28, 2000, the Accused sent a letter to Witter in which he represented that he had requested her medical records from three medical providers. At the time the Accused made this representation, he knew he had not yet requested any of Witter's medical records. The Accused's representation was false and material.

7.

On April 26, 2000, the Accused sent a letter to Witter in which he represented that he had not yet received her medical records. At the time the Accused made this representation he knew he had not yet requested Witter's medical records. The Accused's failure to request Witter's medical records was a material fact that he had in mind and he knowingly failed to disclose it to Witter.

8.

Beginning in June 2000, the Accused informed Witter that he had communicated by letter with Prudential Property and Casualty Insurance Company (hereinafter "Prudential"), who insured the driver of the other car involved in the accident, about her claim and was waiting for a response from Prudential.

9.

On August 14, 2000, Witter asked the Accused for a copy of the letter he purported to have sent to Prudential. In response to that request, the Accused created a letter addressed to Prudential with a date of May 11, 2000, and sent a copy of it to Witter. At the time the Accused provided Witter with a copy of that letter, he knew a letter had not been sent to Prudential until August 4, 2000.

10.

On May 9, 2001, the Oregon State Bar received a complaint from Witter concerning the Accused's conduct. The Bar proceeded to investigate the matter.

11.

During the course of the investigation, the Accused represented to Disciplinary Counsel's Office that (1) shortly after he prepared a letter to Prudential on or about May 11, 2000, he sent a copy of it to Witter by letter or facsimile; (2) as soon as he had all the materials regarding Witter's claim he attempted to work with Prudential to resolve Witter's claim; (3) after he sent a letter to Prudential he was never able to get through by telephone to the Prudential adjuster; and 4) Witter was promptly informed both times the Accused moved his office. At the time the Accused made these representations to Disciplinary Counsel's Office, he knew they were material and false.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11 of this stipulation, he violated DR 1-102(A)(3) and DR 1-103(C) of the Code of Professional Responsibility.

Sanction

13.

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

A. *Duty Violated.* The Accused violated his duty to be candid with his client and with the Bar. *Standards*, §§ 4.6, 7.0.

B. *Mental State.* “Intent” is the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused acted intentionally with respect to his conduct in this case. He wanted Witter and the Bar to believe that any delay in processing Witter’s legal matter was caused by Prudential. In fact, the delay was caused by the Accused’s failure to act.

C. *Injury.* Injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Witter had an expectation that the Accused was being truthful with her. The Accused’s misrepresentations irreparably damaged the attorney-client relationship between them. Disciplinary Counsel’s Office also was harmed as a result of the Accused’s conduct. The Office was required to conduct an extensive investigation that would not have been necessary if the Accused had simply told the truth at the outset.

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

1. A dishonest or selfish motive in that the Accused made misrepresentations to his client and the Bar in order to cover up his own failure to timely process Witter’s legal matter. *Standards*, § 9.22(b).

2. A pattern of misconduct. Over the course of almost two years, the Accused repeatedly provided false and misleading information. *Standards*, § 9.22(c).

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

E. *Mitigating Circumstances*. The following mitigating circumstances are present in this case:

1. Personal or emotional problems. There is evidence that, during part of the time the Accused represented Witter, he was suffering from depression and anxiety as a result of some personal issues. *Standards*, § 9.32(c).

2. Remorse. *Standards*, § 9.32(l).

14.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client. *Standards*, § 4.62. A suspension is also generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public or the legal system. *Standards*, § 7.2.

15.

Lawyers who engage in conduct involving misrepresentation toward clients or others have been suspended for varying periods of time. *In re Melmon*, 322 Or 380, 908 P2d 822 (1995) (lawyer suspended for 90 days for violating DR 1-102(A)(3) and DR 5-105(E) when she created or helped to create a false aircraft bill of sale and when she represented multiple clients whose interests were in actual or likely conflict); *In re Benson*, 317 Or 164, 854 P2d 466 (1993) (lawyer suspended for 180 days when, in anticipation that client's property may be subject to criminal forfeiture, he prepared and recorded trust deeds and supporting promissory notes, without consideration); *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); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (two lawyers suspended for 120 days for failing to disclose in an affidavit the actual consideration for a purported sale of real property); *In re Greene, II*, 290 Or 291, 620 P2d 1379 (1980) (lawyer suspended for 60 days for failing to disclose to the court in a petition seeking approval for conservator to purchase and improve real property for the benefit of minor children that the property belonged to the conservator who was also the lawyer's spouse).

Lawyers who violate DR 1-103(C) have also been suspended. *In re Wyllie*, 327 Or 75, 957 P2d 1222 (1998) (lawyer who made false statements to the Bar in a report and affidavit regarding efforts to satisfy minimum continuing legal education requirements was suspended for two years); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (lawyer who failed to respond to the Bar was suspended for 120 days); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (lawyer who failed to respond to the Bar was suspended for 60 days).

16.

Consistent with the *Standards* and Oregon case law, the Accused will be suspended from the practice of law for a period of 120 days, to commence 30 days after approval of this stipulation by the Disciplinary Board, for violations of DR 1-102(A)(3) and DR 1-103(C).

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 11th day of April 2003.

/s/ Jason D. Castanza

Jason D. Castanza

OSB No. 97040

EXECUTED this 14th day of April 2003.

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. 02-166
)
ROBERT A. GRAHAM,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 9-101(C)(2) and DR 9-101(C)(4).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: May 19, 2003

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(C)(2) and DR 9-101(C)(4).

DATED this 19th day of May 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Robert A. Graham, 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 October 2, 1998, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Josephine County, Oregon.

3.

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

4.

On November 16, 2002, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 9-101(C)(2) and DR 9-101(C)(4) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Anthony Farrugia and his wife entered into an agreement with a contractor to have a custom home built that would accommodate Mr. Farrugia’s declining health. The couple retained the Accused when the contractor failed to complete the home to their expectations and failed to remedy perceived defects.

6.

It was agreed that Mr. Farrugia would provide any assistance that he could (gathering documents and the like), to attempt to minimize the costs of litigation. Mr. Farrugia gathered the documents the Accused requested or Mr. Farrugia felt would be of assistance in the litigation. The Accused misplaced or lost at least a portion of these documents.

7.

The Accused failed to provide the Farrugias with a copy of their deposition testimonies at any time prior to a scheduled arbitration hearing. Mr. Farrugia's deposition was misfiled and could not be located in the Accused's office. The Accused was able to obtain that deposition transcript from opposing counsel immediately before the arbitration hearing, but without sufficient time for his clients to review it. The Accused was unable to produce Mrs. Farrugia's deposition testimony, despite requests from the Farrugias and the Bar.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 9-101(C)(2) (failure to properly identify and safeguard client property) and DR 9-101(C)(4) (failure to promptly return client property).

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 his clients to preserve the clients' property. *Standards*, § 4.1.

B. *Mental State.* The Accused did not act knowingly or intentionally. Rather, the Accused's conduct demonstrates negligence, which is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.

C. *Injury.* The conduct resulted in potential injury. The Farrugias had insufficient time to review depositions prior to the arbitration and it is unclear whether the Accused had the necessary information and documentation to present his clients' case.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary record, having received an admonition for violating DR 9-101(C)(4) in January 2002. *Standards*, § 9.22(a).

2. The Accused has substantial experience in the practice of law, having been admitted to the State Bar of California in 1977 and the Oregon State Bar in 1998. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).
2. The Accused cooperated with Disciplinary Counsel's Office in responding to the complaint and in resolving this disciplinary proceeding. *Standards*, § 9.32(e).

10.

ABA Standards § 4.1 suggests that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Oregon case law is in accord. *See, e.g., In re Hockett*, 16 DB Rptr 151 (2002) (attorney who received client property from opposing party and failed to notify or promptly tender to client upon request received reprimand for violating DR 9-101(C)(1) and DR 9-101(C)(4)); *In re Moore*, 14 DB Rptr 129 (2000) (reprimand for violation of DR 9-101(C)(4) for failing to return unused client funds and client file); *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) when failed to promptly return client funds, render accountings or maintain client funds in trust).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for the violations specified herein, the sanction to be effective the day this stipulation is approved by the Disciplinary Board.

12.

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

EXECUTED this 22nd day of April 2003.

/s/ Robert A. Graham

Robert A. Graham

OSB No. 98239

EXECUTED this 29th day of April 2003.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott

Amber Bevacqua-Lynott

OSB No. 99028

Assistant Disciplinary Counsel

Cite as 335 Or 436 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
LAUREN PAULSON,)
)
Accused.)

(OSB No. 00-105; SC S49826)

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

Argued and submitted March 20, 2003. Decided June 5, 2003.

Lauren Paulson argued the cause and filed the briefs for himself.

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

Before Carson, Chief Justice, and Gillette, Durham, and Riggs, De Muniz, and Balmer, Justices.

PER CURIAM

The Accused is publicly reprimanded.

SUMMARY OF SUPREME COURT OPINION

In this lawyer disciplinary proceeding, the Oregon State Bar (Bar) alleged that the Accused had violated Code of Professional Responsibility Disciplinary Rule (DR) 2-106(A), which prohibits a lawyer from charging a clearly excessive fee, by billing a client for time spent responding to the client's complaint to the Bar against the Accused. A trial panel of the Disciplinary Board agreed with the Bar and imposed a public reprimand. *Held*: A fee charged for time spent exclusively in pursuit of a lawyer's own interests violates DR 2-106(A). Accused publicly reprimanded.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 00-129
)
DAWNA F. SCOTT,)
)
Accused.)

Counsel for the Bar: Chris Mullmann
Counsel for the Accused: Susan D. Isaacs
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 9-101(A),
DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation
for Discipline. 30-day suspension.
Effective Date of Order: June 16, 2003

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, effective June 16, 2003 for violation of DR 1-103(C), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4).

DATED this 9th day of June 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused 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 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 25, 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 9-101(A), DR 9-101(C)(3), 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.

On November 18, 1999, pursuant to an oral fee agreement, Tina Emery (“Emery”) retained the Accused to represent her in a possible claim against the Betty Ford Clinic. Emery paid the Accused a \$1,500 retainer to investigate the possible claim at \$125 per hour. The Accused deposited the retainer in her lawyer trust account. During the time of her representation of Emery, the Accused periodically withdrew funds from trust for payment of fees in amounts greater than warranted by her billings or invoices and she failed to properly maintain client funds in trust.

6.

By letter dated March 15, 2000, Emery terminated the services of the Accused and demanded an itemized statement for services rendered, the return of her complete

file, and a refund of any unearned retainer. The Accused did not refund any portion of the retainer and did not return Emery's file material at that time.

7.

In April 2000, Emery retained attorney C. Thomas Davis ("Davis") to assist her in the return of her retainer and file. The Accused promised to comply with Davis's request for return of Emery's retainer and file but did not do so at that time. On April 26, 2000, Davis wrote the Bar complaining of Scott's conduct.

8.

On May 5, 2000, the Bar wrote the Accused concerning Davis's complaint and requested her reply by May 26, 2000.

9.

On May 16, 2000, the Accused provided Emery with an invoice for professional services rendered from November 1999 to March 2000, which included a description of the legal services provided and the time spent, and also sent a refund check. The Accused did not prepare or send any other billings or invoices. The Accused did not maintain complete records of Emery's retainer or the time she spent on Emery's case and could not locate a ledger card for the retainer paid by Emery.

10.

The Accused did not respond to the Bar's letter of May 5, 2000, and on June 13, 2000, the Bar wrote a second letter to the Accused, reminding her of her obligation to respond to inquires from the Bar, and giving her until June 20, 2000, to respond.

11.

On June 20 and July 5, 2000, the Accused responded to the Bar's inquires. On August 7, 2000, the Bar requested additional information not later than August 21, 2000. The Accused did not respond, and on August 23, 2000, the Bar asked for a response not later September 5, 2000. The Accused maintains that she did not receive either one of the Bar's August letters. The Accused did not respond, and the matter was referred to the Clackamas/Linn/Marion County Local Professional Responsibility Committee ("LPRC") for investigation on September 18, 2000.

12.

The Accused met with the LPRC investigator on January 8, 2001. He confirmed by a letter dated January 9, 2001, that he wanted a copy of the Emery file and the Accused's trust ledger for the months of November through March reflecting the deposit into her trust account and withdrawals made on the retainer provided by Emery. The Accused sent a copy of the Emery file to the investigator on January 23, 2001. On February 21, 2001, the investigator wrote a letter to the Accused in which

her reminded her that she still needed to send her trust account records. The Accused promised the investigator that she would order the trust account records from her bank and would provide them to him as soon as possible. When the Accused did not provide the trust account records to the investigator by March 7, 2001, the investigator issued a subpoena duces tecum on March 14, 2001, requesting the Accused's trust account ledger from November 1, 1999 through May 2000. On March 26, 2001, the Accused forwarded trust account records she had secured from her bank to the investigator.

Violations

13.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 1-103(C), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4).

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.* By failing to maintain client funds in trust, failing to maintain adequate records, and failing to promptly return client property, the Accused violated her duty to her client. *Standards*, § 4.0. By failing to cooperate in the investigation of her conduct, the Accused violated her duty to the profession. *Standards*, § 7.0.

B. *Mental State.* In failing to properly handle and promptly return client property, and failing to maintain accurate records, the Accused acted negligently, which is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. By failing to cooperate fully with the Bar in the investigation of her conduct, the Accused also acted negligently.

C. *Injury.* There was little actual injury in that the Accused eventually refunded the unearned portion of the retainer and the file. However, Emery did not have access to her file or funds and suffered frustration in that she had to hire another lawyer to assist her in obtaining those items. The Accused's lack of cooperation with the Bar's investigation required a referral to the LPRC and the issuance of two subpoenas. *Standards*, p. 17.

- D. *Aggravating Factors*. Aggravating factors include:
1. A pattern of misconduct. *Standards* § 9.22(c).
 2. Vulnerability of the victim. (Emery is legally blind and an alcoholic.) *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 dishonest or selfish motive. *Standards*, § 9.32(b).
 3. Inexperience in the practice of law. *Standards*, § 9.32(f).
 4. Remorse. *Standards*, § 9.32(l).

The *Standards* suggest that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client funds and causes injury or potential injury to a client. *Standards*, § 4.12.

15.

Oregon case law is in accord. *In re MacNair*, 16 DB Rptr 98 (2002) (60-day suspension for failure to deposit funds into trust, inadvertently drawing checks on the account for his own expenses, and failure to prepare and maintain complete trust accounting records). See also *In re Eakin*, 334 Or 238, 259, 48 P3d 147 (2002), where the supreme court noted that a reprimand may be an appropriate sanction for unintentional mistakes in trust account management but because the attorney in *Eakin* should have known that she was improperly dealing with her client's trust account and had substantial experience in the practice of law, a 60-day suspension was an appropriate sanction.

16.

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 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4), the sanction to be effective June 16, 2003.

17.

In addition, on or before July 1, 2003, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$271, incurred for transcription and related costs of her deposition. Should the Accused fail to pay \$271 in full by July 1, 2003, 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.

18.

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 March 15, 2003. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of May 2003.

/s/ Dawna F. Scott

Dawna F. Scott

OSB No. 97393

EXECUTED this 28th day of May 2003.

OREGON STATE BAR

By: /s/ Chris L. Mullmann

Chris L. Mullmann

OSB No. 72311

Assistant Disciplinary Counsel

Cite as 335 Or 476 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
FRANK C. ROBERTS,)
)
)
Accused.)

(OSB No. 00-161; SC S49819)

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

Argued and submitted May 7, 2003. Decided June 12, 2003.

Michael V. Phillips, Eugene, argued the cause and filed the brief for the Accused.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was Frederick J. Carlson.

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices.

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 DECISION

In this lawyer disciplinary proceeding, the Oregon State Bar (Bar) alleged that, in the course of representing the conservator of the estate of a protected person, the Accused violated Code of Professional Responsibility Disciplinary Rule (DR) 1-102(A)(4) (conduct prejudicial to administration of justice) and DR 6-101(A) (incompetent representation). The trial panel concluded that the Accused had violated those rules and that the appropriate sanction was a 60-day suspension from the practice of law. *Held*: The Accused knowingly violated DR 1-102(A)(4) and negligently violated DR 6-101(A). The Accused is suspended from the practice of law for a period of 60 days, commencing 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. 01-155
)	
WILLIAM J. HEDGES,)	
)	
Accused.)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Jeffrey A. Bowersox
Disciplinary Board:	None
Disposition:	Violation of DR 2-110(A)(2). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	June 13, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by William J. Hedges 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) of the Code of Professional Responsibility.

DATED this 13th day of June 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William J. Hedges, 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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 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 2-110(A)(2) 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.

Facts

5.

On May 22, 2000, Josephine van de Voorde (hereinafter “van de Voorde”) retained the Accused to pursue a claim for personal injuries sustained in an automobile accident. The Accused filed a civil complaint in the Circuit Court of the State of Oregon for the County of Multnomah, *Josephine van de Voorde v. Arlene Byram*, Case No. 00-06-05566, on June 1, 2000 (hereinafter “Court Action”). The defendant in the Court Action was represented by counsel (hereinafter “Defense Counsel”).

6.

The Court Action was subject to mandatory arbitration. On August 23, 2000, the court filed an Order transferring the case to Multnomah County Arbitration for

all purposes. In late September 2000, the parties' counsel selected an arbitrator and in early October 2000, the case was scheduled for a November 30, 2000, hearing.

7.

Defense Counsel commenced van de Voorde's deposition on October 23, 2000. The deposition was not concluded. In the Accused's view, the deposition had not gone well and his client was a poor witness. On October 25, 2000, Defense Counsel sent the Accused a letter in which they requested additional documents from van de Voorde.

8.

On November 13, 2000, the defendant's insurance company claims representative orally withdrew a previous settlement offer of about \$7,200, and conveyed a new offer of \$3,500, exclusive of medicals paid by van de Voorde's personal injury protection provider. He asked the Accused to convey the offer to his client and to get back to him with her response. The claims representative confirmed the conversation by letter dated November 21, 2000.

9.

Between October 23 and November 14, 2000, the Accused did not communicate with his client. On November 14, 2000, the Accused sent a letter to van de Voorde with which he forwarded a copy of Defense Counsel's October 25, 2000, letter. Among other things, the Accused expressed a view that van de Voorde and he did "not seem to be the greatest fit for an attorney-client relationship" and that she maybe needed an attorney more optimistic about the value of her claim.

10.

The parties' counsel rescheduled van de Voorde's deposition for November 28, 2000, and rescheduled the arbitration hearing to February 2, 2001. On November 27, 2000, the Accused telephoned van de Voorde at about 8:00 p.m. He left a voice mail message that he would call at about 8:00 a.m. the following morning. The Accused did not leave a substantive message about the reason for his call or a telephone number for van de Voorde to call him. Since the October 23, 2000, deposition, the Accused had not spoken with or met with van de Voorde.

11.

On the morning November 28, 2000, van de Voorde left her home before 8:00 a.m. for the deposition. At about 8:00 a.m., the Accused telephoned van de Voorde at her home. He also telephoned Defense Counsel's office and reported that he had no contact with his client and he did not believe she would appear. Defense Counsel and the Accused agreed to reschedule the deposition.

12.

Van de Voorde appeared for the deposition at Defense Counsel's office as scheduled. Defense Counsel and the insurance company claims representative were present. Defense Counsel spoke with the Accused by telephone after van de Voorde arrived. Van de Voorde also spoke with the Accused from Defense Counsel's office. The Accused told van de Voorde that she needed a new lawyer and that he would be withdrawing. He also told van de Voorde to have her new lawyer contact him and he would deliver a copy of the file to the new lawyer.

13.

On November 28, 2000, Defense Counsel sent the Accused a letter enclosing an Offer to Allow Judgment (ORCP 54 E) in the amount of \$7,000. Pursuant its terms, the offer was to expire in three days if not accepted. Defense Counsel also informed the Accused that no further offers would be made if the offer was not accepted. The Accused reported that he does not think he read the letter until after the Offer to Allow Judgment had expired. He did not send a copy of Defense Counsel's November 28, 2000, letter or the Offer to Allow Judgment to van de Voorde or otherwise notify her about the offer or the consequences if she did not prevail or failed to obtain a more favorable judgment. The Accused did not contact Defense Counsel to respond to the offer or request additional time for van de Voorde to respond.

14.

After November 28, 2000, the Accused did not meet with or speak with van de Voorde. Immediately following November 28, 2000, the Accused did not submit a motion or notice of withdrawal to the court and did not deliver the file or a copy thereof and other papers belonging to van de Voorde to van de Voorde.

15.

On December 20, 2000, Defense Counsel sent a notice to the Accused scheduling van de Voorde's continued deposition for January 17, 2001. On January 10, Defense Counsel sent a second deposition notice to the Accused rescheduling the January 17, 2001, deposition date to January 23, 2001. On January 15, 2001, van de Voorde received a telephone message from the Accused's office in which she was informed that her deposition had been scheduled to continue on January 23, 2001. By letter dated January 16, 2001, the Accused confirmed the January 15, 2001, telephone message.

16.

On January 19, 2001, Defense Counsel sent the Defendant's Prehearing Statement of Proof to the Accused. The Accused sent a copy of the Defendant's prehearing statement to van de Voorde without explanation. On January 19, 2001, the Accused submitted a Motion to Withdraw and supporting affidavit to the court. The

court granted the motion on January 22, 2001. At no time did the Accused deliver the original or a copy of van de Voorde's file to van de Voorde.

17.

On January 23, 2001, van de Voorde appeared for deposition as noticed by Defense Counsel. It was at that time that van de Voorde learned of Defense Counsel's November 28, 2000, letter and the Offer to Allow Judgment. Defense Counsel told van de Voorde about the communication and provided her with a copy of the documents. On January 23, 2001, notwithstanding earlier communications that no further offers would be conveyed, the insurance company claims representative offered van de Voorde \$5,000 to settle the Court Action. Van de Voorde accepted the offer. The same day, the insurance company delivered a check for the settlement amount to van de Voorde and a stipulated judgment of dismissal was signed and thereafter submitted to the court.

