

DISCIPLINARY BOARD REPORTER

VOLUME 19

January 1, 2005, to December 31, 2005

Report of Lawyer Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2005



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BOARD
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PREFACE

This Disciplinary Board Reporter (DB Reporter) contains final decisions of the Oregon Disciplinary Board, stipulations for discipline between accused lawyers and the OSB, summaries of 2005 decisions of the Oregon Supreme Court involving the discipline of lawyers, orders of reciprocal discipline imposed by the court, and related matters. Cases in this DB Reporter should be cited as 19 DB Rptr ____ (2005).

In 2005, a decision of the Disciplinary Board was final if neither the Bar nor the accused sought review of the decision by the Oregon Supreme Court. See Title 10 of the Bar Rules of Procedure (page 53 of the OSB 2006 Membership Directory) and ORS 9.536.

The decisions printed in this DB Reporter have been reformatted and corrected for typographical errors, but no substantive changes have been made to them. Because of space restrictions, most 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, 2006, 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 No. 04-136
)
ROBERT G. KLAHN,)
)
Accused.)

Counsel for the Bar: Lia Saroyan
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 9-101(A) and DR 9-101(C)(3).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: January 5, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3).

DATED this 5th day of January 2005.

/s/ Michael R. Levine
Michael R. Levine, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On November 20, 2004, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On May 14, 2004, the Accused’s lawyer trust account at US Bank held \$1,937.35. On May 17, 2004, six checks drawn on the Accused’s trust account were presented to the bank for payment. The bank honored all six checks and after doing so, the account had a negative balance of (\$352.65).

6.

On May 17, 2004, US Bank sent a notice of insufficient funds to the Disciplinary Counsel’s Office pursuant to its obligations under DR 9-102. The Bar sought the Accused’s response. The Accused submitted a timely response after conducting a review of his trust account records. As a result of his review, the Accused determined that certain errors had been made by the Accused in the handling of client funds and maintaining accurate records of client funds, including:

A. Deposits were entered twice for the same client into the accounting register reflecting that the client had more funds on deposit than the client actually had;

B. Checks received from two clients in 2003 were maintained in the firm's safety deposit box until July 2004. Firm records incorrectly indicated that the checks had been deposited to trust. As a result, disbursements from the trust account were made that should not have been, creating deficiencies in the trust account and drawing on funds belonging to other clients;

C. A check drawn on the trust account in 1998 was not recorded in the check register; and

D. Periodic reconciliations of office accounting records with trust account bank statements were discontinued for many years, thereby allowing any accounting errors to go undetected.

7.

Errors made in handling client funds were inadvertent, not the result of intentional conduct by the Accused or his office staff. Once the Accused received notice of the overdraft, the Accused undertook an audit of the account, discovered the errors referenced in paragraph 6 and modified his recording and reconciliation procedures to avoid the reoccurrence of similar errors in the future.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 9-101(A) and DR 9-101(C)(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 lawyer's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his clients to preserve client property. *Standards*, § 4.0.

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

C. *Injury*. There was no actual injury to any of the Accused's clients, as the Accused rectified all accounting errors. There was potential injury to the extent that some client funds were drawn upon when they should not have been, were not maintained in trust as required by DR 9-101(A) for periods of time, and were not thus afforded the protections that a trust account provides.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused made multiple errors over many years and has substantial experience in the practice of law. *Standards*, § 9.22(d), (i).

2. In 2000, the Accused was disciplined for billing a client for time spent responding to the client's Bar complaint and failing to timely respond to the Disciplinary Counsel's Office (DR 1-103(C) and DR 2-106(A)). *In re Klahn*, 14 DB Rptr 65 (2000); *Standards*, § 9.22(a).

E. *Mitigating Factors*. Mitigating factors include:

The Accused did not act with a dishonest or selfish motive, made timely, good-faith efforts to rectify the consequences of the accounting errors, and made a full and free disclosure to the Bar with a cooperative attitude toward these proceedings. *Standards*, § 9.32(b), (d), (e).

10.

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

11.

Oregon case law is in accord. *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of DR 9-101(A) and DR 9-101(C)(3).

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"). The SPRB approved the sanction set forth in this Stipulation for Discipline at its meeting on November 20, 2004. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

EXECUTED this 16th day of December 2004.

/s/ Robert G. Klahn

Robert G. Klahn

OSB No. 80068

EXECUTED this 27th day of December 2004.

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. 02-02
)
BRIAN J. DOBIE,)
)
Accused.)

Counsel for the Bar: Mary A. Cooper
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 9-101(C)(3) and DR 9-101(C)(4).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: January 10, 2005

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

DATED this 10th day of January 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Jill A. Tanner, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Brian J. Dobie, 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 lawyers.

2.

The Accused, Brian J. Dobie, 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. He currently has 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 24, 2004, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 9-101(C)(3) 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

6.

From 1992 until late 2000, the Accused represented Cynthia Moffett. During the course of this representation, the Accused received money from Ms. Moffett in connection with trusts he had established on her behalf, and made expenditures of these monies in accordance with Ms. Moffett’s instructions and the stated purposes of the trusts. When the representation terminated, Ms. Moffett hired new counsel, K. Garl Long, who asked the Accused to forward various accounting records and other parts of Ms. Moffett’s files to him.

7.

The Accused failed to maintain or preserve for a period of at least five years after his representation of Ms. Moffett concluded, adequate financial records concerning her matter, including banking records, accountings, statements of disbursements, and other financial records. Thus, when Mr. Long asked the Accused to provide Ms. Moffett with complete financial records and a complete accounting of the funds he had received from her, the Accused was unable to do so.

Violations

8.

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

Sanction

9.

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

A. *Duty Violated.* The Accused violated his duty to his client to preserve and keep records of client property. *Standards*, § 4.1.

B. *Mental State.* The Accused’s mental state was negligent in that he deviated from the standard of care that a reasonable lawyer would have exercised in this situation. *Standards*, at 7.

C. *Injury.* The client was exposed to potential injury by the Accused’s failure to keep proper records concerning her property. *Standards*, at 7.

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

1. Prior disciplinary offense. *Standards*, § 9.22(a). On December 23, 1997, a trial panel found the Accused guilty of violating DR 6-101(B) and DR 7-101(A)(2) in one matter, and DR 9-101(C)(3) in another. *In re Dobie*, 12 DB Rptr 19 (1998). (The Accused maintains that the deficiencies in his recordkeeping in the present case predated the discipline imposed upon him in connection with this earlier case, and also maintains that those deficiencies have since been addressed.)

2. 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. Upon reconstructing his records from other sources, the Accused demonstrated that he did not convert client funds. *Standards*, § 9.32(b).

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

10.

Oregon lawyers who have engaged in similar misconduct have been publicly reprimanded. *See, e.g., In re Sarriugarte*, 4 DB Rptr 53 (1990) (failure to release prior client files to new lawyer upon request); *In re Klemp*, 11 DB Rptr 1 (1997) (failure to retain copies of bank records and to maintain ledgers showing accounts held in trust for clients); *In re Stimac*, 14 DB Rptr 42 (2000) (failure to promptly deliver client files after they are requested by client's new lawyer); *In re Grimes*, 15 DB Rptr 241 (2001) (failure to provide accounting due to lawyer's failure to maintain adequate accounting records).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for his violation of DR 9-101(C)(3) and DR 9-101(C)(4).

12.

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 under the terms of BR 3.6.

EXECUTED this 3rd day of January 2005.

/s/ Brian J. Dobie

Brian J. Dobie

OSB No. 90249

EXECUTED this 3rd day of January 2005.

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper

OSB No. 91001

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 04-85
)
ROBERT E. BOTTA,)
)
Accused.)

Counsel for the Bar: Michael F. Conroyd; Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),
and DR 7-102(A)(5). Stipulation for Discipline.
90-day suspension.
Effective Date of Order: March 11, 2005

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 60 days from the date of this order, for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5).

DATED this 10th day of January 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Hon. Jill A. Tanner, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Robert E. Botta, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 2000, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On November 5, 2004, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Gonzalez Matter

Facts

5.

The Accused was court appointed to represent Gilberto Gonzalez (hereinafter “Gonzalez”) in the defense of some criminal matters.

6.

On January 13, 2004, Gonzalez entered a guilty plea to some of the charges pending against him. At the time, the court directed that Gonzalez be evaluated by a psychiatrist before any sentence would be imposed. A sentencing hearing was scheduled for January 29, 2004.

7.

At the January 29, 2004, hearing, the Accused represented to the court that he had contacted the psychiatrist but that the evaluation of Gonzalez had not been completed because the psychiatrist had not timely responded to the Accused's request for an evaluation. At the time the Accused made this representation to the court he knew that it was false as he had not yet contacted the psychiatrist. Based upon the Accused's false representation, the court rescheduled the sentencing hearing to February 6, 2004.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) of the Code of Professional Responsibility.

Bunse Matter

Facts

9.

On November 6, 2003 the Accused was retained by Jason Bunse (hereinafter "Bunse") regarding a probation violation.

10.

On December 4, 2003, Bunse entered a plea denying the violation. The court set a hearing for January 9, 2004.

11.

On January 8, 2004, Bunse appeared at the Accused's office and informed the Accused that he had not yet contacted witnesses for the January 9, 2004, hearing. Bunse asked the Accused to try and get the hearing rescheduled.

12.

On January 8, 2004, the Accused represented to the court in a telephone conversation that Bunse could not attend the hearing the following day because he was stranded in Portland due to inclement weather. At the time the Accused made that representation to the court he knew that it was false. As a result of the Accused's false representation, the court rescheduled the hearing to January 24, 2004.

Violations

13.

The Accused admits that by engaging in the conduct described in paragraphs 9 through 12 he violated DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5) 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 lawyer’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 the court and to avoid conduct prejudicial to the administration of justice. *Standards*, § 6.1.

B. *Mental State.* The Accused acted intentionally.

C. *Injury.* The court sustained actual injury in that it relied upon the Accused’s false representations in deciding how to proceed in the matters before it. Neither of the Accused’s clients sustained injury.

D. *Aggravating Factors.* The following aggravating circumstances are present:

1. Dishonest or selfish motive. *Standards*, § 9.22(b).

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

E. *Mitigating Factors.* The following mitigating circumstances are present:

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

2. Personal or emotional problems. At the time, the Accused was suffering from alcohol dependency, adjustment disorder with depressed mood, and chronic posttraumatic stress disorder. The Accused has abstained from the consumption of alcohol since February 2004. He has obtained treatment for the above-referenced conditions and has complied with and continues to comply with the treatment plan outlined by his doctor. *Standards*, § 9.32(c).

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

4. Inexperience in the practice of law. At the time of the underlying events, the Accused had been licensed to practice law in Oregon since 2000. *Standards*, § 9.32(f).

5. Remorse. *Standards*, § 9.32(m).

15.

The *Standards* provide that suspension is generally appropriate when a lawyer knows that false statements are being made to the court and those statements cause injury or potential injury to a party to the legal proceeding, or cause an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.12.

16.

Oregon case law supports the imposition of a suspension where a lawyer makes misrepresentations to a court. *In re Hiller and Jansen*, 298 Or 526, 694 P2d 540 (1985) (120-day suspension for lawyers who filed an affidavit with the court attesting to sale of property when lawyers knew there was no consideration for the sale and buyer was employed by the lawyers); *In re Morris*, 326 Or 493, 953 P2d 387 (1998) (120-day suspension for lawyer who altered and then filed with court a final account for services rendered as counsel for a personal representative after statement had already been signed and notarized); *In re Page*, 326 Or 572, 955 P2d 239 (1998) (reciprocal discipline case in which lawyer was suspended for 30 days for altering and then filing with court a document that had already been signed by opposing counsel); *In re Jones*, 326 Or 195, 951 P2d 149 (1997) (45-day suspension for lawyer who signed bankruptcy documents in blank notwithstanding the existence of a perjury clause); *In re Hedrick*, 312 Or 442, 820 P2d 1187 (1991) (two-year suspension for lawyer who falsely stated in a petition to submit a will to probate court that the will in question was testators' last will when lawyer knew that a later will existed); *In re Walker*, 293 Or 297, 647 P2d 468 (1982) (30-day suspension for lawyer who misrepresented the status of decedent's estate to court); *In re Green*, 290 Or 291, 620 P2d 1379 (1980) (60-day suspension for lawyer who knowingly failed to inform court that property conservator was seeking to purchase for benefit of a protected minor belonged to conservator, who was also lawyer's spouse).

17.

Consistent with the *Standards* and Oregon case law, and because the mitigating circumstances outweigh the aggravating circumstances, the parties agree that the Accused shall be suspended from the practice of law for 90 days for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(5), the sanction to be effective on the 60th day after this stipulation has been approved by the Disciplinary Board.

18.

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

EXECUTED this 28th day of December 2004.

/s/ Robert E. Botta

Robert E. Botta

OSB No. 00027

EXECUTED this 3rd day of January 2005.

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. 04-19, 04-137
)
JON S. HENRICKSEN,)
)
Accused.)

Counsel for the Bar: Floyd H. Shebley; Stacy J. Hankin
Counsel for the Accused: Susan D. Isaacs
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 9-101(A),
DR 9-101(C)(3), and DR 9-101(C)(4).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: February 9, 2005

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 30 days from the date of this order or February 1, 2005, whichever is later, for violation of DR 1-102(A)(3), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4).

DATED this 10th day of January 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Hon. Jill A. Tanner, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Jon S. Henricksen, 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 lawyers.

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 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 November 22, 2004, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) in the Searls matter and DR 1-102(A)(3) in the Walters 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.

Searls Matter

(Case No. 04-19)

Facts

5.

On or about October 5, 2000, Trace Searls (hereinafter “Searls”) retained the Accused in connection with a criminal matter. Pursuant to an oral fee agreement, Searls paid the Accused \$10,000. On October 5, 2000, the Accused deposited the \$10,000 into his lawyer trust account, and immediately withdrew \$5,000 of it, based on his understanding, without written confirmation, that the fee was nonrefundable and earned upon receipt.

6.

On October 16, 2000, the Accused accounted for the use of a portion of the \$10,000 he had received from Searls. However, by this accounting, there remained nearly \$2,000 of Searls' funds in the Accused's lawyer trust account. The Accused failed to provide a subsequent accounting for these remaining funds.

7.

On October 31, 2000, and February 15, 2001, the Accused received funds representing refunds of Searls' bail money in the amount of \$15,000 and \$8,455, respectively. The Accused failed to render an accounting to Searls regarding the use of these funds.

8.

Beginning in late January 2001, Searls and his agents made numerous requests for Searls' file materials from the Accused. The Accused did not deliver Searls' file materials to Searls' agents until late August 2001.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Walters Matter

(Case No. 04-137)

Facts

10.

In early July 2004, the Accused received a check from the Oregon Department of Revenue payable to him and Victoria Walters (hereinafter "Walters"), his former wife. The Accused knew that he was entitled to receive only half of the funds.

11.

A few days after receiving the check, the Accused, without authority from Walters, endorsed her name on the back of the check and deposited the funds into his personal bank account.

12.

The Accused sent Walters her half of the funds after she contacted him in late July 2004.

13.

The Bar does not contend that at the time the Accused endorsed Walters's name, he intended to injure or defraud her.

Violations

14.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 13, he violated DR 1-102(A)(3) 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 lawyer'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 properly handle client funds and property. *Standards*, § 4.1. He also violated his duty to maintain his own personal integrity. *Standards*, § 5.1.

B. *Mental State.* The Accused acted negligently in the Searls matter and intentionally in the Walters matter.

C. *Injury.* "Injury" is harm to a client, the public, the legal system, or the profession which results from the lawyer's misconduct. *Standards*, at 7.

Searls sustained potential injury as a result of the Accused's failure to account in that he was uncertain whether the Accused actually earned the funds that were paid to him. However, no actual injury occurred because the Accused earned the funds he retained in the Searls matter. Searls was also frustrated with the Accused's failure to promptly return the file to him or his agents.

Walters sustained potential injury as a result of the Accused's conduct.

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

1. Dishonest or selfish motive in the Walters matter. *Standards*, § 9.22(b).
2. Multiple offenses. *Standards*, § 9.22(d).
3. Substantial experience in the practice of law as the Accused has been a lawyer in Oregon since 1973. *Standards*, § 9.22(i).

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

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Cooperative attitude toward the proceeding. *Standards*, § 9.32(e).
3. Character or reputation. *Standards*, § 9.32(g).
4. Remorse. *Standards*, § 9.32(m).

16.

The *Standards* provide that a period of suspension is generally appropriate when a lawyer knowingly engages in certain types of conduct that seriously adversely reflects on the lawyer's fitness to practice, while a reprimand is generally appropriate when a lawyer knowingly engages in conduct that involves dishonesty, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. *Standards*, §§ 5.12, 5.13.

17.

Oregon case law supports the imposition of a suspension under these circumstances. *In re Magar*, 312 Or 139, 817 P2d 289 (1991) (60-day suspension imposed on lawyer who, without authority, endorsed a check payable to someone else); *In re Boothe*, 303 Or 643, 740 P2d 785 (1987) (six-month suspension of lawyer who violated DR 9-101(C)(3) and DR 9-101(C)(4) in one matter and DR 1-102(A)(3), DR 1-102(A)(4), and DR 9-101(A) in another matter where, among other things, lawyer endorsed his client's name on a check knowing he was not authorized to do so).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 1-102(A)(3), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4), the sanction to be effective on the 30th day after this stipulation has been approved by the Disciplinary Board or February 1, 2005, whichever is the latest.

19.

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

EXECUTED this 19th day of December 2004.

/s/ Jon S. Henricksen

Jon S. Henricksen

OSB No. 73135

EXECUTED this 3rd day of January 2005.

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. 04-22
)
B. RUPERT KOBLEGARDE,)
)
Accused.)

Counsel for the Bar: John M. Junkin; Stacy J. Hankin
Counsel for the Accused: Bradley F. Tellam
Disciplinary Board: None
Disposition: Violation of DR 5-105(E). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: January 19, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 5-105(E).

DATED this 19th day of January 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1970, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On December 1, 2004, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 5-105(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.

In July 1999, the Accused was retained by Bernice Greening (hereinafter “Greening”) to represent her in an estate planning matter. On September 3, 1999, Greening executed a revocable living trust, a power of attorney, a pour-over will and a warranty deed prepared by the Accused. After September 3, 1999, the Accused continued to represent Greening in the estate planning matter.

6.

On or about September 3, 1999, the Accused undertook to represent Sharon Ketchum (hereinafter “Ketchum”), Greening’s daughter, in a proceeding to appoint Ketchum as guardian and another person as conservator for Greening. On Ketchum’s behalf, the Accused prepared and filed a petition and affidavit in support of the appointment of a guardian and conservatorship for Greening.

7.

With regard to the guardianship and conservatorship matter, the interests of Greening and Ketchum were adverse. To the extent disclosure and consent was available to cure any conflict of interest, the Accused undertook to represent Ketchum in the guardianship and conservatorship matter without obtaining consent that complied with the full disclosure requirements of DR 10-101(B) from both Greening and Ketchum.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated DR 5-105(E) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 6-101(A) as set forth in the Amended Formal Complaint, upon the approval of this stipulation, is dismissed.

Sanction

10.

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

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

B. *Mental State.* The Accused acted negligently.

C. *Injury.* “Injury” is harm to a client, the public, the legal system, or the profession which results from the lawyer’s misconduct. *Standards*, at 7. Injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

Greening and Ketchum sustained potential injury.

D. *Aggravating Factors.* The following aggravating circumstances are present:

1. Prior disciplinary offenses. In 2002, the Accused was reprimanded for violating DR 6-101(A) (*In re Koblegarde*, 16 DB Rptr 374 (2002)). *Standards*, § 9.22(a).

2. Substantial experience in the practice of law; the Accused has been a lawyer in Oregon since 1970. *Standards*, § 9.22(i).

- E. *Mitigating Factors*. The following mitigating circumstances are present:
1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
 2. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
 3. Character and reputation. *Standards*, § 9.32(g).
 4. Delay. A complaint was not filed with the Bar until almost four years after the Accused's underlying conduct. *Standards*, § 9.32(j).

11.

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

12.

Prior case law supports the imposition of a public reprimand under these circumstances. *In re Mammen*, 9 DB Rptr 203 (1995) (reprimand for lawyer who engaged in a likely conflict of interest by representing interests adverse to current clients in an unrelated matter); *In re Powers*, 9 DB Rptr 167 (1995) (reprimand for lawyer who prepared a will and a deed conveying property on behalf of one client while simultaneously representing a beneficiary of the will in another matter); *In re Cohen*, 316 Or 657, 853 P2d 286 (1983) (reprimand for lawyer who simultaneously represented two clients where there was an actual conflict of interest among them).

13.

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

14.

The Accused shall also pay to the Bar its reasonable and necessary costs in the amount of \$707.75, incurred for his deposition. Should the Accused fail to pay \$707.75 in full by 60th day after approval of this stipulation by the Disciplinary Board, 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.

15.

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

Cite as *In re Koblegarde*, 19 DB Rptr 22 (2005)

EXECUTED this 3rd day of January 2005.

/s/ B. Rupert Koblegarde

B. Rupert Koblegarde

OSB No. 70079

EXECUTED this 5th day of January 2005.

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. 03-74, 03-75, 04-33,
)	04-63, 04-64
ERIC M. CUMFER,)	
)	SC S52107
Accused.)	

Counsel for the Bar:	J. Stefan Gonzalez; Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(B)(2), DR 5-101(A), DR 6-101(B), and DR 9-101(C)(4). Stipulation for Discipline. Two-year suspension.
Effective Date of Order:	February 4, 2005

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 in the State of Oregon for a period of two years. The sanction shall be effective three days from the date of this order.

DATED this 1st day of February 2005.

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

STIPULATION FOR DISCIPLINE

Eric M. Cumfer, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 9, 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 and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On April 16, 2004, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 6-101(B) and DR 1-103(C) concerning Case Nos. 03-74, 03-75, and 04-33. On June 11, 2004, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 6-101(B) and DR 1-103(C) concerning Case Nos. 04-63 and 04-64. 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. 04-33)

Facts and Violations

5.

On or about July 10, 2000, Anthony D. Smith (hereinafter “Smith”) was convicted of felony crimes, *State of Oregon v. Anthony D. Smith*, Jackson County Circuit Court Case No. 93800BFE. On or about August 3, 2000, Smith’s lawyer filed a notice of appeal (hereinafter “Smith Appeal”). On August 30, 2000, the Court of Appeals appointed the Accused to represent Smith on appeal. On October 30, 2001, the Accused filed an opening brief in the Smith Appeal. The state filed the

respondent's brief on November 6, 2002. Before the Court of Appeals filed its decision, the Accused told Smith that he would file a petition for Supreme Court review if the Court of Appeals affirmed his convictions.

6.

On May 1, 2003, the Court of Appeals filed its decision affirming Smith's convictions, without opinion. The Court of Appeals filed the appellate judgment and closed the Smith Appeal on July 15, 2003. The Accused received a copy of the court's decision and the appellate judgment.

7.

On or about August 18, 2003, Smith discovered that the Court of Appeals had affirmed his conviction. On or about August 21, 2003, Smith instructed the Accused to take action to obtain relief from default, to reinstate his appeal, and to file a petition for Supreme Court review.

8.

After the Court of Appeals affirmed Smith's convictions, counsel for the State of Oregon told the Accused that the state was willing to stipulate to a reversal of Smith's convictions and remand the case to the trial court. The Court of Appeals had reversed the convictions of Smith's codefendants and remanded their cases to the trial court. *State v. McKinzie*, 186 Or App 384, 63 P3d 1214 (2003); *State v. Carter*, 186 Or App 678, 64 P3d 582 (2003). The Accused told counsel for the state that he would discuss the proposal with Smith and get back to him.

9.

Between about May 1, 2003, and October 10, 2003, the Accused:

(a) failed to notify Smith of the Court of Appeals' decision and appellate judgment;

(b) failed to provide Smith with a copy of the Court of Appeals' decision and the appellate judgment;

(c) failed to tell Smith about the state's proposal to stipulate to a reversal of Smith's convictions and remand Smith's case to the trial court for new trial;

(d) failed to file a petition for Supreme Court review;

(e) failed to take action to obtain relief from default and reinstate the Smith Appeal;

(f) failed to monitor the Smith Appeal;

(g) failed to communicate with Smith;

(h) failed to communicate with counsel for the state;

- (i) failed to communicate with the court concerning the Smith Appeal; and
- (j) failed to take action to protect Smith's appeal rights.

10.

On or about October 10, 2003, Smith filed on his own behalf a motion for relief from default and for an extension of time to file a petition for Supreme Court review. The court allowed Smith's motion on October 22, 2003. The Accused received a copy of the court's order and was required to file a petition for review within 30 days. On November 13, 2003, the Supreme Court directed the Accused to confirm within seven days whether he continued to represent Smith. On November 24, 2003, Smith filed a motion for appointment of a new lawyer to represent his interests.

11.

Between about October 10, 2003, and December 1, 2003, the Accused:

- (a) failed to file a petition for Supreme Court review;
- (b) failed to tell Smith about the state's proposal to stipulate to a reversal of Smith's convictions and remand Smith's case to the trial court;
- (c) failed to take action to obtain relief from default and reinstate the Smith Appeal;
- (d) failed to take action to extend the time to file a petition for Supreme Court review;
- (e) failed to monitor the Smith Appeal;
- (f) failed to communicate with Smith;
- (g) failed to communicate with counsel for the state;
- (h) failed to communicate with or respond to the inquiry of the Supreme Court concerning his continued representation of Smith; and
- (i) failed to take action to protect Smith's appeal rights.

12.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to him in violation of DR 6-101(B) of the Code of Professional Responsibility.

McCarvill Matter

(Case No. 03-74)

Facts and Violations

13.

On or about June 25, 1999, Brian McCarvill (hereinafter “McCarvill”) filed a petition for postconviction relief, *Brian McCarvill v. Jean Hill*, Superintendent Eastern Oregon Correctional Institution, Umatilla County Case No. CV990797 (hereinafter “McCarvill Case”). On or about September 12, 2000, the trial court denied McCarvill’s petition, and on November 6, 2000, filed a judgment in favor of the defendant in the McCarvill Case.

14.

In or about December 2000, McCarvill retained and paid the Accused to pursue an appeal of the trial court’s decision in the McCarvill Case. The Accused filed a notice of appeal in the McCarvill Case on December 7, 2000. Between about January 2, 2001, and March 21, 2002, the Accused failed to file an opening brief and filed 12 motions for extension of time to file an opening brief in the McCarvill Case. The court granted the Accused’s motions, but on March 27, 2002, ordered that the opening brief be filed by April 4, 2002, and that no further extensions of time would be allowed. On April 4, 2002, the Accused filed the opening brief in the McCarvill Case.

15.

On March 27, 2003, the Court of Appeals filed its decision affirming the trial court’s decision, and on May 20, 2003, filed the appellate judgment in the McCarvill Case. The Accused received a copy of the Court of Appeals’ decision and the appellate judgment. Prior to and after March 27, 2003, the Accused failed to communicate with or respond to McCarvill’s and his representatives’ inquires concerning the McCarvill Case.