Violation

18.

The Accused admits that the aforesaid conduct constituted violation of DR 2-110(A)(2), improper withdrawal from employment without taking reasonable steps to avoid foreseeable prejudice to his client's rights. Upon further factual inquiry, the parties agree that the alleged violation of DR 6-101(B) should be and, upon the approval of this stipulation, is dismissed.

Sanction

19.

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

A. *Duty Violated.* In violating DR 2-110(A)(2), the Accused violated his duties to his client and the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State.* The Accused's conduct demonstrates knowledge and negligence. The Accused knew that he had not filed a motion to withdraw and had not delivered the file to his client. He also knew that as the attorney of record, Defense Counsel was required to continue to communicate with him. The Accused was negligent in delaying the submission of the motion to withdraw to the court and not recognizing that his obligation to promptly deliver the client's file to the client was not dependent on her first requesting the file. The Accused was also negligent in failing to insure that Defense Counsel's communications were promptly conveyed

to his client along with sufficient explanation for her to understand what was required or the consequences if certain actions did not occur.

C. *Injury*. The *Standards* define “injury” as harm to the client, the public, the legal system or the profession that results from a lawyer’s conduct. “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, p. 7. An injury does not need to be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

Actual and potential injury is present in this case. Van de Voorde was denied the right to know of, review and decide whether to accept the defendant’s Offer to Allow Judgment, and an explanation about the consequences if she failed to accept the offer. The Accused did not attempt to obtain an extension of time for her to consider the offer. He did not provide van de Voorde with her file, including the documents that had been gathered from the various medical providers for use in her case if the matter had proceeded to hearing as scheduled on February 2, 2001. If van de Voorde had sought new counsel, she did not have her file to present for review.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused has a prior disciplinary record in that he was suspended from the practice of law in 1992 for 63 days for violating DR 6-101(B) (neglect of a legal matter); DR 9-101(C)(3) (failure to provide an accounting); DR 9-101(C)(4) (failure to promptly deliver client funds or property); and DR 1-103(C) (failure to cooperate) (*In re Hedges*, 313 Or 618, 836 P2d 119 (1992)). *Standards*, § 9.22(a). This record of prior discipline is entitled to some weight in considering the sanction to be imposed. *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

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

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. The Accused’s prior misconduct is remote in time. *Standards*, § 9.32(m).

20.

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, and causes injury or potential injury to a client. *Standards*, §§ 4.13, 4.43. The *Standards* also provide that reprimand is generally appropriate when a lawyer

negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

21.

Oregon case law is in accord. *See, e.g., In re Coyner*, 16 DB Rptr 315 (2002) (reprimand for violation of DR 2-110(A)(2) and DR 6-101(B)); *In re Hanson*, 16 DB Rptr 64 (2002) (reprimand for DR 2-110(A)(2) and DR 6-101(B)).

22.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 2-110(A)(2), the sanction to be effective upon approval of this Stipulation for Discipline by the Disciplinary Board.

23.

In addition, on or before August 1, 2003, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$234.40, incurred for the cost of the Accused's deposition. Should the Accused fail to pay \$234.40 in full by August 1, 2003, 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 has been reviewed by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB). The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

DATED this 6th day of June 2003.

/s/ William J. Hedges

William J. Hedges
OSB No. 81258

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. 01-3
)
CHRISTOPHER D. WRIGHT,)
)
Accused.)

Counsel for the Bar: Charles L. Best; Martha M. Hicks
Counsel for the Accused: Mark M. Williams
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 5-104(A).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: June 25, 2003

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 5-104(A).

DATED this 25th day of June 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Christopher D. Wright, 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 October 2, 1992, 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 21, 2002, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-101(A), and DR 5-104(A). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In about 1995, the Accused undertook to represent Barbara West (hereinafter “West”) to petition for the appointment of West as conservator for the estate of her mother, Freda Thompson (hereinafter “Thompson”). Thereafter, and at all relevant times herein, the Accused represented West as conservator of Thompson’s estate.

6.

On November 11, 1998, the Thompson estate invested \$10,000 in Sunset Chaser, Inc., a corporation in which the Accused held a 50% interest. The investment required that the corporation repay this amount over time. The Accused arranged for and documented this investment without first having obtained West’s consent after full disclosure. The Accused and West had differing interests in the transaction, and

West expected the Accused to exercise his professional judgment therein for the protection of the Thompson estate.

7.

The Accused's interest in a corporation that was soliciting an investment from the Thompson estate and that was later obligated to repay the estate did affect or reasonably might have affected his professional judgment on behalf of West as conservator of the estate. After Sunset Chaser, Inc. began to solicit investment funds from the Thompson estate, the Accused continued to represent West as conservator of the estate without first having obtained West's consent to the continued representation after full disclosure.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-101(A) and DR 5-104(A).

Upon further factual inquiry, the parties agree that the charges of alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 1-103(C) should be and, upon the approval of this stipulation, are dismissed.

Sanction

9.

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

A. *Duty Violated.* The Accused violated his duty to his client to avoid conflicts of interest. *Standards*, § 4.3.

B. *Mental State.* The Accused was negligent in determining whether his representation of West might be materially affected by his own interests.

C. *Injury.* West did not suffer actual harm in that the Accused repaid the obligation in full with interest, but there was the potential for harm to West in the Accused's conduct.

D. *Aggravating Factors.* There are no aggravating factors appropriately attributable to the Accused.

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. The Accused was relatively inexperienced in the practice of law. *Standards*, § 9.32(f).

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

Standards § 4.33 suggests 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.

10.

Oregon case law is in accord. See *In re Boivin*, 271 Or 419, 533 P2d 171 (1975) (lawyer reprimanded for representing a client in a business transaction with the lawyer); *In re Montgomery*, 292 Or 796, 634 P2d 338 (1982) (lawyer reprimanded for one violation of DR 5-104(A)); *In re Moore*, 13 DB Rptr 51 (1999) (lawyer reprimanded for violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E)).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A) and DR 5-104(A), the sanction to be effective on the date this stipulation is approved by the Disciplinary Board.

In addition, on or before July 1, 2003, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$306.60, incurred for deposition fees and transcripts. Should the Accused fail to pay \$306.60 in full by July 1, 2003, 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.

12.

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

EXECUTED this 13th day of May 2003.

/s/ Christopher D. Wright

Christopher D. Wright

OSB No. 92563

EXECUTED this 28th day of May 2003.

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. 00-117
)	
WARREN WEST,)	
)	
Accused.)	

Counsel for the Bar:	Conrad E. Yunker; Martha M. Hicks
Counsel for the Accused:	J. Michael Alexander
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A)(1). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	July 15, 2003

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 15th day of July 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Gary L. Hedlund
Gary L. Hedlund, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Warren J. West, 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 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

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

4.

On February 7, 2002, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(3) and DR 5-101(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 or about April 3, 1995, the Accused undertook to represent Sandra Kirkpatrick (hereinafter “Kirkpatrick”) in a wrongful death claim arising from the death of Kirkpatrick’s daughter. Kirkpatrick’s daughter had been fatally injured in a single-car accident that occurred on March 7, 1995, on Bear Creek Road, a Deschutes County road, near its intersection with Oregon State Highway 20. The car in which Kirkpatrick’s daughter had been a passenger had failed to negotiate a sharp turn at this location. The State of Oregon (hereinafter “the State”) was responsible for designing the approach to Highway 20 and for installing and maintaining proper signage for the turn.

6.

At all relevant times, the Accused was aware that ORS 30.275(1) provided that no action arising from an act or omission of a public body shall be maintained unless the required notice of the claim is given. At all relevant times, the Accused was aware that ORS 30.275(2)(a) required that notice of a claim for wrongful death be given within one year after an alleged loss or injury.

7.

On or about March 4, 1996, the Accused filed a tort claim notice with Deschutes County on behalf of Kirkpatrick. At that time, the Accused had not investigated thoroughly whether the State of Oregon had any responsibility for the road design, maintenance, or signage at the accident site. Accordingly, on March 4, 1996, he did not file a tort claim notice with the State on Kirkpatrick's behalf. Thereafter, the Accused did no further investigation into whether the State had any responsibility for the road design, maintenance, or signage at the accident site.

8.

At all relevant times, the Accused was aware that he had not filed a tort claim notice with the State within one year of the date of the accident described in paragraph 5 herein, and that failure to timely file a tort claim notice with the State could bar any claim against the State by Kirkpatrick.

9.

When the Accused failed to investigate thoroughly whether the State was responsible for the design, maintenance or signage at the accident site and when he failed to file a tort claim notice with the State within one year after the accident, the Accused may have committed legal malpractice.

10.

On or about October 1, 1996, the Accused filed a wrongful death and personal injury lawsuit against Deschutes County on behalf of Kirkpatrick, which alleged that the county had failed adequately to mark the sharp turn on Bear Creek Road near the intersection with Highway 20 and was therefore liable for the death of Kirkpatrick's daughter.

11.

On or about January 9, 1997, the Accused received actual knowledge that the State, rather than Deschutes County, was responsible for installing and maintaining proper signage on Bear Creek Road near the site of the accident. The Accused did not file a tort claim notice on behalf of Kirkpatrick with the State at that time.

12.

Once the Accused learned of his possible legal malpractice, the exercise of his professional judgment on behalf of Kirkpatrick with respect to her wrongful death claims against Deschutes County and the State was or reasonably may have been affected by his own financial, business, or personal interests in avoiding a legal malpractice claim against him. Thereafter, the Accused continued to represent Kirkpatrick without first obtaining her consent after full disclosure.

13.

On or about March 4, 1997, the Accused filed an amended complaint on behalf of Kirkpatrick, which added the State as a defendant in Kirkpatrick's lawsuit. The Accused effected service on the State on May 5, 1997. Service on the State acted as a tort claim notice. However such notice was not timely unless the discovery rule applied under the facts and circumstances of the case, or if the State had had actual notice of the claim. There was no resolution of these issues before Kirkpatrick voluntarily dismissed her lawsuit with prejudice.

Violations

14.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-101(A)(1).

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

Sanction

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

B. *Mental State.* The Accused was negligent in determining whether his representation of Kirkpatrick might be affected by his own interests, i.e., he failed to be aware of the substantial risk that a possible malpractice claim against him might affect the quality of his representation of Kirkpatrick, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.

C. *Injury.* Kirkpatrick suffered actual injury in that she was unable to proceed against the public entity that was responsible for the road conditions that contributed to her daughter's death.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary offense in that in April 1992, he was admonished for violation of DR 1-102(A)(3) and DR 5-101(A)(1). *Standards*, § 9.22(a).

2. The Accused had substantial experience in the practice of law, having been admitted to the bar in 1973. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

2. The Accused is of good character and has a good reputation. *Standards*, § 9.32(g).

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

16.

The *Standards* suggest 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.

Oregon case law is in accord. See *In re Carey*, 307 Or 315, 767 P2d 438 (1989) (public reprimand for multiple violations of DR 5-101(A)(1) and DR 5-105); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (public reprimand for violation of DR 5-101(A), DR 5-104(A), and DR 5-105); *In re McCurdy*, 13 DB Rptr 107 (1999) (public reprimand for violation of DR 1-102(A)(4) and DR 5-101(A)); *In re Lafky*, 13 DB Rptr 114 (1999) (public reprimand for violation of DR 2-110(A)(2) and DR 5-101(A)); *In re Moore*, 13 DB Rptr 51 (1999) (public reprimand for violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E)).

17.

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 on the date this stipulation is approved.

In addition, on or before July 1, 2003, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$329.90, incurred for deposition appearance and transcript. Should the Accused fail to pay \$329.90 in full by July 1, 2003, 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.

18.

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 (SPRB) on May 10, 2003. The parties agree this stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of June 2003.

/s/ Warren J. West

Warren J. West

OSB No. 73322

EXECUTED this 17th day of June 2003.

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. 02-135
)
CYNTHIA KAY McNEFF,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4), DR 5-101(A),
DR 7-104(A)(1), and DR 7-110(B). Stipulation for
Discipline. 60-day suspension.
Effective Date of Order: August 1, 2003

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, effective August 1, 2003, for violation of DR 1-102(A)(4), DR 5-101(A), DR 7-104(A)(1), and DR 7-110(B).

DATED this 15th day of July 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Cynthia Kay McNeff, 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 21, 1998, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On October 21, 2002, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(4), DR 5-101(A) (two counts), DR 5-102(A), DR 7-104(A)(1), and DR 7-110(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.

Facts

5.

On or about February 16, 2000, Ann Foster (“wife”) obtained a default order of dissolution from her husband, James Foster (“husband”). The judgment obligated husband to pay monthly child support. Between June 2000 and February 2001, the Accused represented husband in issues related to the dissolution of marriage obtained by wife. On or about June 19, 2000, the Accused filed a motion to set aside the default order of dissolution.

6.

Prior to the time the Accused began representing husband, she became involved in an intimate romantic relationship with husband, including cohabitation, that continued following the initiation of representation. In July 2000, the Accused

and husband began a business venture called Viking Demolition (“Viking”). By continuing to represent husband while entering into a business and a romantic relationship with him, the Accused’s professional judgment on behalf of husband was, or reasonably may have been, affected by her own financial, business, or personal interests. To the extent that consent was available to cure any conflict of interest, the Accused did not obtain husband’s written consent to the continued representation after full disclosure, as defined in DR 10-101(B), but she did discuss the matter with husband.

7.

On September 18, 2000, the default order of dissolution was set aside, with costs awarded to wife.

8.

On or about November 17, 2000, on behalf of husband the Accused obtained an Order to Show Cause relating to the status quo on parenting time. This order set a hearing date for December 14, 2000. On December 5, 2000, erroneously believing that wife’s attorney had failed to answer the show cause within the proscribed period, the Accused appeared personally before the court and obtained a temporary restraining order on behalf of husband without providing wife’s attorney with notice of her intended appearance. At all relevant times herein, the Accused knew wife was represented by counsel.

9.

On December 22, 2000, the Accused had wife personally served with a Notice of Deposition. Wife’s counsel had not given the Accused permission to communicate with his client on the subject of the representation. The Accused was not authorized by law to personally serve wife, and there was no written agreement requiring her to do so.

10.

On or about January 10, 2001, wife’s attorney noticed the Accused’s deposition in the domestic relations matter for January 25, 2001, as husband’s business partner and domestic associate. Subsequently, the Accused was advised that wife’s attorney intended to call the Accused as a witness at trial scheduled for February 27, 2001. Having been so advised, the Accused continued to represent husband.

11.

On February 27, 2001, the Accused appeared as trial counsel for husband knowing that it was likely wife’s attorney intended to call her as a witness on behalf of wife. During opening statements the court inquired of the Accused and opposing counsel how the Accused could represent husband while she was his business partner

and domestic associate. After consultation with counsel and representatives of the Bar, the Accused moved to withdraw as counsel for husband. The court granted the motion and reset the case.

Violations

12.

The Accused admits that by continuing to represent husband after being advised that she was going to be called by wife's lawyer as a witness, and by engaging in conduct that the court recognized as a personal interest conflict, requiring the court to reset the hearing and prolong the litigation, the Accused violated DR 1-102(A)(4) (conduct prejudicial to the administration of justice) of the Code of Professional Responsibility. The Accused admits that by continuing to represent husband when her professional judgment was, or reasonably may have been affected by her own personal interests stemming from their personal relationship, without providing full disclosure as defined by DR 10-101(B), the Accused violated DR 5-101(A) (self-interest conflict) of the Code of Professional Responsibility. The Accused admits that by continuing to represent husband when her professional judgment was, or reasonably may have been affected by her own financial, business or property interests stemming from their initiation of a mutual business relationship in Viking, without providing full disclosure as defined by DR 10-101(B), the Accused violated DR 5-101(A) (self-interest conflict) of the Code of Professional Responsibility. The Accused admits that by serving wife with a notice of deposition at a time she knew wife to be represented by counsel, she violated DR 7-104(A)(1) (contact with a represented party) of the Code of Professional Responsibility. The Accused admits that by appearing *ex parte*, without prior notice to opposing counsel, she violated DR 7-110(B) (*ex parte* communication with the court) of the Code of Professional Responsibility.

Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 5-102(A) (lawyer as a witness) should be and, upon the approval of this stipulation, is dismissed.

Sanction

13.

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

A. *Duty Violated.* The Accused violated her duty to her client to avoid conflicts of interest, her duty to the legal system to avoid conduct prejudicial to the

administration of justice, and her duty to the legal system to avoid improper communications with individuals in the legal system. *Standards*, §§ 4.3, 6.1, 6.3.

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. The Accused acted with a knowing mental state, that is, she was aware of the conflict of interest created by her personal and business relationship with husband but did not fully disclose to husband the possible effect of her own personal interests on husband to the injury or potential injury of husband. “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. *Id.* The Accused acted with negligence in communicating with a represented party, in engaging in an *ex parte* communication with the court, and in prejudicing the administration of justice.

C. *Injury*. Injury may be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. *Standards*, p. 7. The Accused’s conduct caused injury to the court and proceedings, as the determinative hearing was required to be reset upon the court learning of the Accused’s conflict, causing a delay in the proceedings and additional expenses and attorney fees to wife. The Accused’s *ex parte* contact also caused actual injury to wife, in that an order was entered that affected wife’s rights and obligations, without her having an opportunity to appear and be heard regarding those issues.

“Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, p. 7. The Accused’s failure to provide full disclosure and obtain informed consent to her continued representation caused potential injury to husband in that he may not have fully appreciated how the Accused’s personal and business interests may have affected her professional judgment. The Accused’s contact with wife when she was represented had the potential to cause wife harm, in that wife may have communicated with the Accused or acted contrary to her interests in the absence of counsel.

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

3. Inexperience in the practice of law, the Accused having been admitted in 1998, and having never previously represented a client in a domestic relations matter at the time of her representation of husband. *Standards*, § 9.32(f).

14.

The *Standards* provide that a period of 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. Oregon case law is in accord with the imposition of a period of suspension under circumstances similar to those present in this matter. See *In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999) (attorney suspended for four months for significant personal conflict in connection with representation of business interest); *In re Thompson*, 325 Or 467, 940 P2d 512 (1997) (63-day suspension for violation of DR 1-102(A)(4) and DR 7-110(B)); *In re McHugh*, 14 DB Rptr 23 (2000) (stipulation to 60 days for violation of DR 1-102(A)(4), DR 5-101(A), and DR 5-110(A)).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violating DR 1-102(A)(4) (conduct prejudicial to the administration of justice), DR 5-101(A) (personal interest conflict), DR 7-104(A)(1) (communication with a represented party), and DR 7-110(B) (*ex parte* contact with the court). The sanction is to be effective August 1, 2003.

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 7th day of July 2003.

/s/ Cynthia Kay McNeff

Cynthia Kay McNeff

OSB No. 98164

EXECUTED this 8th day of July 2003.

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. 02-173
)
ANITA C. SMITH,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: Michael C. McClinton
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: July 15, 2003

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 15th day of July 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Anita C. Smith, 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 15, 1989, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion County, Oregon.

3.

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

4.

On December 13, 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.

Unemployment Matter

Facts

5.

Doug Thompson (hereinafter “Thompson”) hired the Accused for representation in connection with a wrongful termination claim in June 2000. Shortly thereafter, Thompson was denied unemployment benefits and the Accused agreed to file an appeal of that denial. However, the Accused misread the deadline on the notice and miscalendared the date, resulting in Thompson’s request being denied as untimely.

6.

Upon discovering her error, the Accused immediately met with Thompson and explained what had occurred, verbally advising him to seek other counsel and notifying Thompson that she would be notifying her malpractice carrier. However,

the Accused did not provide this information to Thompson in writing, nor receive his informed consent before she continued to represent him in his employment matter.

Violations

7.

The Accused admits that, by continuing to represent Thompson after his unemployment claim 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) of the Code of Professional Responsibility.

Domestic Relations Contempt Matter

Facts

8.

In January 2001, Thompson's ex-wife served him with a motion for contempt. The Accused filed a response and counter claims, and the case went to hearing on dates in January, February, and March 2001. The court verbally found in favor of Thompson. The Accused received a letter decision in mid-March 2001 that provided that the Accused was to prepare the written order for the court's signature. However, the court's letter did not address all of the issues, so the Accused needed clarification before she could draft the order.

9.

Due to the press of other matters concerning Thompson and his wife, the Accused did not complete the order prior to being terminated by Thompson in February 2002.

Violations

10.

The Accused admits that, by failing to timely draft and submit the contempt order, the Accused violated DR 6-101(B) (neglect of a legal matter) 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.* By failing to timely attend to her client's legal matter, the Accused violated her duty to her client. *Standards*, § 4.4. By failing to determine whether her continued representation of a client may have been affected by her own interest, the Accused violated her duty to her client. *Standards*, § 4.3.

B. *Mental State.* The Accused acted negligently in failing to adequately disclose the potential conflict in writing and obtain Thompson's consent to continued representation following the dismissal of his unemployment claim. The Accused also acted negligently in failing to timely complete the order in Thompson's domestic relations contempt matter. 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.* An injury does not need to be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7. The Accused's failure to timely draft and file the contempt order delayed the resolution of that legal matter and caused potential injury to Thompson's case. The Accused's failure to provide full written disclosure and obtain informed consent to her continued representation caused potential injury to Thompson in that he may not have fully appreciated how the Accused's filing error may have affected her professional judgment, before he consented to the Accused's continued representation.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offenses. *Standards*, § 9.22(a). The Accused received a letter of admonition on February 14, 1995, for violating DR 5-101(A). Letters of admonition are to be considered as evidence of past misconduct for purposes of aggravating any sanction, if the misconduct that gave rise to the letter was of the same or similar type as the misconduct at issue in the present matter. *In re Cohen*, 330 Or 489, 501, 8 P3d 953 (2000).

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

3. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused was admitted to practice in 1989.

E. *Mitigating Factors.* Mitigating factors include:

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

2. Full and free disclosure to Disciplinary Board or cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

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 Berger*, 16 DB Rptr 363 (2002) (reprimand for DR 5-101(A) and DR 6-101(B)); *In re O'Dell*, 16 DB Rptr 219 (2002) (reprimand for DR 5-101(A) and DR 6-101(B)); *In re Storkel*, 16 DB Rptr 224 (2002) (reprimand for DR 5-101(A) and DR 6-101(A) and (B)).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that 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.

14.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein has been approved 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 26th day of June 2003.

/s/ Anita C. Smith

Anita C. Smith
OSB No. 89359

EXECUTED this 1st day of July 2003.

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. 03-44
)
RUSSELL E. VAUSE,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Russell E. Vause
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: July 15, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Russell E. Vause 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 6-101(B), neglect of a legal matter entrusted to a lawyer, and DR 9-101(C)(4), failure to promptly deliver client property as requested by the client.

DATED this 15th day of July 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Russell E. Vause, 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 18, 1979, 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 May 10, 2003, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 6-101(B) and DR 9-101(C)(4). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violations

5.

In or about May 1999, Barbara Roth (hereinafter “Roth”) retained the Accused to pursue a claim for personal injury sustained on March 10, 1999. On or about March 9, 2001, the Accused filed a civil complaint against Hasong J. Pak, in the Clackamas County Circuit Court, Case No. CC0103230 (hereinafter “Court Action”).

6.

On or about November 2, 2001, the defendant in the Court Action filed a motion for summary judgment. The Accused informed his client that the motion was likely to be granted, but he nevertheless filed a response and appeared for the hearing on the motion. The court granted the motion and, on or about February 12, 2002, entered judgment against the Accused’s client dismissing her claim in the Court Action and awarding the defendant his costs and disbursements.

7.

In or about May 1, 2002, the Accused closed his practice in Oregon and moved to California. Prior to leaving Oregon, the Accused failed to notify his client that the court had granted the defendant's motion for summary judgment and dismissed her claim; failed to notify his client that a judgment had been entered against her for the defendant's costs; failed to provide his client with a copy of the court's decision, the defendant's cost bill, and judgment; and failed to explain appellate remedies to his client. Before and after the Accused moved to California, the Accused's client attempted to communicate with the Accused, but he failed to respond.

8.

On or about March 21, 2002, the Accused's client filed a complaint with the Bar and thereafter retained another lawyer concerning the Accused's conduct. In and after June 2002, the new lawyer on behalf of the Accused's former client requested that the Accused deliver a copy of the client's file. The Accused failed to promptly deliver a copy of the client's file to his client or her new lawyer. In or about January 2003, the Accused delivered a copy of the file to the Bar and the Bar in turn delivered a copy thereof to the client and her new lawyer.

9.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to him and failure to promptly deliver client property in violation of DR 6-101(B) 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 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*. The Accused violated his duties to his client and the profession. *Standards*, §§ 4.1, 4.4, 7.0.

B. *Mental State*. The Accused's conduct demonstrates negligence, or 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.

C. *Injury*. There was actual and potential injury to the Accused's client. The Accused's client was frustrated by the Accused's failure to communicate with

her concerning her case and she was denied the opportunity to discuss and pursue appellate remedies. The Accused's client's was also denied access to her file for a significant period of time. *Standards*, p. 7.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused was admonished for violation of DR 9-101(C)(4) on April 5, 2000. *In re Jones*, 326 Or 195, 951 P2d 149 (1997); *Standards*, § 9.22(a).
2. There are multiple rule violations. *Standards*, § 9.22(d).
3. The Accused's client was vulnerable. *Standards*, § 9.22(h).
4. The Accused has substantial experience in the practice of law having been admitted to practice in 1979. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

11.

The *Standards* provide 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*, §4.42. Reprimand is also generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, §4.13. Case law is in accord. *See, e.g., In re Holden*, 12 DB Rptr 49 (1998) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)); *In re Coulter*, 15 DB Rptr 220 (2001) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)).

12.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 6-101(B), neglect of a legal matter entrusted to a lawyer, and DR 9-101(C)(4), failure to promptly deliver client property.

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 18th day of June 2003.

/s/ Russell E. Vause

Russell E. Vause

OSB No. 79429

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. 01-81, 01-120, 03-27
)	
STEVEN H. GORHAM,)	
)	
Accused.)	

Counsel for the Bar:	Caren J. Rovics; Stacy J. Hankin
Counsel for the Accused:	Richard L. Cowan
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A)(1), DR 6-101(B) (two counts), and DR 7-101(A)(1). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	August 7, 2003

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, violation of DR 5-101(A)(1), DR 6-101(B) (two counts), and DR 7-101(A)(1).

DATED this 7th day of August 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Steven H. Gorham, 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, Steven H. Gorham, 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 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 19, 2001, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(B) and DR 7-101(A)(1) in the Ray matter. On July 21, 2001, the SPRB authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 6-101(B) in the Strickland matter. On April 11, 2003, the SPRB authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 5-101(A)(1) in the Martyr 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.

Ray Matter

Case No. 01-81

Facts

5.

On October 20, 1999, the Accused was appointed to represent Thomas Ray (hereinafter “Ray”) in connection with a petition for postconviction relief filed in Marion County Circuit Court. The Accused learned of his appointment in early November 1999. Between then and April 17, 2000, the Accused periodically

performed some work, but failed to investigate or review Ray's legal matter. During those same months the Accused also failed to respond to Ray's letter to the Accused.

6.

At the time Ray filed his petition, he was serving his prison sentence in a correction facility in Marion County. Shortly after the Accused was appointed to represent Ray, Ray was transferred to a correction facility in Malheur County. On April 18, 2000, the Accused sent a letter to Ray asking him whether he wanted to have the matter proceed in Marion County or have it transferred to Malheur County. On June 15, 2000, the Accused received a letter from Ray instructing the Accused not to transfer the matter from Marion County.

7.

As a result of letters the Accused received from Ray, which he perceived as antagonistic, the Accused decided to withdraw from representing Ray. Based upon his prior experience, the Accused believed that because Ray had been transferred to Malheur County, the court would not appoint another lawyer in Marion County to represent Ray if the Accused withdrew from representing him.

8.

Contrary to Ray's instructions, the Accused thereafter filed a motion to change venue to Malheur County, which the court granted. Venue was also proper in Malheur County because Ray was incarcerated there.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated DR 6-101(B) and DR 7-101(A)(1) of the Code of Professional Responsibility.

Strickland Matter

Case No. 01-120

Facts

10.

On or about February 28, 2000, the Accused was appointed to represent Wayne Strickland (hereinafter "Strickland") in connection with a petition for a writ of habeas corpus. In order to be successful in that petition, Strickland had to prove that he should immediately be released from prison.

11.

On April 28, 2000, the State of Oregon filed a motion to dismiss the petition. The Accused obtained a number of extensions in which to file a response, the last of which required a response by October 16, 2000. The Accused failed to file a response by that date or obtain another extension.

12.

On November 20, 2000, as a case management tool, the court signed a judgment of dismissal that stated the action would be dismissed without prejudice on January 3, 2001, unless Strickland filed the appropriate pleading or the court entered an order vacating the judgment. Between November 20, 2000, and February 7, 2001, the Accused failed to respond to letters from Strickland, and telephone calls from Strickland and a family member inquiring about the status of the matter. The Accused, however, did file a response with the court on January 5, 2001, and Strickland's legal matter was reinstated.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 12, he violated DR 6-101(B) of the Code of Professional Responsibility.

Martyr Matter

Case No. 03-27

Facts

14.

In September 2000, the Accused was appointed to represent Robert Martyr (hereinafter "Martyr") in connection with an appeal of a denied petition for habeas corpus.

15.

On November 27, 2001, the court of appeals directed the Accused to file a brief on or before December 19, 2001. The notice informed the Accused that no further extensions would be granted. Because of a calendaring error, the Accused failed to file a brief by the December 18, 2001, deadline. On or about January 8, 2002, the court of appeals dismissed the appeal.

16.

After January 8, 2002, the Accused's exercise of his professional judgment on behalf of Martyr was or reasonably may have been affected by his own financial,

business, property, or personal interests. In February 2002, the Accused spoke with Martyr about the dismissal and sent him a letter confirming their conversation. However, neither the conversation nor the letter constituted full disclosure because the Accused did not explain to Martyr the potential adverse impact on Martyr of continuing to have the Accused represent him in light of the failure to timely file the brief and the court's subsequent dismissal of the appeal, and because the Accused did not recommend that Martyr seek independent legal advice to determine whether he should consent to the Accused's continued representation. The Accused thereafter continued to represent Martyr without obtaining his consent after full disclosure.

17.

On May 9, 2002, the Court of Appeals reinstated the appeal and gave the Accused until May 23, 2002, to file a brief. The Accused did not file a brief by May 23, 2002, but instead requested an extension of time.

18.

On May 28, 2002, the court of appeals dismissed the appeal because the Accused had not filed a brief by the May 23, 2002, deadline.

19.

After May 28, 2002, the Accused's exercise of his professional judgment on behalf of Martyr was or reasonably may have been affected by his own financial, business, property, or personal interests. In June 2002, the Accused sent a letter to Martyr disclosing the dismissal. However, that letter did not constitute full disclosure because it did not explain to Martyr the potential adverse impact on Martyr of continuing to have the Accused represent him in light of the failure to file the brief and the court's subsequent dismissal of the appeal, and because the Accused did not recommend that Martyr seek independent legal advice to determine whether he should consent to the Accused's continued representation. The Accused thereafter continued to represent Martyr without his consent after full disclosure.

Violations

20.

The Accused admits that, by engaging in the conduct described in paragraphs 14 through 19, he violated DR 5-101(A)(1) of the Code of Professional Responsibility.

Sanction

21.

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 Ray and Strickland, and his duty to obtain consent after full disclosure from Martyr. *Standards*, §§ 4.1, 4.4.

B. *Mental State.* "Intent" is defined in the *ABA Standards* as the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused knew that Ray did not want venue changed. Despite Ray's instructions, the Accused filed a motion with the intent that venue be changed. The Accused did not intend to cause injury or harm to Ray.

"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. *Id.* The Accused acted with negligence in failing to take constructive action in the Ray matter and in failing to maintain adequate communications with Ray and Strickland. The Accused also acted with negligence in failing to fully disclose the conflict of interest to Martyr.

C. *Injury.* Injury can be either actual or potential. In this case, there was potential injury to Ray because for many months he was unaware of the status of his case. Ray did not sustain actual injury because his petition for postconviction relief was filed prematurely. At the time of filing and throughout the postconviction matter, Ray's direct appeal was pending. Although Ray disclosed the pending direct appeal in the pro se petition for postconviction relief he had filed, neither the Accused, the State, nor the court recognized this to be the case before the matter was transferred to Malheur County. Eventually, the petition was dismissed because it was prematurely filed.

There was potential injury to Strickland because for a period of time he believed his case had been dismissed. Strickland's petition was eventually denied on its merits and the denial was affirmed by the court of appeals.

There was potential injury to Martyr. Because of the undisclosed conflict of interest, he did not understand or consent to the Accused's potentially divided loyalty. On May 30, 2002, the Accused filed a brief and a motion to reinstate the appeal. The Court of Appeals reinstated the appeal.

D. *Aggravating Circumstances.* The following aggravating circumstances exist:

1. Prior disciplinary offenses. In 1990, the Accused received a letter of admonition for violating DR 6-101(B). *In re Cohen*, 330 Or 489, 8 P3d 953 (2000); *Standards*, § 9.22(a).

2. Selfish motive. The Accused filed a motion to change venue in the Ray matter, in part, because he no longer wished to represent Ray. *Standards*, § 9.22(b).

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

4. Substantial experience in the practice of law. The Accused was admitted to practice in Oregon in 1975. *Standards*, § 9.22(i).

E. *Mitigating Circumstances*. The following mitigating circumstances exist:

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

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

3. Remorse. *Standards*, § 9.32(l).

22.

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. A reprimand is also 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, 4.43.

23.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Lafky*, 13 DB Rptr 114 (1999); *In re McCurdy*, 13 DB Rptr 107 (1999); *In re Brownlee*, 9 DB Rptr 85 (1995).

24.

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

25.

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 30th day of July 2003.

/s/ Steven H. Gorham

Steven H. Gorham

OSB No. 75136

EXECUTED this 31st day of July 2003.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

Cite as 335 Or 639 (2003)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
LLOYD S. KUMLEY,)
)
Accused.)

(OSB No. 01-32; SC S49372)

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

Argued and submitted January 6, 2003. Decided August 14, 2003.

Kevin T. Lafky, of Lafky & Lafky, Salem, argued the cause and filed the brief for the Accused.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was Russell Lipetzky, Bar Counsel, Salem.

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices. (Leeson, J., resigned January 31, 2003, and did not participate in the decision of this case.)

PER CURIAM

The Accused is reprimanded.

SUMMARY OF SUPREME COURT OPINION

A candidate for a seat in the state legislature (the Accused) listed “attorney” as one of his present occupations in forms that he filed in connection with his candidacy, and also stated, in a form that he filed with the Government Standards and Practices Commission, that he was a “self-employed attorney” for a law practice bearing his name. At the time, the Accused was a member of the Oregon State Bar, but had been on inactive status for a number of years. The Bar filed a formal complaint, alleging that the Accused’s statements violated two disciplinary rules, DR 1-102(A)(2) (criminal act adversely reflecting on fitness to practice law) and DR 1-102(A)(3) (dishonesty, fraud, deceit, or misrepresentation), and one statute, ORS 9.160 (only active members of Bar may represent themselves as qualified to practice

law). A trial panel of the Oregon State Bar found that the Accused had violated the statute and both rules and imposed a 12-month suspension. *Held*: The Accused violated DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.160. The Accused is reprimanded.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case No. 03-36
)	
JILL R. FOX,)	
)	
Accused.)	

Counsel for the Bar:	Jeffrey D. Sapiro
Counsel for the Accused:	Christopher R. Hardman
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:	August 18, 2003

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

DATED this 18th day of August 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Jill R. Fox, 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 23, 1993, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Yamhill County, Oregon.

3.

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

4.

On April 11, 2003, 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.

In October 2001, the Accused was retained by Alfred Moss (hereinafter “Moss”) in a creditor-debtor matter. Moss believed that a judgment had been entered against him incorrectly and that it was adversely affecting his credit. Moss paid the Accused a retainer for fees and costs.

6.

From October 2001 until December 2002, the Accused failed to take any action in the Moss matter and did not respond to inquiries from Moss.

7.

On October 5, 2002, Moss wrote the Accused terminating the attorney-client relationship and asking for a refund of his retainer. The Accused did not refund the retainer until December 10, 2002.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 6-101(B) (neglect of a legal matter) and DR 9-101(C)(4) (failure to promptly return client property).

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 neglecting the Moss’ legal matter, the Accused violated her duty of diligence to her client. *Standards*, § 4.4. In failing to return Moss’s retainer promptly, the Accused violated her duty to preserve client property. *Standards*, § 4.1.

B. *Mental State.* The Accused did not act with an intentional or knowing mental state. That is, she did not intend to neglect Moss’s legal matter or delay the return of his retainer, but acted with a negligent state of mind. “Negligence” is defined in the *Standards* as a failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. The Accused was hopeful of getting to Moss’ matter, but the press of other business and the illness and later death of her law partner in March 2002, adversely affected the Accused’s intended schedule. Still, she should have realized after a time in 2002, that she was not dealing with the Moss matter with a reasonable amount of diligence.

C. *Injury.* For the purposes of determining a sanction, injury may be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Here, Moss was injured to the extent that he experienced the frustration of a long delay without any action taken on his legal matter by the Accused and without responses to his status inquiries, and a further delay of shorter duration in obtaining a return of his retainer.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused received a letter of admonition in early November 2002, while Moss was still waiting for the return of his retainer, for neglect of another client's legal matter. *Standards*, § 9.22(a).

2. The Accused committed two disciplinary rule violations. *Standards*, § 9.22(d).

3. The Accused has substantial experience in the practice of law, having been admitted in 1993. *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's experienced personal or emotional problems in that her longtime law partner and friend unexpectedly passed away in March 2002, resulting in the Accused expending considerable time and resources on her partner's caseload, in addition to her own. *Standards*, § 9.32(c).

3. The Accused met with Moss in December 2002, and refunded Moss's entire retainer. *Standards*, § 9.32(d).

4. The Accused made full and free disclosure to the Bar throughout the pendency of these proceedings. *Standards*, § 9.32(e).

5. The Accused is remorseful and regrets that she could not assist Moss with his legal matter. *Standards*, § 9.32(l).

10.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13. Reprimand also is 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 is in accord with a reprimand in this case. See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for violation of DR 6-101(B) with prior admonition for same rule); *In re Coulter*, 15 DB Rptr 220 (2001) (reprimand for violations of DR 6-101(B) and DR 9-101(C)(4)); *In re Moore*, 14 DB Rptr 129 (2000) (reprimand for failing to promptly return trust account balance to client in violation of DR 9-101(C)(4)).

12.

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

sanction to be effective upon the approval of this stipulation by the Disciplinary Board.

13.

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

EXECUTED this 25th day of July 2003.

/s/ Jill R. Fox

Jill R. Fox

OSB No. 93272

EXECUTED this 4th day of August 2003.

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. 03-30
)
THOMAS V. BRYANT,)
)
Accused.)

Counsel for the Bar: Martha M. Hicks
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 21, 2003

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 3-101(B) and ORS 9.160.

DATED this 21st day of August 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Gary L. Hedlund
Gary L. Hedlund, 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 was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 23, 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 April 11, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160. 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.

Effective March 6, 2000, the Accused voluntarily transferred from active membership in the Oregon State Bar to inactive membership. At the time of his transfer to inactive membership, the Accused represented Allison LLC, aka Allison Partnership, in a Chapter 11 bankruptcy reorganization proceeding, Case No. 301-42410-elp11, and was attorney of record in that proceeding.

6.

On or before February 11, 2002, Allison LLC received an offer to purchase its assets that would enable it to pay its creditors in full. On February 11, 2002, the Accused filed a motion for permission from the court for his client to enter into a lease agreement as part of this transaction. The hearing on this motion was originally scheduled for February 27, 2002, but on that day was rescheduled to March 18, 2002.

The terms of the offer to purchase Allison LLC's assets were such that it would expire before the Accused could obtain the approval of its terms by the bankruptcy court. Accordingly, on or about March 4, 2002, the Accused prepared and filed a motion to dismiss Allison LLC's Chapter 11 bankruptcy proceeding.

7.

On March 6, 2002, while the above-described motions were pending before the bankruptcy court, the Accused prepared and submitted to the court, the bankruptcy trustee, and his client's creditors (or their counsel) a Notice of Amendment to Proposed Lease/Option. The Accused signed this notice as the representative of the debtors in possession and prepared the certificate of service for the notice on his pleading paper, which identified him as "Thomas V. Bryant – Attorney at Law."

8.

On March 18, 2002, Allison LLC's new counsel was substituted as attorney of record in the Chapter 11 bankruptcy proceedings, and the court dismissed the proceedings.

9.

By March 6, 2002, after 29 years of practicing law in Oregon, the Accused had closed his law practice and made arrangements for substitute counsel for most of those clients he expected would require legal services in the near future. He took the above-described actions on behalf of Allison LLC to deal with what he perceived as an emergency that would result in the loss of payment in full to Allison LLC's creditors.

10.

At all relevant times, ORS 9.160 provided, in relevant part, as follows: "No person shall practice law or represent that person as qualified to practice law unless that person is an active member of the Oregon State Bar."

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 3-101(B) and ORS 9.160.

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 as a professional to avoid the unlawful practice of law. *Standards*, § 7.0.

B. *Mental State.* The Accused acted with a negligent mental state. In the course of what he perceived to be an emergency that only he could timely handle, he failed to heed a substantial risk that his actions on behalf of his client would constitute the unauthorized practice of law, which failure was a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.

C. *Injury.* No actual harm resulted from the Accused's conduct. However, the client was exposed to some potential injury in that the court could have rejected the documents the Accused filed had it known he was not an active member of the Oregon State Bar.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has prior disciplinary offenses: a 1998 public reprimand for violation of DR 5-105(E) (current client conflict of interest), *In re Bryant*, 12 DB Rptr 69 (1998); and a 2002 public reprimand for violating DR 5-101(A) (lawyer's self-interest conflict) and DR 5-105(C) and (E) (former and current client conflict of interest), *In re Bryant*, 16 DB Rptr 40 (2002). *Standards*, § 9.22(a). Under *In re Jones*, 326 Or 195, 951 P2d 149 (1997), the Accused's disciplinary record should be considered as only a moderate aggravating factor because his prior offenses were relatively minor, as were the sanctions imposed as a result of them, and the conduct giving rise to the disciplinary rule violations was not similar to the conduct in this case.

2. The Accused had substantial experience in the practice of law, having been a member of the Oregon Bar since 1973 and having been admitted to the New York Bar in 1954. *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 has displayed a cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

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

4. After 29 years, the Accused has wound up his practice, has voluntarily become an inactive member of the Bar and does not intend to resume the practice of law.

13.

The *Standards* suggests 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.

Prior Disciplinary Board decisions support this result. See *In re Bassett*, 16 DB Rptr 190 (2002); *In re Dixon (I)*, 17 DB Rptr 102 (2003); *In re Nelson*, 17 DB Rptr 41 (2003).

14.

Consistent with the *Standards* and prior Disciplinary Board decisions, the parties agree that the Accused shall be publicly reprimanded for violation of DR 3-101(B) and ORS 9.160, the sanction to be effective upon approval of the terms of this stipulation.

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 (SPRB) on June 13, 2003. 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 July 2003.

/s/ Thomas V. Bryant

Thomas V. Bryant

OSB No. 73362

EXECUTED this 11th day of August 2003.

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. 02-125
)
G. JEFFERSON CAMPBELL,)
)
Accused.)