16.

Between about March 27, 2003, and July 10, 2003, the Accused:

- (a) failed to notify McCarvill about the Court of Appeals’ decision and appellate judgment;
- (b) failed to provide McCarvill with a copy of the Court of Appeals’ decision and appellate judgment;
- (c) failed to file a petition for Supreme Court review;
- (d) failed to take action to obtain relief from default and extend the time to file a petition for Supreme Court review;
- (e) failed to communicate with McCarvill;

- (f) failed to communicate with the court;
- (g) failed to monitor the McCarvill Case; and
- (h) failed to take action to protect McCarvill's appeal rights.

17.

On or about May 28, 2003, McCarvill discovered that the Court of Appeals had affirmed the decision of the trial court and had entered an appellate judgment. On May 29, 2003, McCarvill filed a motion for immediate recall of appellate judgment for the purpose of seeking review, motion for extension of time to file petition for review, and motion for the appointment of counsel, copies of which were served on the Accused. On June 25, 2003, the court's appellate legal counsel requested that the Accused, within 14 days, file a response to McCarvill's allegations and to advise the court if the Accused was willing to represent McCarvill for the purpose of filing a petition for Supreme Court review of the Court of Appeals' decision. The Accused failed to file a response to McCarvill's allegations.

18.

On July 1, 2003, the Supreme Court granted McCarvill's motion for relief from default, and granted him an extension of time until August 31, 2003, to file a petition for review. The court took no action on McCarvill's motion to recall the appellate judgment and reinstate the appeal, and held in abeyance McCarvill's motion for appointment of counsel. Thereafter, the Accused continued his representation of McCarvill, without making full disclosure to and obtaining McCarvill's consent to his continued representation, when the exercise of his professional judgment on behalf of McCarvill was or reasonably may have been affected by his own financial, business, property, or personal interests.

19.

In or about July 2003, the Accused notified McCarvill that he would file a petition for Supreme Court review of the decision of the Court of Appeals. On July 10, 2003, the Accused filed a petition for review. The Accused failed to provide McCarvill with a copy of the petition or to notify McCarvill that he had filed a petition for Supreme Court review. On October 2, 2003, the Supreme Court filed an order denying review of the Court of Appeals' decision in the McCarvill Case, and on November 17, 2003, filed an order dismissing McCarvill's motion for appointment of counsel as moot.

20.

Between about July 10, 2003, and November 17, 2003, the Accused:

- (a) failed to provide McCarvill with a copy of the Court of Appeals' decision;
- (b) failed to provide McCarvill with a copy of the appellate judgment;

(c) failed to provide McCarvill with a copy of the petition for Supreme Court review;

(d) failed to provide McCarvill with a copy of the Supreme Court's order denying McCarvill's petition for review; and

(e) failed to communicate with McCarvill.

21.

On June 4, 2003, McCarvill filed a complaint with the Bar concerning the Accused's conduct. On June 9, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response by June 30, 2003. On June 30, 2003, the Accused requested an extension of time until July 15, 2003, to provide his response. Disciplinary Counsel's Office granted the request, but the Accused then failed to provide the response.

22.

On July 22, 2003, Disciplinary Counsel's Office again requested the Accused's response to McCarvill's complaint by July 31, 2003. The Accused failed to respond, and on August 20, 2003, the matter was referred to the Local Professional Responsibility Committee for investigation. On March 10, 2004, Disciplinary Counsel's Office requested additional information from the Accused concerning the McCarvill complaint by March 23, 2004. The Accused did not respond.

23.

In or about December 2000, McCarvill paid the Accused \$17,000 for legal services to be preformed concerning the appeal of the McCarvill Case. In or about July 2003, the Accused represented to McCarvill that all of the funds McCarvill paid for legal services had not been used and that he would return the unused funds to McCarvill. Between about July 2003 and December 2003, McCarvill requested that the Accused deliver the funds to him. The Accused failed to deliver the funds. Between about August 2003 and December 2003, McCarvill and his representatives requested that the Accused deliver McCarvill's file and the trial court transcripts to McCarvill's Federal Public Defender. The Accused failed to deliver McCarvill's file and the transcripts as requested.

24.

The Accused admits that the aforesaid conduct constituted failure to fully respond to the inquiries of the disciplinary authorities; a lawyer self-interest conflict; neglect of a legal matter entrusted to him; and failure to promptly deliver client funds and property as requested by the client, in violation of DR 1-103(C), DR 5-101(A), DR 6-101(B), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Tumbaco-Chavez Matter

(Case No. 03-75)

Facts and Violations

25.

On July 8, 2003, Victor Tumbaco-Chavez filed a complaint with the Bar concerning the Accused's conduct. On July 9, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response by July 30, 2003. The Accused did not respond. On August 5, 2003, Disciplinary Counsel's Office again requested the Accused's response to the Tumbaco-Chavez's complaint by August 12, 2003. The Accused failed to respond, and on August 20, 2003, the matter was referred to the Local Professional Responsibility Committee for investigation.

26.

The Accused admits that the aforesaid conduct constituted failure to respond fully to the inquiries of the disciplinary authorities in violation DR 1-103(C) of the Code of Professional Responsibility.

Cunningham Matter

(Case No. 04-64)

Facts and Violations

27.

On or about January 24, 2001, the court appointed the Accused to represent Clinton Cunningham (hereinafter "Cunningham") on appeal of an adverse decision denying Cunningham's petition for postconviction relief, *Clinton W. Cunningham v. S. Frank Thomson, Superintendent, Oregon State Penitentiary*, Case No. CA A 107806 (hereinafter "Cunningham Case").

28.

On or about February 5, 2003, the Court of Appeals affirmed the trial court's decision in the Cunningham Case. Thereafter, the Accused requested and was granted extensions of time and, on or about March 27, 2003, filed a petition for reconsideration of the decision with the Court of Appeals. On or about June 12, 2003, the court allowed the petition for reconsideration and modified in part and adhered in part to its previous decision. The Accused received a copy of the Court of Appeals' decisions. On or about August 23, 2003, the Court of Appeals filed the appellate judgment and the Cunningham Case was closed. The Accused received a copy of the appellate judgment.

29.

Prior to and between about February 2003 and February 2004, the Accused:

- (a) failed to notify Cunningham about the Court of Appeals' February 5, 2003, decision;
- (b) failed to notify Cunningham about the motion for reconsideration of the Court of Appeals' February 5, 2003, decision;
- (c) failed to notify Cunningham about the Court of Appeals' June 12, 2003, decision;
- (d) failed to notify Cunningham that the Court of Appeals had filed an appellate judgment and closed the case;
- (e) failed to provide Cunningham with a copy of the Court of Appeals' decisions and the appellate judgment;
- (f) failed to seek an extension of time to file a petition for Supreme Court review;
- (g) failed to file a petition for Supreme Court review;
- (h) failed to take action to obtain relief from default and extend the time to file a petition for Supreme Court review;
- (i) failed to respond to Cunningham's letters and telephone messages;
- (j) failed to communicate with Cunningham;
- (k) failed to communicate with co-counsel on appeal;
- (l) failed to monitor the Cunningham Case; and
- (m) failed to take action to protect Cunningham's appeal rights.

30.

Prior to and between February 2003 and February 2004, the Accused accepted and continued employment as Cunningham's lawyer when he knew or it was obvious that his continued representation would result in violation of a disciplinary rule.

31.

On or about January 21, 2004, Cunningham filed a complaint with the Bar concerning the Accused's conduct. On February 5, 2004, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response by February 26, 2004. The Accused did not respond. On March 8, 2004, Disciplinary Counsel's Office again requested the Accused's response to the Cunningham complaint by March 15, 2004. The Accused did not respond.

32.

On March 16, 2004, the Accused telephoned Disciplinary Counsel's Office and requested an extension of time until April 12, 2004, to provide his explanation concerning Cunningham's complaint. The Bar granted the request. Thereafter, the Accused failed to provide the explanation. On April 23, 2004, Disciplinary Counsel's Office again requested the Accused's explanation by April 30, 2004. The Accused did not respond.

33.

The Accused admits that the aforesaid conduct constituted conduct prejudicial to the administration of justice; failure to respond fully to the inquiries of the disciplinary authorities; failure to withdraw from the representation; and neglect of a legal matter entrusted to him, in violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(B)(2), and DR 6-101(B) of the Code of Professional Responsibility.

Cooper/Ennis Complaint

(Case No. 04-63)

Facts and Violations

34.

On or about September 15, 2000, the Court of Appeals appointed the Accused to represent Jamison Ennis (hereinafter "Ennis") on appeal of Ennis's conviction for felony murder, *State of Oregon v. Jamison Ennis*, Marion County Circuit Court Case No. 99C41999, CA A 107806 (hereinafter "Ennis Case").

35.

On or about March 13, 2003, the Court of Appeals affirmed the trial court's decision in the Ennis Case. The Accused received a copy of the Court of Appeals' decision. On or about May 8, 2003, the Court of Appeals filed the appellate judgment and the Ennis Case was closed. The Accused received a copy of the appellate judgment.

36.

Between about February 2003 and February 2004, the Accused:

- (a) failed to notify Ennis about the Court of Appeals' decision;
- (b) failed to notify Ennis that the Court of Appeals had filed an appellate judgment and closed the case;
- (c) failed to provide Ennis with a copy of the Court of Appeals' decision and the appellate judgment;
- (d) failed to seek an extension of time to file a petition for Supreme Court review;

- (e) failed to file a petition for Supreme Court review;
- (f) failed to take action to obtain relief from default and extend the time to file a petition for Supreme Court review;
- (g) failed to respond to Ennis's letters and telephone messages;
- (h) failed to communicate with Ennis;
- (i) failed to monitor the Ennis Case; and
- (j) failed to take action to protect Ennis's appeal rights.

37.

In or about February 2004, Ennis retained new counsel to represent him. On or about February 17, 2004, Ennis's new counsel filed a complaint with the Bar concerning the Accused's conduct. On March 8, 2004, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response by March 29, 2004.

38.

On April 2, 2004, the Bar received a letter from the Accused. On April 7, 2004, Disciplinary Counsel's Office asked the Accused to address Ennis's allegation that he had not responded to Ennis's letters and messages and that he provide the response by April 21, 2004. The Accused did not respond. On April 23, 2004, Disciplinary Counsel's Office again requested the Accused's response by April 30, 2004. The Accused did not respond.

39.

The Accused admits that the aforesaid conduct constituted conduct prejudicial to the administration of justice; failure to cooperate and respond to the inquiries of the disciplinary authorities; and neglect of a legal matter entrusted to him, in violation of DR 1-102(A)(4), DR 1-103(C), and DR 6-101(B) of the Code of Professional Responsibility.

Sanction

40.

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 lawyer'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 1-102(A)(4), DR 1-103(C), DR 2-110(B)(2), DR 5-101(A), DR 6-101(B), and DR 9-101(C)(4), the Accused violated

duties to clients, the legal system, and the profession. *Standards*, §§ 4.1, 4.3, 4.4, 6.2, 7.0.

D. *Mental State*. “Intent” is the conscious objective or purpose to accomplish a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, at 7. The Accused knew that he was responsible for and needed to take action concerning each of his client’s legal matters, but failed to act. The Accused also knew that the disciplinary authorities made numerous requests for his explanations and documents, but failed to respond.

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*, at 7.

The Accused caused actual injury to each of his clients. He did not complete the work he was required to perform. Because the Accused failed to act, the availability of direct appeal and postconviction relief remedies was jeopardized for each of the clients. Judicial determination of the clients’ cases was delayed. The Accused caused Smith serious injury. Smith’s codefendants’ cases were reversed and remanded to the trial court. Through negotiated pleas their cases were concluded and they were released from custody. Smith, who contended that he was the least culpable of the three defendants, was not able to consider or take advantage of the state’s proposal. He remains in custody and is still attempting to pursue his appeal rights. All of the clients were frustrated and upset because the Accused failed to communicate with them and failed to advance and protect their appellate remedies.

The legal system and the disciplinary authorities were injured. Judicial determination of the clients’ issues on appeal has been delayed. The court has been required to devote valuable time to address the Accused’s conduct. The disciplinary authorities also devoted valuable additional time and resources to investigate the complaints because the Accused did not respond. The Accused also caused injury to the profession. The profession is judged by the conduct of its members.

D. *Aggravating Factors*. “Aggravating factors” are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are several aggravating factors in this case. There are multiple offenses and a pattern of misconduct. *Standards*, § 9.22(d), (c). The Accused delayed the regulatory process. *Standards*, § 9.22(e). The Accused has substantial experience in the practice of law. He was admitted to practice in Florida in 1988, and in Oregon in 1994. *Standards*, § 9.22(i). The clients were vulnerable in that they were incarcerated and relied on the Accused to protect and advance their interests and to keep them informed concerning their legal matters. *Standards*, § 9.22(h).

E. *Mitigating Factors*. The Accused has no prior record of discipline. *Standards*, § 9.32(a). There is an absence of selfish or dishonest motives. *Standards*, § 9.32(b). There is some evidence that the Accused suffered from personal or emotional problems at times relevant to this matter. *Standards*, § 9.32(c). The Accused is remorseful. *Standards*, § 9.32(m).

41.

The *Standards* provide suspension is generally appropriate when a lawyer fails to perform services for a client and causes injury or potential injury to a client; or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2. Case law is in accord. *See, e.g., In re Miles*, 324 Or 218, 923 P2d 1219 (1996); *In re Bourcier*, 322 Or 561, 566–567, 909 P2d 647 (1996); *In re Parker*, 330 Or 541, 9 P3d 107 (2000); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988).

42.

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 two years for violation of DR 1-102(A)(4) (two counts), DR 1-103(C) (four counts), DR 2-110(B)(2), DR 5-101(A), DR 6-101(B) (four counts), and DR 9-101(C)(4), the suspension to be effective February 1, 2005, or three days after this stipulation is approved, whichever is later.

In addition, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$734.75, incurred for the Accused's deposition. The Bar may, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full. The amount is due immediately and shall be paid in full before the Accused is eligible to apply for reinstatement as an active member of the Oregon State Bar.

43.

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

Cite as *In re Cumfer*, 19 DB Rptr 27 (2005)

DATED this 14th day of January 2005.

/s/ Eric M. Cumfer

Eric M. Cumfer

OSB No. 94187

OREGON STATE BAR

By: /s/ Jane E. Angus

Jane E. Angus

OSB No. 73014

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of)	Case No. 97-217
)	
ELISSA M. RYAN,)	SC S48903
)	
Accused.)	

**AMENDED ORDER ALLOWING MOTION TO
VACATE APPELLATE JUDGMENT**

Upon consideration by the court.

The court allows the Oregon State Bar’s motion to vacate the appellate judgment of April 8, 2002. The suspension will automatically be vacated and Elissa M. Ryan will be reinstated as an active member of the Bar once she pays the Bar dues and PLF assessment. Ryan’s administrative suspension of April 11, 1997, is declared void. The Bar shall refund to Ryan \$2,749.65 in costs. All additional relief requested by Elissa M. Ryan is denied. The case is dismissed.

DATED this 1st day of February 2005.

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

**MOTION TO VACATE APPELLATE JUDGMENT
AND SUSPENSION AND TO DISMISS**

The Oregon State Bar moves the Supreme Court to vacate the appellate judgment entered in this proceeding and the suspension imposed upon the Accused effective April 8, 2002, and to dismiss the proceeding in its entirety. This motion is based on the following points and authorities:

POINTS AND AUTHORITIES

1. On February 5, 2002, the court issued its order in *In re Ryan*, SC S48903, accepting the parties’ stipulation upon review and suspending the Accused from the practice of law for 18 months. A copy of the court’s order is attached to this motion as Exhibit A. A copy of the stipulation upon review with the trial panel opinion in this matter is attached to this motion as Exhibit B. The Appellate Judgment was effective April 8, 2002.

2. The discipline imposed upon the Accused in this proceeding was based solely on charges that the Accused practiced law during a period when she was suspended from Bar membership due to a failure to pay the Professional Liability Fund (“PLF”) assessment in 1997, and that the Accused thereafter misrepresented that she had done so in the application the Accused filed with the Bar to become reinstated to active membership status. For this conduct, the Accused was disciplined for violation of DR 1-102(A)(3), DR 3-101(B), DR 7-102(A)(5), ORS 9.160, and ORS 9.527(4).

3. On December 26, 2003, the Supreme Court decided the case of *In re Leisure*, 336 Or 244, 82 P3d 144 (2003). In that case, the court determined that the notice procedures followed by the PLF in seeking to suspend a lawyer for failure to pay her PLF assessment installment were deficient under ORS 9.200(1), and therefore the resulting suspension of that lawyer was void.

4. Following the decision in *In re Leisure, supra*, the Bar’s Board of Governors undertook a study and determined that the notice procedures found deficient by the court were also used for many other PLF suspensions from 1984–2003. Applying the holding of the *Leisure* case, these suspensions, too, are void.

5. The disciplinary action initiated by the Bar through this proceeding, which resulted in the discipline imposed on the Accused, was predicated on a PLF suspension that suffers from the same deficient notice procedures identified in *In re Leisure* and, hence, is void.

6. If the Accused’s PLF suspension is void, she did not engage in misconduct when she practiced law during the period of the suspension and did not make misrepresentations in her reinstatement application when she denied having practiced law while suspended.

7. On September 25, 2004, the State Professional Responsibility Board authorized Disciplinary Counsel to petition the court to vacate the appellate judgment entered and the discipline imposed in this proceeding.

In summary, the Bar asks the Supreme Court to vacate the appellate judgment and the suspension in this proceeding and to dismiss the proceeding in its entirety.

Respectfully submitted this 23rd day of November 2004.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro

Jeffrey D. Sapiro
OSB No. 78362
Disciplinary Counsel
5200 SW Meadows Road
Lake Oswego, OR 97035
503-431-6319

EXHIBIT A
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 97-217
)
ELISSA M. RYAN,) SC S48903
)
Accused.)

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

ORDER ACCEPTING STIPULATION UPON REVIEW

Upon consideration by the court.

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

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

DATED this 5th day of February 2002.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.
Chief Justice

EXHIBIT B

STIPULATION UPON REVIEW

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

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

EXECUTED this 21st day of December 2001.

OREGON STATE BAR

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

EXECUTED this 20th day of December 2001.

/s/ Susan D. Isaacs
Susan D. Isaacs
OSB No. 79277

OPINION OF THE TRIAL PANEL

Introduction

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

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

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

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

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

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

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

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

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

Findings of Fact

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

The Accused chose to pay her 1997 PLF premium by installments. Her second installment was due no later than by 5:00 p.m., April 10, 1997. It was late. The

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

Accused knew that if she did not pay her PLF assessment on time, she would be suspended from the practice of law. She intended to pay her assessment on time. It was by her unintentional error that her payment arrived late to the PLF offices.

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

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

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

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

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

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

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

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

On April 25, 1997, the Accused practiced law. She telephoned another lawyer regarding a subpoena for a client's corporate records. She then called the client; they discussed the situation regarding the subpoena. Later, she conferred with another client on a different matter. Following that conversation, she prepared a draft motion and order for an extension of time to respond to a petition for attorney fees. She

billed her clients a total of about one hour for the legal work performed on April 25, 1997. This work constituted the unauthorized practice of law by the Accused, and she knew it. The Accused then left on vacation and was away until May 6, 1997.

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

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

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

From April 16 to May 8, 1997, the Accused never genuinely believed she was authorized to practice law. She hoped she would find a way to nullify the suspension or to legitimately practice law while she appealed the suspension, but from April 16 to the time she submitted her sworn statement in support of her petition for reinstatement on May 8, 1997, the Accused never genuinely believed she was

authorized to practice law. The distinction between the hopes of the Accused and her beliefs is an important one to draw. A person may hope to win the lottery, but not reasonably believe they are going to.

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

Conclusions of Law

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

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

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

As to the legal work the Accused performed after she submitted her petition for reinstatement on the morning of May 8, 1997, we conclude that the Accused made no representation about her intentions regarding the legal work she planned on doing while waiting for her reinstatement to become official. When the Accused

submitted her sworn statement to the Bar on May 8, 1997, the Bar only required her to make representations regarding her past conduct during her period of suspension. The statement the Bar required the Accused to swear to is not drafted in such a manner as to clearly require one to make a representation about his or her future intentions.

Sanction

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

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

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

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

C. *Injury.* "Injury" is harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from "little or no" injury to "serious" injury; a reference to "injury" alone indicates

any level of injury greater than “little or no injury.” ABA *Standards*, p. 7. “Potential injury” is the harm to a client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. ABA *Standards*, p. 7. Both actual injury and potential injury are to be considered in imposing a sanction for lawyer misconduct.

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

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

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

ABA *Standards*, § 5.11 provides, in part:

Disbarment is generally appropriate when:

. . . .

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

ABA *Standards*, § 7.1 provides:

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

ABA *Standards*, § 7.2 provides:

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

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

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

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

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

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

The Accused's misconduct in this case is less serious than was the conduct sanctioned in *Devers*, *Morin*, or *Yacob*. In *Devers*, the court disbarred a lawyer with substantial experience in the practice of law who engaged in multiple violations of

disciplinary rules, including filing a false affidavit with the Bar and engaging in the unauthorized practice of law after he had been suspended by the court. Here, the Accused was administratively suspended by the Bar and does not have substantial experience in the practice of law.

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

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

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

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

In *In re Huffman*, 331 Or 209, 13 P3d 994 (2000), the court imposed a two-year suspension on a lawyer with a prior record of serious misconduct. The accused lawyer, acting pro se, filed a motion to waive or defer the filing fee related to an appeal from an adverse judgment in a civil action. He later filed a motion to waive or defer the costs of preparing the transcript. In both instances, the lawyer asserted that he had “insufficient monies” to pay the costs and fees. This was not true; the lawyer had a net worth approaching at least a million dollars. The Court of Appeals denied the two motions, and the lawyer did not pursue them. Opposing counsel filed an ethics complaint with the Bar. The Supreme Court found that the lawyer had acted intentionally and had caused serious injury. The court stated that a lawyer’s intentional misrepresentation to a court is serious misconduct, because courts must be able to rely on the candor, honesty and integrity of the lawyer who appear before them. *In re Huffman, supra*, 331 Or at 229. Similarly, a lawyer’s intentional misrepresentation to the Bar is serious misconduct, since the Bar must be able to rely on the candor, honesty and integrity of the lawyers it licenses. Unlike the case under consideration, only aggravating circumstances existed in *Huffman*. We find *Huffman* and *Wyllie* to set the upper end of an appropriate sanction in this case.

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

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

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

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

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

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

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

Disposition

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

DATED this 11th day of June 2001.

/s/ William B. Kirby

William B. Kirby
Trial Panel Chairperson

/s/ John N. Berg

John N. Berg
Trial Panel Member

/s/ Thomas Jeffrey Hughes

Thomas Jeffrey Hughes
Trial Panel Public Member

Cite as 338 Or 29 (2005)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
D. SCOTT SUMMER,)
)
Accused.)

(OSB No. 01-199; SC S50870)

En Banc

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

Argued and submitted September 10, 2004. Decided February 3, 2005.

Christ T. Troupis, Troupis & Summer, Meridian, Idaho, argued the cause and filed the brief for the Accused.

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

PER CURIAM

The Accused is suspended from the practice of law for a period of 180 days, commencing 60 days from the date of filing of this decision.

SUMMARY OF THE SUPREME COURT OPINION

Accused Idaho lawyer, who is also licensed to practice law in Oregon, represented a client who had been in two unrelated automobile accidents 11 days apart from each other. The client had been injured only in the first accident and the Accused settled that injury claim with the insurer involved in that accident. One week later, the Accused attempted to recover for his client a second time for some of the same injuries by sending a demand letter to the self-insured company involved in the second accident, and by including with that demand many of the same medical records generated from the first accident. On those facts, an Idaho jury later found the Accused guilty of attempted theft by deception. *Held*: (1) Although BR 1.4(b) might ordinarily require the application of Idaho's disciplinary rules to a proceeding involving an Idaho lawyer, this court applies the disciplinary rules of Oregon when the effects of the Accused's conduct were felt both in Oregon and Idaho, and when the parties litigate the proceeding under Oregon's disciplinary rules as if the

predominant effect of the accused's conduct was clearly felt in Oregon. (2) The Bar proved by clear and convincing evidence that the Accused violated (DR) 1-102(A)(2) when he committed the criminal act of attempted theft by deception under Idaho's criminal code, and because attempted theft reflects adversely on a lawyer's honesty, trustworthiness, and fitness to practice law. (3) The Bar proved by clear and convincing evidence that the Accused violated both DR 1-102(A)(3) and DR 7-102(A)(5) when he made knowing misrepresentations and false statements of fact to the self-insured company involved in his client's second automobile accident. (4) For commission of a criminal act within the practice of law that involves theft, deceit, and dishonesty, the appropriate sanction is suspension from the practice of law for 180 days.

Cite as 338 Or 125 (2005)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
NORMAN A. PHILLIPS,)
)
Accused.)

(OSB Nos. 97-166, 97-167, 98-155; SC S49838)

En Banc

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

Argued and submitted January 12, 2004. Decided March 3, 2005.

Susan D. Isaacs, Beaverton, argued the cause and filed the briefs for the Accused.

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

PER CURIAM

The Accused is suspended from the practice of law for 36 months, effective 60 days from the date of the filing of this decision.

SUMMARY OF THE SUPREME COURT DECISION

The Oregon State Bar alleged that, in the course of using insurance agents to review his client's trusts and in sharing in commissions generated from the agents' sales of insurance products to his clients, the Accused had violated Disciplinary Rule (DR) 1-102(A)(1), DR 1-102(A)(3), DR 3-101(A), DR 4-101(B)(1), DR 4-101(B)(3), and *former* DR 5-101(A) (1996). A trial panel of the Disciplinary Board concluded that the Accused violated all of the rules as alleged except DR 3-101(A). As a sanction, the trial panel suspended the Accused from the practice of law for 24 months. *Held:* There was clear and convincing evidence to support the Bar's allegations regarding DR 1-102(A)(3), DR 4-101(B)(3), and *former* DR 5-101(A) (1996). The Accused is suspended from the practice of law for 36 months.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 04-92
)
DAVID L. RICH,)
)
Accused.)

Counsel for the Bar: Douglas C. Combs; Stacy J. Hankin
Counsel for the Accused: Jeffrey A. Bowersox
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: March 7, 2005

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, effective immediately, for violation of DR 1-102(A)(4) and DR 6-101(B).

DATED this 7th day of March 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Arnold S. Polk
Arnold S. Polk, Esq., Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

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 Washington County, Oregon.

3.

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

4.

On September 8, 2004, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 1-102(A)(4) (conduct prejudicial to the administration of justice) and DR 6-101(B) (neglect of a legal matter) 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.