Counsel for the Bar: John M. Junkin; Jane E. Angus
Counsel for the Accused: Douglas J. Richmond
Disciplinary Board: None
Disposition: Violation of DR 2-106(A). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: September 8, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by G. Jefferson Campbell 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 2-106(A) of the Code of Professional Responsibility.

DATED this 8th day of September 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

G. Jefferson Campbell, 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, G. Jefferson Campbell, was admitted by the Oregon Supreme Court to the practice of law in Oregon in 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, voluntarily and with the advice of counsel. This stipulation 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 a formal disciplinary proceeding against the Accused for alleged violation of DR 2-106(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts and Violations

5.

On or about January 23, 1996, Ellie Gardiner (hereinafter “Gardiner”) retained the Accused to represent her in connection with personal injury and property damage claims against Mayflower Transit (hereinafter “Mayflower”). Gardiner asserted that Mayflower had damaged items of her personal property while moving them from California to Oregon. She further claimed that Mayflower negligently assembled her bed, which subsequently collapsed, causing her personal injury.

6.

On or about January 23, 1996, Gardiner signed the Accused’s Contingency Fee Agreement (“Fee Agreement”). Section II-A of the Agreement contained the following paragraph:

(A) If you decide to DROP THE LEGAL MATTER or make it so we cannot effectively represent you (for example, not responding to our letters), or if you decide TO SETTLE FOR AN AMOUNT WE DO NOT RECOMMEND, then you agree to pay us for all our time expended on the standard hourly rate of one and one-half (1½) times the standard hourly rate of each attorney or paralegal performing services on your claim, or for 33 1/3% of the settlement amount, whichever is GREATER(.)

7.

On or about July 16, 1997, the Accused filed a lawsuit on Gardiner's behalf seeking damages for property damage and personal injury against Mayflower in Jackson County Circuit Court. In December 1998, the Accused and Gardiner settled Gardiner's property damage claim against Mayflower for \$3,500. The Accused received a portion of the settlement amount as an attorney fee. Gardiner's personal injury claim, seeking \$125,000 in noneconomic damages and \$61,000 in economic special damages, remained outstanding.

8.

On or about July 16, 1999, the Accused and Gardiner, without full knowledge of Gardiner's medical condition and at Gardiner's request, offered to settle Gardiner's personal injury claim for \$35,000. Mayflower did not respond to the settlement offer and it lapsed after 10 days. On or about April 26, 2000, the Accused filed a supplemental complaint claiming that Mayflower's negligence had caused Gardiner a permanent physical disability and seeking additional economic and noneconomic damages. Thereafter, Mayflower sought discovery of Gardiner's Social Security disability records relating to a previously established permanent mental health disability. The trial court ordered Gardiner to produce the records and placed restrictions on the use and dissemination of the information. Gardiner refused to produce these records to protect the privacy of her mental health history.

9.

After Gardiner refused to produce her Social Security disability records, she instructed the Accused to dismiss her supplemental complaint seeking damages for permanent disability. As a result of the restrictions ordered by the trial court and the evidence of economic damages, the Accused recommended that Gardiner produce her records and not dismiss her supplemental complaint. Notwithstanding such recommendation, and pursuant to his client's instruction, the Accused filed a notice of dismissal on or about September 1, 2000. Gardiner's original personal injury claim remained outstanding and the Accused continued to represent her in settlement negotiations with Mayflower. The Accused recommended that Gardiner not settle her personal injury claim for less than \$85,000.

10.

On or about November 17, 2000, Gardiner terminated the Accused's representation. Shortly thereafter, Gardiner settled her personal injury claim directly with Mayflower's insurer for \$20,000. The Accused, without knowledge of the settlement or the amount thereof, and believing that Gardiner did not intend to compensate him for his services, filed, on December 21, 2000, a Notice of Attorney Lien in the action, alleging, under Section II-A of the Fee Agreement, that he was entitled to attorney fees in the amount of \$29,236.12, an amount computed at 1½ times the Accused's hourly rate for the time spent on Gardiner's case. That amount exceeded a one-third contingency fee on the \$20,000 settlement, and exceeded the amount the accused would have billed Gardiner had he billed at his usual hourly rate. Thereafter, the Accused filed a motion to with the trial court to award the full amount of the attorney lien, or, if the trial court determined that the provision for 1½ times the hourly rate to be unenforceable, to determine the amount of the Accused's fees by quantum meruit.

11.

The matter came before the court for an evidentiary hearing on April 9 and 12, 2001. On or about November 28, 2001, the court filed an Order Determining Award of Attorney Fees. The court refused to enforce the Accused's Fee Agreement, finding that the fee claimed by the Accused was excessive, and the provision contained in his fee agreement referenced in paragraph 6 above was unconscionable and void as a penalty. The court awarded the Accused only a one-third contingency fee of \$6,667.67. The Accused filed a notice of appeal. On or about March 13, 2003, the court of appeals affirmed the trial court's decision without opinion.

12.

The Accused admits that the aforementioned conduct constitutes violation of DR 2-106(A) of the Code of Professional Responsibility.

Sanction

13.

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

A. *Duty Violated.* In violating DR 2-106(A), the Accused violated duties to his client and the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State.* 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*. Gardiner suffered injury in that the fee charged by the Accused exceeded a reasonable fee for the work the Accused agreed to perform. Also, the distribution of funds Gardiner was entitled to receive was delayed because of the Accused's actions.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused was admitted to practice in 1975 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

2. The Accused has a prior record of discipline. *Standards*, § 9.22(a). In 1996, he was reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3) for conduct that was deemed to be inadvertent. *In re Campbell*, 10 DB Rptr 97 (1996). In 2002, the Accused was also reprimanded for violation of DR 9-101(A). *In re Campbell*, 16 DB Rptr 186 (2002). Because the latter misconduct occurred after the conduct at issue in this case, it is given little weight. *In re Jones*, 326 Or 195, 951 P2d 149 (1997).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused had no dishonest motive. *Standards*, § 9.32(b).

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

14.

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 Potts/Trammel/Hannon*, 301 Or 57, 718 P2d 1363 (1986).

15.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall receive a public reprimand for violation of DR 2-106(A).

16.

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

DATED this 29th day of August 2003.

/s/ G. Jefferson Campbell

G. Jefferson Campbell

OSB No. 75061

DATED this 29th day of August 2003.

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. 01-133
)
RANKIN JOHNSON,)
)
Accused.)

Counsel for the Bar: Victor C. Pagel; Martha M. Hicks
Counsel for the Accused: Susan D. Isaacs
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4) and DR 2-110(A)(2).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: September 22, 2003

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) and DR 2-110(A)(2).

DATED this 22nd day of September 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Rankin Johnson, 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 25, 1996, 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 September 25, 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 1-102(A)(4), DR 2-110(A)(2), 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.

Facts

5.

At all relevant times, the Accused was an attorney with the State Public Defender’s Office. On March 24, 1999, the State Public Defender’s Office filed a notice of appeal in the Oregon Court of Appeals on behalf of Colin Stuart McCoy (“McCoy”). In July 1999, a stay of McCoy’s sentence was obtained and with the stay, all outstanding warrants for McCoy’s arrest were recalled. Thereafter, McCoy’s appeal was assigned to the Accused. The Accused believed that McCoy had one issue regarding improper revocation of probation and sentencing without notice which had merit and should be reviewed by the Court of Appeals.

6.

The Accused's office file for McCoy contained current residential and business addresses for McCoy as well as McCoy's cellular and home telephone numbers. In January 2000, McCoy called the Accused's office 13 times, and the Accused spoke to McCoy regarding his appeal before March 7, 2000.

7.

On March 7, 2000, the day before McCoy's appellate brief was due, the Accused made one telephone call to attempt to contact McCoy at his residence but could not do so. The Accused took no other action to contact McCoy at any of the addresses or telephone numbers his office had on file. On March 8, 2000, the Accused filed a Motion to Withdraw from his representation of McCoy. He sought the court's permission to withdraw because he had been unable to reach McCoy by telephone on March 7, 2000, and because on March 7 he had acquired information from McCoy's trial counsel, OJIN, and a probation officer that McCoy was on "abscond status." In fact, McCoy had not absconded and continued to live and work at the addresses he had previously provided to the Accused. In the Motion to Withdraw, the Accused represented to the Court that he had not been able to maintain contact with McCoy and had no current address at which to communicate with him. These statements were not correct in that the Accused had made only one attempt to contact McCoy one day before the appellate brief was due, and he did, in fact, have McCoy's current address.

8.

The Accused failed to take reasonable steps to prevent foreseeable prejudice to McCoy's rights. He did not send McCoy a copy of his Motion to Withdraw, nor had he previously advised McCoy of his intent to file this motion. The Motion to Withdraw was granted, McCoy's appeal was dismissed, the stay of McCoy's sentence was revoked, and the trial court reissued the arrest warrant that it had previously recalled pending the outcome of McCoy's appeal. The Accused did not advise McCoy of any of these actions.

9.

On June 30, 2000, McCoy was arrested at home, held in jail for several hours, and subsequently arraigned on a probation violation. In July 2000, McCoy contacted the Accused concerning the status of his appeal and was advised that it had been dismissed. On August 9, 2000, the Accused requested reinstatement of McCoy's appeal and the stay of his sentence. On September 27, 2000, the court granted reinstatement of the appeal, but denied reinstatement of the stay of McCoy's sentence.

10.

McCoy retained counsel to represent him before the trial court to reinstate the stay of his jail sentence, which was accomplished on November 14, 2000, after three court appearances.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(4) and DR 2-110(A)(2).

The parties agree that on July 26, 2003, the State Professional Responsibility Board dismissed the charge of alleged violation of DR 6-101(A) following further factual inquiry by Disciplinary Counsel's Office.

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 the public to avoid engaging in conduct that is prejudicial to the administration of justice and his duty as a professional to properly withdraw from representation. *Standards*, §§ 5.0, 7.0.

B. *Mental State.* The Accused acted negligently, i.e., 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. Specifically, the Accused assumed from the information he obtained and from the fact that he was unable to reach McCoy by telephone that McCoy's address and telephone numbers had changed. The Accused also assumed that other attempts to locate McCoy would be unsuccessful.

C. *Injury.* McCoy was actually injured by the Accused's conduct. He was arrested in the presence of his wife and child and jailed for several hours at a time when he had no reason to believe he was subject to arrest. He also incurred \$2,000 in attorney fees to reinstate the stay of his sentence. Moreover, three additional trial court hearings were required to bring McCoy back into the position in which he would have been had his appeal not been dismissed.

D. *Aggravating Factors.* Aggravating factors include:

There are no aggravating factors appropriately attributable to the Accused's conduct.

- E. *Mitigating Factors*. Mitigating factors include:
1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
 2. Absence of dishonest or selfish motive. *Standards*, § 9.32(b).
 3. Timely good-faith effort to rectify the consequences of the Accused's misconduct. *Standards*, § 9.32(d).
 4. The Accused is of good character and reputation. *Standards*, § 9.32(g).
 5. The Accused is remorseful about the consequences to McCoy of his conduct. *Standards*, § 9.32(l).

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 to the profession, and causes injury or potential injury to a client, the public, or the legal system.

14.

The injury to the client in this case was significant. However, considering the mitigating factors appropriately attributable to the Accused, Oregon case law suggests that a public reprimand is an appropriate sanction. *See In re Howser*, 329 Or 404, 987 P2d 496 (1999) (public reprimand for violation of DR 2-110(B)(2) and DR 5-105(E)); *In re Collier*, 295 Or 320, 667 P2d 481 (1983) (public reprimand for failing to reply to a counterclaim, which resulted in a default judgment being entered against the lawyer's client); *In re Schoen*, 294 Or 68, 653 P2d 989 (1982) (public reprimand for failing to file an appellate brief and failing to respond to notice of default, resulting in dismissal of an appeal). *See also In re Coyner*, 16 DB Rptr 315 (2002) (public reprimand for violation of DR 2-110(A)(2) and DR 6-101(B)).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of DR 1-102(A)(4) and DR 2-110(A)(2).

In addition, on or before November 30, 2003, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$170.80, incurred for deposition expenses. Should the Accused fail to pay \$170.80 in full by November 30, 2003, 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.

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 July 26, 2003. The parties agree that this stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 10th day of September 2003.

/s/ Rankin Johnson

Rankin Johnson

OSB No. 96490

EXECUTED this 12th day of September 2003.

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. 01-106, 01-107, 01-108,
	)	01-178, 01-179, 01-180, 01-181,
LONA L. MONSON,	)	01-188, 01-189, 03-56
)	
Accused.)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	Susan K. Eggum
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 3-101(A), DR 3-102(A), and DR 5-101(A)(1). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	September 24, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court approves the Stipulation for Discipline. The Accused is suspended from the practice of law for one year in the State of Oregon effective the date of this order.

DATED this 24th day of September 2003.

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 14, 1989, and has been a member of the Oregon State Bar continuously since that time. The Accused was an inactive member of the Bar from February 1, 1991 through May 31, 2000, and from December 31, 2001, to the present. At all other times, the Accused was an active member of the Bar, having or using an office 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.

The conduct described herein is currently being investigated by the Multnomah County Local Professional Responsibility Committee. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the matters now pending against the Accused.

Facts Common to All Cases

5.

At all relevant times herein, the Accused utilized Advanced Legal Systems (hereinafter referred to as “ALS”), a Texas business that was engaged in direct mailings to the public for the purpose of identifying persons interested in estate planning.

6.

At all relevant times, the Accused lived in Kansas City, Missouri, as well as Las Vegas, Nevada. Beginning in June 2000, though May 2001, the Accused used an office of an ALS entity at 1800 SW First Avenue, Suite 380, Portland, Oregon. The Accused shared this office with the staff and agents of ALS who were the primary users of the office. Beginning in the fall of 2000, the Accused began visiting this office approximately once a month, until approximately June 2001, when the Accused began renting an office at the same location. The Accused continued to visit her office approximately once a month until August 2001.

7.

ALS contacted by mail persons who indicated an interest in purchasing a living trust, most of whom were senior citizens. When ALS received post cards from persons interested in information relating to living trusts, a nonlawyer agent of ALS visited the customers. The ALS agents made a slide-show presentation about the benefits of living trusts as estate planning devices; delivered to the customers a brochure that contained the Accused's name and telephone number; and presented a business card with the agent's name and telephone number. While the Accused knew the ALS agents were visiting customers, she did not know the ALS agents were engaging in these activities and did not know that all of the ALS brochures contained her name and telephone number or that the telephone number on the agents' business cards was the same telephone number the brochure represented to be that of her Portland office. The Accused did not authorize, allow, or know that any ALS agent used her telephone number on his or her business card.

8.

At the initial meeting between the ALS agent and a potential customer, the agent's presentation emphasized the benefits of revocable living trusts over wills or other estate planning devices. The agent would recommend living trusts to the potential clients as an appropriate estate planning device for their circumstances and obtain information concerning the potential client's assets if the client was interested in executing a living trust. The Accused was unaware of the content of the ALS agents' presentations to the potential clients and whether they recommended living trusts to the clients.

9.

If the potential client expressed an interest in preparing a living trust, the ALS agent presented an engagement letter drafted by the Accused and printed on her Portland law office stationery. The ALS agent would then forward the signed engagement letter and the client's financial and personal information to the Accused.

By signing the engagement letter, the client would agree to pay a fee of \$2,495 by check payable to the Lona L. Monson Trust Account. The Accused paid ALS \$2,095 of this fee. The Accused has no knowledge of the amount of commissions ALS paid to any of its agents but did know that the agents were to receive a commission for the sale of each living trust.

The Accused's engagement letter did not disclose the nature or terms of her relationship with ALS; that the ALS agents would attempt to sell insurance products to her clients; that the agents would receive commissions from the sale of insurance products; that the Accused had agreed to pay \$2,095 of her fee to ALS; that her law practice was primarily in another state or states; that she was only in her Portland office approximately once a month; or that the agents who had personal contact with the clients were not her employees. The engagement letter did state that the client

was under no obligation to purchase any insurance or insurance products from anyone. The Accused did not at any other time make these disclosures to her clients or obtain their informed consent to her representation of them.

10.

The Accused would review the financial information obtained by the ALS agent and personally contact clients to discuss this information, determine whether it was accurate, and determine whether a living trust was a suitable estate planning device. When the living trust and supporting documents were prepared, a non-lawyer agent of ALS delivered the trust to the customer and assisted the customer in executing the documents.

The Accused knew that the ALS agents would attempt to sell annuities to the clients when the living trust documents were executed, using information they had obtained in previous contacts with the clients, but she did not know what information ALS agents used in attempting to sell annuities. The Accused knew that the ALS agents would receive a commission if they sold annuities to the clients, but did not know what commissions were paid to ALS agents, what incentives, if any, ALS gave its agents to sell annuities, or what tactics the agents used in their sales presentations. The Accused was never present at any meeting between an ALS agent and a potential Oregon client.

11.

The Accused did not hire any ALS agent to take financial information or make presentations about the advantages of living trusts as estate planning devices and did not hire any ALS agent to act as a notary. Rather, ALS selected, paid, and made available to the Accused agents who would perform these functions. The Accused was not the immediate supervisor of any ALS agent and did not control the ALS agents, but attempted to meet with them on a monthly basis. The Accused trained all but one of those ALS agents she understood would be taking financial information and making living trust presentations. The Accused does not, however, know if she trained all of the ALS agents who actually took financial information and made living trust presentations.

The Accused made some effort to train the agents about how to conduct themselves in their contacts with her clients and what they could or could not say, but is unaware of what other training or instructions ALS gave its agents. Even though the Accused made her telephone and pager numbers available to ALS agents and would respond to questions, ALS instructed its agents that they could present “legal questions” to ALS and its managers. The Accused is unaware of any such instructions but does not deny that ALS could have given them without her knowledge. Under the circumstances of her relationship with ALS, the Accused could have anticipated that ALS agents would render legal advice to her clients but did not take appropriate steps to prevent this conduct.

12.

Approximately 368 Oregon residents executed living trusts and related estate planning documents from the Accused.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 of this stipulation, she violated DR 1-102(A)(3) by failing to disclose the nature and extent of her relationship with ALS, failing to disclose that the ALS agents were insurance salespersons, and by creating the impression that the ALS agents were her employees; DR 3-101(A) by creating a situation where the ALS agents had the opportunity to practice law and by failing adequately to supervise them in order to prevent the unauthorized practice of law; DR 3-102(A) by sharing her fee with ALS; and DR 5-101(A)(1) by failing obtain her clients' informed consent to her representation of them after full disclosure of her relationship with ALS.

Michael and Elizabeth Ottlinger

Case No. 01-106

14.

On or about November 4, 2000, Michael and Elizabeth Ottlinger (hereinafter referred to as "the Ottlingers") purchased a living trust and related estate planning documents after meeting with a nonlawyer agent of ALS. The agent collected a check payable to the Accused in the sum \$2,495.00 from the Ottlingers and had them sign the engagement letter described in paragraph 9 herein.

The Accused prepared a living trust for the Ottlingers. The Ottlingers refused an offer to deliver their completed estate planning documents before December 2000. Thereafter, they were unable to reach the Accused or an ALS agent to make another appointment to execute their documents, despite their several attempts to do so by calling what they had been led to believe was the Accused's telephone number. The Ottlingers' documents remained with the notary throughout the holidays.

On January 4, 2001, the Accused learned that the Ottlingers had not yet received their documents and that they had cancelled their request for the preparation of a living trust. On January 11, 2001, the Accused sent a full refund of the Ottlingers' fee to Herb Perilloux of ALS and instructed him immediately to hand deliver the check to the Ottlingers.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 and 14 of this stipulation, she violated DR 3-101(A), DR 3-102(A), and DR 5-101(A)(1).

Thelma and Rixey Chadwell

Case No. 01-108

16.

On or about November 14, 2000, Thelma and Rixey Chadwell (hereinafter referred to as “the Chadwells”) purchased a living trust and related estate planning documents after meeting with a nonlawyer agent of ALS. The agent collected a check payable to the Accused in the sum of \$2,495 from the Chadwells and had them sign the engagement letter described in paragraph 9 herein.

The Accused prepared a living trust and related documents for the Chadwells. After their first consultation with the Accused, the Chadwells were unable to reach the Accused at any telephone number they had been provided for her or at any address they were able to obtain. When the Chadwells did not receive their estate planning documents by January 9, 2001, they decided not to complete the process of finalizing them. On January 15, 2002, the Accused learned from ALS that the Chadwells were requesting a refund of their fee. The following day, January 16, 2001, the Accused mailed the Chadwells a full refund.

Violations

17.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 and 16 of this stipulation, she violated DR 3-101(A), DR 3-102(A), and DR 5-101(A)(1).

Norman and Gay Tussing

Case No. 01-179

18.

On May 23, 2001, Norman and Gay Tussing (hereinafter referred to as “the Tussings”) purchased a living trust and related estate planning documents after meeting with a nonlawyer agent of ALS. The agent collected a check payable to the Accused in the sum \$2,495 from the Tussings and had them sign the engagement letter described in paragraph 9 herein.

On May 22, 2001, the Accused spoke by telephone with Mr. Tussing regarding the contents of his application for an estate plan. Following the Accused’s

contact with Mr. Tussing by telephone on May 22, 2001, she prepared a living trust and related documents for the Tussings.

Thereafter, a nonlawyer ALS agent rendered legal advice to the Tussings concerning whether and how the bank account of their incorporated business could be made an asset of the trust. The Accused did not know that an ALS agent rendered this legal advice to the Tussings. After the Accused had prepared the trust documents and made arrangements for delivery of the documents to the Tussings, she learned that an ALS agent had rendered legal advice to Mr. Tussing and advised the Tussings that this agent was not authorized to do so.

On August 23, 2001, the Tussings requested a refund of the fees they had paid the Accused. The Accused made a prompt refund.

Violations

19.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 and 18 of this stipulation, she violated DR 3-101(A), DR 3-102(A), and DR 5-101(A)(1).

John and Olivebell Szymik

Case No. 01-178

20.

On or about March 21, 2001, John and Olivebell Szymik (hereinafter referred to as “the Szymiks”) purchased a living trust and related estate planning documents after meeting with a nonlawyer agent of ALS. The agent collected a check payable to the Accused in the sum \$2,495 from the Szymiks and had them sign the engagement letter described in paragraph 9 herein.

On March 30, 2001, the Accused spoke by telephone with the Szymiks concerning their estate plan. The Szymiks state that they were unable thereafter to discuss their estate plan with the Accused or contact her at her office or at the telephone numbers that had been provided to them. In April 2001, the Accused prepared and delivered a living trust and related documents for the Szymiks. On or about September 28, 2001, at the Szymiks’ request, the Accused made a full refund of the fee she had received.

Violations

21.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 and 20 of this stipulation, she violated DR 3-101(A), DR 3-102(A), and DR 5-101(A)(1).

Norman Edmisten

Case No. 01-181

22.

On or about June 9, 2001, Norman Edmisten met in his home with Gary Whalen who represented himself to be a paralegal acting on behalf of the Accused. In the course of this meeting, Whalen advised Edmisten that a living trust was an appropriate estate planning device considering Edmisten's financial circumstances and made representations concerning the percentage of his estate that Edmisten could lose to probate costs.

The Accused does not know whether Whalen attempted to give legal advice to Edmisten concerning estate planning.

Violations

23.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 and 22 of this stipulation, she violated DR 3-101(A).

Helen C. Madden

Case No. 01-107

24.

On March 7, 2001, Helen Madden (hereinafter referred to as "Madden") purchased a living trust and related estate planning documents after meeting with two nonlawyer ALS agents. The agents collected a check payable to the Accused in the sum \$2,495 from Madden and had her sign the engagement letter described in paragraph 9 herein. Madden terminated the Accused's employment before the Accused drafted the estate planning documents.

Violations

25.

The Accused admits that, by engaging in the conduct described in paragraphs 1 through 12 and 24 of this stipulation, she violated DR 3-101(A) and DR 5-101(A)(1).

26.

After further factual investigation, the Bar and the Accused agree that Case Nos. 01-180, 01-188, and 01-189 should be dismissed.

Sanction

27.

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 admits that she violated her duties of diligence and candor to her clients and her duty to her clients to avoid conflicts of interest. *Standards*, §§ 4.3, 4.4, 4.6. The Accused also admits that she violated her duty to the public to maintain her personal integrity. *Standards*, § 5.1.

B. *Mental State.* The Accused admits that she acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of her conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7.

C. *Injury.* The Accused admits that the Ottlingers, the Chadwells, and the Tussings were actually harmed by the Accused’s conduct in that they were delayed in finalizing their estate plans. All of the people who purchased living trusts from the Accused were exposed to the potential harm of receiving and relying to their detriment on legal advice rendered by nonlawyers. They were also exposed to the potential harm of purchasing legal documents and insurance products that were not necessarily appropriate for their circumstances.

D. *Aggravating Factors.*

1. The Accused engaged in a pattern of misconduct. *Standards*, § 9.22(c).
2. The Accused committed multiple offenses. *Standards*, § 9.22(d).
3. The victims of the Accused’s conduct were senior citizens and, as such, were vulnerable. *Standards*, § 9.22(h).
4. The Accused had substantial experience in the practice of law, having been admitted to the Oregon State Bar in 1989. *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 made some efforts to limit ALS’s role to identifying persons interested in estate planning; to obtaining financial information for verification, review and evaluation by the Accused; and to delivering the finalized estate planning documents for notarized signatures.
3. The Accused gave full and complete cooperation to the State of Oregon’s Department of Justice when it investigated the conduct of ALS and its

relationship with the Accused. Further, the Accused has abided by all the terms of the Assurance of Voluntary Compliance she signed as a result of the Department of Justice's investigation. The Assurance of Voluntary Compliance implicitly acknowledges that the Accused lacked any intent to harm Oregon clients.

4. The Accused voluntarily agreed, in full and complete cooperation with the State of Oregon's Department of Justice, not to practice law in Oregon for a period of four years. The Marion County Circuit Court approved the Assurance of Voluntary Compliance on September 24, 2001. The Accused has abided by this agreement, and will continue to abide by this agreement.

5. The Accused further and voluntarily agreed to, and did, pay to the State of Oregon's Department of Justice the sum of \$5,000 for deposit to the Consumer Protection and Education Revolving Account.

6. Without exception, the Accused always refunded fees requested by any Oregon client without dispute or delay.

28.

ABA *Standards* § 4.32 suggests that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client. ABA *Standards* § 4.62 suggests that suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client. ABA *Standards* § 7.2 suggests that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

29.

Oregon case law is in accord. See *In re Morin*, 319 Or 547, 878 P2d 393 (1994), where the lawyer was disbarred for engaging in a scheme to market and sell living trusts. The Accused's conduct is less egregious than that in *Morin* where the lawyer deceived hundreds of clients into believing that they were receiving valid wills and directives to physicians when he knew they were not, and directed his staff to improperly notarize hundreds of documents. In this case, there is no evidence that the documents the Accused provided to her clients were invalid or that she encouraged or permitted the non-lawyer agents to execute the documents improperly or violate any statutes governing the conduct of notaries. Accordingly, a suspension rather than disbarment is an appropriate sanction.

30.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of one year for violation of DR 1-102(A)(3), DR 3-101(A), DR 3-102(A), and DR 5-101(A)(1) of the Code of Professional

Responsibility, the sanction to be effective immediately upon acceptance of this Stipulation by the Oregon Supreme Court.

31.

The Accused understands and agrees that the provisions of this stipulation do not affect or in any way alter her obligation to comply with the requirements of the Assurance of Voluntary Compliance described in paragraph 27(e)(3) and (4) herein.

32.

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 (SPRB) on May 10, 2003. The parties agree the stipulation is to be submitted to the Oregon Supreme Court for consideration pursuant to the terms of BR 3.6.

EXECUTED this 8th day of July 2003.

/s/ Lona L. Monson

Lona L. Monson
OSB No. 89097

EXECUTED this 15th day of July 2003.

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. 99-144, 99-145, 99-146
)
KAREN E. DUNCAN,)
)
Accused.)

Counsel for the Bar: Liz Fancher; Martha M. Hicks
Counsel for the Accused: Stephen R. Moore
Disciplinary Board: None
Disposition: Violation of DR 2-101(A)(1) and DR 3-101(A).
Stipulation for Discipline. 90-day suspension.
Effective Date of Order: November 21, 2003

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 90 days, effective November 21, 2003, or 10 days after this stipulation is approved by the Disciplinary Board, whichever date is later, for violation of DR 2-101(A)(1) and DR 3-101(A).

DATED this 24th day of September 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Gary L. Hedlund
Gary L. Hedlund, Esq., Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Karen E. Duncan, 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 June 6, 1997, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Deschutes County, Oregon.

3.

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

4.

On July 21, 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 2-101(A)(1) and DR 3-101(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.

In February 1993, the Accused and Donald E. Oliver (hereinafter referred to as “Oliver”) formed “Oliver & Duncan,” a California law partnership. The Accused took the Oregon bar examination in February 1997. The Accused passed the bar examination and was admitted to practice in Oregon in June 1997. Oliver took the Oregon bar examination in July 1997 and February 1998. Thereafter, his admission to the Oregon State Bar was delayed until March 3, 2000.

6.

On or about January 1, 1998, the Accused opened a law office in Redmond, Oregon, and in March 1998, began practicing law under the name “Oliver & Duncan.” At all times mentioned herein, Oliver was a member of the State Bar of

California and his application for admission to the Oregon State Bar was pending before the Oregon Board of Bar Examiners from May of 1997 until March 3, 2000.

7.

At all relevant times between January 1, 1998, and March 2, 2000, the Accused knew that Oliver was not licensed to practice law in Oregon.

8.

On a number of occasions in 1998, the Accused utilized law firm letterhead that contained the following statements:

Oliver & Duncan
Attorneys at Law
Licensed in Oregon and California
Donald E. Oliver
Karen E. Duncan

9.

In 1998, 1999, and 2000, the Accused placed advertisements in the Yellow Pages of the Central Oregon US West-DEX telephone directory. The advertisements contained the following statements:

Oliver & Duncan
Experienced Trial Attorneys &
General Practice
Licensed in Oregon & California

10.

The above-described letterhead and advertisements were misleading in that they could reasonably have been interpreted to represent that both Oliver and the Accused were licensed to practice law in Oregon.

11.

Between January 1, 1998, and March 3, 2000, Oliver repeatedly engaged in the following activities:

- A. writing and signing letters to opposing counsel or opposing parties regarding substantive matters;
- B. rendering legal advice to clients in person or in telephone conferences;
- C. engaging in substantive negotiations with opposing counsel.

The Accused was or should have been aware of these activities.

12.

Between January 1, 1998, and March 3, 2000, Oliver also represented a client at a deposition, signed a motion and filed it with the court, and made a routine court appearance without supervision. The Accused was or should have been aware of these activities.

13.

While the Accused made efforts to supervise Oliver's activities, these efforts were inadequate to assure that Oliver did not practice law in Oregon before he became an active member of the Oregon State Bar.

Violations

14.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 2-101(A)(1) and DR 3-101(A).

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 her duties as a professional to avoid publishing potentially misleading advertisements and to avoid assisting another in the unlawful practice of law. *Standards*, § 7.0.

B. *Mental State.* The Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of her conduct but without the conscious objective to accomplish a particular result. *Standards*, p. 7. The Accused was or should have been aware of Oliver's activities and that they constituted the practice of law, but was negligent in determining whether, under the circumstances, Oliver was permitted to engage in them. The Accused generally used appropriate stationery in her practice.

C. *Injury.* The Accused's conduct in allowing Oliver to unlawfully practice law caused actual injury to the regulation of the legal profession and caused some confusion to opposing counsel as to Oliver's authority to act on behalf of Oregon clients. The Accused's conduct caused no actual injury to her clients, but prospective clients could have been misled by her advertisements and letterhead into believing that Oliver was licensed to practice law in Oregon. *Standards*, p. 7.

D. *Aggravating Factors*. Aggravating factors include:

1. Selfish motive. *Standards*, § 9.22(b).
2. A pattern of misconduct. *Standards*, § 9.22(c).
3. Multiple offenses. *Standards*, § 9.22(d).

E. *Mitigating Factors*. Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Full and free disclosure to the Bar and cooperative attitude toward the proceedings. *Standards*, § 9.32(e)
3. The Accused has exhibited remorse. *Standards*, § 9.32(l).
4. The Accused is of good character. *Standards*, § 9.32(g).
5. Between July 1999 and March 2000, the Accused's firm obtained ethics advice from legal counsel in an attempt to mitigate or resolve the questions raised during the Bar's investigation of her conduct.

16.

Standards § 7.2 suggests that a 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.

17.

Oregon case law indicates that a suspension is an appropriate sanction. *See In re Jones*, 308 Or 306, 779 P2d 1016 (1989). *See also In re Lofton*, 11 DB Rptr 129 (1997); *In re Muir*, 10 DB Rptr 37 (1996).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violation of DR 2-101(A)(1) and DR 3-101(A), the sanction to be effective November 21, 2003, or 10 days after this stipulation is approved, whichever date is later.

In addition, on or before December 31, 2003, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$546, incurred for deposition expenses and transcript. Should the Accused fail to pay \$546 in full by December 31 2003, 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.

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 17th day of September 2003.

/s/ Karen E. Duncan

Karen E. Duncan

OSB No. 97160

EXECUTED this 18th day of September 2003.

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. 01-184
)
KEVIN T. LAFKY,)
)
Accused.)

Counsel for the Bar: Stephen R. Blixseth; Martha M. Hicks
Counsel for the Accused: Bradley F. Tellam
Disciplinary Board: None
Disposition: Violation of DR 5-105(E). Stipulation for
Discipline. 30-day suspension.
Effective Date of Order: October 4, 2003

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 30 days, effective October 4, 2003, for violation of DR 5-105(E).

DATED this 1st day of October 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused 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 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 February 21, 2003, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 2-106(A), DR 5-105(E), and DR 6-101(A). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

For approximately eight years before January 2000, the Accused represented Thomas O. Regan (hereinafter referred to as “Regan”) in litigation and administrative proceedings in which Regan was accused of wrongdoing against and financial abuse of elderly persons. Some of these matters arose out of Regan’s sale or promotion of living trusts to elderly persons.

6.

In January 2000, the Accused was still representing Regan in one of the matters described in paragraph 5 above. This matter had been settled, but the settlement agreement was not yet completed and a judgment dismissing the case had not yet been entered. At this time, Regan referred John Christopher (hereinafter

referred to as “Christopher”), an elderly man with whom Regan had previously established a relationship, to the Accused for legal matters relating to drafting a living trust. Christopher asked the Accused to draft a living trust that would name Regan as successor trustee in the event of Christopher’s death. Although the Accused suggested several reasons why it might not be appropriate to appoint a person, including Regan, who was not a relative as successor trustee, he ultimately drafted a trust that named Regan as successor trustee. During the course of the representation, Christopher also asked for and received the Accused’s assistance in transferring the management of his and his wife’s assets to a local financial advisor.

7.

When he undertook to represent Christopher, the Accused knew about his prior and ongoing representation of Regan and the subject matter of that representation. When the Accused undertook to represent Christopher, and at all relevant times thereafter, Christopher had an interest in knowing, and the Accused had a duty to advise Christopher, of any and all significant facts within the Accused’s knowledge regarding the qualifications of the person Christopher chose to serve as successor trustee and any risks associated with that person serving as successor trustee and acquiring knowledge of Christopher’s financial condition.

8.

When the Accused undertook to represent Christopher, and at all relevant times thereafter, Regan had a right to the preservation of, and the Accused had a duty to preserve, the confidential and secret information the Accused had obtained in his prior and ongoing representation of Regan.

9.

As described in paragraph 7 and 8 above, the interests of Christopher and Regan were adverse to one another. Insofar as consent after full disclosure may have been available to cure the conflict between Christopher’s and Regan’s interests, the Accused failed to obtain either client’s consent to his simultaneous representation of the other after full disclosure.

Violations

10.

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

11.

Upon further factual inquiry, the parties agree that the charge(s) of alleged violation(s) of DR 2-106(A) and DR 6-101(A) should be and, upon the approval of this stipulation, are 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 his clients to avoid conflicts of interest which would impair his judgment. *Standards*, § 4.0.

B. *Mental State.* The Accused acted negligently in determining whether his representation of Regan would adversely affect Christopher and in failing to warn Christopher of matters within his knowledge that could have affected Christopher’s decision to have Regan appointed successor trustee.

C. *Injury.* Christopher did not receive information that may have been relevant to his decision to appoint Regan as successor trustee. Without Lafky’s knowledge, Christopher gave Regan access to funds and information about his financial condition, and Regan misappropriated some of the money for his own use.

D. *Aggravating Factors.* Aggravating factors include:

1. This is the Accused’s third disciplinary offense. See paragraph 14 herein. *Standards*, § 9.22(a).

2. The Accused had 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 made full and free disclosure to the Bar. *Standards*, § 9.32(e).

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

13.

Standards § 4.3 suggests that a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client will adversely affect another client and causes injury or potential injury. However, Oregon case law indicates that, with the aggravating factors present in this case, a suspension is the appropriate sanction.

14.

In 1997, the Accused was reprimanded for violation of DR 7-109(C) (paying, offering to pay, or acquiescing in the payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case). *In re Lafky*, 11 DB Rptr 9 (1997). In 1999, he was reprimanded for violation of DR 2-110(A)(2) (improper withdrawal) and DR 5-101(A) (lawyer's self-interest conflict). *In re Lafky*, 13 DB Rptr 114 (1999). As in this case, the conduct that comprised the Accused's prior disciplinary rule violations was undertaken with a negligent state of mind. Under the analytical framework developed in *In re Jones*, 326 Or 195, 201, 951 P2d 149 (1997), the Accused's prior offenses are an aggravating factor.

15.

Oregon case law indicates that, under the circumstances of this case, a suspension is an appropriate sanction. See *In re Robertson*, 290 Or 639, 624 P2d 603 (1981) (30-day suspension for violation of *former* DR 5-105(A) (current DR 5-105(E)) by experienced lawyer); *In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987) (although the court imposed a 63-day suspension for violation of *former* DR 1-102(A)(4) (current DR 1-102(A)(3)), *former* DR 5-105(A) (current DR 5-105(E)), and DR 7-102(A)(7), it wrote that a 30-day suspension would be appropriate for the conflict of interest by itself).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 30 days for violation of DR 5-105(E), the sanction to be effective beginning on October 4, 2003.

17.

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 (SPRB) on July 26, 2003. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 26th day of September 2003.

/s/ Kevin T. Lafky

Kevin T. Lafky
OSB No. 85263

EXECUTED this 29th day of September 2003.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks
OSB No. 75167
Assistant Disciplinary Counsel

Cite as 336 Or 36 (2003)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
MICHAEL L. McDONOUGH,)
)
Accused.)

(OSB No. 00-20; SC S49503)

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

Argued and submitted May 5, 2003. Decided October 2, 2003.

J. Michael Alexander, Salem, argued the cause and submitted the brief for the Accused.

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

Before Carson, Chief Justice, and Gillette, Durham, Riggs, De Muniz, and Balmer, Justices. (Kistler, J., did not participate in the decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for a period of 18 months, effective 60 days from the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar charged the Accused with violating Code of Professional Responsibility Disciplinary Rule (DR) 1-102(A)(2) (committing criminal act that reflects adversely upon lawyer's honesty, trustworthiness, or fitness to practice law) and with being subject to discipline under ORS 9.527(1) (conduct justifying denial of admission to Bar). A trial panel of the Disciplinary Board concluded that the Accused was guilty of the alleged misconduct and suspended him from the practice of law for 18 months. *Held*: (1) The Accused lawyer violated DR 1-102(A)(2) and is subject to discipline under ORS 9.527(1); and (2) an 18-month suspension is the appropriate sanction for that misconduct. The Accused is suspended from the practice of law for a period of 18 months, 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. 03-34
)
PHILLIP C. GILBERT,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: Christopher R. Hardman
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3). Stipulation for
Discipline. 30-day suspension.
Effective Date of Order: November 1, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective November 1, 2003, for violation of DR 1-102(A)(3).

DATED this 29th day of October 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Phillip C. Gilbert, 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 18, 1992, 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 April 11, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation 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 and Violations

5.

The Accused represented Larry Tuttle (“Tuttle”) in a personal injury claim arising out of an auto accident. Days before the statute of limitations was set to expire, without the knowledge or authority of Tuttle, the Accused represented to the opposing party’s insurance company (hereinafter “Nationwide”) that he had authority to settle the claim for \$23,500. The following day, without the knowledge or authority of Tuttle, the Accused settled the claim and confirmed the settlement in a letter to Nationwide.

6.

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

Sanction

7.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “Standards”). The *Standards* require that the Accused’s conduct be analyzed by considering the following 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 of candor to the client pursuant to *Standards* § 4.62. He also violated his duty to the public to maintain personal integrity. *Standards*, § 5.13.

B. *Mental State.* The Accused acted knowingly when he made material misrepresentations to the insurer that he had Tuttle’s authority to settle. He also acted knowingly when he settled the matter on behalf of his client, having failed to previously reveal material information to his client. “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.

C. *Injury.* Injury can be either actual or potential. In this case, there was actual injury to Tuttle, in that his personal injury claim was initially settled for an amount below its value. Tuttle was required to obtain new counsel and make a claim against the Accused’s malpractice insurance to make himself whole.

D. *Aggravating Factors.* Aggravating factors include:

Substantial experience in the practice of law, the Accused having been admitted to practice in Oregon in 1992. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings *Standards*, § 9.32(e).
3. Good character or reputation. *Standards*, § 9.32(g).
4. Remorse. *Standards*, § 9.32(l).

8.

The *Standards* provide that a suspension is appropriate where a lawyer knowingly deceives a client and causes injury or potential injury to the client. *Standards*, § 4.62. The *Standards* also suggest that a reprimand is generally appropriate when a lawyer knowingly engages in other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law. *Standards*, § 5.13.

9.

The Disciplinary Board has previously authorized short-term suspensions in cases where lawyers have settled claims without the knowledge or authority of their clients. *See, e.g., In re Pfister*, 15 DB Rptr 16 (2001) (120-day suspension approved for, among other violations, the attorney's failure to inform his client that he had settled a disputed claim without his client's knowledge or consent and executed a satisfaction of judgment); *In re Scanlon*, 13 DB Rptr 91 (1999) (attorney suspended for 90 days for signing and notarizing a client's name to a satisfaction of judgment, in violation of both disciplinary rules and criminal statutes).

10.

Oregon case law suggests that a shorter suspension than was imposed in *Pfister* and *Scanlon* is appropriate. *See In re Fuller*, 284 Or 273, 586 P2d 1111 (1978) (lawyer received a 60-day suspension for leading his clients to believe he had filed and obtained a default judgment on their behalf, falsely representing to opposing counsel that he had authority to settle for his clients, and failing to inform his clients that he had in fact settled the case). The Accused's conduct is not as egregious as that in *Fuller* in that the Accused did not make affirmative misrepresentations to his client and did subsequently notify his client of the settlement, once completed.

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of DR 1-102(A)(3), the sanction to be effective November 1, 2003.

12.

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 (SPRB) on September 6, 2003. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 17th day of October 2003.

/s/ Phillip C. Gilbert

Phillip C. Gilbert

OSB No. 92312

EXECUTED this 17th day of October 2003.

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. 03-70
)
RICHARD SPEIGHT,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(2), DR 5-101(A), and
DR 6-101(B). Stipulation for Discipline. Public
reprimand.
Effective Date of Order: October 31, 2003

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), DR 5-101(A), and DR 6-101(B).

DATED this 31st day of October 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Richard Speight, 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 10, 1974, 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 26, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 2-110(A)(2), 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.