Sometime before August 28, 2003, an order to show cause in the Washington County Circuit Court case *O’Grady v. Torgerson*, Case No. C031474DRB was served on Ryan Torgerson (hereinafter “Torgerson”) requiring him to appear on September 26, 2003, and show cause why his parenting and custody rights should not be suspended (hereinafter “parenting matter”).

6.

On or about August 28, 2003, Torgerson retained the Accused to represent him in three separate matters, one of which was the parenting matter described in paragraph 5 above. On August 28, 2003, the Accused signed a Notice of

Representation in all three matters and a Request for Hearing in the parenting matter. The pleadings associated with the parenting matter were served on Fiona O'Grady (hereinafter "O'Grady"), but were inadvertently not filed with the court.

7.

On September 24, 2003, the court granted O'Grady's motion to reset the September 26, 2003, hearing date, and the hearing was rescheduled to November 3, 2003. The court did not notify the Accused of the new hearing date because the court had not been informed that the Accused was representing Torgerson.

8.

After September 24, 2003, the Accused failed to pursue Torgerson's legal matter in that he failed to follow up on the status of the parenting matter or determine the new date for the show cause hearing.

9.

On November 3, 2003, the Accused did not appear at the show cause hearing. The hearing was rescheduled for January 23, 2004.

10.

Either on or shortly after November 3, 2003, the Accused learned that his Notice of Representation and Request for Hearing had not been filed with the court. He also learned that the show cause hearing had been rescheduled, but did not learn of the new date.

11.

After November 3, 2003, the Accused failed to pursue Torgerson's legal matter in that he failed to file a Notice of Representation with the court and failed to determine the new date for the show cause hearing.

12.

On January 23, 2004, the Accused failed to appear at the show cause hearing. Torgerson proceeded per se.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 12, he violated DR 1-102(A)(4) and DR 6-101(B) 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 lawyer’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 Torgerson and to avoid conduct prejudicial to the administration of justice. *Standards*, §§ 4.4, 6.1.

B. *Mental State.* The Accused acted negligently when he inadvertently failed to assure that Notice of Representation was filed with the court. His conduct became knowing after he discovered that the Notice of Representation had not been filed with the court, but did not take steps to remedy the situation.

C. *Injury.* The court and O’Grady sustained actual injury because the show cause hearing had to be rescheduled due to the Accused’s failure to appear. Torgerson also sustained actual injury in that the resolution of his legal matter was delayed by the Accused’s conduct.

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

1. Prior disciplinary offenses. In 1999, the Accused was reprimanded for violating DR 5-105(E) (current client conflict of interest). *In re Rich*, 13 DB Rptr 67 (1999); *Standards*, § 9.22(a).

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

3. Substantial experience in the practice of law as the Accused has been licensed to practice law in Oregon since 1979. *Standards*, § 9.22(i).

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

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

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

15.

The *Standards* provide that a reprimand 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. A reprimand is also appropriate when a lawyer negligently engages in conduct prejudicial to the administration of justice and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.13.

16.

Imposition of a reprimand is consistent with Oregon case law. *See In re Willes*, 17 DB Rptr 271 (2003) (reprimand for lawyer who violated DR 1-102(A)(4) and DR 6-101(B) by failing to appear or appear timely at hearings and failing to communicate with his client).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violations of DR 1-102(A)(4) and DR 6-101(B), the sanction to be effective immediately.

18.

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

EXECUTED this 2nd day of March 2004.

/s/ David L. Rich

David L. Rich
OSB No. 79357

EXECUTED this 3rd day of March 2004.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacey 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. 04-128
)
JUSTUS BUCK HUMPHREYS,) SC S52070
)
Accused.)

ORDER IMPOSING RECIPROCAL DISCIPLINE

Upon consideration by the court.

The Oregon State Bar's recommendation that the accused be disbarred from the practice of law is allowed. Justus Buck Humphreys (OSB No. 80470) is disbarred from the practice of law in Oregon, effective the date of this order. The Bar's motion to strike the supplemental affidavit is denied.

DATED this 8th day of March 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.
Chief Justice

SUMMARY

Effective March 8, 2005, the Oregon Supreme Court disbarred Eugene lawyer Justus Buck Humphreys under BR 3.5 (reciprocal discipline). The State of Texas previously imposed the same sanction and the State of Iowa previously revoked Humphreys' license.

In August 1991, Humphreys was convicted of four counts of felony tax evasion and one count of misdemeanor willful filing of a false tax return.

In 1994, based upon the conviction, the Supreme Court of Texas disbarred Humphreys for violating Texas Rule of Discipline 8.05. In 1994, based upon the conviction and other matters, the Supreme Court of Iowa revoked Humphreys' license to practice law for violating Iowa Rules of Professional Conduct DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), DR 5-103(A), DR 5-104(A), and DR 9-102(A).

The tax convictions and the discipline in Texas and Iowa were not brought to the attention of the Oregon State Bar until 2004, and the reciprocal discipline proceeding followed thereafter.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 03-124, 03-125, 04-39,
) 04-40, 04-107, 04-108, 04-143,
MARK A. AMES,) 04-144, 04-145
)
)
Accused.) SC S52213

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 7-101(A)(2), DR 9-101(C)(3), and
DR 9-101(C)(4). Stipulation for Discipline.
Two-year suspension.

Effective Date of Order: March 8, 2005

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 in the State of Oregon for a period of two years. The sanction shall be effective the date of this order.

DATED this 8th day of March 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

STIPULATION FOR DISCIPLINE

Mark A. Ames, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 6, 1998, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On December 8, 2004, a Second Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 6-101(B) (seven counts), DR 7-101(A)(2), DR 9-101(C)(3), DR 9-101(C)(4) (five counts), and DR 1-103(C) (eight counts). 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.

Draheim Matter

(Case No. 03-124)

Facts

6.

On or about April 22, 2003, the Accused undertook to represent Jason Draheim (hereinafter “Draheim”) to modify the custody provisions of Draheim’s judgment of dissolution of marriage. Between April 22, 2003, and about July 3, 2003, when Draheim terminated the Accused’s employment, the Accused failed to take any significant action on Draheim’s case and failed to respond to Draheim’s attempts to contact him.

7.

The Disciplinary Counsel's Office of the Oregon State Bar received a complaint from Draheim concerning the Accused's conduct on or about July 3, 2003. On July 24, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by August 14, 2003. The Accused made no response. On August 26, 2003, Disciplinary Counsel's Office again requested the Accused's response to the complaint by September 5, 2003. The Accused responded, but on September 11, 2003, Disciplinary Counsel's Office requested the Accused to provide additional information by September 22, 2003. The Accused made no response. On September 29, 2003, Disciplinary Counsel's Office again requested the Accused to provide the information it had previously requested by October 6, 2003. The Accused did not provide the information. On October 9, 2003, Disciplinary Counsel's Office again requested the Accused to provide the information it had previously requested by October 16, 2003. The Accused made no response. On October 22, 2003, Disciplinary Counsel's Office again requested the Accused to provide the information it had previously requested by November 5, 2003. The Accused made no response.

Violations

8.

The Accused admits that he neglected a legal matter entrusted to him, including failing to communicate with his clients, and failed to respond to inquiries from or cooperate with Disciplinary Counsel's Office, in violation of DR 6-101(B) and DR 1-103(C).

Zuhk and Zvereva Matter

(Case No. 03-125)

Facts

9.

After January 13, 2001, the Accused undertook to represent Sergey Zuhk, Dina Zvereva, and Elena Zvereva (hereinafter "Zuhk and Zvereva") in a personal injury matter. Zuhk and Zvereva terminated the Accused's employment on or about February 26, 2003. Thereafter, the Accused failed to deliver Zuhk and Zvereva's file to them or to their new counsel, despite several requests that he do so.

10.

The Oregon State Bar received a complaint from Zuhk and Zvereva's new lawyer concerning the Accused's conduct on June 2, 2003. On June 6, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by June 27, 2003. The Accused made no response. On July 23, 2003, Disciplinary Counsel's Office again requested the Accused's response

to the complaint by July 30, 2003. The Accused made no response until August 5, 2003, when he represented to Disciplinary Counsel's Office that he would send Zuhk and Zvereva's file to the Bar. The Accused did not send the file, and on September 11, 2003, Disciplinary Counsel's Office requested the Accused to produce Zuhk and Zvereva's file and explain why he had not yet sent it to the clients. The Accused responded to Disciplinary Counsel's Office on October 8, 2003, but failed to provide the file or requested explanation. The Accused failed to respond to Disciplinary Counsel's Office's subsequent October 9, 2003, and October 22, 2003, requests for Zuhk and Zvereva's file and his explanation of why he had not yet sent it to them.

Violations

11.

The Accused admits that he failed to promptly deliver to the client, as requested, property in his possession which the client was entitled to receive, and failed to respond to inquiries from or cooperate with Disciplinary Counsel's Office, in violation of DR 9-101(C)(4) and DR 1-103(C).

Gullette Matter

(Case No. 04-39)

Facts

12.

In or about April 2000, the Accused undertook to represent Fred and Barbara Gullette (hereinafter "the Gullettes") in litigation against the former tenants and manager of the Gullettes' rental property. Between about June 8, 2001, and March 22, 2002, the Accused failed to effect service on the tenants. On March 22, 2002, the court dismissed the Gullettes' lawsuit for want of prosecution. Thereafter, until July 22, 2002, when the Gullettes terminated his employment, the Accused took no action to reinstate their case and took no further substantial action on their case. From early 2002 until July 22, 2002, the Accused failed to communicate with the Gullettes regarding the status of their case and failed to respond to the Gullettes' attempts to contact him.

Violations

13.

The Accused admits that he neglected a legal matter entrusted to him and failed to communicate with his clients, in violation of DR 6-101(B).

Matveyev Matter

(Case No. 04-40)

Facts

14.

Before September 12, 2003, the Accused undertook to represent Roman Matveyev (hereinafter “Matveyev”) in a personal injury matter. On or about September 12, 2003, Matveyev employed new counsel, Frederic Cann (hereinafter “Cann”), to render an opinion on whether the Accused had properly handled his personal injury claim. On September 12, 2003, September 25, 2003, and September 30, 2003, Cann requested that the Accused deliver Matveyev’s file to him. The Accused failed to deliver Matveyev’s file as requested.

15.

The Oregon State Bar received a complaint from Cann concerning the Accused’s conduct on November 11, 2003. On November 19, 2003, Disciplinary Counsel’s Office forwarded a copy of the complaint to the Accused and requested his response to it by December 10, 2003. The Accused made no response. On December 11, 2003, Disciplinary Counsel’s Office again requested the Accused’s response to the complaint by December 18, 2003. The Accused made no substantive response.

Violations

16.

The Accused admits that he failed to promptly deliver to the client, as requested, property in his possession which the client was entitled to receive, and failed to respond to inquiries from or cooperate with Disciplinary Counsel’s Office, in violation of DR 9-101(C)(4) and DR 1-103(C).

Taylor Matter

(Case No. 04-107)

Facts

17.

In the fall of 2001, the Accused undertook to represent Debra Taylor (hereinafter “Taylor”) in a personal injury matter. The Accused filed a lawsuit on Taylor’s behalf in August 2002. Thereafter, the Accused failed to take any significant action on Taylor’s case, including properly serving the defendant. In September 2003, Taylor’s case was dismissed for want of prosecution. Costs were awarded against Taylor.

18.

The Oregon State Bar received a complaint from Taylor concerning the Accused's conduct on November 20, 2003. On December 8, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by December 29, 2003. The Accused made no response. On January 13, 2004, Disciplinary Counsel's Office again requested the Accused's response to the complaint by January 21, 2004. The Accused made no substantive response.

Violations

19.

The Accused admits that he neglected a legal matter entrusted to him, and failed to respond to inquiries from or cooperate with Disciplinary Counsel's Office, in violation of DR 6-101(B) and DR 1-103(C).

Kline Matter

(Case No. 04-108)

Facts

20.

In or around December 2000, the Accused undertook to represent Harrison Kline (hereinafter "Kline") to assist in the resolution of one or more collection matters. Kline delivered a number of documents to the Accused that were related to the representation. The Accused provided Kline with regular updates as to the status of his collection matters for approximately six months. Beginning in 2002, however, the Accused reported no progress on Kline's matters. Kline heard nothing from the Accused after mid-2003. In 2002, 2003, and 2004, Kline requested that the Accused return his documents to him. The Accused did not respond to Kline's requests or provide the requested documents.

21.

The Oregon State Bar received a complaint from Kline concerning the Accused's conduct on May 3, 2004. On May 14, 2004, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by June 4, 2004. The Accused made no response. On June 14, 2004, Disciplinary Counsel's Office again requested the Accused's response to the complaint by June 21, 2004. The Accused made no substantive response.

Violations

22.

The Accused admits that he neglected a legal matter entrusted to him; failed to promptly deliver to the client, as requested, property in his possession which the

client was entitled to receive; and failed to respond to inquiries from or cooperate with Disciplinary Counsel's Office, in violation of DR 6-101(B), DR 9-101(C)(4), and DR 1-103(C).

Lambey Matter
(Case No. 04-143)

Facts

23.

In or around May 2003, the Accused undertook to represent Bertha Lambey (hereinafter "Lambey") in a personal injury matter. Thereafter, the Accused failed to take any significant action on Lambey's case, including handling the bills for her medical care, or negotiating with the insurance company, and he failed to respond to Lambey's attempts to contact him.

24.

The Oregon State Bar received a complaint from Lambey concerning the Accused's conduct on August 17, 2004. On September 15, 2004, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by October 6, 2004. The Accused made no response. On October 8, 2004, Disciplinary Counsel's Office again requested the Accused's response to the complaint by October 15, 2004. The Accused made no substantive response to the Bar's inquiry prior to November 10, 2004.

Violations

25.

The Accused admits that he neglected a legal matter entrusted to him, and failed to respond to inquiries from or cooperate with Disciplinary Counsel's Office, in violation of DR 6-101(B) and DR 1-103(C).

Mikhaylov Matter
(Case No. 04-144)

Facts

26.

On or about September 16, 2003, the Accused undertook to represent Raisa Mikhaylov (hereinafter "Mikhaylov") in a dissolution of marriage proceeding. Mikhaylov paid the Accused a \$1,000 retainer and delivered personal documents to him. The Accused failed to file the petition for dissolution of marriage on Mikhaylov's behalf until February 2004. Thereafter the Accused failed to take any significant action on Mikhaylov's case, including properly serving the respondent.

27.

On or about March 2, 2004, Mikhaylov retained other counsel. Mikhaylov and her counsel requested that the Accused account for her retainer and refund the unearned portion of it. Mikhaylov and her counsel also requested that the Accused provide her new counsel a copy of her file. Thereafter, the Accused failed to respond to Mikhaylov's attempts to contact him and failed to deliver to her the requested accounting or client funds and property.

28.

The Oregon State Bar received a complaint from Mikhaylov concerning the Accused's conduct on July 30, 2004. On August 5, 2004, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by August 26, 2004. The Accused made no response. On September 15, 2004, Disciplinary Counsel's Office again requested the Accused's response to the complaint by September 22, 2004. The Accused made no substantive response to the Bar's inquiry until November 17, 2004, at which time the Accused provided Mikhaylov's client file to the Bar.

Violations

29.

The Accused admits that he neglected a legal matter entrusted to him; intentionally failed to carry out a contract of employment; failed to account for client property in his possession; failed to promptly deliver to the client, as requested, property in his possession which the client was entitled to receive; and failed to respond to inquiries from or cooperate with Disciplinary Counsel's Office, in violation of DR 6-101(B), DR 7-101(A)(2), DR 9-101(C)(3), DR 9-101(C)(4), and DR 1-103(C).

Pham Matter

(Case No. 04-145)

Facts

30.

In or around March or April 2003, the Accused undertook to represent Danhle Pham (hereinafter "Danhle") for injuries incurred at a local department store (hereinafter "store case"). Danhle paid the Accused \$200 for costs.

31.

The Accused filed a lawsuit on Danhle's behalf on January 29, 2004. Thereafter, the Accused failed to take any significant action on Danhle's store case, including properly serving the defendant.

32.

In or around October or November 2003, the Accused undertook to represent Danhle and Ngocle Pham (hereinafter “Ngocle”) in a personal injury matter resulting from an automobile accident (hereinafter “auto case”). Danhle and Ngocle delivered to the Accused a number of documents, including police reports. Thereafter, the Accused failed to take any significant action on the auto case and failed to respond to Ngocle’s attempts to contact him. Danhle and Ngocle retained new counsel to handle the auto case in about July 2004.

33.

Danhle and Ngocle’s new counsel requested their file materials on a number of occasions, including July 1, 2004, and July 28, 2004. The Accused promised to deliver the file, but failed to do so.

34.

The Oregon State Bar received a complaint from Pham concerning the Accused’s conduct on September 8, 2004. On September 15, 2004, Disciplinary Counsel’s Office forwarded a copy of the complaint to the Accused and requested his response to it by October 6, 2004. The Accused made no response. On October 8, 2004, Disciplinary Counsel’s Office again requested the Accused’s response to the complaint by October 15, 2004. The Accused made no substantive response to the Bar’s inquiry before November 10, 2004, at which time he provided Danhle’s and Ngocle’s file materials to the Bar.

Violations

35.

The Accused admits that he neglected a legal matter entrusted to him; failed to promptly deliver to the client, as requested, property in his possession which the client was entitled to receive; and failed to respond to inquiries from or cooperate with Disciplinary Counsel’s Office, in violation of DR 6-101(B), DR 9-101(C)(4), and DR 1-103(C).

Sanction

36.

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 lawyer’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The most important ethical duties are those obligations that a lawyer owes to clients. *Standards*, at 5. In this case, the Accused violated his duty to act with reasonable diligence and promptness in representing his clients, (*Standards*, § 4.4), and failed to properly handle and preserve client property (*Standards*, § 4.1). The Accused also violated his duty as a professional by failing to respond fully to inquiries by Disciplinary Counsel’s Office. *Standards*, § 7.0.

B. *Mental State.* The most culpable mental state is that of “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. *Standards*, at 6. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 6. The Accused knowingly or intentionally failed to perform services for his clients. *See In re Recker*, 309 Or 633, 789 P2d 663 (1999) (when lawyer neglected client’s legal matter and also failed to respond to her client’s repeated inquiries, such a failure to maintain client communication was also found to be intentional). The Accused also acted knowingly in failing to promptly return client property and in failing to respond fully to Bar inquiries in violation of DR 1-103(C).

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). There was actual injury to the Accused’s clients by the Accused’s failure to actively pursue their cases. *See In re Parker*, 330 Or 541, 547, 9 P3d 107 (2000) (so stating). The Gullette, Taylor, and one of the Pham matters were dismissed due to the Accused’s inaction, and the Taylor dismissal resulted in a cost award against Taylor. The Accused allowed the statute of limitations to run in the Zuhk and Zvereva matter. Lambey was sent to collections in her case for failing to pay her medical provider and Mikhaylov’s dissolution was substantially delayed. In addition, the Accused’s failure to promptly provide client property and failure to communicate caused actual injury in the form of client anxiety and frustration in all matters. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the lawyer neglect can constitute actual injury under the *Standards*); *In re Schaffner II*, 325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989).

The Accused’s failure to cooperate with the Bar’s investigation of his conduct caused actual harm to both the legal profession and to the public because he delayed the Bar’s investigation and, consequently, the resolution of the complaints against him. *In re Schaffner II*, *supra*, 325 Or at 427; *In re Miles*, 324 Or 218, 222, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

D. *Aggravating Factors.* Aggravating factors include:

1. A pattern of misconduct. The Accused’s transgressions having occurred over a substantial period of time. *Standards*, § 9.22(c). *See In re Schaffner I*, 323 Or 472, 480, 918 P2d 803 (1996).

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

- E. *Mitigating Factors*. Mitigating factors include:
1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
 2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
 3. Personal or emotional problems. *Standards*, § 9.32(c). The Accused was experiencing personal or emotional difficulties during part of the period when he failed to respond to his clients in that his father became seriously ill, resulting in the Accused being absent from his office a considerable amount.

37.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly improperly handles client property. *Standards*, § 4.12. A suspension is also appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Finally, 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. *Standards*, § 7.2.

38.

Oregon case law also suggests that a lengthy suspension is appropriate. *See In re Parker*, 330 Or 541, 9 P3d 107 (2000) (four-year suspension for knowing neglect, including failing to respond to client messages, and knowing failure to respond to Bar inquiries in four matters); *In re Schaffner II, supra* (two-year suspension for single violations of DR 6-101(B), DR 9-101(C)(4), and DR 1-103(C) when prior discipline for similar misconduct); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988) (two-year suspension for neglect of five client matters, three violations of current DR 9-101(C)(4)), and substantially refusing to cooperate with Bar authorities (DR 1-103(C))). *See also In re Barrow*, 13 DB Rptr 126 (1999) (two-year suspension for multiple disciplinary rules in multiple matters when lawyer experienced mental disability or chemical dependency during relevant period of time).

39.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for two years for violations of DR 6-101(B) (seven counts), DR 7-101(A)(2), DR 9-101(C)(3), DR 9-101(C)(4) (five counts), and DR 1-103(C) (eight counts), the sanction to be effective upon approval by the Supreme Court.

40.

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

EXECUTED this 9th day of February 2005.

/s/ Mark A. Ames

Mark A. Ames

OSB No. 98031

EXECUTED this 9th day of February 2005.

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. 02-81
)
STEPHEN TRUKOSITZ,) SC S51683
)
Accused.)

ORDER GRANTING MOTION TO DISMISS REVIEW

The accused's motion to dismiss this review is granted. The accused is suspended for 12 months commencing the date of this order.

DATED this 9th day of March 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
) Case No. 02-81
Complaint as to the conduct of)
) SC S51683
STEPHEN TRUKOSITZ,)
)
Accused.)

**PETITIONER’S MOTION TO DISMISS APPEAL
AND ESTABLISH EFFECTIVE DATE OF SUSPENSION**

Petitioner Stephen Trukositz (hereinafter “Accused”) moves the court for an order dismissing his request for review filed on August 23, 2004, and establishing the effective date of his suspension from the practice of law as the date of the court’s order. The Oregon State Bar (hereinafter “Bar”) does not oppose the Accused’s motion.

The Accused and the Bar have filed their briefs. The Accused waived oral argument and on February 4, 2005, the court filed an order submitting the petition on the record and the briefs. The Disciplinary Board Trial Panel filed its decision on June 29, 2004. The Trial Panel found that the Accused violated DR 1-102(A)(3), DR 5-101(A), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility and ordered that the Accused be suspended from the practice of law for 12 months, followed by a six-month period of probation if he is reinstated as an active member of the Bar. Pursuant to BR 10.1 and BR 10.3, the Trial Panel’s decision and the Accused’s suspension would have been effective on August 29, 2004, but for the Accused’s request for review. The Accused therefore asks that the court order his suspension to be effective the date of the court’s order dismissing the request for review.

Respectfully submitted this 2nd day of March 2005.

RICKER & ROBERSON

By: /s/ Jonel K. Ricker
Jonel K. Ricker
OSB No. 79359
Attorneys for Steven Trukositz

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I filed the foregoing PETITIONER'S MOTION TO DISMISS APPEAL AND ESTABLISH EFFECTIVE DATE OF SUSPENSION on the 2nd day of March 2005, by mailing the original by first-class mail, with postage prepaid, through the United States Postal Service to:

State Court Administrator
Case Records Division
Supreme Court Building
1163 State Street NE
Salem, OR 97310-1331

I further certify I served the foregoing PETITIONER'S MOTION TO DISMISS APPEAL AND ESTABLISH EFFECTIVE DATE OF SUSPENSION on the 2nd day of March 2005, by mailing a copy by first-class mail, with postage prepaid, through the United States Postal Service to:

Jane E. Angus, Esq.
Assistant Disciplinary Counsel
Oregon State Bar
5200 SW Meadows Rd.
PO Box 1689
Lake Oswego, OR 97035

DATED this 2nd day of March 2005.

/s/ Diane Williams, Legal Assistant for
Jonel K. Ricker
OSB No. 79359

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
) Case No. 02-81
Complaint as to the conduct of)
)
STEPHEN TRUKOSITZ,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Jonel Ricker
Disciplinary Board: Carl Wittopp, Jr., Esq., Chair; Carol DeHaven
Skejanec, Esq.; Mitchell P. Rogers, Public
Member
Disposition: Violation of DR 1-102(A)(3), DR 5-101(A), DR
6-101(A), and DR 6-101(B). Trial Panel Opinion.
12-month suspension.
Effective Date of Order: March 9, 2005

OPINION OF THE TRIAL PANEL

A formal Complaint was filed by the Oregon State Bar Disciplinary Counsel against Stephen Trukositz (OSB No. 76363) on May 30, 2002. An Amended Formal Complaint was filed May 15, 2003. Within that amended complaint the Oregon State Bar alleged that the Accused had violated DR 1-102(A)(3), DR 5-101(A), DR 6-101(A); and DR 6-101(B) of the Code of Professional Responsibility. The Accused filed an answer to the complaint dated May 29, 2003, wherein the Accused admitted that the Bar had the authority to prosecute the complaint; that he was at all relevant times a member of the Oregon State Bar; that Mirna L. Mejia was injured in a motor vehicle accident on or about December 22, 1998; and that she retained the Accused to pursue her personal injury claim on or about March 11, 1999. The Accused further admitted that on or about December 22, 2000, the statute of limitations expired and barred Mejia's claim; that on or about January 2001, the Accused discovered the statute of limitations had expired; and that he orally notified Mejia that she had a possible claim against him. The Accused continued to represent Mejia when exercise

of his professional judgment on behalf of his client would be or reasonably might be affected by his own financial business, property, or personal interest without obtaining Mejia's consent after full disclosure. After disclosing to Mejia that her claim was barred by the statute of limitations, the Accused represented to her that he would notify his insurance company; he would give his insurance company Mejia's name, address, and telephone number; and his insurance company would contact her and pay her damages. The Accused admitted also that between about March 1999 and December 22, 2000, the Accused (a) did not investigate Mejia's claim; (b) did not contact the adverse party or the adverse party's insurance carrier concerning Mejia's claim; (c) did not file a lawsuit concerning Mejia's claim; (d) did not monitor the statute of limitations as it concerned Mejia's claim; (e) did not request and obtain an agreement to toll the statute of limitations; and (f) did not take other action to protect, prepare, prosecute, or resolve Mejia's claim.

A hearing was scheduled for August 25, 2003; however, due to an accident which severely injured one of the Trial Panel, the hearing was postponed. The hearing was ultimately held on March 15, 2004, in Pendleton, Oregon. Trial Panel members included Mitchell P. Rogers, Carol DeHaven Skerjanec, and the undersigned, Carl W. Hopp, Jr. The Bar was represented by Jane E. Angus, and the Accused was represented by Jonel Ricker. The witnesses called by the Accused included John Smallmon, Norma Rolland, Toni Emerson, and the Accused. The only witness for the Bar was Mirna Mejia. The Bar offered Exhibits 1 through 12 and all were received. There were no prehearing rulings that affected the disposition of the case.