Earl and Shari Padfield (hereinafter “Buyers”) retained the Accused in April 2001, to represent them in connection with their planned purchase of a business. In addition to representing the Buyers, the Accused agreed to perform “closing services” for the transaction, which included taking possession of \$20,000 in earnest money from the Buyers to be tendered to the Seller upon closing. Although the Accused did not consider himself to be acting as an escrow agent for the transaction, the Accused believed he had a fiduciary obligation to the Seller to preserve the earnest money in the event of a dispute. The Accused told the Buyers that he would not be able to continue to represent them, should a dispute arise in connection with the transaction.

6.

When the Buyers and Seller were unable to agree upon certain terms and the time for closing expired, both made claims for possession of the earnest money and the Accused refused to tender it to either party. Instead, the Accused maintained the funds in his trust account until such time as a resolution could be reached. He also suggested to the Buyers that they seek separate legal counsel, and he identified for the Buyers a lawyer who was willing to consult with them. The Accused contemplated that an arbitration would take place or a lawsuit would be filed. However, neither occurred.

7.

Some months thereafter, the Accused learned that the attorney he had identified for the Buyers had not been retained by them. He was told that the Buyers were working with their real estate broker to resolve this situation, which also did not occur.

8.

At some point thereafter, the Accused became aware that the Seller acknowledged that she was not entitled to the Buyers' earnest money and was prepared to sign a release. However, that never happened. Later the Accused learned there was a new buyer, and that the earnest money would therefore be released. However, this also never happened. Because the Accused no longer considered himself to be the lawyer for the Buyers, he did not communicate the foregoing information to them and failed to confirm whether they were engaged in efforts to resolve the earnest money dispute.

9.

The Buyers subsequently contacted the Accused in writing on two occasions, first in February of 2002, demanding the return of their funds, but the Accused did not acknowledge or respond to that correspondence. The Accused did have contact with the Seller's attorney and, from that communication, understood a lawsuit was going to be filed. Thereafter, in July 2002, the Buyers again wrote the Accused to inquire as to the status of their earnest money, and he again failed to respond, after learning from the Seller's attorney that a lawsuit was likely. Ultimately, the Accused deposited the funds in court after a lawsuit was filed by the Seller against the Buyers in May 2003.

10.

The Buyers complained to the Bar in January 2003, when 18 months had passed since the retention of their earnest money funds by the Accused, and more than 12 months had passed without word from the Accused.

Violations

11.

The Accused admits that when he undertook to represent the Buyers and continued to do so without consent and full disclosure at a time when he believed he had a fiduciary obligation to the Seller, the Accused violated DR 5-101(A) prohibiting personal interest conflicts. The Accused further admits that by failing to communicate with the Buyers or take appropriate action on their behalf to facilitate a determination of the disposition of their funds, he improperly withdrew from representation without taking steps to adequately protect his clients' interest in violation of DR 2-110(A)(2), and neglected a legal matter in violation of 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.* The Accused violated the duty of diligence he owed to his clients, as well as his duty to avoid conflicts of interest. *Standards*, §§ 4.3, 4.4.

B. *Mental State.* The Accused acted negligently with respect to the conflict and failure to take adequate steps to protect his client's interests upon withdrawal, and knowingly with respect to the neglect. "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. "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.

C. *Injury.* The Accused caused significant actual injury to the Buyers who were without any of their \$20,000 earnest money for nearly two years and were unable to recover all of their money short of litigation because the Accused was not acting solely on their behalf and would not return it to them.

D. *Aggravating Factors.* Aggravating factors include:

1. Multiple offenses. *Standards*, § 9.22(d).
2. Substantial experience in the practice of law, the Accused having been admitted to practice in 1974. *Standards*, § 9.22(i).

- E. *Mitigating Factors*. Mitigating factors include:
1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
 2. There is no evidence of a dishonest or selfish motive. *Standards*, § 9.32(b).
 3. The Accused has been cooperative in these proceedings. *Standards*, § 9.32(e).

13.

The *Standards* suggest that a suspension is appropriate for the knowing conduct, *Standards*, § 4.42, and a reprimand is appropriate for the negligent conduct, *Standards*, §§ 4.33, 4.43.

14.

There is no Oregon case which addresses all three of these specific violations. As the Accused's conflict led to his inaction and eventual neglect, *In re Harrington*, 301 Or 18, 718 P2d 725 (1986) (reprimand for violating DR 5-101(A), DR 5-104(A), and (current) DR 5-105(E)), and *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (reprimand for a DR 5-105(C) conflict), are akin to the Accused's conduct in this matter. See also *In re Young*, 295 Or 461, 666 P2d 1339 (1983) (stipulated reprimand for violating DR 6-101(B) when inexperience and anxiety led to inaction); *In re Passannante*, 16 DB Rptr 310 (2002) (attorney stipulated to a reprimand for violating DR 2-110(A)(2), DR 6-101(B), DR 9-101(A), and DR 9-101(C)(3)); *In re Gorham*, 17 DB Rptr 159 (2003) (attorney stipulated to a reprimand for DR 5-101(A), DR 6-101(B), and DR 7-101(A)(1)).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violating DR 2-110(A)(2) (withdrawing without taking appropriate steps to protect client interests), DR 5-101(A) (personal interest conflict), and DR 6-101(B) (neglect of a legal matter), the sanction to be effective upon approval of the Disciplinary Board.

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 24th day of October 2003.

/s/ Richard Speight

Richard Speight

OSB No. 74309

EXECUTED this 27th day of October 2003.

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. 03-101
)
BRIAN A. BUCHANAN,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 7-106(A). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: October 31, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 7-106(A).

DATED this 31st day of October 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Brian A. Buchanan, 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 18, 1992, 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 10, 2003, the State Professional Responsibility Board (hereinafter “SPRB”), authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 7-106(A). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On April 23, 2003, a Marion County Circuit Court judge signed a restraining order prohibiting the Accused from entering his wife’s residence.

6.

On June 7, 2003, at a time when the Accused knew about the restraining order, he entered his wife’s residence in violation of that order.

Violation

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he violated DR 7-106(A) (disregard a ruling of a tribunal) 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 his duty to avoid abusing the legal process. *Standards*, § 6.2.

B. *Mental State.* “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, p. 7. The Accused acted knowingly. He understood the terms of the restraining order, but chose to ignore them for his personal convenience.

C. *Injury.* Injury is harm to the client, the public, the legal system, or the profession that results from a lawyer’s misconduct. The Accused caused actual and potential injury to the legal system and the profession. The Accused’s disregard of the court’s order demonstrates disrespect for the court. The court and the district attorney’s office was thereafter required to devote valuable time and resources to this matter, which would have been avoided had the Accused complied with the terms of the order. The Accused also caused potential injury to the profession. As a member of the Bar, the Accused is expected to comply with the law. When lawyers fail to obey the law or court orders, the public has reason to question the judicial process and the need to comport their own conduct to societal norms.

D. *Aggravating Circumstances.* The following aggravating circumstances are present in this matter:

1. Selfish motive. *Standards*, § 9.22(b).
2. Substantial experience as the Accused has been licensed to practice law in Oregon since 1992. *Standards*, § 9.22(i).

E. *Mitigating Circumstances.* The following mitigating circumstances are present in this matter:

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

2. Absence of dishonest motive. *Standards*, § 9.32(b).
3. Personal or emotional problems as the Accused and his wife were going through a divorce at the time of the events at issue. *Standards*, § 9.32(c).
4. Cooperative attitude toward these proceedings. *Standards*, § 9.32(e).
5. Imposition of other penalties or sanctions. In a criminal proceeding, the Accused pleaded guilty to violating the restraining order. He was sentenced to 14 days in jail and fined. *Standards*, § 9.32(k).
6. Remorse. *Standards*, § 9.32(l).

9.

The *Standards* provides that suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards*, § 6.22. The *Standards* also provide that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.23.

10.

In this case, because the mitigating circumstances far outweigh the aggravating circumstances, a public reprimand is the most appropriate sanction. Oregon case law supports the imposition of a public reprimand under these circumstances. *In re Jones*, 13 DB Rptr 133 (1999) (lawyer who violated the terms of court-ordered probation when he entered a bar and consumed alcohol was publicly reprimanded).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 7-106(A), the sanction to be effective upon approval by the Disciplinary Board.

12.

Disciplinary Counsel of the Oregon State Bar has reviewed the Stipulation for Discipline and the sanction was approved by the SPRB on October 10, 2003. 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 October 2003.

/s/ Brian A. Buchanan

Brian A. Buchanan

OSB No. 92243

EXECUTED this 24th day of October 2003.

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. 02-69, 02-108
)
ELIZABETH A. CLARK,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: Pamela E. Yee, Esq., Chair; Elmer M. Dickens,
Esq.; Allen M. Gabel, Public Member
Disposition: Violation of DR 1-103(C), DR 6-101(B), and
DR 7-101(A)(2). Trial Panel Opinion. 120-day
suspension, plus formal reinstatement under
BR 8.1.
Effective Date of Opinion: November 18, 2003

OPINION OF THE TRIAL PANEL

Anderson Matter

Case No. 02-69

Section One: Introduction

Date and Nature of Charge: By Formal Complaint dated August 6, 2002, the Oregon State Bar (“OSB”) has charged the Accused with violation of DR 6-101(B), DR 7-101(A)(2), and DR 1-103(C) of the Code of Professional Responsibility.

DR 6-101. Competence and Diligence.

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

DR 7-101. Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(2) Fail to carry out a contract of employment entered into with a client for professional services but the lawyer may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105.

DR 1-103. Disclosure of Information to Authorities; Duty to Cooperate.

(C) A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege.

The Accused. The Accused is Elizabeth A. Clark, OSB #90230, having an office and place of business in Clackamas County, Oregon.

Summary of Complaint. On or about July 9, 2001, the Accused undertook to file a small estate affidavit for Constance D. Anderson (“Anderson”), sole heir of decedent’s estate. From July 9 to December 6, 2001, the Accused failed to respond to Anderson’s attempts to contact her and failed to inform her of the status of the proceeding.

Anderson filed a complaint on January 9, 2002, which was forwarded to the Accused by the Disciplinary Counsel’s Office. A response was requested by February 1, 2002. The Accused made no response. Responses were subsequently requested by February 11 and April 26, 2002, by the Disciplinary Counsel’s Office. The Accused made no response.

Default. The Accused was personally served with a copy of the Formal Complaint and Notice to Answer on October 22, 2002. The Accused has failed to appear within the time provided by the Bar Rules of Procedure.

An Order of Default was entered of record by the Disciplinary Board State Chairperson on March 19, 2003. The Disciplinary Counsel’s Office submitted a Memorandum Re: Sanction on August 28, 2003, which was mailed to the Accused. No responsive memorandum was received by the Trial Panel from the Accused.

Section Two: Findings of Fact

When an Order of Default is entered, the allegations in the Formal Complaint are deemed true. BR 5.8(a). Therefore, the Accused is found to have undertaken to represent Anderson as to the filing of a small estate affidavit. The Accused failed to respond to Anderson’s attempt to contact the Accused and failed to keep Anderson informed as to the procedure. Other than the fact that Anderson’s check to the State of Oregon for the \$65 filing fee was cashed 53 days after Anderson gave the check to the Accused, there is no evidence that the small estate was completed and no evidence that the client (Anderson) was kept informed of the procedure.

Further, the Accused is found to have failed to respond to the Disciplinary Counsel’s Office after the complaint of Anderson was sent to her.

Section Three: Conclusions of Law

DR 6-101(B). See Section One for verbatim of Rule. The determination whether a lawyer has neglected a legal matter is a fact of specific inquiry. *In re Magar*, 335 Or 306, 66 P3d 1014 (2003). There needs to be a determination that the attorney has failed to act or failed to act diligently. *Magar, supra*, 335 Or at 321.

The ABA *Model Rules of Professional Conduct* sets forth that a lawyer shall act with reasonable diligence and promptness in representing a client. ABA *Model RPC* 1.3. See also ABA *Standard* 4.4. Further, a lawyer has a specific affirmative duty to communicate with clients, keep them reasonably informed about the status of their case and promptly comply with reasonable requests for information. ABA *Model RPC* 1.4. These principles have been used in the Oregon Supreme Court's analysis of DR 6-101(B).

To prove a violation of DR 6-101(B), the Bar must show a course of negligent conduct. *In re Eadie*, 333 Or 42, 64, 36 P3d 468 (2001). Also, the Bar's burden requires clear and convincing evidence of a course of neglectful conduct. *Magar, supra*, 335 Or at 321. The allegations of the Complaint are deemed as true, and the Accused failed to respond to repeated attempts by the client to make contact. The client even drove to the Accused's office in an attempt to make contact. The Accused failed to respond in any manner to the client's inquiries, which constitutes a course of neglectful conduct. *In re Recker*, 309 Or 633, 637, 789 P2d 663 (1990).

The Accused stated to Disciplinary Counsel that she was not opening her mail. The Accused was a sole practitioner and has no other attorney to review her matters. She could have advised her clients to retain other counsel. Since the Accused has practiced law since 1990, a reasonable inference can be drawn that she knew of (1) her obligations to her client, (2) her lack of attention, and (3) her lack of response to inquiries and therefore acted knowingly. *In re Parker*, 330 Or 541, 546, 9 P3d 107 (2000).

DR 7-101(A)(2). See Section One for verbatim of Rule. A violation of DR 7-101(A)(2) requires intentional conduct. *In re Collier*, 295 Or 320, 327, 667 P2d 481 (1983). Intent can be inferred from conduct, including the conduct of inaction. *In re Loew*, 292 Or 806, 811, 642 P2d 1171 (1982). The accused in *Loew* stated that he intended to serve his client but was unable to bring himself to do the work even with the client's urging. The court found this to be intentional conduct. The Oregon Supreme Court has considered the repeated failure to respond to client inquiries as a factor that the lawyer has acted intentionally. *In re Sousa*, 323 Or 137, 144, 915 P2d 408 (1996); see also *In re Recker, supra*.

The Accused apparently filed the small estate affidavit, as the check to the State of Oregon for the \$65 filing fee was cashed. Therefore, it appears the Accused performed the services for which she was hired. However, the Accused failed to respond to the client's inquiries and attempts to contact the Accused, which is a part

of the contract of services to be provided. The failure to respond was intentional by the Accused and thus she has violated DR 7-101(A)(2).

DR 1-103(C). See Section One for verbatim of Rule. The Accused failed to respond to the complaint by the client and the Disciplinary Counsel's Office repeated requests to respond and has violated her duty owed as a professional. *In re Kluge*, 335 Or 326, 349, 66 P3d 492 (2003). A lawyer under investigation must respond fully and truthfully to inquiries and requests from Bar disciplinary authorities, subject only to right or privilege. *In re Bourcier*, 325 Or 429, 939 P2d 604 (1997); *see also In re Jaffee*, 331 Or 398, 15 P3d 533 (2000).

The mental state required for a violation of DR 1-103(C) is not clear from the rule, but there are no facts nor evidence before the Trial Panel which would indicate anything other than that the Accused's failure to respond was knowing and intentional. The failure to respond has caused actual injury to the legal profession and the public. *In re Parker, supra*, 330 Or at 547. The Accused has violated DR 1-103(C).

Section Four: Sanctions

The sanctions will be addressed at the conclusion of this Opinion.

Willey Matter

Case No. 02-108

Section One: Introduction

Date and Nature of Charge. By Formal Complaint dated August 6, 2002, the OSB has charged the Accused with violation of DR 1-103(C) of the Code of Professional Responsibility.

The Accused. See page 2 hereof, Anderson Matter.

Summary of Complaint. The OSB received a complaint from Ann M. Willey ("Willey") on January 28, 2002, as to the conduct of the Accused in representing Willey. The complaint was sent to the Accused on January 30, 2002, and the Accused was asked to respond by February 20, 2002. When the Accused failed to respond, the Disciplinary Counsel's Office requested a response by March 5, 2002. The Accused failed to respond.

Default. The Accused was personally served with a copy of the Formal Complaint and Notice to Answer on October 22, 2002. The Accused has failed to appear within the time provided by the Bar Rules of Procedure.

An Order of Default was entered of record by the Disciplinary Board State Chairperson on March 19, 2003. The Disciplinary Counsel's Office submitted a Memorandum Re: Sanction on August 28, 2003, which was mailed to the Accused. No responsive memorandum was received by the Trial Panel from the Accused.

Section Two: Findings of Fact

When an Order of Default is entered, the allegations in the Formal Complaint are deemed true. BR 5.8(a). Therefore, the Accused is found to have failed to respond to the Willey complaint as requested by the Disciplinary Counsel's Office.

Section Three: Conclusions of Law

Reference is made to the discussion at page 4 herein as to DR 1-103(C) violations and is incorporated by this reference.

Section Four: Sanctions

In summary, we have concluded that the Accused violated DR 6-101(B), 7-101(A)(2), and 1-103(C) of the Professional Code of Responsibility. In determining sanctions, the Oregon Supreme Court first refers to the ABA *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992). Under the ABA *Standards*, to determine the appropriate sanction the following factors are considered: the duty violated, the Accused's mental state, the injury caused by the misconduct, and the existence of aggravating or mitigating factors. *In re Kluge, supra*, 335 Or at 348.

As noted in the ABA *Standards*, suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or the lawyer engages in a pattern of neglect. ABA *Standards*, § 4.42. The Commentary thereto discusses the injury to the client and distinguishes suspension from a reprimand when a matter was neglected but the matter was eventually handled and resolved with no financial loss to client, which is similar to this matter.

Since the Accused has failed to respond to the Complaint and the allegations contained therein are deemed true, the Accused is found to have acted with intent in failing to contact her client and knowingly failed to cooperate with the Bar investigation process. *In re Kluge, supra*, 335 Or at 350.

ABA *Standards* § 9.2 sets forth the factors which may be considered for aggravation. Those factors which are present here are a prior disciplinary offense, multiple offenses and substantial experience in the practice of law. Mitigating factors in this case are absence of a dishonest or selfish motive and personal and emotional problems.

The prior disciplinary offense resulted in a public reprimand in February 2000. The conduct involved dishonesty, fraud, deceit, or misrepresentation, which is fairly serious. Analysis of the prior offense includes the consideration of the relative seriousness of the prior offense and resulting sanction, and the timing of the current offense in relation to the prior offense and resulting sanction. *In re LaBahn*, 335 Or 357, 363–364, 67 P3d 381 (2003). Since the prior offense involved a relatively serious violation of the Disciplinary Rules and was shortly before this violation, we find that the prior offense heightens the significance of the Accused's neglect of the Anderson and Willey matters.

The case of *In re LaBahn, supra*, reviews a number of cases which discuss neglect of a client's legal matter. Although neglect was found, the cases did not necessarily find a particular amount of damages. However, from a client's viewpoint, the failure to respond and nonperformance is as frustrating as outright prevarication. *In re LaBahn, supra*, 335 Or at 366. Therefore, suspension is an appropriate sanction.

As for the Accused's violation of DR 1-103(C), the Accused violated her duty to the public in failing to respond to requests from the Disciplinary Counsel's Office during the investigation. *ABA Standards*, § 5.0; *In re Parker, supra*, 330 Or at 551. Because the disciplinary investigation was unnecessarily extended due to the Accused's failure to respond, the Accused caused actual injury to the Bar and to the public. *In re Kluge, supra*, 335 Or at 350. The appropriate sanction is suspension. *ABA Standards*, § 7.2.

Section Five:

Disposition

It is the decision of the Trial Panel that the Accused be suspended for 120 days for violation of DR 6-101(B), 7-101(A)(2), and 1-103(C) of the Code of Professional Responsibility.

Further, the Trial Panel finds that it would be in the best interest of the public to require the Accused to be subject to formal reinstatement under BR 8.1 at such time as she elects to return to active status with the Bar.

Dated this 17th day of October 2003.

/s/ Pamela E. Yee

Pamela E. Yee
OSB No. 87372
Trial Panel Chair

CONCURRING MEMBERS:

/s/ Al Gabel

Al Gabel, Public Member

/s/ Elmer Dickens

Elmer Dickens

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)	
)	
Complaint as to the Conduct of	)	Case Nos. 01-82, 01-83
)	
DUANE C. MIKKELSEN,)	
)	
Accused.)	

Counsel for the Bar:	Steven L. Myers; Stacy J. Hankin
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 5-101(A), and DR 6-101(B), and DR 9-101(C)(4). Stipulation for Discipline. One-year suspension, all but 90 days of which shall be stayed, subject to three years of probation.
Effective Date of Order:	November 18, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court approves the Stipulation for Discipline. The Accused is suspended from the practice of law for one year in the State of Oregon, subject to the terms and conditions of the stipulation, effective 60 days from the date of this order.

DATED this 18th day of November 2003.

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

STIPULATION FOR DISCIPLINE

Duane C. Mikkelsen, 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 24, 1982, 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 15, 2001, the Bar filed a Formal Complaint against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(3) (two counts), DR 5-101(A), DR 6-101(B) (two counts), 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.

Gibson Matter

Case No. 01-82

Facts

5.

In September 1995, the Accused undertook to represent Michael and Nancy Gibson (hereinafter “the Gibsons”) in a dispute with State Farm, their homeowner’s insurance carrier, and Steve Hudson (hereinafter “Hudson”), their State Farm agent.

6.

Between September 1995 and June 26, 1997, the Accused failed to pursue the Gibsons’ legal matter and failed to respond to their numerous requests for information regarding the status of that matter.

7.

On July 3, 1997, the Accused filed a complaint on behalf of the Gibsons against State Farm and Hudson.

8.

In September and October 1997, Carl Rodrigues (hereinafter “Rodrigues”), the lawyer representing the defendants, sent letters to the Accused asking him to make certain changes to the complaint, to provide discovery, and to identify some dates when he could depose the Gibsons. On January 29, 1998, because the Accused had not responded to those letters, Rodrigues noticed the Gibsons’ depositions for February 24, 1998. The depositions were eventually rescheduled for March 19, 1998.

9.

Between July 14, 1997, and March 13, 1998, the Accused failed to communicate with the Gibsons and failed to respond to their numerous requests for information regarding the status of their legal matter.