Finding of Fact

1. The following facts were proved to the Trial Panel by clear and convincing evidence;

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

(B) The Accused, Stephen Trukositz, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his office and place of business in the Umatilla County, Oregon.

(C) On or about December 22, 1998, Mirna L. Mejia (hereinafter "Mejia") was injured in a motor vehicle accident. On or about March 11, 1999, Mejia retained the Accused to pursue her personal injury claim.

(D) Between about March 1999 and December 22, 2000, the Accused:

- a. Did not investigate Mejia's claim;
- b. Did not contact the adverse party or the adverse party's insurance carrier concerning Mejia's claim;
- c. Did not file a lawsuit concerning Mejia's claim;
- d. Did not monitor the statute of limitations as it concerned Mejia's claim;
- e. Did not request and obtain an agreement to toll the statute of limitations; and
- f. Did not take other action to protect, prepare, prosecute or resolve Mejia's claim.

(E) On or about December 22, 2000, the statute of limitations expired and barred Mejia's claim. On or about January 2001, the Accused discovered that the statute of limitations had expired. The Accused orally notified Mejia that she had a possible claim against him.

(F) Thereafter, the Accused continued to represent Mejia when the exercise of his professional judgment on behalf of his client was or reasonably might be affected by his own financial, business, property, or personal interests without obtaining Mejia's consent after full disclosure.

(G) After disclosing to Mejia that her claim was barred by the statute of limitations, the Accused represented to her that he would notify his insurance company; he would give his insurance company Mejia's name, address, and telephone number; and his insurance company would contact her and pay her damages.

2. Mejia was credible in all her testimony, and where her testimony differed from the testimony of the Accused she is to be believed.

3. The Accused is not credible.

3.1 The Accused notified Mejia that she had a malpractice claim against him in April or May of 2001.

3.2 Exhibit 7 was not prepared and sent in the ordinary course of the Accused's business.

4. Mejia suffered harm because her medical bills were not paid, she was turned over to collection, she was forced to pay the bills by placing them on her credit card with a high rate of interest, and she did not receive wage loss.¹ To some extent the harm to Mejia could have been avoided by the Accused contacting Mejia's insurance company to make sure the medical bills and wage loss were paid under Mejia's PIP benefits.

5. Mejia suffered damage to her credit, which may adversely effect her ability to obtain reasonable credit in the future.

6. The Accused did not obtain medical reports or wage loss information pertaining to the accident for which he was hired to represent Mejia.

7. Mejia contacted the Accused at his office at least 18–24 times between March 11, 1999, and May 2001.

8. The Accused has a history of discipline by the Bar, having received a public reprimand in 1992 for a conflict-of-interest violation, and having been suspended for 90 days in 1994 for neglect and deceit.

9. The Accused has failed to show much, if any, remorse.

10. The Accused has failed to demonstrate that he, in any way, has developed a diary system or other in-office procedures so as to avoid future problems of this nature.

11. The Accused told Mejia that he had given her name, address, and telephone number to his insurance company when in fact he had not.

12. The Accused left Mejia with the mistaken belief that the Accused's insurance company would contact Mejia.

¹ Although the Accused admitted in the answer to the amended complaint that the statute of limitations for the underlying personal injury claim and consequential malpractice claim against the Accused ran, there were facts that strongly suggested (and no evidence to the contrary) that Mejia's personal injury claim was still viable at the time of the hearing and not barred by a statute of limitations defense. Mejia received two checks from Liberty Mutual, the at-fault party's insurer, for \$969.70 dated 12-31-98 and \$605.00 dated 12-10-99. In addition, Liberty Mutual presumably directly paid a rental for Mejia for car rental incurred from 12-29-98 to 2-9-99 according to the rental billing. Mejia denied signing any advance payment receipts or receipt of any "Advance Payment Notices" as contemplated in ORS 12.155.

In essence, all evidence supports the statute of limitations tolled for Mejia's personal injury claim; if that is true then the consequential malpractice claim statute of limitations may have also tolled.

Conclusion of Law

1. The Accused violated DR 1-102(A)(3) when, during representation of Mejia, he expressed or implied to Mejia that he (a) was working on her case; (b) had contacted the other driver's insurance company; and (c) was waiting for the other driver's insurance company to get back to him with an offer. The Accused made these representations, knowing they were untrue at the time he made them. He then failed to correct the false understandings and impressions he created.

2. The Accused also violated DR 1-102(A)(3) when he represented to his client that he would notify his insurance company; he would give his insurance company Mejia's name, address, and telephone number, and his insurance company would contact her and pay her damages. The Accused did not notify the insurance company nor provide the PLF with any information. When the Accused failed to do what he promised, he knew what he told his client and that she was relying on what he told her. The Accused knew his representations were not true and took no action to correct his statements and or the false understandings he created.

3. The Accused admitted violating DR 5-101(A) in that he failed to make disclosure required by the disciplinary rules. He had a clear personal and financial interest, which was adverse to his client's interests because of his malpractice.

4. Because Mejia's harm in not having her medical bills paid or receiving wage loss to which she was entitled under her PIP benefits is directly attributed to the Accused's failure to recognize PIP benefits existed, the Accused violated DR 6-101(A) because he was not competent in the handling of the personal injury action and the representation of Mejia.

5. Because the Accused was not thorough in his obtaining the wage loss information and medical reports the Accused lacked competency and violated DR 6-101(A).

6. Because the Accused did not obtain medical reports or wage loss information, and in fact, did nothing to further Ms. Mejia's claim, he neglected a matter entrusted to him by Mejia, a violation DR 6-101(B).

7. Because the Accused did not pursue obtaining PIP benefits for Mejia, he was neglectful and violated DR 6-101(B).

8. Because the Accused did not timely file an action on behalf of Mejia he was neglectful and violated DR 6-101(B).

Disposition

The Trial Panel found that the Oregon State Bar proved and established by clear and convincing evidence violation of DR 1-102(A)(3), DR 5-101(A), and DR 6-101(B) of the Code of Professional Responsibility. The three members of the panel are unanimous in their belief that the Accused, if he practices law again, will commit the same violations, which were alleged and proven in this case, unless supervised

in some way. It is the decision of the Trial Panel that the Accused be suspended from practice for 12 months. The panel believes a six-month supervised period upon readmission to assure that the Accused establishes an adequate calendaring system is advisable.

/s/ Carl W. Hopp, Jr.
Carl W. Hopp, Jr., Esq.
Trial Panel Chairperson
Date: June 21, 2004

/s/ Mitchell P. Rogers
Mitchell P. Rogers
Trial Panel
Date: June 22, 2004

/s/ Carol DeHaven Skejanec
Carol DeHaven Skejanec, Esq.
Trial Panel
Date: June 22, 2004

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 04-66
)
KAREN A. STEELE,)
)
Accused.)

Counsel for the Bar: J. Philip Parks; Stacy J. Hankin
Counsel for the Accused: Peter R. Jarvis
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3) and DR
7-102(A)(5). Stipulation for Discipline.
180-day suspension.
Effective Date of Order: March 13, 2005

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 180 days, effective three days from the date of this order, for violation of DR 1-102(A)(3) and DR 7-102(A)(5).

DATED this 10th day of March 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Hon. Jill A. Tanner, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Karen A. Steele, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 25, 1987, 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 16, 2004, the Bar filed an Amended 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) and DR 7-102(A)(5). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On September 4, 2003, a trial court signed an order terminating the Accused’s appointment to represent an indigent defendant in a criminal matter.

6.

On September 5, 2003, the Accused, with the help of her co-counsel and at her former client’s request, filed a petition for a writ of mandamus (hereinafter “mandamus proceeding”) challenging the court’s September 4, 2003, order, as described in paragraph 5 above.

7.

On September 10, 2003, the Accused sent an e-mail to Ann Christian (hereinafter “Christian”), informing her that a mandamus proceeding had been filed. Christian was employed by the Public Defense Services Commission (hereinafter “PDSC”). The PDSC was responsible for compensating lawyers who represented indigent criminal defendants in Oregon.

8.

In a responding e-mail on September 18, 2003, Christian asked the Accused whether she intended to bill the state for the time expended in the mandamus proceeding after the Accused’s representation had been terminated. The Accused’s responding e-mail, also sent on September 18, 2003, informed Christian that neither she nor her co-counsel had charged, nor were they charging, the state for their work in the mandamus proceeding.

9.

In early October 2003, an appellate court denied the petition in the mandamus proceeding.

10.

On November 14, 2003, the Accused submitted to PDSC a request for reimbursement for her and her co-counsel’s reasonable time and expenses in the mandamus proceeding. On December 1, 2003, PDSC sent a notice to the Accused informing her that her request for fees in the mandamus proceeding were being denied for a number of reasons. One reason for the denial was that the Accused had previously agreed not to seek compensation for work performed in the mandamus proceeding.

11.

On December 11, 2003, the Accused sent a letter to PDSC requesting reconsideration of its December 1, 2003, decision. On December 11, 2003, Ingrid Swenson (hereinafter “Swenson”), PDSC’s general counsel, sent a letter to the Accused denying the request for reconsideration because the Accused’s representation of the client had been terminated before the mandamus proceeding had been filed, the Accused had not requested preauthorization to file the mandamus proceeding, and the Accused had previously advised Christian that neither she nor her co-counsel had charged or would charge the state for work performed in the mandamus proceeding.

12.

On December 16, 2003, the Accused sent a letter to Swenson representing that she had not waived any right to seek reimbursement for her reasonable time and expenses in the mandamus proceeding, that the prior e-mail communications between

her and Christian supported her position that she had not waived reimbursement, and that she had previously told Christian only that she was not seeking reimbursement at that time. In the context in which the Accused made those representations to Swenson, she knew that they were false and material.

13.

In the December 16, 2003, letter to Swenson referenced in paragraph 12 above, the Accused also represented that the e-mail she enclosed therein in support of her position that she had not waived reimbursement was the full text of the e-mail she had sent to Christian on September 18, 2003. At the time the Accused made this representation, she knew that it was false and material as she had recently made material changes to the e-mail and had enclosed the altered e-mail in her December 16, 2003, letter to Swenson. Copies of the original e-mail of September 18, 2003, and the e-mail altered by the Accused and submitted to Swenson on December 16, 2003, are attached to this stipulation as Exhibit 1 and Exhibit 2.

14.

Thereafter, Swenson discovered that the e-mail the Accused had sent to her on December 16, 2003 (Exhibit 2), was different from the copy of the e-mail in PDSC's file (Exhibit 1). In a December 17, 2003, telephone conversation, and subsequent letter, the Accused represented to Swenson that she did not know why the e-mail she had sent to Swenson was different from the one in PDSC's file and that she had not altered the e-mail. At the time the Accused made these representations, she knew that they were false and material.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 14, she violated DR 1-102(A)(3) (conduct involving dishonesty and misrepresentation) and DR 7-102(A)(5) (knowingly make a false statement of fact) of the Code of Professional Responsibility.

Sanction

16.

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 lawyer'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 maintain personal integrity. *Standards*, § 5.1.

B. *Mental State.* “Intent” is the conscious objective or purpose to accomplish a particular result. The Accused acted intentionally.

C. *Injury.* Injury is harm to the client, the public, the legal system, or the profession that results from a lawyer’s misconduct. There was potential injury to PDSC because: for a period of time Swenson was concerned, in light of the Accused’s denial that she had altered the e-mail, that a PDSC employee had altered the September 18, 2003, e-mail; and because PDSC might have paid to the Accused fees she was not entitled to receive or had waived. In fact, PDSC did not end up paying any funds to the Accused or her co-counsel for the mandamus proceeding.

D. *Aggravating Factors.* The following aggravating circumstances are present in this matter:

1. Dishonest or selfish motive. *Standards*, § 9.22(b).
2. Multiple offenses. *Standards*, § 9.22(d).
3. Substantial experience in the practice of law as the Accused has been licensed to practice law in Oregon since 1987. *Standards*, § 9.22(i).

E. *Mitigating Factors.* The following mitigating circumstances are present in this matter:

1. Absence of a prior disciplinary record. *Standards*, § 9.23(a).
2. Personal or emotional problems. At the time of the underlying events the Accused was experiencing frequent migraine headaches and her purse had recently been stolen. *Standards*, § 9.23(c).
3. Cooperative attitude toward proceedings. *Standards*, § 9.23(e).
4. Remorse. *Standards*, § 9.23(m).

17.

Disbarment is generally appropriate when a lawyer engages in intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer’s fitness to practice law. *Standards*, § 5.11(b). The Accused’s conduct here seriously adversely reflects on her fitness to practice law. However, because the mitigating circumstances outweigh the aggravating circumstances, a suspension is a more appropriate sanction.

18.

Lawyers who have manufactured or altered evidence or other documents under similar circumstances have been suspended for various periods of time or, in some cases, disbarred. *In re Castanza*, 17 DB Rptr 106 (2003) (120-day suspension of lawyer who manufactured a demand letter in order to prevent his client from

discovering that he had neglected her legal matter); *In re Page*, 326 Or 572, 955 P2d 239 (1998) (30-day reciprocal suspension of lawyer who significantly altered and filed original documents signed by opposing counsel, without notice to him or court); *In re Morris*, 326 Or 493, 953 P2d 387 (1998) (120-day suspension of lawyer who, among other things, altered a signed final accounting for an estate by inserting an award for the prior personal representative's fees, without notice to the court); *In re Barber*, 322 Or 194, 904 P2d 620 (1995) (disbarment of lawyer who, among other things, altered a copy of a contingent fee agreement that was attached to a complaint in an action against his former clients for payment of his fees); *In re Yacob*, 319 Or 10, 860 P2d 811 (1993) (disbarment of lawyer who, among other things, submitted fabricated documents in response to Bar's investigation of his conduct); *In re Leonard*, 308 Or 560, 784 P2d 95 (1989) (35-day suspension of lawyer who altered language in a lease and thereafter informed opposing parties that there was no need for them to consult with their lawyer about the change).

19.

The Accused's conduct here is more egregious than in those cases involving a single act of dishonesty or misrepresentation. In this case, the Accused engaged in dishonesty when she altered the e-mail and then perpetuated that dishonesty through subsequent misrepresentations. The Accused's conduct here is not as egregious as in those cases where lawyers have been disbarred. In those cases, the lawyers engaged in additional improper acts resulting in multiple violations of other disciplinary rules.

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 180 days. The sanction shall be effective three days from the date this stipulation is approved by the Disciplinary Board.

21.

In addition, on or before the last day of the suspension, and before the Accused shall be reinstated to the practice of law, she shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$482.50, incurred for her deposition, deposition transcript and copy charges. Should the Accused fail to pay \$482.50 in full by the last day of the 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.

22.

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 under the terms of BR 3.6.

EXECUTED this 4th day of March 2005.

/s/ Karen A. Steele

Karen A. Steele
OSB No. 87352

EXECUTED this 7th day of March 2005.

OREGON STATE BAR

By: /s/ Stacy J. Hankin

Stacy J. Hankin
OSB No. 86202
Assistant Disciplinary Counsel

EXHIBIT 1

To: Ann S CHRISTIAN@ojd.state.or.us
From: withxs@justice.com
Date: 09/18/2003 10:56 a.m.
Subject: Re: _____

Ann,

Neither Rose nor I charged or are charging the state for the mandamus preparation and litigation. We are keeping track of our time separately from the file organization that you authorized on 9/4/2003. _____ specifically requested that we file the mandamus in his behalf. We believed it our obligation to do so under Bar rules, even if not paid, given our responsibilities to prevent prejudice to his rights.

[Text struck out here]

Bob Rocklin is representing the state in the mandamus. They are scheduled to file their response tomorrow. We have not heard if they will file or request an extension.

[Text struck out here]

I can get you copies of anything re: the mandamus if you'd like. Will also answer any questions.

Cite as *In re Steele*, 19 DB Rptr 87 (2005)

Again, we are not charging the state for the mandamus.

Karen

Karen A. Steele
Attorney at Law
PO Box 4341
Salem, OR 97302
503-508-4668

The foregoing email, together with any computer files attached thereto, is intended as a confidential legal communication by Karen A. Steele, Attorney, Salem, Oregon. This message may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient of this email, or the employee or agent

EXHIBIT 2

From: withxs@justice.com
Date: 18 Sept 10:56 (PDT)
To: Ann S CHRISTIAN@ojd.state.or.us
Subject: Re: _____

Ann,

Neither Rose nor I charged or are charging the state for the mandamus preparation and litigation at this time. We are keeping track of our time separately from the file organization that you authorized on 9/4/2003. _____ specifically requested that we file the mandamus in his behalf. We believed it our obligation to do so under Bar rules, even if not paid, given our responsibilities to prevent prejudice to his rights. We will address the pay issue separately in the future.

[Text struck out here]

Bob Rocklin is representing the state in the mandamus. They are scheduled to file their response tomorrow. We have not heard if they will file or request an extension.

[Text struck out here]

I can get you copies of anything re: the mandamus if you'd like. Will also answer any questions.

Again, we are not charging the state for the mandamus at this time.

Karen

[Text struck out here]

Cite as 338 Or 341 (2005)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
ALLAN F. KNAPPENBERGER,)
)
Accused.)

(Case Nos. 02-13, 02-14, 02-106; SC S50864)

En Banc

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

Argued and submitted January 7, 2005. Decided March 24, 2005.

Peter R. Jarvis, Hinshaw & Culbertson, Portland, argued the cause and filed the briefs for the Accused. With him on the briefs was David J. Elkanich.

Stacy J. Hankin, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar.

PER CURIAM

The Accused is suspended from the practice of law for 120 days, commencing 60 days from the date of filing of this decision.

SUMMARY OF THE SUPREME COURT DECISION

Two of the Accused’s employees sued him on employment-related matters. Both employees were represented by counsel. The Accused confronted both employees and asked them who was responsible for instigating the action. In a separate matter, the husband in a divorce action, who was also the subject of a related restraining order, consulted with the Accused because he sought representation in the divorce. Husband elected to retain a lawyer other than the Accused. Approximately two months later, wife in that same divorce action retained the Accused to represent her in the divorce and in a hearing regarding a different related restraining order. *Held:* (1) The Accused violated (DR) 7-104(A)(1) by communicating with his employees, whom he knew to be represented parties, on the subject of the action, despite the fact that at least one of the communications was brief and transitory. (2) Husband was a former client of the Accused, at least during

Cite as *In re Knappenberger*, 19 DB Rptr 95 (2005)

the several hours of their consultation. (3) The Accused violated DR 5-105(C) because his representation of wife constituted a former-client conflict. The Accused is suspended from the practice of law for 120 days, commencing 60 days from the date of filing this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of)	Case Nos. 03-80, 03-81, 04-12
)	
STEVEN R. SCHARFSTEIN,)	
)	
Accused.)	

Counsel for the Bar:	Victor C. Pagel; Martha M. Hicks
Counsel for the Accused:	Stephen R. Moore
Disciplinary Board:	None
Disposition:	Violation of DR 1-103(C) and DR 6-101(B). Stipulation for Discipline. 120-day suspension, all but 30 days stayed subject to a one-year probation.
Effective Date of Order:	April 9, 2005

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 for violation of DR 1-103(C) and DR 6-101(B), all but 30 days of which shall be stayed subject to the Accused's completion of a one-year probation. The sanction shall be effective 10 days from the date of this order, or on April 9, 2005, whichever is later.

DATED this 8th day of April 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill R. Tanner
Hon. Jill R. Tanner, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Steven F. Scharfstein, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 4, 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 February 2, 2005, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 1-103(C) 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.

Case No. 03-80

Facts

5.

On or about June 20, 1998, the Accused undertook to represent AMCO Insurance (hereinafter “AMCO”) to file suit against an uninsured motorist who, on October 20, 1995, had caused damage to a vehicle owned by an individual who was insured by AMCO.

6.

Between June 20, 1998, and approximately November 27, 2002, when AMCO terminated his employment, the Accused failed to file suit, failed to respond to AMCO’s attempts to contact him, and failed to keep AMCO informed about the status of its case.

7.

The Oregon State Bar received a complaint from AMCO concerning the Accused's conduct on March 26, 2003. On April 2, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by April 23, 2003. The Accused responded on April 24, 2003. On July 16, 2003, Disciplinary Counsel's Office requested the Accused to provide additional information concerning his conduct by July 30, 2003. The Accused made no response. On August 5, 2003, Disciplinary Counsel's Office again requested the Accused to provide additional information concerning his conduct by August 15, 2003. The Accused made no response, and Disciplinary Counsel's Office referred the matter to the Clackamas/Linn/Marion County LPRC for further investigation.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7 of this stipulation, he violated DR 6-101(B) and DR 1-103(C).

Case No. 03-81

Facts

9.

On or about May 12, 1999, the Accused undertook to represent Allied Insurance/Premium Collection (hereinafter "Allied") in collection litigation.

10.

From May 12, 1999, through about April 25, 2002, the Accused failed to file suit, failed to respond to Allied's attempts to contact him, and failed to keep Allied informed about the status of its case.

11.

The Oregon State Bar received a complaint from Allied concerning the Accused's conduct on April 7, 2003. On April 9, 2003, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by April 30, 2003. The Accused responded on April 24, 2003. On July 16, 2003, Disciplinary Counsel's Office requested the Accused to provide additional information concerning his conduct by July 30, 2003. The Accused made no response. On August 5, 2003, Disciplinary Counsel's Office again requested the Accused to provide additional information concerning his conduct by August 15, 2003. The Accused made no response, and Disciplinary Counsel's Office referred the matter to the Clackamas/Linn/Marion County LPRC for further investigation.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 9 through 11 of this stipulation, he violated DR 6-101(B) and DR 1-103(C).

Case No. 04-12

Facts

13.

On or about March 5, 2001, the Accused undertook to represent Michael and Elisabeth Sumpter (hereinafter “the Sumpters”) in a stepparent adoption. Between March 2001 and October 2003, the Accused failed to complete the adoption. Between March 2002 and October 2003, the Accused failed to respond to the Sumpters’ attempts to contact him and failed to keep them adequately informed about the status of their case.

14.

On about August 1, 2003, the court dismissed the Sumpters’ adoption proceeding for want of prosecution. Thereafter, until about October 2003, the Accused failed to take any steps to set aside the order of dismissal.

15.

On or about August 16, 2001, the Accused undertook to represent the Sumpters in a medical malpractice claim. After about November 16, 2002, and until October 2003, the Accused took no substantial action on the Sumpters’ claim, failed to respond to the Sumpters’ attempts to contact him, and failed to keep them informed about the status of their case.

Violations

16.

The Accused admits that, by engaging in the conduct described in paragraphs 13 through 15 of this stipulation, he violated DR 6-101(B).

Sanction

17.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’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 pursue their matters diligently and his duty owed as a professional to cooperate fully with the Bar in an investigation of his conduct. *Standards*, §§ 4.4, 7.0.

B. *Mental State.* The Accused acted knowingly in neglecting his clients' matters. He failed to keep the clients informed as to the status of their matters or to take the actions necessary to conclude the matters, despite numerous reminders from the clients of his obligation to do so. A knowing state of mind is "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *Standards*, at 7.

C. *Injury.* AMCO and Allied experienced frustration in not being able to communicate with the Accused about the status of their cases. AMCO did not suffer financial injury from the Accused's failure to pursue its claim because the uninsured motorist against whom AMCO wished to proceed had given a false name at the accident site and the Accused could not locate him. Allied did not suffer financial injury from the Accused's failure to pursue its claim because the corporate insured against whom Allied wished to proceed was insolvent and no longer in business.

The Sumpters were actually injured by the Accused's delay in concluding their stepparent adoption. The Sumpter family, and especially the child who was the subject of the adoption proceeding, suffered great anxiety and frustration at the delay in what should have been a relatively short-term proceeding. The Sumpters were not actually injured with respect to the substantive resolution of their medical malpractice claim. They did, however, suffer anxiety and frustration at being unable to reach the Accused or to resolve the matter and were exposed to potential injury in that their claim could have been barred by the statute of limitations. Ultimately, the Accused completed both the stepparent adoption and the medical malpractice claim.

The Oregon State Bar and the Accused's clients were actually injured by the Accused's failure to respond to the inquiries of Disciplinary Counsel's Office in that the investigation and resolution of his clients' complaints were delayed, and it was necessary to refer the AMCO and Allied cases to the LPRC for investigation by a member of that committee.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a);
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b);
3. Personal or emotional problems. *Standards*, § 9.32(c). During the relevant times herein, the Accused and his wife had to terminate his wife's five-

month pregnancy for medical reasons, and the Accused's wife miscarried another child.

4. Interim rehabilitation. *Standards*, § 9.32(k). The Accused has taken steps to remedy the office management and conflict management problems that contributed to his conduct.

18.

Standards § 4.42 suggests that suspension is generally appropriate when (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards* § 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. *Standards* at page 23 suggests that probation is a sanction that should be imposed when a lawyer's right to practice law needs to be monitored or limited. However, the probationary conditions must make sense in light of the misconduct at issue. *In re Haws*, 310 Or 741, 801 P2d 818 (1990).

19.

Under the circumstances of this case, the *Standards* suggest that a period of suspension with probation is the appropriate sanction. In this case, probation is appropriate because the Accused has been addressing the law office management problems and inexperience that contributed to his conduct, and there have been no further complaints concerning his conduct. Probation is intended to assist the Accused in maintaining his current course of education and training and to monitor his practice over a period of time.

20.

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; *In re Hughes*, 9 DB Rptr 37 (1995). See also *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension for violation of DR 1-103(C) (two counts) and DR 6-101(B)); *In re Piper*, 14 DB Rptr 153 (2000) (120-day suspension for violation of DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2)); *In re Bonner*, 12 DB Rptr 209 (1998) (120-day suspension for violation of DR 1-103(C), DR 6-101(B), and DR 7-101(A)(2)).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 120 days, all but 30 days of which shall be stayed subject to the Accused's completion of a one-year probation. The sanction shall be effective 10 days from the date this stipulation is approved by the Disciplinary Board

or on April 9, 2005, whichever is later. 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. Ludwig Schmidt, or another person acceptable to the Bar (hereinafter “the Supervising Attorney”), shall supervise the Accused’s probation. 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. Within 25 days of the effective date of this stipulation, the Accused shall meet with the Supervising Attorney to review his existing caseload and shall thereafter take all appropriate actions as recommended by the Supervising Attorney to address any problems the Supervising Attorney may identify.

d. During the term of probation, the Accused shall meet no less often 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 Supervising Attorney shall review the Accused’s entire caseload quarterly, and the Accused shall take all appropriate actions to address any problems the Supervising Attorney may identify.

The Accused shall respond to all reasonable requests from the Supervising Attorney for information that will allow the Supervising Attorney to evaluate the Accused’s compliance with the terms of this probation. The Accused shall also consult with the Supervising Attorney regarding any difficulties he may encounter in his practice as such difficulties may arise and take the steps recommended by the Supervising Attorney to resolve those difficulties.

e. Within 45 days of the effective date of this stipulation, the Accused shall have the Professional Liability Fund review and evaluate his banking, accounting, and office management systems and shall put into effect all changes thereto recommended by the Professional Liability Fund.

f. 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.

g. During the term of this probation, the Accused shall attend at least nine hours of accredited practical skills or law office management classes and report his attendance to the Supervising Attorney.

h. 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.

i. 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 after the expiration of the 30 days of imposed suspension and pay all fees required for reinstatement.

j. Before reinstatement to the active practice of law, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in this proceeding in the amount of \$390.75, for witness fees and mileage and reporting and transcription of the deposition of Elisabeth Sumpter. Should the Accused fail to pay said sum in full by the 30th day after his suspension begins, 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.

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 under the terms of BR 3.6.

EXECUTED this 28th day of March 2005.

/s/ Steven R. Scharfstein

Steven R. Scharfstein

OSB No. 93490

EXECUTED this 29th day of March 2005.

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. 04-153
)
BOB CASEY,)
)
Accused.)

Counsel for the Bar: Jeffrey D. Sapiro
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 8, 2005

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 8th day of April 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Bob Casey, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 23, 1987, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation 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 17, 2004, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 3-101(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.

5.

Facts

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 2004, the Accused failed to pay his membership fees to the Oregon State Bar timely and, after proper notice, was suspended from active membership in the Bar on July 2, 2004. On August 11, 2004, the Accused was reinstated to active membership in the Bar.

7.

Between July 2, 2004, and August 11, 2004, the Accused practiced law while he was not an active member of the Oregon State Bar.

Violation

8.

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

Sanction

9.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’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 “negligence,” defined in the *Standards*, as the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, at 7. The Accused mistakenly thought he had paid his membership fees, and thereafter failed to open and read the written notice from the Bar informing him that he had not paid and was suspended as a result. When he learned that he had been suspended, the Accused promptly paid the membership fees, filed the appropriate documentation for reinstatement, and was reinstated.

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*, at 6.

D. *Aggravating Factors.* Aggravating factors include:

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

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 has demonstrated remorse for his conduct. *Standards*, § 9.32(m).

10.

Drawing together the factors of duty, mental state, and injury, *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 potential injury to a client, the public, or the legal system.

Oregon case law is in accord. See *In re Dixon*, 17 DB Rptr 75 (2003); *In re Bassett*, 16 DB Rptr 190 (2002).

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 publicly reprimanded for violation of DR 3-101(B).

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 under the terms of BR 3.6.

EXECUTED this 24th day of March 2005.

/s/ Bob Casey

Bob Casey
OSB No. 87425

EXECUTED this 28th day of March 2005.

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. 04-96
)
MICHAEL R. GENNA,)
)
Accused.)

Counsel for the Bar: Stephen R. Blixseth; Jane E. Angus
Counsel for the Accused: Peter R. Jarvis; Rene C. Holmes
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4), DR 7-110(B)(2),
and DR 7-110(B)(3). Stipulation for Discipline.
60-day suspension.
Effective Date of Order: May 1, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended from the practice of law for 60 days for violation of DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3) of the Code of Professional Responsibility, the suspension effective May 1, 2005, or three days after the date of this order, whichever is later.

DATED this 25th day of April 2005.

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

/s/ Michael Zusman
Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael R. Genna, attorney at law (hereinafter “Accused”), and the Oregon State Bar (hereinafter “Bar”) hereby stipulate to the following matters under 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 lawyers.

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 Lane 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 17, 2004, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On or about March 13, 2001, Brandalee Tidwell filed a petition for dissolution of marriage in the Circuit Court of the State of Oregon for the County of Lane, Case No. 150105152, *Brandalee Tidwell, petitioner, and Roger A. Tidwell, respondent* (hereinafter “Court Action”). On or about September 27, 2002, the court entered a Judgment and Decree of Dissolution of Marriage in the Court Action. Pursuant to the stipulation of the parties and the terms of the Decree, the parties were awarded joint custody of their minor child.

6.

On or about February 12, 2003, Roger Tidwell, represented by counsel, filed a Motion and Order to Show Cause re: Modification of Judgment, Custody and Child Support in the Court Action, pursuant to which he sought an order awarding him sole

care, custody, and control of the parties' minor child; modifying the parenting plan to allow Brandalee Tidwell, then known as Brandalee Diodonet (hereinafter "Diodonet") only supervised contact with the child for up to three hours per week; requiring Diodonet to pay child support in an amount to be determined under the Oregon Child Support Guidelines; and requiring Diodonet to pay Roger Tidwell his costs and attorney fees.

7.

On or about March 5, 2003, the court entered an order requiring Diodonet to appear and show cause why the Decree should not be modified to grant the relief requested by Roger Tidwell. Diodonet was personally served with a copy of the court's order on March 5, 2003, but thereafter failed to file an appearance or notify Roger Tidwell's counsel that she intended to do so.

8.

On or about April 5, 2003, Roger Tidwell's counsel filed a Motion for Entry of Default, Motion for Entry of Judgment, and proposed form of Judgment Modifying Custody and Parenting Plan. On April 16, 2003, the court granted Roger Tidwell's motions and entered an Order of Default and Judgment Modifying Custody and Parenting Plan against Diodonet.

9.

On or about April 24, 2003, the Accused, on behalf of Diodonet, filed a Motion to Set Aside Order of Default and Judgment. Prior to filing the motion, the Accused contacted Roger Tidwell's counsel who informed the Accused that he was not willing to set aside the order of default and judgment. Under UTCR 5.020, Roger Tidwell was allowed until May 12, 2003, to file a response to Diodonet's motion. On April 29, 2003, the court granted Diodonet's Motion to Set Aside Order of Default and Judgment Modifying Custody and Parenting Plan.

10.

On May 12, 2003, Roger Tidwell's counsel filed a Motion to Reconsider the court's April 29, 2003, order setting aside the Order of Default and Judgment Modifying Custody and Parenting Plan. On June 4, 2003, the court granted Roger Tidwell's Motion to Reconsider and denied Diodonet's Motion to Set Aside Order of Default and Judgment Modifying Custody and Parenting Plan, except on the issue of attorney fees, with that issue to be set for hearing on June 30, 2003. The hearing was rescheduled to July 28, 2003.

11.

On July 22, 2003, the court clerk's office issued a notice of scheduled court proceeding, which scheduled a trial date in the Court Action for October 29, 2003. A copy of the notice was served on the Accused and Roger Tidwell's counsel.

12.

On July 28, 2003, the Court Action came before the court for hearing. The Accused and Diodonet, and counsel for Roger Tidwell appeared. On July 28, 2003, the court again granted Roger Tidwell's Motion to Reconsider and upheld the April 16, 2003 Judgment Modifying Custody and Parenting Plan, but modified the award of attorney fees to a lesser amount. The court directed Roger Tidwell's counsel to prepare the amended judgment.

13.

On or about August 13, 2003, Roger Tidwell's counsel provided the Accused with a copy of a proposed Amended Judgment Modifying Custody and Parenting Plan, and on September 2, 2003, submitted the proposed amended judgment to the court, with copy of his transmittal letter and the proposed amended judgment sent to the Accused. The court signed the Amended Judgment Modifying Custody and Parenting Plan on September 8, 2003. The court prepared and sent Notice of Entry of Judgment to the Accused and counsel for Roger Tidwell, which action concluded proceedings in the Court Action, and closed the case.

14.

On or about October 28, 2003, the Accused received a notice from the court's calendaring clerk scheduling the Court Action for a small claims hearing on December 1, 2003. On October 28, 2003, the Accused appeared in the office of the court's calendaring clerk. The Court Action was not at that time on the court's trial calendar. Without notice to Roger Tidwell's counsel, the Accused instructed the clerk to place the Court Action on the court's trial docket for October 29, 2003. On October 29, 2003, the Accused appeared before the presiding judge (not the judge who had held the July 28, 2003, hearing and entered the September 8, 2003, Amended Judgment Modifying Custody and Parenting Plan), without notice to Roger Tidwell's counsel. Roger Tidwell and his counsel were not present and were not aware of the Accused's contact with the court's calendar clerk or appearance before the presiding judge. The Accused advised the court that it was the time set for trial and presented Diodonet's testimony for a *prima facie* case in response to Roger Tidwell's Motion for Modification of Judgment, Custody, and Child Support. Later the same day, the Accused submitted a proposed form of judgment to the court, without notice to and without providing a copy of the form of judgment to Roger Tidwell's counsel. The form of judgment was contrary to the Amended Judgment Modifying Custody and Parenting Plan entered by the court on September 8, 2003. On October 30, 2003, the court signed the form of Amended Judgment submitted by the Accused.

15.

On October 31, 2003, the Accused sent a copy of the October 30, 2003, Amended Judgment to Roger Tidwell's counsel.

16.

Thereafter, Roger Tidwell's counsel and the Accused appeared before the court concerning a motion to set aside the Accused's October 30, 2003, Amended Judgment. The court granted Roger Tidwell's counsel's motion to set aside the October 30, 2003, Amended Judgment.

Violations

17.

Based on the foregoing, the Accused admits that he violated DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3) of the Code of Professional Responsibility.

Sanction

18.

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 lawyer'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 the legal system and the profession. *Standards*, §§ 6.0, 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*, at 7. The Accused asserts that when he received the court's notice for a small claims hearing, he believed issues remained to be resolved by the court in the Court Action and that they were still scheduled to be heard on October 29, 2003. The Accused admits that he was negligent in not checking his file more carefully; not reviewing the documents contained in his file; and not contacting opposing counsel to confirm the status of the case. Had the Accused done so, he would have realized that there were no remaining issues to be decided by the court. The Accused also asserts that he thought he provided Roger Tidwell's counsel with a copy of the amended judgment before submitting it to the court, but was mistaken in this regard.

C. *Injury.* There was actual injury to the court, Roger Tidwell, and Roger Tidwell's counsel. By not giving notice of his October 29, 2003, request to place the case on the court docket and appearance before the presiding judge, the Accused

adversely affected the rights of Roger Tidwell and his counsel to appear and challenge the Accused's actions. By not giving notice to and providing Roger Tidwell's counsel with a copy of his proposed Amended Judgment before he submitted the Amended Judgment to the court, the Accused similarly affected Roger Tidwell's right to challenge the Accused's actions before the court signed and entered the Accused's form of judgment. The court was adversely affected because the Accused did not inform the presiding judge that the Accused caused the case to be placed on the court's docket that same day, and that he had not informed Roger Tidwell's counsel that he had taken such action. Roger Tidwell incurred additional attorney fees, and Roger Tidwell's counsel and the court devoted additional time to set aside the Amended Judgment the Accused submitted to the court.

D. *Aggravating Factors.* Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating factors include:

1. There are multiple rule violations. *Standards*, § 9.22(d).
2. The Accused was admitted to practice in 1972 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating factors include:

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

19.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.13. Reprimand is also 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. Reprimand is generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *Standards*, § 6.33. Reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

Although reprimand may be considered, the circumstances of this case are more aggravated and therefore a period of suspension is the appropriate sanction. See, e.g., *In re Roberts*, 335 Or 476, 71 P3d 71 (2003); *In re Thompson*, 325 Or 467, 940 P2d 512 (1997); and *In re Smith*, 316 Or 55, 848 P2d 612 (1993), where the court imposed short-term suspensions for violation of DR 1-102(A)(4) and other rules.

20.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 1-102(A)(4), DR 7-110(B)(2), and DR 7-110(B)(3), the suspension effective May 1, 2005, or three days after the date the stipulation is approved, whichever is later.

21.

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 under the terms of BR 3.6.

DATED this 15th day of April 2005.

/s/ Michael R. Genna

Michael R. Genna
OSB No. 72087

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. 04-81
)
PENNY L. DAVIS,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Mark M. Williams
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 6-101(B), and
DR 7-101(A)(2). Stipulation for Discipline.
120-day suspension.
Effective Date of Order: June 1, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Penny L. Davis 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 120 days for violation of DR 1-103(C), DR 6-101(B), and DR 7-101(A)(2) of the Code of Professional Responsibility, effective June 1, 2005, or three days after the date of this order, whichever is later.

DATED this 25th day of April 2005.

/s/ Susan G. Bischoff
Susan G. Bischoff, Region 5
Disciplinary Board Chairperson

/s/ Michael C. Zusman
Michael C. Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Penny L. Davis, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law on September 26, 1977, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On November 20, 2004, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 1-103(C), DR 6-101(B), and DR 7-101(A)(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 July 12, 2002, James McGinnis, Deborah McGinnis, and their minor child, [REDACTED] died as a result of an explosion/fire in their home. In July 2002, Charmaine Bannister (hereinafter “Bannister”) was appointed to serve as the personal representative of the estate of James McGinnis. Patricia Schafer (hereinafter “Schafer”) was appointed to serve as the personal representative of the estate of Deborah McGinnis.

6.

On or about February 23, 2003, Bannister retained the Accused to represent her interests as the personal representative and to conclude the probate of the estate of James McGinnis. Schafer was represented by other counsel (hereinafter “Schafer’s Counsel”). Primary issues of dispute were the distribution of insurance proceeds paid

to the estate of Deborah McGinnis, and the payment of James McGinnis' and Deborah McGinnis' debts and expenses related to the administration of their respective estates. In and between March 2003 and January 2004, Bannister provided information to and requested information and action from the Accused concerning the estates, and her duties as personal representative of the estate of James McGinnis. On or about May 9, 2003, Schafer's Counsel proposed terms to the Accused to resolve issues between the estates of James McGinnis and Deborah McGinnis.

7.

In and between about March 2003 and January 2004, the Accused neglected a legal matter entrusted to her and intentionally failed to carry out a contract of employment by:

- (a) failing to respond to Bannister's inquiries and failing to communicate and timely communicate with Bannister;
- (b) failing to provide and timely provide Bannister with copies of written communications the Accused received from other persons concerning the McGinnis' estates;
- (c) failing to convey and timely convey Bannister's requests to and otherwise communicate with Schafer's Counsel;
- (d) failing to monitor Bannister's case;
- (e) failing to take action to resolve issues of dispute concerning the estates of James McGinnis and Deborah McGinnis; and
- (f) failing to take substantive action to advance and protect the interests of Bannister and the estate of James McGinnis.

8.

On or about January 22, 2004, Bannister filed a complaint with the Bar concerning the Accused's conduct. On January 30, 2004, the complaint was referred to Disciplinary Counsel for investigation. On February 3, 2004, Disciplinary Counsel forwarded a copy of the complaint to the Accused and requested her explanation by February 24, 2004. On February 18, 2004, the Accused acknowledged receipt of the Bar's letter and requested an extension of time until March 5, 2004, to provide her explanation. Disciplinary Counsel granted the Accused's request. Thereafter, the Accused failed to provide her explanation or communicate with Disciplinary Counsel. On March 16, 2004, Disciplinary Counsel again requested that the Accused provide an explanation. The Accused failed to respond, and on June 18, 2004, the matter was referred to the Multnomah Local Professional Responsibility Committee (hereinafter "LPRC") for investigation.

9.

On or about July 14, 2004, the LPRC investigator telephoned and left a message for the Accused asking her to call to schedule a meeting concerning the complaint. The Accused did not respond. On July 22, 2004, the LPRC investigator sent the Accused a letter asking that she contact the investigator to schedule a meeting concerning the complaint. The Accused did not respond. On August 3, 2004, the LPRC sent the Accused a second letter asking that she contact the investigator to schedule a meeting concerning the complaint. The Accused did not respond. On or about August 13, 2004, the LPRC issued a subpoena for the Accused to appear for deposition concerning the complaint. The subpoena was served on the Accused on August 16, 2004. The Accused appeared for deposition on September 2, 2004.

10.

The Accused admits that the aforesaid conduct constituted failure to respond to the inquiries of the disciplinary authorities; neglect of a legal matter entrusted to her; and intentional failure to carry out a contract of employment, in violation of DR 1-103(C), DR 6-101(B), and DR 7-101(A)(2) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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 lawyer’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 1-103(C), DR 6-101(B), and DR 7-101(A)(2), the Accused violated duties to her client, the legal system, and the profession. *Standards*, §§ 4.4, 6.2, 7.0.

B. *Mental State.* “Intent” is the conscious objective or purpose to accomplish a particular result. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, at 7. The Accused knew that she was responsible for and needed to take action concerning her client’s legal matter, but failed to act. The Accused also knew that the disciplinary authorities made numerous requests for her explanation, but she failed to respond.

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*, at 7.

The Accused caused actual injury to her client. The Accused's client was frustrated by the Accused's failure to communicate with her. Because the Accused failed to communicate, the opportunity to accept Schafer's settlement proposal, which included the distribution of a portion of the insurance proceeds received by the estate of Deborah McGinnis to the Accused's client, was lost. As a result, the estate of James McGinnis lacked funds and other assets to pay his debts and other expenses related to the administration of his estate.

The legal system and the disciplinary authorities were also injured. The disciplinary authorities devoted additional time and resources to investigate the complaint because the Accused did not respond. The Accused also caused injury to the profession. The profession is judged by the conduct of its members.

D. *Aggravating Factors*. "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are several aggravating factors in this case. There are multiple offenses and a pattern of misconduct. *Standards*, § 9.22(d), (c). The Accused delayed the regulatory process. *Standards*, § 9.22(e). The Accused has substantial experience in the practice of law. She was admitted to practice in 1977. *Standards*, § 9.22(i). The client was vulnerable in that she relied on the Accused to actively advance her objectives; to promptly conclude the case; and to keep her informed. *Standards*, § 9.22(h).

E. *Mitigating Factors*. The Accused has no prior record of discipline. *Standards*, § 9.32(a). There is an absence of selfish or dishonest motives. *Standards*, § 9.32(b). The Accused had a good reputation in the legal community and is remorseful. *Standards*, § 9.32(g), (m).

12.

The *Standards* provide that suspension is generally appropriate when a lawyer fails to perform services for a client and causes injury or potential injury to a client; or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.22. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2. Case law is in accord. See, e.g., *In re Miles*, 324 Or 218, 923 P2d 1219 (1996); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996). See also *In re Piper*, 14 DB Rptr 153 (2000); *In re Berentson*, 12 DB Rptr 74 (1998); *In re Bonner*, 12 DB Rptr 209 (1998).

13.

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 120 days for violation of DR 1-103(C), DR 6-101(B), and DR 7-101(A)(2), the suspension effective June 1, 2005, or three days after the Disciplinary Board approves this stipulation, whichever is later.

14.

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

DATED this 20th day of April 2005.

/s/ Penny L. Davis

Penny L. Davis
OSB No. 77153

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. 04-53, 04-54, 04-69,
) 04-86, 04-87
RICHARD A. CREWS,)
)
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: Michael C. Zusman, Chair; Carol J. Bernick;
Ray Earl Bozlee, Public Member
Disposition: Violation of DR 1-102(A)(2), DR 1-102(A)(3),
DR 1-103(C), DR 6-101(B), DR 9-101(C)(4),
WA RPC 1.15, WA RPC 8.4(b), WA RPC
8.4(c), and WA RPC 8.4(d). Trial Panel Opinion.
Disbarment.
Effective Date of Opinion: May 1, 2005

OPINION OF THE TRIAL PANEL

In this matter, the Accused failed to answer or appear. Accordingly, the Trial Panel entered an Order, dated October 25, 2004, finding the Accused in default under BR 5.8. The Trial Panel is, therefore, taking the allegations in the Bar's Formal Complaint as true.

The Trial Panel exercised its discretion to request and consider evidence and legal authority submitted by the Bar limited to the issue of sanctions. BR 5.8. The Panel has reviewed the Bar's submission and hereby adopts as its findings and conclusions the facts and recommendations set forth in the Bar's sanctions memorandum submitted on December 22, 2004. That memorandum is attached hereto and incorporated herein by this reference.

Based on the foregoing, it is the decision of the Trial Panel that the Accused should be disbarred.

2/9/2005
Date

/s/ Michael C. Zusman
Michael C. Zusman
OSB No. 84397
Trial Panel Chairperson

2/14/2005
Date

/s/ Carol J. Bernick
Carol J. Bernick
OSB No. 89409
Trial Panel Member

2/16/2005
Date

/s/ Ray Earl Bozlee
Ray Earl Bozlee
Trial Panel Public Member

Cite as 338 Or 480 (2005)
IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
the Reciprocal Discipline of)
)
DEVEN J. COGGINS,)
)
Accused.)

(OSB No. 04-161; SC S52109)

En Banc

On review of the recommendation of the State Professional Responsibility Board.

Submitted on the record January 27, 2005. Decided May 5, 2005.

Susan Roedl Cournoyer, Assistant Disciplinary Counsel, Lake Oswego, filed the notice and reply for the Oregon State Bar.

Deven J. Coggins filed the answer for himself.

PER CURIAM

Recommendation for discipline denied.

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar sought reciprocal discipline of the Accused in Oregon under BR 3.5(a) after the Accused was reprimanded by the Tenth Circuit for failing to respond its orders and for failing to follow court rules. The Accused's office is in Utah. The proceedings in this reciprocal discipline case arose because the Accused's law partner had represented a client in a federal criminal matter in Utah and the Accused had made a single court appearance on the client's behalf in the course of that representation. The lawyer-client relationship between the client and the Accused's partner eventually broke down and after making clear that he no longer wished to be represented by the Accused's partner, the client filed an appeal. Despite the client's wishes, the Tenth Circuit subsequently contacted the Accused's partner and ordered him to represent the client. The Tenth Circuit then issued orders in March, April, and July 2004 directing the Accused to respond to that court's inquiries regarding the Accused's handling of the client's appeal, even though the Accused was not, nor had he been, the client's lawyer. The Accused did not respond to the

March order, but did respond to the orders that followed. *Held*: The case at hand is not like the usual reciprocal discipline case in that the Tenth Circuit order is, by itself, insufficient to establish that the Accused's conduct in the Tenth Circuit also violated an Oregon disciplinary rule. First, there is no evidence showing that the Accused's conduct prejudiced the Tenth Circuit proceedings or the client's substantive interests in those proceedings. Second, the Accused's decision to forgo a response to the Tenth Circuit's first order was undertaken with the good-faith belief that the Accused's law partner would either submit, or had submitted, a sufficient explanation to the Tenth Circuit. The Bar's recommendation for reciprocal discipline is denied.

Cite as 338 Or 508 (2005)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
SALLY LEISURE,)
)
Accused.)

(OSB Nos. 02-149, 02-150, 03-31; SC S51514)

En Banc

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

Argued and submitted March 7, 2005. Decided May 12, 2005.

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

Sally Leisure, herself, Portland, argued the cause and filed the brief for the Accused.

PER CURIAM

The Accused is suspended from the practice of law for 18 months, effective 60 days from the date of the filing of this decision.

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar alleged that the accused lawyer violated Code of Professional Responsibility Disciplinary Rules (DRs) by writing numerous checks that, when she wrote them, she knew that her checking account could not cover. Based on that conduct, and its effect on two creditors in particular, the Bar charged violations of DR 1-102(A)(2) (engaging in criminal conduct reflecting adversely on a lawyer's honesty, trustworthiness, or fitness to practice law) and DR 1-102(A)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). A trial panel of the Disciplinary Board had concluded that the Accused did not violate DR 1-102(A)(2), but that she did violate DR 1-102(A)(3). The trial panel imposed an 18-month suspension with all except three months of that period of suspension stayed pending the Accused's compliance with certain conditions. *Held:* The accused lawyer is guilty of violating DR 1-102(A)(2) and DR 1-102(A)(3) for her conduct in issuing to others over an extended period of time checks that she knew that her bank

account could not cover. In addition, the Accused also made material misrepresentations by falsely stating that her bank would cover checks at times that she knew that her bank would not, and by failing to disclose to a law firm her receipt of funds that were subject to a fee-sharing agreement with that law firm.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 04-109, 04-110
)
MICHAEL R. SHINN,)
)
Accused.)

Counsel for the Bar: Andrew T. Reilly; Stacy J. Hankin
Counsel for the Accused: Thomas E. Cooney
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(1) and DR 2-110(A)(2).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: May 13, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 2-110(A)(1) and DR 2-110(A)(2).

DATED this 13th day of May 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael R. Shinn, 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 lawyers.

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 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 19, 2004, 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)(1) and DR 2-110(A)(2) of the Code of Professional Responsibility in the Terry matter and violation of DR 2-110(A)(2) of the Code of Professional Responsibility in the Storie matter. A copy of the Formal Complaint and the Accused’s answer are attached as Exhibits 1 and 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.

Terry Matter

(Case No. 04-110)

Facts

5.

In January 2001, the Accused undertook to represent Susan Terry (hereinafter “Terry”) in a claim against her former husband for personal injuries she allegedly sustained on September 7, 1999. On September 5, 2001, the Accused filed a compliant in federal court on Terry’s behalf.

6.

Sometime in early 2002, the Accused ceased working on Terry's legal matter, because service upon Terry's former husband was not timely accomplished due to an internal administrative error.

7.

Local Rule 83.11(a) of the United States District Court for the District of Oregon allows a lawyer to withdraw as counsel of record only with leave of court. The Accused failed to obtain the court's permission to withdraw as Terry's counsel.

8.

After the Accused ceased working on Terry's legal matter, he failed to take reasonable steps to avoid foreseeable prejudice to Terry in that he failed to give her written notice that he was no longer pursuing her case, as required by Local Rule 83.11(a) of the United States District Court for the District of Oregon, and failed to promptly forward to Terry correspondence he received from the court regarding her legal matter. Based upon a conversation he had with Terry, the Accused thought that Terry understood that he was no longer pursuing her legal matter.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated DR 2-110(A)(1) and DR 2-110(A)(2) of the Code of Professional Responsibility.

Storie Matter

(Case No. 04-109)

Facts

10.

On October 21, 2002, the Accused was retained by Keith Storie (hereinafter "Storie") with regard to a pending lawsuit. Thereafter, the Accused and Storie disagreed about the terms of the retention and about how to proceed in the pending lawsuit.

11.

On January 24, 2003, Storie sent a letter to the Accused terminating his services, and informing the Accused that he had retained a new lawyer to represent him in the pending lawsuit. Thereafter, the Accused asserted a possessory lawyer's lien on Storie's file.

12.

After January 24, 2003, the Accused orally informed some of the opposing lawyers that he was no longer representing Storie. However, the Accused failed to take other reasonable steps to avoid foreseeable prejudice to Storie's rights including (by not) executing and returning a substitution of counsel, notifying the court and all of the opposing lawyers that he was no longer representing Storie, and promptly forwarding correspondence and pleadings he received after January 24, 2003, to Storie's new lawyer.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 12, he violated DR 2-110(A)(2).

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 lawyer'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 properly withdraw from two pending legal matter. *Standards*, § 7.0.

B. *Mental State.* The Accused knew he had not properly withdrawn, but did not act with a conscious objective or purpose to accomplish a particular result.

C. *Injury.* Terry sustained actual injury in that she did not receive notices from the court after the Accused ceased working on her legal matter. Storie also sustained actual injury in that he did not receive documents from some of the opposing lawyers who continued to send correspondence and pleadings to the Accused when he was no longer representing Storie.