10.

On March 17 and 18, 1998, the Accused discussed the status of the lawsuit with the Gibsons, and advised them to dismiss it. On March 18, 1998, the Accused led Rodrigues to believe that the Gibsons had decided to dismiss their lawsuit. At the time the Accused did so, the Gibsons had not reached a decision to dismiss the lawsuit.

11.

On March 19, 1998, Rodrigues sent the Accused a proposed stipulation of dismissal. On September 10, 1998, because the Accused had not responded to that proposed stipulation, Rodrigues filed a motion to dismiss for want of prosecution. In response to that motion, the Accused signed and filed an affidavit in which he represented that he had recently communicated with the Gibsons who had confirmed their desire to pursue the lawsuit. At the time the Accused signed and filed this affidavit, he knew it was misleading because he had not initiated any communication with the Gibsons since March 18, 1998. He had, however, received numerous letters from them inquiring about the status of their case.

12.

Between March 28, 1998, and October 19, 1998, the Accused failed to communicate with the Gibsons and failed to respond to their numerous requests for information regarding the status of their legal matter. After September 10, 1998, the Accused failed to inform the Gibsons that Rodrigues had filed a motion to dismiss.

13.

On October 15, 1998, the court held a hearing to consider the motion to dismiss. At that hearing, the Accused represented to the court and to Rodrigues that he had experienced difficulties communicating with the Gibsons. At the time the

Accused made that representation, he knew it was misleading because he had not made any efforts to communicate with the Gibsons since March 18, 1998.

14.

At that October 15, 1998, hearing the Accused also represented to Rodrigues and the court that the Gibsons were indecisive as to whether they wanted to pursue their claims. At the time the Accused made that representation he knew he had received a letter from the Gibsons a few days earlier setting forth their strong desire to pursue their claims.

15.

At the conclusion of the October 15, 1998, hearing, the court granted the motion to dismiss. Later that day, Rodrigues sent a proposed order and judgment to the Accused for his consideration.

16.

After October 15, 1998, the Accused failed to inform the Gibsons of the material fact that their case had been dismissed, which fact he had in mind.

17.

Beginning on December 12, 1998, the Gibsons requested that the Accused return file materials they had previously provided to him. The Accused failed to return those materials until June 1999.

Violations

18.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 17, he violated DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 6-101(B) (neglect of a legal matter), and DR 9-101(C)(4) (failure to promptly return client materials) of the Code of Professional Responsibility.

Moses Matter

Case No. 01-83

Facts

19.

In August 1998, the Accused undertook to represent Jenelle Moses (hereinafter "Moses") in an employment discrimination complaint against Barrett Business Service, Inc. (hereinafter "Barrett") and James and Carol Harkins, dba Alpha Graphics (hereinafter "the Harkinses").

20.

On October 27, 1999, the Accused filed a complaint against Barrett and PSOF, LCC, on behalf of Moses. As of October 28, 1999, Moses's claims against Barrett and the Harkinses were barred by the statute of limitations.

21.

The Accused failed to effectuate service on Barrett and Moses' claims against it were dismissed on March 6, 2000.

22.

After March 6, 2000, the Accused failed to inform Moses of the material fact that her claim against Barrett had been dismissed, which fact he had in mind.

23.

After March 6, 2000, the Accused continued to represent Moses without obtaining her consent after full disclosure when the exercise of his professional judgment may reasonably have been affected by his failure to effectuate service on Barrett such that Moses' claims against Barrett were dismissed.

24.

On October 29, 1999, the Accused filed an amended complaint substituting Harkinses, dba Alpha Graphics, for PSOF, LLC.

25.

In February 2000, the lawyer representing the Harkinses filed a motion for summary judgment asserting that Moses' claims were barred by the statute of limitations. After he received the motion for summary judgment, the Accused continued to represent Moses without obtaining her consent after full disclosure when the exercise of his professional judgment may reasonably have been affected by his failure to name the correct defendant in the lawsuit until after the statute of limitations had run on any claims Moses had against the Harkinses.

26.

On February 8, 2000, the lawyer representing the Harkinses informed the Accused that he was scheduling a hearing on April 7, 2000, for the court to consider the motion for summary judgment. Because the Accused did not put that hearing date on his calendar and because the lawyer representing the Harkinses sent the documents concerning that motion to the wrong address, the Accused did not reply or otherwise oppose the motion for summary judgment and did not appear at the April 7, 2000, hearing. The court granted the motion for summary judgment, dismissed Moses' claim against the Harkinses, and awarded them their attorney fees and costs.

27.

On May 12, 2000, the Accused filed a motion to vacate the judgment of dismissal and thereafter filed a response to the Harkinses' motion for summary judgment.

28.

The Accused informed Moses that he was filing the motion to vacate the judgment of dismissal, and provided her with a copy of it. However, based upon the information Moses received from the Accused, she did not completely understand that her lawsuit had been dismissed.

29.

Moses asked the Accused to inform her when the motion to vacate the judgment of dismissal would be heard by the court. The Accused did not inform Moses about the date of the hearing because he did not see the hearing notice when his office received it. Moses contacted the court directly and attended the hearing on July 21, 2000. The Accused did not appear at that hearing.

Violations

30.

The Accused admits that, by engaging in the conduct described in paragraphs 19 through 29, he violated DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 5-101(A) (lawyer self-interest conflict), and DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Sanction

31.

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 duties to properly handle client property, to avoid conflicts of interest, to act with reasonable diligence and promptness, and to act with candor toward clients. *Standards*, §§ 4.1, 4.3, 4.4, 4.6. The Accused also violated his duties to maintain personal integrity and to avoid making false statements to the court. *Standards*, §§ 5.1, 6.1.

B. *Mental State*. While the Accused was representing the Gibsons and Moses, he experienced a major depressive disorder which affected his ability to diligently tend to his client matters, but the Accused acted knowingly when he made false or misleading statements to others.

C. *Injury*. Injury is harm to the client, the public, the legal system, or the profession that results from a lawyer's misconduct.

The Accused's misconduct caused actual injury to the Gibsons and Moses. They were misled as to the status of their legal matters and they experienced anxiety and frustration because the Accused failed to communicate with them for long periods of time. *In re Schaffner II*, 325 Or 421, 426–427, 939 P2d 39 (1997).

The Accused's conduct also caused actual injury to Rodrigues' client and the court.

The Accused's violation of DR 5-101(A) caused potential injury to Moses. Because of the undisclosed conflict of interest, she did not understand or consent to the Accused's divided loyalty.

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

1. Dishonest or selfish motive with regard to the misrepresentations and the self-interest conflict of interest. *Standards*, § 9.22(b).

2. Pattern of misconduct. On two occasions, and under similar circumstances, the Accused failed to maintain adequate communications with clients. *In re Schaffner I*, 323 Or 472, 480, 918 P2d 803 (1996); *Standards*, § 9.22(c).

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

4. Substantial experience in the practice of law as the Accused has been licensed to practice law in Oregon since 1982. *Standards*, § 9.22(i).

E. *Mitigating Circumstances*. The following mitigating circumstances exist in this matter:

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

2. Cooperative attitude toward proceedings. *Standards*, § 9.32(e).

3. Mental disability or impairment in that during the time of the misconduct described in this stipulation, the Accused experienced a major depressive disorder according to his treating physician, David B. Farley, M.D. *Standards*, § 9.32(h).

4. Delay in disciplinary proceeding. *Standards*, § 9.32(i).

5. Remorse. *Standards*, § 9.32(l).

32.

Under all the circumstances, the *Standards* suggest that a period of suspension with probation is the appropriate sanction. *Standards*, §§ 4.12, 4.42, 4.62, 5.12, 6.12. Probation is a sanction that can be imposed when a lawyer's right to practice law needs to be monitored or limited. *Standards*, p. 23. However, the probationary conditions must make sense in light of the misconduct at issue. *In re Haws*, 310 Or 741, 801 P2d 818 (1990).

33.

In this case, probation is appropriate because the Accused has been successfully treating his depressive condition and there have been no further complaints concerning his conduct. Probation is intended to assist the Accused in maintaining his current course of treatment and to monitor his practice over a period of time.

34.

Probation is related to and intended to address the DR 5-101(A), DR 6-101(B), and DR 9-101(C)(4) violations only. It does not relate to or address the DR 1-102(A)(3) violations.

35.

Oregon case law supports a term of suspension with probation in this case. *In re Seto*, 16 DB Rptr 10 (2002); *In re Dodge*, 16 DB Rptr 278 (2002); *In re Cohen*, 9 DB Rptr 229 (1995); *In re Hughes*, 9 DB Rptr 37 (1995).

36.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for one year, all but 90 days of which shall be stayed, subject to three years of probation. The sanction shall be effective 60 days from the date this stipulation is approved by the court. 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. Mark R. Bailey, Esq., or such other person acceptable to the Bar, shall supervise the Accused's probation (hereinafter "Supervising Attorney"). The Accused agrees to cooperate and shall comply with all reasonable requests of the Supervising Attorney and Disciplinary Counsel's Office 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. 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.

D. The Accused shall continue medical treatment as required with Dr. Farley, including taking, as prescribed, 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.

E. The Accused shall obtain from Dr. Farley a written report to the Supervising Attorney and Disciplinary Counsel's Office, on a quarterly basis, or more frequently if reasonably requested, which identifies his opinion concerning the Accused's mental health, his fitness to practice law and his compliance with the terms of his probation.

F. Dr. Farley is of the opinion that the Accused currently is emotionally fit to practice law. Nevertheless, upon the expiration of the 90 days of imposed suspension, the Accused shall not be eligible for reinstatement until he is examined and evaluated by a mental health professional chosen by the Bar, and that professional issues a report stating that the Accused is fit to practice law and able to adequately perform the duties of an attorney.

G. 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.

H. 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.

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

J. 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.

K. 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 90 days of imposed suspension expire.

L. The Accused's reinstatement after the 90 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 \$356.40, incurred for reporting and transcription of the Accused's deposition. Should the Accused fail to pay said sum in full by the 90th 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.

37.

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

EXECUTED this 8th day of October 2003.

/s/ Duane C. Mikkelsen

Duane C. Mikkelsen
OSB No. 82335

EXECUTED this 9th day of October 2003.

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. 99-12
)
TERENCE S. McLAUGHLIN,)
)
Accused.)

Counsel for the Bar: William D. Bailey; Stacy J. Hankin
Counsel for the Accused: Andrew P. Ositis
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 5-104(A).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: November 25, 2003

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 5-104(A).

DATED this 25th day of November 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Mary M. James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 19, 1984, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Yamhill County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely 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 (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of 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 this proceeding.

Facts

5.

On June 1, 1996, the Accused met with Peter Lipshutz (hereinafter “Lipshutz”) to discuss Lipshutz’s investment in a project to develop a computer security product. Earlier in the year, Lipshutz had invested \$40,000 with a company that was attempting to develop and market the product. Lipshutz sought the Accused’s advice on how to preserve the technology underlying his \$40,000 investment given that it was an asset in a pending Chapter 11 bankruptcy proceeding.

6.

Between June 1, 1996, and through October 4, 1996, Lipshutz had a reasonable expectation that the Accused was representing him in the new venture.

7.

During the months of June and July 1996, the Accused spoke with Lipshutz numerous times about the venture. Specifically, Lipshutz asked the Accused to participate in the new venture whereby the technology referred to in paragraph 5 would be obtained, produced, and marketed. The Accused also had discussions about the venture and the technology with other interested parties.

8.

In early August 1996, Lipshutz formed a Nevada corporation for the purpose of pursuing the venture. Lipshutz relied upon the Accused's advice and believed that the Accused was exercising his professional judgment to protect Lipshutz's interests in the formation of that corporation, called Secure Systems Technology, Inc. (hereinafter "SSTi").

9.

The parties, including Lipshutz, agreed that the Accused would become president of SSTi. By agreeing to become an officer in SSTi, the Accused entered into a business transaction with Lipshutz when Lipshutz expected the Accused to exercise his professional judgment for Lipshutz's protection. The Accused spoke with Lipshutz about his new role and sent him a letter dated July 15, 1996. That letter generally informed Lipshutz that the Accused's participation in the venture could create a conflict of interest between them. However, neither the conversation nor the letter constituted full disclosure because the Accused did not fully explain to Lipshutz the potential adverse impact on him of the Accused's new role as president of SSTi. Specifically, the Accused did not inform Lipshutz that as president of SSTi, Nevada law required him to act solely to further the interests of the corporate entity SSTi.

10.

On August 23, 1996, the Accused, Lipshutz and other parties signed the SSTi shareholders' agreement. Lipshutz believed that the Accused was exercising his professional judgment to protect Lipshutz's interest as a party to that agreement.

11.

Under the agreement described in paragraph 10, Lipshutz received 50% of the voting stock in SSTi in exchange for his promise to fund the venture. That agreement formally appointed the Accused as president of SSTi and provided for SSTi to pay him a monthly salary.

12.

The Accused's interests as president of SSTi potentially differed from the interests of Lipshutz as shareholder and creditor of SSTi.

13.

After the Accused agreed to and did become president of SSTi, Lipshutz expected the Accused to exercise his judgment to protect Lipshutz's interests in SSTi.

14.

Before the Accused became president of SSTi, he failed to fully explain to Lipshutz that the proposed structure of the corporation made it impossible for Lipshutz to remove the Accused from the president position without the agreement and assistance of others.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 14, he violated DR 5-101(A) and DR 5-104(A) 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.* The most important duties a lawyer owes are those owed to clients. *Standards*, p. 5. The Accused violated his duty to avoid conflicts of interest with his client. *Standards*, § 4.3.

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. The Accused recognized he had a conflict of interest with Lipshutz and failed to fully disclose to Lipshutz the possible effect of that conflict.

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). "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 a lawyer's misconduct. *Standards*, p. 7. Lipshutz sustained potential injury in that, as a result of the undisclosed conflicts of interest, he did not understand or consent to the Accused's divided loyalty.

D. *Aggravating Circumstances.* The following aggravating circumstances exist:

1. Multiple offenses. *Standards*, § 9.22(d).
2. Substantial experience in the practice of law as the Accused has been lawyer in Oregon since 1984. *Standards*, § 9.22(i).

E. *Mitigating Circumstances.* The following mitigating circumstances exist:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Delay in disciplinary proceedings. *Standards*, § 9.32(i).

17.

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*, § 4.32. Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible affect of that conflict and causes injury or potential injury to a client. *Standards*, § 4.32.

18.

Oregon case law suggests that, regardless of the fact that the Accused acted knowingly, a public reprimand is appropriate in this case. See *In re Boivin*, 271 Or 419, 533 P2d 171 (1975) (lawyer reprimanded for representing a client in a business transaction with a lawyer); *In re Montgomery*, 292 Or 796, 634 P2d 338 (1982) (lawyer reprimanded for violating DR 5-104(A)); *In re Wright*, 17 DB Rptr 132 (lawyer reprimanded for violating DR 5-101(A) and DR 5-104(A) by failing to obtain consent after full disclosure when his client invested funds in a corporation in which the lawyer held a 50% interest).

19.

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

20.

Disciplinary Counsel of the Oregon State Bar has reviewed the stipulation for discipline and the sanction was approved by the SPRB on November 15, 2003. 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 November 2003.

/s/ Terence S. McLaughlin

Terence S. McLaughlin

OSB No. 84073

EXECUTED this 20th day of November 2003.

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. 03-40
)
WILL CHILDS,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
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. Public reprimand.
Effective Date of Order: November 26, 2003

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded, for violation of DR 1-103(C), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4).

DATED this 26th day of November 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Will Childs, 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 December 9, 1999, 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 6, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-103(C), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In October 2001, David Cole (hereinafter “Cole”) hired the Accused to represent him as the plaintiff in a civil matter. For the next year, the Accused’s communication with Cole was sporadic, but the Accused was tending to Cole’s legal matter. However, following the exchange of brief communications in October 2002, the Accused understood that time was not of the essence and put Cole’s matter aside. The Accused subsequently failed to respond to Cole’s attempts to communicate with him. Included in Cole’s messages to the Accused were requests for an update on the status of his case, an accounting of Cole’s retainer and a refund of the unearned balance of the retainer.

6.

Following Cole's submission of a complaint to the Bar, the Accused failed to provide a written response to the Bar's inquiry. He did, however, telephone staff on one occasion indicating that he had been out of town on an extended vacation and therefore did not timely receive the Bar's letter. The Accused requested, and was given, a short extension to put his response together. The Accused did not respond within the extended deadline.

7.

Due to the Accused's failure to respond, the matter was transferred to the Lane County Local Professional Responsibility Committee (hereinafter "LPRC") for further investigation. The Accused then cooperated with the LPRC's investigation.

Violations

8.

The Accused admits that, by failing to communicate with his client about the status of Cole's matter and failing to account for and return Cole's retainer, the Accused violated DR 6-101(B) (neglect of a legal matter), DR 9-101(C)(3) (failure to account for client funds), and DR 9-101(C)(4) (failure to promptly provide client property). The Accused further admits that, by failing to timely provide a response to Disciplinary Counsel's Office, the Accused violated DR 1-103(C) (failure to fully respond in disciplinary investigation).

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 of diligence to his client and his duty to safeguard client property. *Standards*, §§ 4.1, 4.4. The Accused also violated his duty to the profession to respond to inquiries concerning allegations of professional misconduct. *Standards*, § 7.0.

B. *Mental State.* The Accused acted negligently in all respects, save his knowing failure to timely respond to the Bar's inquiries. "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. "Knowledge" is the conscious awareness of the

nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

C. *Injury*. The potential and actual injury was minimal but apparent to the client, in terms of Cole's frustration at the Accused's nonresponsiveness. The unearned portion of the client's retainer remained in trust during the time period referred to above and ultimately was refunded to Cole. The injury to the profession was actual in terms of the delay in investigating Cole's complaint. However, the Accused did cooperate with the LPRC's investigation.

D. *Aggravating Factors*. Aggravating factors include:

Prior disciplinary offenses, insofar as the Accused was recently admonished (March 24, 2003) for failing to provide accountings and remit client funds and property in violation of DR 9-101(C)(3) and DR 9-101(C)(4). However, this factor is minimized by the fact that a majority of the conduct currently in question occurred prior to the conclusion of the matter for which he was admonished. *See In re Cohen*, 330 Or 489, 8 P3d 953 (2000); *Standards*, § 9.22(a).

E. *Mitigating Factors*. Mitigating factors include:

1. No dishonest or selfish motive. *Standards*, § 9.32(b).
2. During the period when the Accused failed to respond to the Bar's inquiries, February through April 2003, the Accused was undergoing painful and disruptive treatments for a serious medical condition. *Standards*, § 9.32(c).
3. The Accused is a relatively inexperienced lawyer, having been admitted to the Bar in 1999. *Standards*, § 9.32(f).
4. Remorse. *Standards*, § 9.32(l).

10.

The *Standards* suggest that a reprimand would be appropriate for the Accused's negligent handling of his client matters. *Standards*, §§ 4.13, 4.43. However, absent mitigation, a suspension is generally proper for a knowing failure to respond to the Bar. *Standards*, § 7.2; *In re Miles*, 324 Or 218, 223, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753-754, 801 P2d 818 (1990).

11.

Oregon cases have imposed short suspensions for similar conduct to that of the Accused. *See, e.g., In re Hedges*, 313 Or 618, 836 P2d 119 (1992) (attorney received 63-day suspension for violations of DR 6-101(B), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C)). However, the neglect in *Hedges* was of a longer duration and caused substantial injury to his clients. In addition, *Hedges* had substantial experience in the practice of law and was not suffering from mental or emotional problems. *See also In re Paauwe*, 298 Or 215, 691 P2d 97 (1984); *In re Chandler*, 303 Or 290, 735 P2d 1220 (1987).

12.

Recent case law suggests that, where there is evidence that an attorney suffered from personal and emotional problems when neglect occurred and, as here, the only evidence of actual injury to the client was that of anxiety and frustration, a reprimand is sufficient sanction. *See In re Cohen, supra*. The Accused's medical condition is a similar circumstance.

13.

Consistent with the Standards and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violating of DR 1-103(C), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4), the sanction to be effective upon approval by the Disciplinary Board.

14.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board (SPRB) on September 6, 2003. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 17th day of November 2003.

/s/ Will Childs

Will Childs

OSB No. 99474

EXECUTED this 20th day of November 2003.

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 Nos. 03-1, 03-17
)
CATHERINE DIXON,)
)
Accused.)

Counsel for the Bar: Jeffrey D. Sapiro
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-103(C) (two counts). Stipulation
for Discipline. 90-day suspension.
Effective Date of Order: December 4, 2003

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 90 days, effective December 4, 2003, for two violations of DR 1-103(C).

DATED this 4th day of December 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ Mary Mertens James
Mary Mertens James, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Catherine Dixon, 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 December 14, 1990, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Marion County, Oregon.

3.

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

4.

On May 27, 2003, a Formal Complaint was filed against the Accused in Case No. 03-1, pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-103(C). On November 15, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused in Case No. 03-17, for an additional alleged violation of DR 1-103(C) of the Code of Professional Responsibility.

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

Sanchez Matter

Case No. 03-1

Facts

5.

On or about November 5, 2002, the Bar received a written complaint about the Accused from Michael Sanchez, a former client of the Accused. Disciplinary Counsel’s Office sent the complaint to the Accused on or about November 12, 2002, and asked her to respond to it on or before December 3, 2002. She did not respond.

6.

Disciplinary Counsel's Office sent the Accused another written request for a response to the Sanchez complaint on or about December 3, 2002, by certified and regular mail. A response was requested on or before December 10, 2002. The Accused did not respond.

7.

On or about January 6, 2003, Disciplinary Counsel's Office notified the Accused by certified and regular mail that, due to her failure to respond, the Sanchez complaint was being referred to a local professional responsibility committee (LPRC) for investigation. The Accused did not respond to this notice. However, she did cooperate with the subsequent investigation by the LPRC.

8.

Disciplinary Counsel's Office of the Oregon State Bar is empowered to investigate the conduct of lawyers in Oregon.