D. *Aggravating Factors.* The following aggravating circumstances are present:

1. A pattern of misconduct. *Standards*, § 9.22(c).
2. Multiple offenses. *Standards*, § 9.22(d).
3. Substantial experience in the practice of law as the Accused has been an Oregon lawyer since 1973. *Standards*, § 9.22(i).

- E. *Mitigating Factors*. The following mitigating circumstances are present:
1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
 2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
 3. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
 4. Character or reputation. *Standards*, § 9.32(g).
 5. Remorse. *Standards*, § 9.32(m).

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. *Standards*, § 7.3. Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

15.

Because the mitigating circumstances outweigh the aggravating circumstances, a public reprimand is the more appropriate sanction. *In re Peters*, 15 DB Rptr 184 (2001) (lawyer with no prior disciplinary history who violated duties he owed to the profession in two matters was reprimanded).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimand for violation of DR 2-110(A)(1) and DR 2-110(A)(2).

17.

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 under the terms of BR 3.6.

EXECUTED this 9th day of February 2005.

/s/ Michael R. Shinn

Michael R. Shinn

OSB No. 73270

EXECUTED this 15th day of February 2005.

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. 04-14
)
MARY A. NESTER,)
)
Accused.)

Counsel for the Bar: Conrad Yunker; Martha M. Hicks
Counsel for the Accused: Peter R. Jarvis
Disciplinary Board: None
Disposition: Violation of DR 1-103(C) and DR 5-101(A).
Stipulation for Discipline. 30-day suspension.
Effective Date of Order: June 3, 2005

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 June 3, 2005, for violation of DR 1-103(C) and DR 5-101(A).

DATED this 18th day of May 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Mary A. Nester, 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 lawyers.

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 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 19, 2004, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-102(A)(3), DR 1-103(C) and DR 5-101(A). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In May 2000, the Accused undertook as a lawyer to represent the owners and operators of a nursing home, Linda Johnston and Linda Hill Investments, Inc., *dba* Sheridan Care Center (hereinafter collectively “Johnston”) in the defense of certain charges arising out of the deaths of one or more residents of Sheridan Care Center and in the assessment, development and implementation of the nursing home’s corporate compliance program.

6.

On or about April 11, 2001, the Oregon Board of Examiners of Nursing Home Administrators (hereinafter “BENHA”) authorized disciplinary proceedings against

Johnston in connection with the deaths described in paragraph 5 above. The Accused undertook as a lawyer to represent Johnston in these proceedings.

7.

At all relevant times herein, the Accused owned an interest in Compliance Advocates, LLC, a health care facility management consultant company. In or around May 2001, the Accused, with Johnston's permission, retained Compliance Advocates, LLC to provide certain services in connection with the Accused's legal representation of Johnston.

8.

On December 5, 2001, Johnston and BENHA entered a consent order to resolve the disciplinary proceedings described in paragraph 6 herein. The consent order required Johnston to retain the services of a management consulting firm, approved by BENHA, to perform a comprehensive evaluation of the management of Sheridan Care Center and to report to BENHA the results of that evaluation and the results of subsequent periodic reevaluations.

9.

Johnston selected, and BENHA approved, Compliance Advocates LLC to perform the evaluations described in paragraph 8 herein. The Accused continued thereafter to represent Johnston as a lawyer without first having obtained Johnston's consent to the continued representation after full disclosure of the potential adverse impact upon the Accused's professional judgment of the Accused's ownership of the company required by the consent order to report to BENHA the results of its evaluation of Johnston's nursing home and any failures by Johnston to comply with its recommendations.

10.

The Oregon State Bar received a complaint concerning the Accused's conduct on May 20, 2002. On July 3, 2003, in the course of the Disciplinary Counsel's investigation of this complaint, the Accused represented that before Johnston entered into an agreement with Compliance Advocates LLC to provide the evaluations and reports to BENHA required by the consent order described in paragraph 8 herein, the Accused provided Johnston with "information orally and in writing regarding potential conflicts as well as identifying the principals of Compliance Advocates, LLC. This included advice in writing to seek independent legal counsel. . . ." Taken as a whole, these representations were false in that the Accused had not disclosed a possible lawyer's self-interest conflict to Johnston and had rendered no written advice to seek independent counsel. Because the Accused failed to review her file in the matter, she did not know the truth or falsity of the representations when she made them.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, she violated DR 1-103(C) and DR 5-101(A).

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

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 lawyer’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated her duty to her clients to avoid conflicts of interest and her duty as a professional to respond truthfully to inquiries by the Bar about her conduct. *Standards*, §§ 4.3, 7.0.

B. *Mental State.* The Accused acted negligently in failing to recognize the self-interest conflict in her clients’ contracting with Compliance Advocates to perform the evaluation and make the reports described in paragraph 8 herein while she represented the clients in the BENHA disciplinary proceedings. Although the Accused knew she was obligated to respond truthfully to inquiries by the Bar, she failed to ascertain the truth or falsity of the representations she made to the Bar in the course of its disciplinary investigation. The *Standards* define “negligence” as the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, at 7.

C. *Injury.* The Accused’s clients were exposed to the potential for injury in that her duty as a lawyer to protect her clients’ confidences and secrets could have conflicted with her duty as a principal of Compliance Advocates to report fully and truthfully to BENHA. The Bar experienced some actual injury in that its investigation of the Accused’s conduct was delayed by her false statements. The Bar was also exposed to potential injury in that it could have been misled in its investigation by the Accused’s false statements and its ability to protect the public could thereby have been impaired.

D. *Aggravating Factors.* The aggravating factor applicable to this case is: Substantial experience in the practice of law. The Accused has been a member of the Bar since 1993. *Standards*, § 9.22(i).

E. *Mitigating Factors*. The mitigating factors applicable to this case include:

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

13.

Standards § 4.33 suggests that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests and causes injury or potential injury to a client. *Standards* § 7.3 suggests that a public reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

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. *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.

14.

Oregon case law suggests that a short period of suspension, not a public reprimand, is the appropriate sanction in this case.

In *In re Schaffner*, 323 Or 472, 481, 918 P2d 803 (1996), the Supreme Court stated that a 60-day suspension is an appropriate sanction for one intentional violation of DR 1-103(C). See also *In re Worth*, 336 Or 256, 278, 82 P3d 605 (2003). The Disciplinary Board has determined that a 30-day suspension is an appropriate sanction when the lawyer violated DR 1-103(C) for making a false statement to the Bar without first determining the truth or falsity of that statement, and for violation of DR 2-101(A), DR 2-110(A)(2), and DR 6-101(B). *In re Mendez*, 10 DB Rptr 129 (1996).

With respect to the Accused's self-interest conflict, the court has also typically imposed a short period of suspension when a conflict is so obvious that the lawyer should know better. *In re Robertson*, 290 Or 639, 624 P2d 603 (1981); *In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987); *In re Gant*, 293 Or 130, 137, 645 P2d 23 (1982).

15.

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 5-101(A) and DR 1-103(C), the sanction to be effective beginning on June 3, 2005.

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 Chair of the SPRB on March 17, 2005. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

EXECUTED this 3rd day of May 2005.

/s/ Mary A. Nester

Mary A. Nester

OSB No. 93381

EXECUTED this 6th day of May 2005.

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. 04-74, 04-130, 05-17
)
JOHN P. BOWLES,) SC S52450
)
Accused.)

Counsel for the Bar: C. Thomas Davis; Jane E. Angus
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(2), DR 1-102(A)(3),
DR 1-103(C), DR 2-106(A), DR 6-101(B),
DR 9-101(A), DR 9-101(C)(3), and DR
9-101(C)(4). Stipulation for Discipline.
One-year suspension.
Effective Date of Order: June 1, 2005

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 in the State of Oregon for a period of one year. The sanction shall become effective June 1, 2005. In addition, the accused shall also pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,180.50. This amount shall be paid in full before the accused is eligible to apply for reinstatement as an active member of the Oregon State Bar.

DATED this 24th day of May 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.
Chief Justice

STIPULATION FOR DISCIPLINE

John P. Bowles, 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 lawyers.

2.

The Accused, John P. Bowles, was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 8, 1997, 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.

The State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for violation of DR 1-102(A)(3), DR 1-103(C), DR 2-106(A), and DR 9-101(A) of the Code of Professional Responsibility, Case No. 04-74, on June 11, 2004. On November 20, 2004, the SPRB authorized a formal disciplinary proceeding against the Accused for violation of DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4), Case No. 04-130. On March 12, 2005, the SPRB authorized a formal disciplinary proceeding against the Accused for violation of DR 1-102(A)(2) of the Code of Professional Responsibility, Case No. 05-17. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of these proceeding.

Kubbo Matter

(Case No. 04-74)

Facts and Violations

5.

In or about October 2003, Kalle Kubbo (hereinafter “Kubbo”) was served with a civil summons and complaint for Forcible Entry and Detainer (hereinafter “FED”), *Justine and Keith Jenkins v. Inez Keough and Ravio K. Kubbo*, Clackamas County

Circuit Court Case No. FED 3100421 (hereinafter “FED Case”). Kubbo paid a first appearance fee and filed an answer in the FED Case on or about October 27, 2003. The court scheduled the trial of the FED Case for November 10, 2003.

6.

In late October 2003, the Accused sent Kubbo a letter offering his legal services to Kubbo for the FED Case. The Accused represented that the initial consultation was free. On or about October 31, 2003, Kubbo met with the Accused. At the meeting, the Accused represented to Kubbo that the landlord’s notice of eviction was defective; the Accused could get the FED Case dismissed if Kubbo retained him for representation; the Accused would represent Kubbo for \$250, including \$50 for the initial consultation; the landlord may be required to pay Kubbo’s attorney fees and costs; the Accused would apply for and recover the attorney fees and costs paid by Kubbo from the landlord. Based on the Accused’s representations, Kubbo retained the Accused to represent him in the FED Case. Kubbo paid \$250 in advance to the Accused for the representation. The Accused did not have a written fee agreement or other communication with Kubbo that provided that the fee Kubbo paid to the Accused was earned on receipt.

7.

The Accused failed to deposit and maintain the funds Kubbo paid to the Accused for the FED Case in a lawyer trust account. Prior to and after about October 2003, the Accused did not have a lawyer trust account in a financial institution in Oregon.

8.

On or about November 5, 2003, the landlord’s lawyer told the Accused that the FED Case would be dismissed because the notice of eviction was defective. On November 6, 2003, the landlord’s lawyer filed a motion and order to dismiss the FED Case, with copy of the motion served on the Accused by facsimile transmission and by mail the same day. On November 7, 2003, the court dismissed the FED Case. As a result, Kubbo was the prevailing party and entitled to the award of his costs and disbursements and reasonable attorney fees.

9.

Under ORCP 68, the Accused was required to file and serve a statement for costs and attorney fees not later than 14 days after entry of the judgment in the FED Case. After November 6, 2003, the Accused failed to file a statement for Kubbo’s costs and disbursements and attorney fees with the court. The Accused did not inform Kubbo that he had taken no action and was not taking action to obtain an award and collect the attorney fees and costs from the landlord in the FED Case. In or about early December 2003, Kubbo contacted the Accused to determine if he had collected the attorney fees and costs from the landlord in the FED Case. The Accused

represented to Kubbo that he was in the process of recovering the fees and costs. At the time, the Accused knew that the time to file the statement had passed; that he had not filed the statement for costs and attorney fees with the court; and as a result, he could not recover the costs and attorney fees from the landlord.

10.

On or about February 26, 2004, Kubbo filed a complaint with the Bar concerning the Accused's conduct. On March 3, 2004, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response and the production of certain documents by March 24, 2004. The Accused did not respond. On March 31, 2004, the Bar received a facsimile transmission from the Accused concerning Kubbo's complaint. The Accused failed to deliver the documents the Bar requested. The Accused represented to the Disciplinary Counsel's Office that he had performed substantially more work on the FED Case than the fee Kubbo paid; he told Kubbo that he had missed the period to file for recovery of fees and costs; and he thought opposing counsel dismissed the case a day later than the FED Case was actually dismissed as an explanation for why he failed to timely prepare and file the statement for costs and attorney fees. The representations were misleading and not true. The Accused knew they were misleading and not true at the time he made them.

11.

On or about March 31, 2004, Disciplinary Counsel's Office notified the Accused that he was required to deliver the requested documents and a signed response to Bar's inquiry to the Bar. The Accused did not respond. On April 6, 2004, Disciplinary Counsel's Office again requested the Accused's complete response to the Bar's inquiry and the delivery of the documents by April 13, 2004. The Accused did not respond. On April 14, 2004, Disciplinary Counsel's Office requested the Accused's response to certain questions and again asked that he deliver the documents that had been requested. The Accused did not respond. On April 29, 2004, Disciplinary Counsel's Office again requested the Accused's response to questions and the production of documents by May 5, 2004. The Accused did not respond.

12.

While the subject of a disciplinary investigation, the Accused failed to fully and truthfully respond to inquiries from and cooperate with the Disciplinary Counsel's Office, which is empowered to investigate or act on the conduct of lawyers.

13.

The Accused admits that the aforesaid conduct constitutes conduct involving misrepresentation; failure to fully and truthfully respond to the inquiries of the disciplinary authorities; charging or collecting an illegal or clearly excessive fee; failure to maintain a lawyer trust account; and failure to deposit and maintain client

funds in a lawyer trust account, in violation of DR 1-102(A)(3), DR 1-103(C), DR 2-106(A), and DR 9-101(A) of the Code of Professional Responsibility.

Vincent Matter
(Case No. 04-130)
Fact and Violations

14.

Prior to October 2002, Long Dang Bui (hereinafter “Landlord”) rented residential premises located in Portland, Oregon Tami Vincent (hereinafter “Vincent”) and Shaun Jordan (hereinafter “Jordan”). In and after October 2002, Vincent and Jordan withheld rent from the Landlord on grounds that the Landlord had failed to maintain the premises in a habitable condition and failed to repair the premises after notice thereof. On or about November 4, 2002, the Landlord filed a Forcible Entry and Detainer action against Vincent and Jordan, *Long Dang Bui v. Shawn Jordan and Tami Vincent*, Multnomah County Circuit Court Case No. 02FO17196 (hereinafter “FED Case”).

15.

On or about November 4, 2002, Vincent and Jordan (hereinafter collectively “Clients”) retained the Accused to represent their interests to defend the FED and to assert claims for damages and other relief against the Landlord for the Clients. On or about November 12, 2002, the Accused filed an Answer, Affirmative Defenses and Counterclaim for the Clients in the FED Case. On or about November 29, 2002, the Accused filed an Amended Answer, Affirmative Defenses, and Counterclaim for the Clients in the FED Case.

16.

On or about December 13 and 18, 2002, the court held a hearing concerning the FED Case. On December 20, 2002, the court filed its decision and entered judgment in favor of the Clients, awarding them possession of the residential premises, a diminution of past rent, credit for past paid rent, and costs and attorney fees. In and between November 4, 2002, and about December 18, 2002, the Accused failed to provide the Clients with copies of all pleadings and court notices; failed to communicate and timely communicate with health and building inspectors concerning the residential premises; failed to subpoena the appropriate health and building inspectors for the trial of the FED Case; and failed to take action to assert claims to terminate the Clients’ tenancy of the premises and for the award of other damages, or to refer the Clients to counsel who would do so.

17.

Under ORCP 68, the Accused was required to file and serve a statement for costs and attorney fees not later than 14 days after entry of the judgment in the FED

Case. After about December 20, 2002, the Accused failed to communicate and timely communicate with the Clients; failed to timely prepare and file a statement for costs and attorney fees; failed to include in a statement for costs all costs to which the Clients' were entitled; failed to prepare and submit a supplemental judgment to the court; failed to assist the Clients to obtain the release of the funds they deposited with the court prior to trial; failed to take action to collect the Clients' judgment against the Landlord; and failed to pursue other damage claims against the Landlord for the Clients or to refer them to counsel who would do so.

18.

During the Accused's representation, the Clients delivered funds to the Accused concerning their legal matter. The Accused failed to prepare and maintain complete records of his receipt, deposit, and disbursement of the Clients' funds, and failed to account to the Clients for the funds delivered to him. In or about April 2003, the Clients terminated the Accused's representation. The Clients requested that the Accused deliver all paperwork, photographs, and other documents concerning their legal matter to them. The Accused failed to promptly deliver to the Clients, as requested by the Clients, all papers and other property the Clients were entitled to receive.

19.

The Accused admits that the aforesaid conduct constitutes neglect of a legal matter entrusted to him; failure to maintain complete records of his receipt, deposit and disbursement of the Clients' funds, and failure to account for the Clients' funds; and failure to promptly deliver as requested by the Clients the property the Clients were entitled to receive, in violation of DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Tax Matters

(Case No. 05-17)

Facts and Violations

20.

Federal law requires taxpayers to file income tax returns at specified times. Failure to file income tax returns and failure to pay income taxes in violation of 26 USC §7203 is a crime. The Accused was required to file federal income tax returns and pay income taxes for tax calendar years 2001, 2002, and 2003. The Accused failed to file those returns and failed to pay income taxes for calendar years 2001, 2002, and 2003 as required by law in violation of 26 USC §7203.

21.

State law requires taxpayers to file income tax returns at specified times. Failure to file income tax returns and failure to pay income taxes in violation of

ORS 314.075(1) is a crime. The Accused was required to file state income tax returns and pay income taxes for tax calendar years 2001, 2002, and 2003. The Accused failed to file those returns and failed to pay income taxes for calendar years 2001, 2002, and 2003 as required by law in violation of ORS 314.075(1).

22.

The Accused admits that the aforesaid conduct constitutes a violation DR 1-102(A)(2) of the Code of Professional Responsibility.

Sanction

23.

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 lawyer’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 1-102(A)(2), DR 1-102(A)(3), DR 1-103(C), DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4), the Accused violated his duties to his clients, the public, and the profession. *Standards*, §§ 4.1, 4.4, 4.6, 5.1, 7.0.

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. “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*, at 7. The Accused knew that he had a legal duty to file federal and state income tax returns and pay federal and state income taxes, but failed to comply with the law. The Accused knew that he was responsible for and needed to take action concerning his client’s legal matters, but he failed to act or timely act. The Accused knew he had not filed a statement for costs and attorney fees; that the time to file such a statement had passed; and he had taken no action to recover the fees when he told Kubbo that he was in the process of collecting the costs and fees. The Accused was negligent in his handling of Vincent’s photographs, representing that he had thrown them away when he actually had misplaced them. The Accused also knew that the disciplinary authorities had repeatedly requested his explanation and documents, but he failed to respond as he was required to do.

C. *Injury.* The Accused’s failure to timely file his federal and state income tax returns and failure to pay federal and state income taxes caused actual injury to the state and federal government, hindering their ability to administer the tax system and collect tax revenue. In late February 2005, the Accused filed his federal and state income tax returns for calendar years 2001, 2002 and 2003, but has not paid the

taxes due. Kubbo was injured in that he did not recover the costs incurred or the attorney fees he paid to the Accused. Vincent and her family were injured. The Accused failed to take action to terminate the tenancy of the residential premises when it was not habitable and dangerous to the health and safety of the family, and effectively left them without counsel in dealing with post court decision issues. Vincent was also injured when the Accused failed to timely return her documents and photographs of the conditions of the premises in which she and her family resided. The Accused did not deliver the photographs until March 2005, over a year after they should have been returned. Kubbo and Vincent were frustrated and upset because the Accused failed to communicate with and take action on their behalf. The Accused also caused injury to the disciplinary authorities. The investigation of the Kubbo matter was delayed because the Accused failed to respond and provide requested information and documents in a timely manner.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused engaged in a pattern of misconduct by failing to file tax returns and failing to pay income taxes for three consecutive calendar tax years; failing to take timely action to assist clients to collect costs and attorney fees; failing to timely communicate with his clients; failing to maintain a lawyer trust account since 2001 through early 2005; and failing to prepare and maintain complete records of clients' funds and other property. *Standards*, § 9.22(c).

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

3. Kubbo and Vincent were vulnerable. Each of them relied on the Accused to take action to pursue and protect their interests. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused asserts he suffered from personal and emotional problems during times relevant to the complaints. *Standards*, § 9.32(c).

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

24.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously reflects on the lawyer's fitness to practice. *Standards*, § 5.12. Suspension is generally appropriate when a lawyer fails to perform services for a client, or knowingly deceives a client, and causes injury or potential injury to the client. *Standards*, §§ 4.42, 4.62. Suspension is also appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. The *Standards* also provide that suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a

professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

25.

Case law is in accord. *See, e.g., In re DesBrisay*, 288 Or 625, 606 P2d 1148 (1980) (court noted that six-month to two-year suspension is appropriate sanction in most cases involving a lawyer's failure to file tax returns; lawyer was suspended for four years); *In re Means*, 207 Or 638, 298 P2d 983 (1956) (six months' suspension for failure to file income tax returns); *In re Lomax*, 216 Or 281, 338 P2d 638 (1959) (one-year suspension for failure to file income tax returns); *In re Lawrence*, 332 Or 502, 31 P3d 1078 (2001). *See also In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (120-day suspension for violation of DR 1-103(C)); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension for violation of DR 1-103(C) and DR 6-101(B)); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension for single violation of DR 6-101(B)); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension for violation of DR 9-101(A) and DR 9-101(C)(3)).

26.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for one year, the sanction to be effective June 1, 2005.

27.

In addition, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,180.50 incurred for the Accused's depositions. The Bar may, without further notice to the Accused, apply for and is entitled to entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date of the Stipulation for Discipline is approved, until paid in full. The amount shall be due immediately and shall be paid in full before the Accused is eligible to apply for reinstatement as an active member of the Oregon State Bar.

28.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board. The stipulation shall be submitted to the Supreme Court for consideration under the terms of BR 3.6.

DATED this 14th day of April 2005.

/s/ John P. Bowles

John P. Bowles
OSB No. 97149

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. 05-18
)
ALEXANDER GREGORY,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(3) and DR 9-101(C)(4).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: May 25, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 2-110(A)(3) and DR 9-101(C)(4) of the Code of Professional Responsibility.

DATED this 25th day of May 2005.

/s/ Susan G. Bischoff

Susan G. Bischoff, Region 5
Disciplinary Board Chairperson

/s/ Michael Zusman

Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Alexander Gregory, 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 lawyers.

2.

The Accused is, and at all times mentioned herein was, an attorney at law duly admitted by the Oregon Supreme Court to the practice of law in this state, and a member of the Oregon State Bar, 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 12, 2005, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 2-110(A)(3) and DR 9-101(C)(4) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts and Violations

5.

In or about February 2004, Elaine Rust (hereinafter “Rust”) retained the Accused to represent her interests in a dissolution-of-marriage matter. Rust paid funds in advance to the Accused as a retainer for the legal services to be performed (hereinafter “Dissolution Retainer”). The Accused deposited the Dissolution Retainer in his lawyer trust account. In or about March 2004, the Accused filed a petition for dissolution of Rust’s marriage. On or about August 30, 2004, Rust terminated the lawyer-client relationship and requested that the Accused return the unearned portion of the Dissolution Retainer. The Accused did not respond.

6.

In or about September 2004, Rust retained the services of a new lawyer to represent her interests in the dissolution matter. On or about September 13, 2004, Rust's new lawyer sent a letter to the Accused requesting, on Rust's behalf, that he deliver a copy of all documents in Rust's dissolution file; a copy of all billing statements; and a refund of the unearned portion of the Dissolution Retainer. The Accused did not respond and on or about November 2, 2004, Rust brought her concerns to the attention of the Bar. Thereafter, in November 2004, after a complaint was filed with the Bar, the Accused delivered the requested documents and the unearned portion of the Dissolution Retainer to Rust.

7.

The Accused admits that the aforementioned conduct constitutes improper withdrawal and failure to promptly deliver client property as requested by the client, in violation of DR 2-110(A)(3) and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

8.

The Accused and the Bar agree that in fashioning the appropriate sanction in this case, the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer'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)(3) and DR 9-101(C)(4), the Accused violated duties to his client and the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State.* The Accused's conduct demonstrates negligence and knowledge. *Standards*, at 7. The Accused was negligent in failing to review his trust account records to insure that he had accounted for and returned the unused portion of the Dissolution Retainer. The Accused acted with knowledge when the client and the client's new lawyer requested Rust's dissolution file, a copy of all billing statements, and a refund of the unearned portion of the Dissolution Retainer. The Accused did not respond until after a complaint was filed with the Bar.

C. *Injury.* The Accused's conduct caused actual injury to his client. The client did not have the use of the unused portion of the funds held by the Accused and was frustrated by the Accused's failure to respond. Also, the client and the client's new lawyer were delayed in pursuing the client's legal matter when the Accused failed to respond to their requests.

D. *Aggravating Factors.* Aggravation or aggravating circumstances are considerations or factors that may justify an increase in the degree of discipline to

be imposed. In this case there are multiple rule violations, *Standards*, § 9.22(d). The Accused was admitted to practice in 1994 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigation or mitigating circumstances are considerations or factors that may justify a reduction in the degree of discipline to be imposed. The Accused does not have a prior record of formal discipline. *Standards*, § 9.22(a). The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). He cooperated with the Disciplinary Counsel's Office in responding to the complaint and in resolving this disciplinary proceeding. *Standards*, § 9.32(e). The Accused is also remorseful. *Standards*, § 9.32(m).

9.

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 also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client. *Standards*, § 7.3. Oregon case law is in accord. See, e.g., *In re Koch*, 18 DB Rptr 92 (2004); *In re Hanson*, 16 DB Rptr 64 (2002); *In re Holden*, 12 DB Rptr 49 (1998); *In re Brownlee*, 9 DB Rptr 85 (1996).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 2-110(A)(3) and DR 9-101(C)(4) of the Code of Professional Responsibility.

11.

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

DATED this 18th day of May 2005.

/s/ Alexander Gregory

Alexander Gregory

OSB No. 94324

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. 05-47
)
PHILIP LEBENBAUM,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: May 26, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Philip Lebenbaum (hereinafter “Accused”) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 6-101(B) of the Code of Professional Responsibility.

DATED this 26th day of May 2005.

/s/ Susan G. Bischoff
Susan G. Bischoff, Region 5
Disciplinary Board Chairperson

/s/ Michael Zusman
Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Philip Lebenbaum, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 25, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 8, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding 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 and Violation

5.

In or about July 2002, Randy Lawrentz (hereinafter “Lawrentz”) retained the Accused to pursue an appeal of an insurer’s denial of his workers’ compensation claim. The Accused filed an appeal of the insurer’s denial of Lawrentz’s workers’ compensation claim with the Workers’ Compensation Board. On or about October 24, 2002, an administrative law judge with the hearings division of the Workers’ Compensation Board filed a decision denying Lawrentz’s claim. Thereafter, the Accused filed a request for review of the hearing officer’s decision with the Workers’ Compensation Board.

6.

On or about October 3, 2003, the Workers’ Compensation Board filed an order on review adopting and affirming the administrative law judge’s order, with

supplementation. On October 13, 2003, the Accused filed a petition for judicial review by the Court of Appeals with the State Court Administrator. In and between December 2003 and August 2004, the Accused filed motions for extensions of time to file the opening brief. The court granted the requests. On September 6, 2004, the Court of Appeals filed an order of dismissal and appellate judgment dismissing Lawrentz's petition for review for want of prosecution. The court sent a copy of the order and appellate judgment to the Accused. The Accused received a copy of the court's order and appellate judgment on September 8, 2004.

7.

In and between about December 2003 and September 2004, the Accused failed to complete and file the opening brief; failed to provide Lawrentz with a copy of the Accused's motions filed with and correspondence to the court and the court's notices, orders and the appellate judgments filed in the case; failed to communicate with and keep Lawrentz informed concerning the status of his case; and failed to notify Lawrentz that his petition for review had been dismissed. In and between about September 2004 and December 2004, the Accused failed to take action to obtain relief from default and to reinstate Lawrentz's case; failed to notify Lawrentz that his case had been dismissed; failed to respond to Lawrentz's calls and messages; and failed to provide Lawrentz with a copy of the Accused's motions and correspondence to the court, the court's notices, orders, and the appellate judgments filed in the case.

8.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to a lawyer in violation of DR 6-101(B) of the Code of Professional Responsibility.

Sanction

9.

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

A. *Duty Violated.* In violating DR 6-101(B), the Accused violated a duty to his client. *Standards*, § 4.4.

B. *Mental State.* The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective 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*, at 7. The Accused knew he had agreed to handle the appeal of Lawrentz's worker's compensation case. He filed for and obtained extensions of time to file the appellate brief and knew that the court dismissed the case. The Accused was negligent in failing to monitor the case and to complete and file the brief. He was also negligent in failing to take action following the dismissal of the case to seek its reinstatement and to promptly notify his client that the case had been dismissed because of his involvement in other matters.

C. *Injury*. The Accused caused actual and potential injury to his client. 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). Lawrentz was denied judicial review of his appeal by the Court of Appeals because the Accused failed to file the appellate brief. The case and claim were dismissed. Lawrentz was also frustrated when the Accused failed to respond to his inquiries about the status of his case. The Accused caused potential injury to the profession because it is judged by the conduct of its members.

D. *Aggravating Factors*. "Aggravating factors" are any considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. Several aggravating factors are present in this case. The Accused has substantial experience in the practice of law. He was admitted to practice in 1986. *Standards*, § 9.22(i). Lawrentz was vulnerable because he relied on his lawyer to file the appellate brief and to provide advice and services to protect and advance the appeal of his claim before the Court of Appeals. *Standards*, § 9.22(h). The Accused has twice been admonished for the same or similar conduct. *In re Lebenbaum*, Case No. 02-72 (May 31, 2002); *In re Lebenbaum*, Case No. 94-125 (Aug 10, 1994). Although a letter of admonition is not formal discipline, when it involves the same or similar conduct, it is considered evidence of past misconduct and an aggravating factor. *In re Cohen*, 330 Or 489, 500–501, 8 P3d 953 (2000); *Standards*, § 9.22(a). When the prior record of discipline is considered, there is also a pattern of misconduct. *Standards*, § 9.22(c).

E. *Mitigating Factors*. The *Standards* also recognize mitigating factors. *Standards*, § 9.32. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). He has acknowledged and fully disclosed his conduct to the Disciplinary Counsel's Office in the investigation and in resolving this matter. *Standards*, § 9.32(e). The Accused has a good reputation and is remorseful. *Standards*, § 9.32(g), (m). He has also taken steps to improve his case monitoring activities to avoid problems encountered in this case.

10.

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

Oregon case law is in accord. *See, e.g., In re Koch*, 18 DB Rptr 92 (2004) (reprimand for violation of DR 2-110(A) and (B), DR 6-101(B), and DR 9-101(C)(4)); *In re Russell*, 18 DB Rptr 98 (2004) (reprimand for violation of DR 6-101(B)); *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for violation of DR 6-101(B) when lawyer had prior record of neglect, and significant mitigating factors present).

11.

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

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 under the terms of BR 3.6.

DATED this 20th day of May 2005.

/s/ Philip Lebenbaum

Philip Lebenbaum

OSB No. 86062

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. 04-56, 04-57, 04-58, 04-117
)
DAVID L. DenHARTIGH,)
)
Accused.)

Counsel for the Bar: Michael F. Conroyd; Stacy J. Hankin
Counsel for the Accused: Brian R. Whitehead
Disciplinary Board: None
Disposition: Violation of DR 6-101(B), DR 7-101(A)(2),
DR 9-101(A), and DR 9-101(C)(3).
Stipulation for Discipline. 90-day suspension.
Effective Date of Order: July 1, 2005

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 July 1, 2005, for violation of DR 6-101(B), DR 7-101(A)(2), DR 9-101(A), and DR 9-101(C)(3).

DATED this 30th day of May 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Hon. Jill A. Tanner, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

David L. DenHartigh, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On November 4, 2004, 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 7-101(A)(2) in one matter and DR 9-101(A) and DR 9-101(C) in three other matters. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

Angelo Matter

(Case No. 04-117)

5.

On May 2, 2000, Noelle Angelo (hereinafter “Angelo”) retained the Accused to represent her in a child support matter.

6.

Between August 2000, and February 2004, the Accused periodically performed some work on Angelo’s legal matter, but failed to take constructive action to advance her claim and failed to maintain adequate communications with Angelo regarding her legal matter.

7.

On numerous occasions between August 2000 and February 2004, Angelo urged the Accused to pursue her legal matter. During that same period of time, the Accused knew that he had a professional duty to act on Angelo's behalf.

8.

Between August 2000 and February 2004, the Accused intentionally failed to carry out his contract of employment with Angelo.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8 of this stipulation, he violated DR 6-101(B) and DR 7-101(A)(2) of the Code of Professional Responsibility.

Facts

OSB Matters

(Case Nos. 04-56, 04-57, 04-58)

10.

On February 21, 2003, the Accused withdrew \$240 from his lawyer trust account for work performed on behalf of a client. The Accused failed to create or maintain records that clearly and expressly reflected the source and amount of those funds.

11.

As a result of the failure to post the transaction described in paragraph 10 above, on May 23, 2003, the Accused subsequently withdrew an additional \$240 from his lawyer trust account for additional work performed on behalf of the same client identified in paragraph 10 above which resulted in an overdraft in that amount. At that time, the client had no funds deposited with the Accused.

12.

On March 1, 2004, the Accused withdrew \$1,000 from his lawyer trust account. At that time, the Accused had less than \$1,000 in his lawyer trust account due to the bank's miscalculation of interest and the Accused's failure to reconcile the account balance against the monthly bank statement which resulted in an overdraft of one cent.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 10 through 12 of this stipulation, he violated DR 9-101(A) and DR 9-101(C)(3) 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 lawyer’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 funds and maintain adequate records. *Standards*, § 4.1. He also violated his duty to act with reasonable diligence and promptness in representing a client. *Standards*, § 4.4.

B. *Mental State.* The Accused acted intentionally when he failed to pursue Angelo’s legal matter. The Accused had been previously admonished for failing to handle client funds properly and failing to maintain adequate trust account records. The Accused acted knowingly when he subsequently violated those same rules in the OSB matters described in paragraphs 10 through 12 herein.

C. *Injury.* Angelo sustained actual injury as a result of the Accused’s conduct. For a number of years she went without child support payments. When a judgment in her favor was finally entered, Angelo was entitled to receive over \$11,000 in delinquent child support payments. The Accused’s failure to properly maintain his lawyer trust account and records caused potential injury.

D. *Aggravating Factors.* Aggravating circumstances include:

1. Prior disciplinary offenses. In March 2003, the Accused was admonished for violating DR 9-101(A) and DR 9-101(C)(3). *Standards*, § 9.22(a).

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

3. Vulnerability of victim. Angelo relied on the Accused to pursue her legal matter and his failure to do so caused her significant injury. *Standards*, § 9.22(h).

4. Substantial experience in the practice of law—the Accused has been an Oregon lawyer since 1991. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigating circumstances include:

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

2. Personal or emotional problems. During some of the relevant time period, the Accused was experiencing depression. *Standards*, § 9.32(c).
3. Cooperative attitude toward the proceeding. *Standards*, § 9.32(e).
4. Remorse. *Standards*, § 9.32(m).

15.

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

16.

Oregon case law supports the imposition of a suspension when a lawyer should have known that he was handling his lawyer trust account improperly. *In re Eakin*, 334 Or 238, 48 P2d 147 (2002) (60-day suspension). Lawyers who knowingly neglect legal matters have also received suspensions. *In re LaBahn*, 335 Or 357, 65 P3d 381 (2004); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (60-day suspensions).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 90 days for violation of DR 6-101(B), DR 7-101(A)(2), DR 9-101(A), and DR 9-101(C), the sanction to be effective on July 1, 2005.

18.

In addition, on or before the last day of the suspension period, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$341.60, incurred for court reporting costs in connection with taking and transcribing his deposition. Should the Accused fail to pay \$341.69 in full by the last day of his suspension period, 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 SPRB. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

Cite as *In re DenHartigh*, 19 DB Rptr 159 (2005)

EXECUTED this 20th day of May 2005.

/s/ David L. DenHartigh

David L. DenHartigh

OSB No. 91038

EXECUTED this 23rd day of May 2005.

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. 05-35
)
RALPH G. MONSON,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
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: June 3, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160.

DATED this 3rd day of June 2005.

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

/s/ Michael Zusman
Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Ralph G. 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1968, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 Bar Rule of Procedure 3.6(h).

4.

At its March 12, 2005, meeting, the State Professional Responsibility Board (hereinafter “SPRB”) directed that the Accused be charged with violating DR 1-102(A)(3) and DR 3-101(B) of the Code of Professional Responsibility, 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 and Violations

5.

ORS 9.160 prohibits the practice of law by a person who is not an active member of the Bar. ORS 9.200 requires Oregon lawyers to pay an annual membership fee to be an active member of the Bar.

6.

On or about December 10, 2003, the Bar mailed a statement to the Accused assessing the 2004 Bar membership fee. Payment of the 2004 membership fee was due by February 2, 2004. On January 22, 2004, the Bar received a request to send a duplicate copy of the 2004 Bar membership fee statement to the Accused. The Bar mailed a duplicate copy of the fee statement to the Accused on January 23, 2004.

7.

The Accused did not pay his 2004 Bar membership fee by February 2, 2004, and on or about February 12, 2004, the Bar mailed a late notice to the Accused. The Accused did not pay the 2004 Bar membership fee, and on or about April 30, 2004, the Bar mailed a final billing notice to the Accused, which included notice that the Accused would be automatically suspended from membership in the Bar if he failed to pay his 2004 Bar membership fee on or before 5:00 p.m. on July 1, 2004. The Accused did not pay the 2004 Bar membership fee and on July 2, 2004, was suspended from membership in the Bar and the practice of law in Oregon.

8.

On July 2, 2004, the Bar mailed notice of the Accused's suspension to the Accused by certified mail, return receipt requested. The notice was received in the Accused's office, but not by the Accused, on July 15, 2004. Thereafter, the Accused continued to practice law in Oregon in violation of Oregon law, but without actual knowledge of his suspension.

9.

Upon receiving actual notice that he was suspended, the Accused promptly submitted a Statement in Support of BR 8.4 Reinstatement to the Bar and paid his 2004 Bar membership fee. The Accused was immediately reinstated as an active member of the Bar.

10.

The Accused admits that the aforesaid conduct constitutes practicing law in violation of the regulations of the profession; and practicing law when not an active member of the Bar, in violation of DR 3-101(B) of the Code of Professional Responsibility and ORS 9.160. Upon further factual inquiry, the parties agree that the alleged violation of DR 1-102(A)(3) should be and, upon the approval of this stipulation, is dismissed.

Sanction

12.

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

A. *Duty Violated.* In violating DR 3-101(B) and ORS 9.160, the Accused violated his duty to his profession. *Standards*, § 7.0.

B. *Mental State*. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. “Negligence” is the failure 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*, at 7. The Accused knew that he would be automatically suspended on a date certain if he did not pay his membership fee. The Accused was negligent when he failed make sure that he had paid his membership fee and failed to realize that he had not done so.

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). The Accused caused potential injury to his clients. During the time the Accused was not authorized to practice law, he was not covered by malpractice insurance. The Accused placed at risk all clients for whom he performed legal services while he was suspended in the event of malpractice claims against him. The Accused also caused potential injury to the legal profession. The public judges the profession by the conduct of its members.

D. *Aggravating Factors*. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. Aggravating factors include: multiple offenses, *Standards*, § 9.22(d), and substantial experience in the practice of law, *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. *Standards*, § 9.32. Mitigating factors include: absence of a prior disciplinary record during his 37 years as a member of the Bar, *Standards*, § 9.32(a); absence of dishonest or selfish motives, *Standards*, § 9.32(b); cooperative attitude during the investigation of the complaint and in resolving this disciplinary proceeding, *Standards*, § 9.32(e); good reputation, *Standards*, § 9.32(g); and remorse, *Standards*, § 9.32(m).

13.

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

14.

Consistent with the *Standards*, the parties agree that the Accused shall be publicly reprimanded for violation of DR 3-101(B) and ORS 9.160.

15.

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

DATED this 19th day of May 2005.

/s/ Ralph G. Monson

Ralph G. Monson

OSB No. 68109

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. 03-96, 03-127, 03-128
)
R. KEVIN HENDRICK,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Bradley F. Tellam
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4), DR 5-101(A),
DR 5-103(B), and DR 6-101(A). Stipulation
for Discipline. 30-day suspension.
Effective Date of Order: July 23, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by R. Kevin Hendrick (hereinafter “the Accused”) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended from the practice of law for 30 days for violation of DR 1-102(A)(4), DR 5-101(A), DR 5-103(B), and DR 6-101(A) of the Code of Professional Responsibility, effective July 23, 2005, or three days after the date of this order, whichever is later.

DATED this 13th day of June 2005.

/s/ Jill A. Tanner

Jill A. Tanner, Region 6
Disciplinary Board Chairperson

/s/ Michael C. Zusman

Michael C. Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE)

R. Kevin Hendrick, 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 lawyers.

2.

The Accused, R. Kevin Hendrick, was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, 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.

The State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for violation of DR 5-103(B) and DR 5-108(B), Case No. 03-96, on October 10, 2003. On December 12, 2003, the SPRB authorized a formal disciplinary proceeding against the Accused in Case No. 03-127 for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 1-103(C); and Case No. 03-128 for violation of DR 5-101(A). On April 8, 2005, the SPRB further considered the matters and directed that the Accused be charged with violation of DR 6-101(A) in Case No. 03-128, and the disposition of other charges. 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

VanCleve Matter

(Case No. 03-096)

5.

Prior to January 2002, Sunset Village Mobile Home Park (hereinafter “Sunset Village”) filed a complaint for forcible entry and detainer against a tenant, Beverly VanCleve (hereinafter VanCleve”), related to a manufactured home rental space. By agreement, VanCleve vacated the premises and the FED action was dismissed.

Thereafter, VanCleve failed to respond to Sunset Village's inquiries regarding a storage agreement and payment of storage fees for the mobile home that VanCleve had left behind.

6.

In or about January 2002, Sunset Village initiated a nonjudicial foreclosure proceeding against VanCleve's abandoned mobile home for nonpayment of storage fees. In or about January 2002, Michael Morris (hereinafter "Morris") retained the Accused to represent VanCleve concerning the dispute with Sunset Village. The Accused represented VanCleve concerning the dispute.

7.

In or about February 2002, the Accused advanced financial assistance to VanCleve in connection with her dispute with Sunset Village by agreeing to loan and loaning \$2,456 for the benefit of VanCleve. In or about February 2002, the Accused delivered his check for \$2,456 to Sunset Village's lawyer to resolve the dispute and to satisfy some of VanCleve's obligations to Sunset Village. Subsequently, the Accused stopped payment on the check before the check was paid by his bank.

8.

The Accused admits that the aforesaid conduct constituted advancing financial assistance for the benefit of his client in violation of DR 5-103(B) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the alleged violation of DR 5-108(B) should be and, upon the approval of this stipulation, is dismissed.

Koppenstein Matter

(Case No. 03-127)

9.

Chris and Carol Koppenstein (hereinafter "the Koppensteins") retained the Accused to pursue civil claims against the Appraisers Certification and Licensure Board and Linda Riddell (hereinafter collectively "Board"). On or about April 29, 1999, the Accused, together with co-counsel, filed a civil complaint for the Koppensteins, *Carol Koppenstein and Chris Koppenstein v. Appraisers Certification and Licensure Board and Linda Riddell*, Polk County Circuit Court Case No. 99P1214 (hereinafter "State Court Action"). In or about August 1999, the Accused caused the summons and complaint concerning the State Court Action to be served on the Board.

10.

The Board was represented by counsel in the State Court Action. On or about September 17, 1999, the Board's lawyers filed a motion to make more definite and

certain the allegations of complaint the Accused filed in the State Court Action. The Accused did not file a response to the motion. On or about October 29, 1999, the court granted the Board's motion to make more definite and certain and ordered the Accused to file an amended complaint within 30 days. The Accused failed to file an amended complaint within the time ordered by the court, and on January 3, 2000, the Board's lawyers filed a motion to dismiss the State Court Action. The Accused did not file a response to the motion to dismiss.

11.

Prior to February 16, 2000, the Accused referred the Koppensteins to bankruptcy counsel. On or about February 16, 2000, the Koppensteins filed a petition for relief in the US Bankruptcy Court for the District of Oregon (hereinafter "Bankruptcy Case"). When the Bankruptcy Case was filed, the Koppensteins' claims in the State Court Action became the property of the bankruptcy estate and subject to the control of the bankruptcy trustee and the bankruptcy court. Under 11 USC §362, the Board and their lawyers were stayed from taking or continuing action against the Koppensteins in the State Court Action without an order granting relief from stay by the bankruptcy court.

12.

In or about and after February 2000, the Accused knew that the Koppensteins had filed the Bankruptcy Case. He should have known that the Koppensteins' claims were the property of the bankruptcy estate and subject to the control of the bankruptcy trustee and bankruptcy court; and that the Board and their lawyers were prohibited by the automatic stay from taking or continuing action against the Koppensteins without a court order granting relief from the automatic stay. Without the consent of or notice to the bankruptcy trustee and the bankruptcy court, on or about February 23, 2000, the Accused filed an amended complaint in the State Court Action.

13.

In and between February 2000 and August 31, 2000, the Accused did not disclose to the Board and their lawyers that the Koppensteins had filed the Bankruptcy Case. Between February 16, 2000, and August 31, 2000, the Board and their lawyers did not know that the Koppensteins had filed the Bankruptcy Case and took action against the Koppensteins in the State Court Action in violation of the automatic stay.

14.

Between February 16, 2000, and August 31, 2000, the Accused did not disclose to the state court that the Koppensteins had filed the Bankruptcy Case. Between February 16, 2000, and August 31, 2000, the state court did not know that the Koppensteins had filed the Bankruptcy Case and continued action in the State

Court Action in violation of the automatic stay. On or about March 3, 2000, the Board's lawyers, on behalf of the Board, filed an answer and counterclaim against the Koppensteins in the State Court Action. On or about August 1, 2000, the Board's lawyers, on behalf of the Board, filed a motion for summary judgment concerning the Koppensteins' claims in the State Court Action. Under ORCP 47, the Koppensteins were required to file their response to the motion within 21 days.

15.

Before the state court scheduled the hearing on the motion for summary judgment, the court called the Accused and the Board's lawyers to determine their availability. Thereafter, the court scheduled a hearing on the motion for summary judgment for August 21, 2000. The Accused received notice of the scheduled hearing date. The Accused did not file a response to the Board's motion for summary judgment on or before August 21, 2000.

16.

On August 21, 2000, the Accused's co-counsel appeared for the Accused at the hearing on the Board's motion for summary judgment. The lawyer asked that the hearing be rescheduled, and that the Accused be allowed until September 6, 2000, to file a response to the Board's motion for summary judgment. The court granted the requests and rescheduled the hearing to September 7, 2000.

17.

The Accused states that he considered for the first time on or about August 31, 2000 that the Koppensteins' claims were part of the bankruptcy estate and subject to the control of the bankruptcy trustee and bankruptcy court; and that the provisions of the automatic stay, 11 USC §362, prohibited actions against the Koppensteins. The Accused then filed a Notice of Filing Bankruptcy and Automatic Stay in the State Court Action, for the first time giving notice to the Board's lawyers and the state court of the Koppensteins' bankruptcy case.

18.

In or about November 2000, the bankruptcy trustee asked the state court to defer action in the State Court Action. In or about May 2001, the bankruptcy trustee filed notice of intent to abandon the Koppensteins' claims in the State Court Action. On or about August 8, 2001, the state court granted the Board's motion for summary judgment and entered a judgment of dismissal of the State Court Action.

19.

The Accused admits that he failed to provide the legal knowledge, skill, thoroughness and preparation reasonably necessary for representing the Koppensteins and that his conduct was prejudicial to the administration of justice in violation of DR 1-102(A)(4) and DR 6-101(A) 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 1-103(C) should be and, upon the approval of this stipulation, are dismissed.

Fidelity Matter
(Case No. 03-128)

20.

Fidelity Northwest, Inc. and a related predecessor company, Fidelity Financial Services Corporation, dba Fidelity Mortgage Services (hereinafter “Fidelity”), was a licensed mortgage broker. Fidelity used primarily private investor money to fund loans. Russell Voeller (hereinafter “Voeller”) was an owner and president of Fidelity.

21.

In and between 1993 and 1998, the Accused provided legal advice to and performed legal services for Fidelity and Voeller. In and between 1993 and 1998, Fidelity proposed to private investors that they fund loans to the Accused and other persons. In and between 1993 and 1998, private investors, including clients of the Accused, provided funds to Fidelity for loans to the Accused. In and between 1993 and 1998, the Accused from time to time provided legal advice and performed legal services for some of the private investors who provided funds to Fidelity for loans to the Accused, but not concerning the specific loan transactions between the Accused and the investors.

22.

The Accused accepted and continued employment as Fidelity’s, Voeller’s, and some of the private investors’ lawyer when the exercise of his professional judgment on behalf of Fidelity, Voeller, and the private investors was likely to be or may reasonably have been affected by his own financial, business, property or personal interests. The Accused failed to provide the private investors, Fidelity and Voeller, orally or in writing, with an explanation sufficient to apprise them of the potential adverse impact of his continued representation; failed to recommend that they seek independent legal advice whether to consent to the representation; and failed to obtain Fidelity’s, Voeller’s, and the private investors’ consent to his representation.

23.

The Accused admits that his conduct constituted a lawyer self-interest conflict and that he violated DR 5-101(A) of the Code of Professional Responsibility.

Sanction

24.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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 lawyer'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 1-102(A)(4), DR 5-101(A), DR 5-103(B), and DR 6-101(A), the Accused violated duties to his clients, the legal system, and the profession. *Standards*, §§ 4.3, 4.5, 6.1, 7.0.

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. "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*, at 7. The Accused knew that the funds he was loaning were to be used to financially assist VanCleve to resolve the claims against her. He knew of his professional and business relationships with Voeller, Fidelity, and the private investors. The Accused should have known of the conflicts and should have provided full disclosure and obtained consent from each of his clients. The Accused also knew he was responsible for and needed to provide competent representation in handling his clients' legal matters. The Accused was negligent in recognizing his lack of experience and understanding of substantive and procedural law and rules in his representation of the Koppensteins.

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*, at 7. The Accused caused injury to the substantive interests of parties to and the procedural functioning of the State Court Action in the Koppenstein matter. The State Court Action continued when it should have been stayed. The Board's lawyers continued to devote substantial time to the case, and asserted a counterclaim and prepared motions and memoranda against the Koppensteins that were filed with the court, which exposed the Board's lawyers to potential sanctions for violation of the automatic stay. The Accused also caused injury and potential injury to the private investors who loaned the Accused a substantial amount of money. The Accused failed to repay loans he obtained. Investors were required to pursue the Accused in the bankruptcy court, which led to an agreement in one case for judgment against the Accused denying dischargeability of the claim and an obligation to repay in excess of \$200,000 to the investor over a period of time through 2016. In another case, the deeds in lieu of foreclosure were accepted by the investor to reduce the loss sustained by the investor.

D. *Aggravating Factors*. "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.21. The Accused has substantial experience in the practice of law having been admitted to practice in

1991. *Standards*, § 9.22(i). There is a pattern of misconduct concerning the Fidelity matter, and multiple offenses. *Standards*, § 9.22(c), (d). The Accused's conduct with respect to the Fidelity matter was motivated in part by his own self-interests. *Standards*, § 9.22(b).

E. *Mitigating Factors*. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. *Standards*, § 9.31. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a). The Accused cooperated in the investigation of his conduct. *Standards*, § 9.32(e). There was also some delay. *Standards*, § 9.32(j).

25.

The *Standards* provide that in the absence of aggravating or mitigating circumstances, upon application of the factors set out in *Standards* § 3.0, "suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client." *Standards*, § 4.52. "Reprimand is generally appropriate when a lawyer (a) demonstrates a 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." *Standards*, § 4.53.

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. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

26.

Case law supports a short-term suspension in this case. *See, e.g., In re Johnson*, 18 DB Rptr 181 (2004) (30-day suspension for violation of DR 1-102(A)(4)); *In re Roberts*, 335 Or 476, 71 P3d 71 (2003) (60-day suspension for violation of DR 1-102(A)(4) and DR 6-101(A)); *In re Galaviz*, 15 DB Rptr 176 (2001) (30-day suspension for violation of DR 1-102(A)(4), DR 2-106(A), and DR 6-101(A)). *See also In re Robertson*, 8 DB Rptr 229 (1994) (30-day suspension for violation of DR 5-101(A)).

27.

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, the sanction to be effective July 23, 2005, or three days after this stipulation is approved, whichever is later.

28.

In addition, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$415.20. The Bar may, without further notice to the Accused, apply for and is entitled to entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the Stipulation for Discipline is approved, until paid in full. The amount shall be due immediately and shall be paid in full before the Accused is eligible to apply for reinstatement as an active member of the Oregon State Bar.

29.

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

DATED this 1st day of June 2005.

/s/ R. Kevin Hendrick

R. Kevin Hendrick
OSB No. 91056

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. 00-122, 03-119, 03-120
)
NICHOLAS I. GOYAK,)
) SC S52241
Accused.)

**ORDER GRANTING MOTION TO
DISMISS PETITION FOR REVIEW**

The Accused's motion to dismiss the petition for review of the disciplinary proceeding is granted, suspension to begin July 7, 2005.

DATED this 20th day of June 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
) Case Nos. 00-122, 03-119, 03-120
Complaint as to the Conduct of)
)
NICHOLAS I. GOYAK,)
)
Accused.)