Violation

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5-8 of this stipulation, she violated DR 1-103(C).

Hardy Matter

Case No. 03-17

Facts

10.

On or about January 9, 2003, the Bar received a written complaint about the Accused from Christine Hardy, a former client of the Accused. Disciplinary Counsel's Office sent the complaint to the Accused on or about January 14, 2003, and asked her to respond to it on or before February 4, 2003. She did not respond.

11.

Disciplinary Counsel's Office sent the Accused another written request for a response to the Hardy complaint on or about February 10, 2003, by certified and regular mail. A response was requested on or before February 20, 2003. The Accused did not respond.

12.

On or about March 4, 2003, Disciplinary Counsel's Office notified the Accused by mail that, due to her failure to respond, the Hardy complaint was being

referred to a local professional responsibility committee (LPRC) for investigation. Thereafter, the Accused cooperated with the investigation by the LPRC.

13.

Disciplinary Counsel's Office of the Oregon State Bar is empowered to investigate the conduct of lawyers in Oregon.

Violation

14.

The Accused admits that, by engaging in the conduct described in paragraphs 10-13 of this stipulation, she violated DR 1-103(C).

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 her duty to the legal profession to cooperate with the Bar's investigation of her conduct. *In re Miles*, 324 Or 218, 221, 923 P2d 1219 (1996).

B. *Mental State.* The Accused acted knowingly in that she knew, from a prior disciplinary proceeding described below, that she was required to respond to Disciplinary Counsel's inquiries. However, she did not intentionally set out to again violate the same disciplinary rule.

C. *Injury.* The underlying, substantive allegations made by clients Sanchez and Hardy were dismissed by the SPRB for lack of probable cause. Therefore, other than the delay in having their complaints considered, there was no actual injury to the Accused's clients. However, there was actual injury to the Bar and the profession in that additional resources were required to investigate the complaints, and the ultimate disposition of those complaints was delayed by the Accused's failure to respond to initial inquiries.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has prior disciplinary offenses. In 2001, the Accused was reprimanded for violating DR 1-103(C). *In re Dixon*, 15 DB Rptr 32 (2001). In 2003, the Accused was again reprimanded, for violating DR 3-101(B). *In re Dixon (I)*, 17 DB Rptr 102 (2003). *Standards*, § 9.22(a).

2. The Accused has substantial experience in the practice of law, having been admitted 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. Cooperative attitude toward these proceedings. *Standards*, § 9.32(e).

3. The Accused is remorseful for her misconduct and asserts that she now fully understands the need to respond timely to disciplinary inquiries, and that the press of other business is not a valid reason not to do so. *Standards*, § 9.32(l).

16.

ABA *Standards* § 7.2 states that a 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.

ABA *Standards* § 8.2 states that suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

17.

Oregon case law confirms that a suspension is the appropriate sanction in an aggravated case of failing to respond to a disciplinary inquiry, or for repeated acts of failing to respond. See *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension, 60 of which was for not responding to the Bar and 60 of which was for neglect); *In re Levi*, 12 DB Rptr 258 (1998) (120-day suspension for nonresponsiveness in light of prior discipline for violating DR 1-103(C) on three occasions and neglect); *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for failing to respond even though all other allegations of misconduct were dismissed). See also *In re Hereford*, 306 Or 69, 756 P2d 30 (1988) (126-day suspension solely for violation of DR 1-103(C) in light of prior disciplinary record).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of 90 days for violations of DR 1-103(C), effective December 4, 2003.

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 2003.

/s/ Catherine Dixon

Catherine Dixon

OSB No. 90480

EXECUTED this 26th day of November 2003.

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) OSB Case No. 01-212
)
JAMES L. GRESS,) SC S50832
)
Accused.)

ORDER IMPOSING PUBLIC REPRIMAND

Upon consideration by the court.

This court accepts the Oregon State Bar's State Professional Responsibility Board's recommendation that the Accused be reprimanded. James L. Gress (OSB No. 91293) is reprimanded in Oregon.

DATED this 16th day of December 2003.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.
Chief Justice

SUMMARY FROM OREGON STATE BAR BULLETIN

Effective December 16, 2003, the Oregon Supreme Court reprimanded Portland lawyer James L. Gress, pursuant to BR 3.5 (reciprocal discipline). The State of Washington had previously imposed the same sanction for Gress's violation of Washington RPC 8.4(d) (conduct prejudicial to the administration of justice). The violation arose from Gress's defense of a workers' compensation claim. Gress conducted a discovery deposition during which he questioned the claimant about his income and learned that the claimant had received income that had not been declared on a federal income tax return. Following the deposition, Gress told the claimant's counsel that if the claimant refused to settle, Gress would notify the IRS of the claimant's failure to report earned income. The claimant refused to settle and Gress reported the claimant to the IRS.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case Nos. 03-42, 03-98
)
JEANNETTE T. MARSHALL,)
)
Accused.)

Counsel for the Bar: Bernard S. Moore; Stacy J. Hankin
Counsel for the Accused: Peter R. Jarvis
Disciplinary Board: None
Disposition: Violation of DR 5-105(C) (two counts). Stipulation
for Discipline. Public reprimand.
Effective Date of Order: December 22, 2003

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(C) (two counts).

DATED this 22nd day of December 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray , Esq.
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Esq., Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Jeannette Thatcher Marshall, 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 June 1, 1943, and has been a member of the Oregon State Bar continuously since that time, having her 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 June 30, 2003, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 5-105(C) in the Newcomb matter (Case No. 03-42). On October 10, 2003, the SPRB authorized the Bar to initiate formal proceeding against the Accused for violation of DR 5-105(C) in the Purcell matter (Case No. 03-98). 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.

Newcomb Matter

Case No. 03-42

Facts

5.

In February 2001, the Accused prepared a will for Muriel Newcomb (hereinafter “Newcomb”). The will provided for Newcomb’s estate to be divided equally between her daughter, her son, and her granddaughter.

6.

On July 17, 2002, the Accused undertook to represent Newcomb’s daughter for the purpose of having her appointed guardian and conservator of Newcomb. On

July 18, 2002, the Accused prepared a petition for appointment of guardian and conservator for signature by Newcomb's daughter. In that petition, Newcomb's daughter asserted that Newcomb had been in an advancing state of senility for at least five years. On its face, that allegation challenged the validity of Newcomb's February 2001 will.

7.

The Accused's representation of Newcomb's daughter in the guardianship and conservatorship matter was significantly related to the Accused's representation of Newcomb with regard to the February 2001 will, and the interests of Newcomb and her daughter in the guardianship and conservatorship matter were adverse.

8.

The Accused failed to obtain consent after full disclosure from Newcomb and her daughter before undertaking to represent Newcomb's daughter as described in paragraph 6, even though the interests of Newcomb and her daughter with regard to the guardianship and conservatorship matter were adverse and that matter was significantly related to Newcomb's February 2001 will.

Violation

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, she violated DR 5-105(C) of the Code of Professional Responsibility.

Purcell Matter

Case No. 03-98

Facts

10.

On May 1, 2002, William Purcell Jr. (hereinafter "Purcell Jr.") executed a will prepared by the Accused. The will directed William Purcell III (hereinafter "Purcell III") and Teresa Espinoza (hereinafter "Espinoza") to act as co-personal representatives of Purcell Jr.'s estate.

11.

On November 20, 2002, at a time when Purcell Jr. was alive, the Accused undertook to represent Espinoza. In connection with that representation, the Accused prepared a petition for probate of Purcell Jr.'s will alleging that Espinoza should be named sole personal representative because Purcell III was not qualified to serve in that capacity. On its face, that petition was inconsistent with the terms of Purcell Jr.'s May 2002 will.

12.

The Accused's representation of Espinoza in the petition referenced in paragraph 11 was significantly related to the Accused's representation of Purcell Jr. with regard to the May 2002 will, and the interests of Espinoza and Purcell Jr. with regard to the petition were adverse.

13.

The Accused failed to obtain consent after full disclosure from Purcell Jr. and Espinoza before undertaking to represent Espinoza as described in paragraph 11, even though the interests of Purcell Jr. and Espinoza with regard to the petition for probate were adverse and that matter was significantly related to Purcell Jr.'s May 2002 will.

Violation

14.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 13, she violated DR 5-105(C) 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 her duty to avoid conflicts of interest. *Standards*, § 4.3.

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 negligently when she failed to obtain consent after full disclosure before undertaking to represent clients whose interests were in likely conflict with the interests of former clients.

C. *Injury.* Injury is harm to the client, the public, the legal system, or the profession that results from a lawyer's misconduct. Injury can be either actual or potential. There was potential injury to Newcomb, her daughter, Purcell Jr., and Espinoza. Because of the undisclosed conflict of interest, they did not understand or consent to the Accused's divided loyalty.

D. *Aggravating Circumstances.* The following aggravating circumstances are present in this matter:

1. Pattern of misconduct. *Standards*, § 9.22(c). On two occasions, and under similar circumstances, the Accused failed to recognize that her representation of a client could cause injury or damage to a former client and failed to obtain the necessary consent after full disclosure.

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

3. Substantial experience as the Accused has been licensed to practice law in Oregon since 1943. *Standards*, § 9.22(i).

E. *Mitigating Circumstances.* The following mitigating circumstances are present in this matter:

1. Absence of a prior disciplinary record over many years of practice. *Standards*, § 9.32(a).

2. The Accused did not act with a dishonest or selfish motive, but instead acted with a desire to protect her elderly clients. *Standards*, § 9.32(b).

3. Cooperative attitude toward proceedings. *Standards*, § 9.32(e).

4. Remorse. *Standards*, § 9.32(l).

16.

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.

17.

Oregon case law supports the imposition of a public reprimand under these circumstances. *In re Howser*, 329 Or 404, 987 P2d 496 (1999); *In re Cohen*, 316 Or 657, 853 P2d 286 (1993); *In re Trukositz*, 312 Or 621, 825 P2d 1369 (1992).

18.

Consistent with the Standards and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for two violations of DR 5-105(C), the sanction to be effective upon approval by the Disciplinary Board.

19.

Disciplinary Counsel of the Oregon State Bar has reviewed the Stipulation for Discipline and the sanction was approved by the SPRB on October 10, 2003. 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 December 2003.

/s/ Jeannette T. Marshall

Jeannette T. Marshall

OSB No. 43010

EXECUTED this 8th day of December 2003.

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. 03-89, 03-90
)
CLARK WILLES,)
)
Accused.)

Counsel for the Bar: Lia Saroyan
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: December 22, 2003

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) and DR 6-101(B).

DATED this 22nd day of December 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

/s/ R. Paul Frasier
R. Paul Frasier, Esq., Region 3
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Clark Willes, 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 19, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Benton County, Oregon.

3.

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

4.

On September 6, 2003, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(4) 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.

Court Matters

Case No. 03-89

Facts

5.

In 1998, the Accused represented a client in defense of criminal charges. A pretrial conference was scheduled for June 1, 1998. The Accused failed to appear at the scheduled conference. The court continued the matter and sought an explanation from the Accused. The Accused explained that he had timely appeared for the criminal matter, but the court was running late and his presence was required in another courtroom for the start of a civil trial. The Accused believed that the criminal court had been advised of his unavailability.

6.

In 1999, the Accused represented a client in defense of criminal charges. In the course of representing this client, the Accused was late for two court appearances and failed to appear for a pretrial conference. As a result of his failure to appear, the court rescheduled the pretrial conference.

7.

In 2000, while representing two clients in separate criminal matters, the Accused was late for a scheduled appearance and failed to appear for a scheduled pretrial conference. When the Accused failed to appear, the court sent the Accused a letter requesting an explanation. The Accused responded that his failure to appear was the result of a calendaring error.

8.

In 2001, while representing a client in a criminal matter, the Accused failed to appear for a scheduled court appearance. When the Accused did not appear, the court sent the Accused a letter requesting an explanation. The Accused responded that his failure to appear was the result of a calendaring error.

9.

In 2003, the Accused represented two clients in connection with two criminal matters. Status hearings were scheduled in both cases for March 31, 2003. The Accused failed to appear at either hearing. In one matter, the client also failed to appear. As a result, a bench warrant was issued for her arrest. After the Accused failed to appear, the court sent the Accused letters requesting an explanation. The Accused responded that he had failed to properly calendar both appearances.

Violations

10.

The Accused admits that, by failing to appear at scheduled court appearances, he violated DR 1-102(A)(4) (conduct prejudicial to the administration of justice) of the Code of Professional Responsibility.

Foerster Matter

Case No. 03-90

Facts

11.

In June 2002, Danny Foerster filed a motion for appointment of counsel to assist in obtaining DNA testing in connection with a 1984 criminal conviction. On August 1, 2002, Judge McCormick appointed the Accused to represent Foerster. In October 2002, having not heard from the Accused and concerned about the status of

his request for counsel, Foerster wrote a letter to Judge McCormick. Judge McCormick responded to Foerster by letter (a copy of which was sent to the Accused), and advised him of the Accused's August appointment.

12.

In October and December 2002, Foerster wrote the Accused two letters seeking confirmation of the Accused's appointment and information about the status of Foerster's legal matter. The Accused did not respond to Foerster's letters. In January 2003, after receiving no response to his written and telephonic attempts to confirm the Accused's appointment, Foerster filed a writ of mandamus against Judge McCormick. After the court advised the Accused of the mandamus proceeding, the Accused notified Foerster of his appointment and commenced work on his legal matter.

Violations

13.

The Accused admits that, by failing to timely attend to Foerster's legal matter and causing further need for involvement of the court, he violated DR 1-102(A)(4) (conduct prejudicial to the administration of justice) and DR 6-101(B) (neglect of a legal matter) 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.* By failing to appear for scheduled hearings and failing to attend to Foerster's legal matter, the Accused violated his duty to his clients and his duty owed to the public. *Standards*, §§ 4.4, 5.2.

B. *Mental State.* The Accused acted negligently by failing to insure that court-scheduled appearances were properly calendared and by failing to more timely advise Foerster of his appointment and attend to Foerster's legal matter.

C. *Injury.* The Accused caused actual injury to his clients as their legal matters were delayed. The Accused's failure to attend court hearings also injured the legal system as the court was required to reschedule matters that had previously been scheduled.

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

15.

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 negligently fails to follow proper procedures or rules and causes injury or potential injury to a party or to the integrity of the legal process. *Standards*, §§ 4.33, 5.23. Oregon case law is in accord. See *In re Honsowetz*, 16 DB Rptr 345 (2002); *In re Brownlee*, 9 DB Rptr 85 (1995).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall receive a public reprimand for violating DR 1-102(A)(4) 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.

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 1st day of December 2003.

/s/ Clark Willes

Clark Willes

OSB No. 86316

EXECUTED this 10th day of December 2003.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 83314

Assistant Disciplinary Counsel

Cite as 336 Or 244 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
SALLY R. LEISURE,)
)
Accused.)

(OSB No. 00-89; SC S50203)

En Banc

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

Argued and submitted November 7, 2003. Decided December 26, 2003.

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

Sally R. Leisure, Portland, argued the cause and filed the brief for herself.

PER CURIAM

The complaint is dismissed.

SUMMARY OF SUPREME COURT OPINION

On July 19, 1999, the Oregon State Bar (the Bar) informed the accused lawyer that she had been suspended from the Bar for failing to pay an installment on her annual Professional Liability Fund assessment that was due on July 12, 1999. The Accused was reinstated a few days later, after paying the balance due on her assessment. Shortly thereafter, the Bar learned that the Accused had continued to practice law during the period of her suspension. Ultimately, the Bar filed a disciplinary complaint against the Accused, charging her with violating a number of disciplinary rules by (1) practicing law while suspended; (2) failing to disclose her suspended status to clients, courts, and opposing counsel; and (3) falsely representing to the Bar, in an application for reinstatement, that she had not practiced law during the period of her suspension. A trial panel found the Accused guilty of all of the charges and imposed a 30-day suspension. The Bar sought review, arguing for a longer suspension. The Accused responded that a longer suspension was not warranted and that, in any event, she was not guilty of any of the charges because the underlying administrative suspension was invalid. The Accused argued that, in suspending her for defaulting on a payment due on her PLF assessment, the Bar had

failed to comply with the 60-day notice and 30-day default period requirements of ORS 9.200(1). The Accused denied that she had waived the 30-day default period when she applied to pay the assessment in installments. She also argued that any waiver of those requirements was void as against public policy. *Held*: The administrative suspension that is at the heart of all of the charges failed to comport with notice and default period requirements set out in ORS 9.200(1) for such suspensions, and the Accused did not waive those statutory requirements when she signed the agreement to pay assessment in installments. The complaint is dismissed.

Cite as 336 Or 281 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
RONALD CUE,)
)
Accused.)

(OSB Nos. 02-132, 02-133; SC S50607)

En Banc

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

Submitted on the record December 3, 2003. Decided December 26, 2003.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, filed the brief for the Oregon State Bar. With her on the brief was Richard D. Adams, Bar Counsel.

No appearance *contra*.

PER CURIAM

The Accused is disbarred.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar (the Bar) charged the Accused with violating eight Disciplinary Rules in two unrelated matters. After the Accused admitted all material facts alleged by the Bar, a trial panel of the Disciplinary Board concluded that the Accused had committed those violations and disbarred him. On review, the Accused did not contest the sanction imposed by the trial panel. *Held*: The Accused violated the Disciplinary Rules. The Accused is disbarred.

Cite as 336 Or 256 (2003)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of)
)
ANTHONY L. WORTH,)
)
Accused.)

(OSB Nos. 99-125, 99-126, 99-127, 99-128, 00-149; SC S49861)

En Banc

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

Argued and submitted September 8, 2003. Decided December 26, 2003.

Jane E. Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause for the Oregon State Bar. With her on the brief was Martin E. Hansen, Bar Counsel.

Jonel K. Ricker, of Ricker & Roberson, La Grande, argued the cause and filed the brief for the Accused.

PER CURIAM

The Accused is suspended from the practice of law for 90 days, effective 60 days from the date of the filing of this decision.

SUMMARY OF SUPREME COURT OPINION

The Oregon State Bar (the Bar) alleged that the Accused violated several Code of Professional Responsibility Rules in his neglectful handling of five post-conviction relief cases and in responding the Bar's inquiries. A trial panel of the Disciplinary Board concluded that the Accused violated DR 6-101(B) and DR 2-110(B)(2) in his handling of the cases, and it imposed a public reprimand. The Bar sought review, contending that the Accused violated DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 7-101(A)(2), and DR 9-101(C)(4) in his handling of the cases, and contending further that a public reprimand was not the appropriate sanction, but that the Accused's conduct warranted a two-year suspension. *Held:* In addition to the violations found by the trial panel, the Accused also violated DR 1-102(A)(4) and DR 9-101(C)(4) with respect to his handling of the cases, and DR 1-102(A)(3) and DR 1-103(C) because of the manner in which the Accused responded to the Bar's inquiries.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re)
)
Complaint as to the Conduct of) Case No. 03-26
)
STEVEN C. BALDWIN,)
)
Accused.)

Counsel for the Bar: Stephen J.R. Shepard; Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: December 30, 2003

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).

DATED this 30th day of December 2003.

/s/ Dwayne R. Murray
Dwayne R. Murray, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Steven C. Baldwin, 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 13, 1983, and has been a member of the Oregon State Bar continuously since that time, having his offices and places of business in Lane and Douglas counties, Oregon.

3.

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

4.

On April 28, 2003, 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) 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 September 6, 2002, Jeremy Wegner filed a petition for dissolution of his marriage to Susan Wegner. On or before October 7, 2002, the Accused undertook to represent Susan Wegner in that matter. At the time the Accused undertook to represent Susan Wegner, he was having a personal and sexual relationship with her.

6.

The Accused undertook to represent Susan Wegner in the dissolution of marriage proceeding when the exercise of his professional judgment on her behalf was likely to or may reasonably have been affected by his own personal interests. The Accused informed Wegner that because of their personal relationship he would not be able to represent her if the dissolution of marriage proceeding went to trial. That conversation did not constitute full disclosure as the Accused did not fully explain to Wegner the potential adverse impact to her of having the Accused represent her in the pending matter, did not recommend that she seek independent legal advice to determine if she should give consent, and did not otherwise satisfy the requirements of DR 10-101(B)(2).

Violations

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he violated DR 5-101(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 his duty to avoid improper personal conflicts of interest. *Standards*, § 4.3.

B. *Mental State.* “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. “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’s conduct demonstrates knowledge and negligence in that he recognized there were rules prohibiting certain conduct, but he failed to provide his client with all of the necessary disclosures.

C. *Injury.* Injury is harm to the client, the public, the legal system, or the profession that results from a lawyer’s misconduct. Injury can be either actual or potential. There was a potential that the Accused would act in his own interests to the detriment of his client. However, no actual injury to the client occurred.

D. *Aggravating Circumstances.* The following aggravating circumstance is present in this matter:

Substantial experience in the practice of law as the Accused has been licensed to practice law in Oregon since 1983. *Standards*, § 9.22(i).

E. *Mitigating Circumstances.* The following mitigating circumstance is present in this matter:

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

9.

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.

10.

Generally, lawyers who engage in personal relationships with clients without full disclosure are reprimanded. *See, e.g., In re Weisser*, 16 DB Rptr 269 (2002). Lawyers who engage in other self-interest conflicts have also been reprimanded. *See, e.g., In re Lafky*, 13 DB Rptr 114 (1999); *In re McCurdy*, 13 DB Rptr 107 (1999) (lawyers who continued to represent clients without full disclosure that lawyer may have committed malpractice during the course of the representation were reprimanded).

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 \$131.40 in full no later than 30 days from the date of the Order Approving Stipulation for Discipline. If the Accused fails to pay those costs, 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.

12.

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

EXECUTED this 19th day of December 2003.

/s/ Steven C. Baldwin

Steven C. Baldwin

OSB No. 83144

EXECUTED this 22nd day of December 2003.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin

OSB No. 86202

Assistant Disciplinary Counsel

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