Counsel for the Bar: William D. Bailey, Esq.; Martha M. Hicks
Counsel for the Accused: Thomas E. Cooney, Esq.
Disciplinary Board: Gilbert B. Feibleman, Esq., Chair; Llewellyn
Fischer, Esq.; Joan LeBarron, Public Member
Disposition: Violation of DR 1-102(A)(2), DR 1-103(C),
DR 9-101(A), and DR 9-101(C)(3). Trial Panel
Opinion. Six-month suspension.
Effective Date of Opinion: January 12, 2005

OPINION OF THE TRIAL PANEL

This matter came regularly before a Trial Panel of the Disciplinary Board consisting of Gilbert B. Feibleman, Esq., Chair; Llewellyn Fischer, Esq.; and Joan LeBarron, Public Member, on December 14, 2004. The Oregon State Bar was represented by Martha Hicks, Assistant Disciplinary Counsel, and William D. Bailey, Esq. The Accused was represented by Thomas Cooney, Esq. The Trial Panel has considered the stipulations, pleadings, exhibits, testimony, trial memoranda, and arguments of counsel.

Cause of Wrongful Conduct

The Accused is charged in Case No. 00-122 with violation of DR 1-102(A)(2) (criminal conduct reflecting adversely on honesty, trustworthiness, or fitness to practice law) for having written four checks to the City of Portland when he knew they would not be honored by his bank, in violation of ORS 165.065. The Accused is also charged with violation of DR 1-103(C) (failure to cooperate with the Bar) during the course of the Bar's investigation of the four NSF checks. In his Answer, the Accused admitted some of the conduct alleged by the Bar and that this conduct violates DR 1-103(C). He has now recanted these admissions.

The Accused is charged in Case Nos. 03-119 and 03-120 with violation of DR 9-101(A) (depositing personal funds into a lawyer trust account) and DR 9-101(C)(3) (failure to maintain complete records of his lawyer trust account). These charges result from the Accused's bank having notified the Bar of three NSF checks written on his lawyer trust account on or about May 21, 2002, and May 28, 2002.

Summary of Facts

During or before the year 1998, the Accused, then a solo practitioner, fell into financial difficulty. He stopped practicing law regularly on or about July 1, 1998, and occupied much of his time thereafter attempting to purchase businesses or facilitating business transactions for others.

The Accused's income became irregular, and the Accused often met his obligations with loans from family members and business associates. Often, he would write checks knowing there was no money in his account at the time he wrote the check but with the expectation that he would receive money from friends or family. Sometimes that expectation was misplaced.

On April 15, 1998, the Accused wrote a check on his personal account for \$325 to pay his Portland business license fee. As of April 13, 1998, there were not sufficient funds in the Accused's personal checking account to cover this check. Then, the account was overdrawn from April 15, 1998, until April 22, 1998, and again from April 28 through May 11, 1998. From April 22 until May 12, 1998, there were not sufficient funds in the account to cover the check, and the Accused knew it. His bank statement shows that the bank was called regarding the account 13 times in April 1998: on April 1, 3, 4, 7, 8, 10, 11, 12, 14, 15, 16, 21, and 23. Before May 12, his bank was called twice more.

The Accused admits that in April 1998, the bank notified him that his check to the city had been dishonored. On May 7, 1998, the City also notified him that his check had been returned. The Accused admittedly did not make his April 15, 1998, check to the city good within 10 days of receiving either notice that it had been dishonored. The Accused did not make this check good until about April 10, 2000, almost two years after the check was dishonored.

In October 1998, the Accused wrote two more checks to the City of Portland for \$1,783 and \$990, respectively. These checks were written on the Accused's business account. When he wrote the checks to the city on October 15, 1998, the Accused's business account was overdrawn, as it had been since October 1, 1998. The account remained overdrawn until October 30, 1998, and the Accused's bank statements indicate that the bank had dishonored three checks from that account on and before October 15. The Accused's bank notified him that the checks to the city had been dishonored, and on December 14, 1998, the City of Portland also notified him that his checks had been returned unpaid. The Accused did not make the checks good within 10 days after either notice and, in fact, did not make them good until about April 10, 2000, even though he paid other creditors in the interim.

On April 15, 1999, the Accused wrote a fourth check to the City of Portland, this time in the amount of \$550. This check was also written on his business account, and when he wrote it, there were not sufficient funds in the account to cover it. In fact, there was only one day in the month of April 1999 (April 12) that the Accused's check to the city could have been covered, and the account was overdrawn from April 20 to April 30, 1999. The Accused's bank statements show that in April 1999, 10 calls were made to the bank to inquire about his account.

Beginning on February 1, 1999, the city began to contact the Accused about his delinquent account. A city employee contacted him by telephone in February and April 1999, and each time the Accused promised to pay. He did not keep those promises. In May, the city employee personally delivered a bill to the Accused and met with him. The Accused promised to pay his account in mid-July. He did not keep this promise. In July, the city employee personally delivered another bill. Thereafter, the Accused failed to respond to several attempts by the city to contact him and his account was sent to the City Attorney's Office for formal collection. It was not until after the City Attorney's Office complained to the Bar and threatened litigation that the Accused settled his account.

When the Bar received the complaint from the City Attorney's Office, Disciplinary Counsel contacted the Accused on March 22, April 24, May 9, June 8, June 21, and August 18, 2000. In his Answer, the Accused admitted that he did not respond to the Bar's inquiries in the year 2000 and that the complaint against him was referred to the Multnomah County Local Professional Responsibility Committee (hereinafter "the LPRC") for investigation. The LPRC returned the case to Disciplinary Counsel's Office without having obtained the Accused's bank records or copies of the NSF checks to the city, and, beginning on March 22, 2002, Disciplinary Counsel's Office attempted to obtain these documents from the Accused. As related by the Bar, the Accused did not produce the requested records for over a year and the Disciplinary Counsel's Office was ultimately required to subpoena them from his bank.

Case Nos. 03-119 and 03-120

The Accused has admitted that from 1998 to 2000, he deposited his personal funds into his trust account, used the account as a personal bank account, and failed to keep or maintain adequate records of his trust account transactions, as alleged in the Third and Fourth Causes of Complaint. There is no reason to summarize the facts of these cases.

Issues

1. The Bar charges that the Accused violated DR 1-102(A)(2), which states, in part, as follows:

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

.....

(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

....

The Bar contends that by writing four NSF checks to the City of Portland at times when the Accused did not have the money in his bank accounts to cover them, the Accused violated ORS 165.065. ORS 165.065 provides, in relevant part, as follows:

(1) A person commits the crime of negotiating a bad check if the person makes, draws or utters a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.

(2) For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:

(a) The drawer has no account with the drawee at the time the check or order is drawn or uttered; or

(b) Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within 10 days after receiving notice of refusal.¹

In order to establish a violation of DR 1-102(A)(2), the evidence must show that the Accused engaged in conduct that is illegal under the criminal code.

2. The Bar also charges that the Accused violated DR 1-103(C), which provides, in relevant part, as follows:

...

(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.

3. The Bar charges that the Accused violated DR 9-101(A), which provides, in relevant part, as follows:

All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated. Trust accounts shall be specifically identified by use of the phrase "Lawyer Trust

¹ "Knowing" is defined by ORS 161.085(8) as follows:

(8) "Knowingly" or "with knowledge," when used with respect to conduct or to a circumstance described by a statute defining an offense, means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.

Account.” No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

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

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

4. Finally, the Bar charges that the Accused violated DR 9-101(C)(3), which provides, in relevant part, as follows:

(C) A lawyer shall:

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

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

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

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

Conclusion as to Issues 1, 2, 3, and 4

The Bar filed an Amended Formal Complaint and the Accused readopted his Answer in response to that complaint. The Accused admits that he violated DR 1-103(C), DR 9-101(A), and DR 9-101(C)(3) but denies that his conduct violated DR 1-102(A)(2).

The evidence shows that the Accused engaged in conduct that is illegal under the criminal code. It is not necessary, for the purposes of this rule, to show that the Accused was convicted of a crime, but merely that his conduct violated a provision of the criminal code. In lawyer discipline matters, it is not necessary to establish a

lawyer's criminal conduct beyond a reasonable doubt, but by clear and convincing evidence, the standard of proof in all lawyer discipline matters. *In re Anson*, 302 Or 446, 453–454, 730 P2d 1229 (1986); *In re Lawrence*, 332 Or 502, 507, 31 P3d 1078 (2001).

The Accused wrote four NSF checks to the City of Portland in 1998 and 1999, and he did not cover those checks until April 10, 2000. Were the Accused being criminally prosecuted, under ORS 165.065(2)(b) this would constitute prima facie evidence that he knew the checks would not be honored when he wrote them. For a violation of ORS 165.065, the person writing a bad check must 'know' that it will not be honored and under (2)(b) the failure of the drawer to make the check good within 10 days establishes prima facie evidence of a violation. Here, however, it is not necessary to resort to conditions in the statute to determine that there is sufficient evidence to establish a violation has occurred. Although the Accused denies that he knew his checks to the City would not be honored, as the following will show, the Panel does not find his denial credible and concludes that the record shows by clear and convincing evidence that his violation was "knowing."

With respect to the April 15, 1998, check for \$325, the evidence shows that as of April 13, 1998, there was not enough money in the Accused's personal checking account to cover a check for \$325. The balance on that day was \$204.10, and by April 15, 1998, the balance in the account was–\$17.20. With the exception of April 24, 1998 (when the account balance was \$10.80), the account remained overdrawn until May 11, 1998. Clearly, there was not enough money in the account to cover the check at a time when the Accused could reasonably expect that the city would present it to the bank, and the evidence shows that the Accused knew this.

The Accused received the overdraft notices on his personal account shortly after they were mailed by the bank. This account was checked repeatedly during April and May 1998. The bank statement shows that between April 10, 1998, and May 12, 1998, 10 telephone calls were made to the bank about the account. No telephone deposits or withdrawals were made on these dates, and the Accused did not have computer access to his account. The calls to the bank were balance inquiries and the Accused must have known when he wrote it that his April 15, 1998, check to the city would not be honored.

The two checks the Accused wrote on October 15, 1998, were written on his "Goyak and Associates PC" checking account. The Accused was the only signatory on this account. He admits that the October 15, 1998, checks, totaling \$2,773, were not honored by his bank and that he did not cover them until April 10, 2000. The evidence shows that this account was overdrawn from October 1, 1998, through October 29, 1998, and the Accused knew it. Five checks were written on the account and returned during the month of October 1998. Three of these checks were returned unpaid by the bank on October 7, October 14, and October 15—on or immediately before the day the Accused wrote the checks to the city. The Accused was aware before April 15, 1998, that checks on this account were being returned unpaid by his

bank. The Accused knew there was no money in his business account when he wrote the October 15, 1998, checks to the city and that his bank would dishonor the checks if they were presented.

The April 15, 1999, check for \$550 was also written on the Accused's "Goyak and Associates PC" checking account. The Accused admits that the bank dishonored this check and that he did not cover it until April 10, 2000. The Accused knew the check would not be honored by his bank. According to the Accused's bank statements, there was only one day in the month of April 1999 that the check could have been covered by funds in the account (April 12), and the Accused was aware this account was overdrawn. By the time the Accused wrote the April 15 check, he knew the bank had already returned one check unpaid (April 7). It had also charged him for two overdrafts (April 2 and 9). The Accused was, moreover, actively monitoring his account, as he had his personal account in 1998, and called the bank about it 10 times in April 1999.

The Accused claims he wrote checks in the hope he would soon have the money to cover them but this only demonstrates that when the Accused wrote the checks to the city, he knew he did not have the money to cover them. The Accused had no reasonable expectation he would be able to cover the checks. Nor was there any credible evidence that at the time he wrote the checks that there was, in fact, a promise by any third party to provide the funds to cover the checks. The Trial Panel finds that he violated ORS 165.065 by clear and convincing evidence.

The Accused argues that *State v. Short*, 88 Or App 567, 746 P2d 742 (1987), is applicable and it would support his position. In that case, the court found it improper for a judge to instruct a jury that it *must* draw an inference of a knowing violation for purposes of ORS 165.065 by a failure to honor a bad check within 10 days. The court discussed the potential for confusion when the court directs the jury to find that if one element of a crime is established by the necessary evidence, an inference should be drawn that the other element is also established by the requisite evidence. *State v. Short, supra*, 88 Or App at 572. Even assuming that the law on jury instructions is applicable, it is the conclusion of the Trial Panel that no inferences are necessary here to establish a knowing violation of the statute. As noted earlier, the Panel concludes that the evidence is clear and convincing that the Accused knew when he wrote the checks that they would not be honored.

This conduct also reflected adversely on his honesty, trustworthiness, or fitness to practice law. Theft is an act of dishonesty which the Supreme Court has found reflects adversely on a lawyer's honesty, trustworthiness, or fitness to practice law. *In re Kimmell*, 332 Or 480, 491, 31 P3d 414 (2001). The negotiation of bad checks is an act of dishonesty akin to theft: a person who writes bad checks knowingly acquires goods or services without paying for them. An act of dishonesty such as is involved in this case demonstrates a disrespect for the law which the Accused has taken an oath to uphold, calling into question that which is required of every lawyer—his good moral character. The fact that the victim is a governmental agency

rather than an individual does not minimize the offense. The Accused violated DR 1-102(A)(2).

Under *In re Haws*, 310 Or 741, 801 P2d 818 (1990), failure to respond to inquiries from Disciplinary Counsel's Office is a violation of DR 1-103(C). The evidence Accused did not respond to inquiries from Disciplinary Counsel's Office to such an extent that the matter had to be referred to an LPRC for further investigation. After the LPRC returned the matter to Disciplinary Counsel's Office, the Accused failed to produce the bank records the Bar requested for over a year, ultimately requiring the issuance of a subpoena for the records to the Accused's banks.

When the Accused signed and filed his Answer in April 2004, he admitted the allegations of paragraph 10 of the Formal Complaint (also paragraph 10 of the Amended Formal Complaint), which alleges that he failed to respond to Disciplinary Counsel's inquiries in the year 2000, and admitted that this conduct violated DR 1-103(C). He readopted that answer at the time of hearing in response to the amended complaint.

Under Oregon evidence law, the Accused's factual admissions in his Answer are admissible as evidence against him. *Yates v. Large*, 284 Or 217, 223, 585 P2d 697 (1978). The Supreme Court has determined that the type of recalcitrance the Accused has admittedly displayed during the course of Disciplinary Counsel's investigation violates DR 1-103(C). *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997). The Accused has admitted this violation, and the Trial Panel finds that he violated the rule.

The Accused has admitted in both Case No. 03-119 and Case No. 03-120 that between 1998 and June 2002, he deposited and maintained his personal funds in his lawyer trust account. By its terms, this rule does not require proof of a culpable mental state.² Therefore, even though the Accused claims he did not know he should not deposit personal funds into his client trust account or use the account for personal business, Supreme Court precedent and the language of DR 9-101(A) demonstrate that he has, nonetheless, violated this rule. The Accused admits the violations, and the Trial Panel finds that he violated DR 9-101(A) in both Case No. 03-119 and Case No. 03-120.

² While the court has not gone so far as to declare DR 9-101(A) to be a strict liability rule, it has held lawyers responsible for trust account mismanagement by employees about which the lawyer did not know. See *In re Starr*, 326 Or 328, 337, 952 P2d 1017 (1998), and the cases cited in footnote 3 therein. Ignorance that his conduct violated a disciplinary rule does not excuse the Accused's conduct. *In re Carey*, 307 Or 315, 321, 767 P2d 438 (1989).

The Accused admits that he did not maintain and preserve his client trust account records, that he did not produce all of the bank records requested by the Bar, and that he violated DR 9-101(C)(3). Accordingly, the Trial Panel finds that he violated DR 9-101(C)(3) twice, as alleged in Case Nos. 03-119 and 03-120.

Sanction

The Oregon Supreme Court refers to the *ABA Standards for Imposing Lawyer Sanctions* (“*Standards*”), in addition to its own case law, for guidance in determining the appropriate sanctions for lawyer misconduct.

A. ABA Standards

The *Standards* establish an analytical framework for determining the appropriate sanction in discipline cases using three factors: the duty violated; the lawyer’s mental state; and the actual or potential injury caused by the conduct. Once these factors are analyzed, the court makes a preliminary determination of sanctions, after which it adjusts the sanction, if appropriate, based on the existence of aggravating or mitigating circumstances.

B. Duties Violated

In violating DR 1-102(A) (2), the Accused violated his duty to the public to maintain the standards of personal integrity upon which the community relies. This is one of the most basic professional obligations to the public. *Standards*, § 5.1. In violating DR 1-103(C), the Accused violated his duty as a professional to cooperate with disciplinary investigations. *Standards*, § 7.0.

C. Mental State

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

In violating DR 1-102(A)(2), the Accused acted knowingly. When he wrote the checks to the City of Portland, the Accused knew there was not enough money in his bank accounts to cover those checks, he knew that his banks had been dishonoring checks written on the accounts in the days before he wrote the checks, and knew that his sources of funds to cover the checks were irregular, untimely, and uncertain. The Accused was, therefore, aware of the nature or attendant circumstances of his conduct and acted at least knowingly when he wrote the checks to the city. Moreover, as reflected in the bank records submitted by the Accused in an exhibit,

he was writing nonsufficient fund checks to others on a regular basis. While the Bar did not charge the Accused for this additional misconduct, the trial panel views it as an aggravating factor for purposes of determining a sanction.³

The Accused's violation of DR 9-101(A) and DR 9-101(C) was negligent. He should have known that he was not permitted to deposit his own funds into his client trust account or to use it for his personal business. The Accused claims that he did not know this, but does not deny that he should have. He also admits that his banking practices with respect to his trust account were negligent and that he did not maintain the records required of him.

D. Extent of Actual or Potential Injury

The *Standards* define "injury" as harm to the client, the public, the legal system, or the profession that results from the 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*, at 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).

The Accused caused actual injury to the Bar in failing to cooperate with its investigation. *In re Bourcier*, 325 Or 429, 424, 939 P2d 604 (1997). The City of Portland suffered actual injury from the Accused's conduct in that its receipt of funds legitimately owed by the Accused was delayed for up to two years, and it was required to expend time and resources in attempts to collect those funds.

E. Preliminary Sanction

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

Standards § 5.12 suggests that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain elements listed

³ According to Defendant's Exhibit 14, during the period April 1, 1998, to April 30, 1998, he was charged twice for returned checks; during the period October 31, 1998, to November 30, 1998, he was charged six times for returned checks; during the period December 1, 1998, to December 31, 1998, he was charged eleven times for returned checks; during the period January 1, 1999, to January 29, 1999, he was charged seven times for returned checks; during the period May 29, 1999, to June 30, 1999, he was charged twice for returned checks; during the period July 1, 1999, to July 30, 1999, he was charged once for a returned check. All of the foregoing checks were drawn on the Accused's business account. During the period May 22, 1998, to June 19, 1998, he was charged four times for returned checks on his personal account.

in *Standards* § 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

Drawing together the duties violated, the Accused's mental state, and the injury caused by his conduct, the ABA *Standards* indicate that a period of suspension is appropriate in this case.

F. Aggravating and Mitigating Circumstances

"Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. The aggravating factors properly attributable, to the Accused in this case are:

- (1) The Accused acted with a dishonest or selfish motive. *Standards*, § 9.22(b).
- (2) The Accused engaged in a pattern of misconduct. *Standards*, § 9.22(c).
- (3) The Accused committed multiple offenses, *Standards*, § 9.22(d).
- (4) The Accused had substantial experience in the practice of law, having been admitted to the bar in 1966. *Standards*, § 9.22(i).

The *Standards* also recognize "mitigating factors." The mitigating factors properly attributable to the Accused are as follows:

- (1) The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
- (2) The Accused enjoys a good reputation in the legal community. *Standards*, § 9.32(g).
- (3) These disciplinary proceedings have been delayed. *Standards*, § 9.32(j).

On the issue of delay, the panel notes that a significant portion of the delay is attributable to the Accused. While the Bar received the complaint about the Accused's conduct in March 2000, he failed for five months to provide the information requested of him, resulting in an August 29, 2000, referral of the matter to an LPRC. Thereafter, when the Accused's case was returned to Disciplinary Counsel's Office for further investigation, the Accused delayed producing his bank records for over a year, with the result that the Bar was required to subpoena them before it could determine whether formal charges were justified. Because a significant portion of the delay in this case is attributable to the Accused, the panel gives the delay in this proceeding little weight as a mitigating factor.

G. Oregon Case Law

Oregon case law also suggests that a period of suspension is appropriate in this case.

As for the Accused's violation of DR 1-102(A)(2), there is precedent in Oregon for disciplining a lawyer for writing bad checks. Although *In re Smith*, 241 Or 542, 407 P2d 643 (1965), involved some aggravating factors not present here, the

Accused was disbarred for, inter alia, issuing three nonsufficient fund checks.⁴ See also *In re Dugan*, 272 Or 708, 538 P2d 938 (1975), and *In re Enright*, 160 Or 313, 85 P2d 359 (1938). While the Accused's misconduct in this regard did not implicate client funds, it was nonetheless criminal behavior under ORS 165.065 and thus deserves a significant period of suspension. *In re Kimmell*, *supra*.

In *In re Miles*, 324 Or 218, 923 P2d 1219 (1996), the court suspended a lawyer for 120 days for two violations of DR 1-103(C), even when no other substantive violations were alleged or proven. The court in *Miles* stated: "In most cases, either a single, significant failure to cooperate with a disciplinary investigation or lesser, multiple failures to cooperate warrant a lengthy suspension from the practice of law." *In re Miles*, *supra*, 324 Or at 223. See also *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (60 days of a 120-day suspension attributable to violation of DR 1-103(C)).

Precedent indicates that a 60-day suspension is warranted for the Accused's violation of DR 1-103(C) alone.

With respect to the Accused's trust account mismanagement, (DR 9-101(A) and DR 9-101(C)(3)), sanctions vary, depending on the seriousness of the violation. For example, the court has reprimanded lawyers for unintentional or inadvertent mistakes involving the lawyer's staff. See, e.g., *In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (lawyer's bookkeeper mistakenly deposited client funds in the lawyer's general account rather than the lawyer's trust account and the lawyer was unaware of his assistant's actions). At the other end of the spectrum is *In re Eakin*, 334 Or 238, 48 P3d 147 (2002), where the court suspended the lawyer for 60 days for mistakenly withdrawing a client's funds from trust (DR 9-101(A)), failing to maintain adequate trust records (DR 9-101(C)(3)), and failing to promptly deliver client property to a client (DR 9-101(C)(4)). Like the Accused in this case, the lawyer in *Eakin* acknowledged that she violated DR 9-101(A) and DR 9-101(C)(3), and she had no prior record of discipline.

The Accused's violation of DR 1-103(C) was every bit as egregious as that in *Miles* and alone warrants a 60-day suspension. His trust account mismanagement extended for a much longer period than in *Eakin* (four years as opposed to one and a half years) and involved many more separate instances of mismanagement, including NSF checks. Even though the Accused's trust account mismanagement did not involve client funds as in *Eakin*, the nature and extent of the rule violations was much more egregious, warranting at least a 60-day suspension for his violations of DR 9-101(A) and DR 9-101(C)(3) alone.

⁴ The Accused issued the checks to clients in payment of money which had been received by him in trust for their account. There were additional charges concerning excessive use of alcohol.

Disposition

The Accused shall be suspended from the practice of law for a period of six months as recommended by the Bar.

IT IS SO ORDERED.

DATED this 12th day of January 2005.

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

/s/ Llewellyn Fischer
Llewellyn Fischer
Trial Panel Member

/s/ Joan LeBarron
Joan LeBarron
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 04-34, 04-35, 04-36,
) 04-37
DONNA M. MATTHEWS,)
) SC S52507
Accused.)

Counsel for the Bar: Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 1-102(A)(4),
DR 5-101(A), DR 5-110(A), DR 7-102(A)(2),
and DR 7-102(A)(5). Stipulation for Discipline.
One-year suspension.
Effective Date of Order: May 16, 2005

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 in the State of Oregon for a period of one year. The sanction shall be effective as of May 16, 2005.

DATED this 21st day of June 2005, *nunc pro tunc* May 16, 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

STIPULATION FOR DISCIPLINE

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

1.

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

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 Lane County, Oregon.

3.

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

4.

On April 16, 2004, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), DR 5-110(A), DR 7-102(A)(2), and DR 7-102(A)(5) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Allison Matter

(Case Nos. 04-34, 04-36, 04-37)

Facts

6.

Mother and Father divorced in California. After relocating to Oregon, Mother sought to modify the California dissolution decree. In the modification matter, the Accused represented Father; Mother was represented by counsel. Trial in the modification matter occurred in May 2002 before Lane County Circuit Court Judge Billings. Judge Billings awarded Mother custody of the eldest child and awarded Father custody of the four younger children. Both parents were awarded parenting time with their noncustodial children.

7.

The judgment specifically provided that Judge Billings would retain jurisdiction over the case and that the parties or counsel could request an accelerated hearing if an emergency arose requiring court interpretation. The matter concluded with the court scheduling a follow-up hearing for early 2003.

In March 2003, the parties, with their respective counsel reappeared before Judge Billings. Judge Billings continued the prior custody order and modified the parenting plan contained in the 2002 judgment and requested that the Accused prepare an order. As of April 22, 2003, the Accused had not submitted an order. On April 22, 2003, Father died of a massive stroke.

8.

On Monday, April 28, 2003, Mother contacted stepmother (Father remarried after the 2002 modification) and advised that Mother would be picking up her children on May 2, 2003, for visitation, consistent with the 2002 modified judgment. On Friday, May 2, 2003, Mother was greeted by stepmother at the family home. Stepmother provided Mother with a letter from the Accused wherein she advised stepmother that regardless of Father's death, the children remained in his legal custody. The Accused advised stepmother to permit Mother only supervised parenting time at stepmother's home or other agreed upon location.

9.

On Friday, May 2, 2003, Mother took the children to the Springfield Police Department with the 2002 modification decree. Mother explained to the police officer that her former husband was dead, that she was the children's mother and detailed her plans to take the children to her home in Washington that evening. Mother explained to the police that stepmother had said that if Mother did not return the children, Mother would be arrested for kidnapping. Mother took her children to Washington on May 2, 2003.

10.

On May 2, 2003, the Accused prepared a motion for order of assistance, an affidavit for her own signature in support of the motion, and an order of assistance using the same caption as that used in the modification matter. In the motion for order of assistance and order, the Accused sought the court's assistance in recovering the children by representing that Father was awarded sole legal custody of the children until a court specifically ordered otherwise, that Mother was holding the children in violation of a determination of legal custody by Judge Billings, and that Father was entitled to the court's assistance in recovering the children.

11.

In the affidavit in support of the motion, which the Accused signed, the Accused reiterated Father's award of legal custody and represented that Mother told stepmother that she would return the children on the evening of May 2, 2003, but instead took them to her home in Washington State. The Accused further represented that "the children are in imminent danger because [the eldest child] resides with Mother, and he has been held by Judge Billings to be a danger to the younger

children, specifically to [one of the younger daughters], and Mother is mentally and physically unwell and denies that [eldest child] poses any risk whatsoever.”

12.

The motion for order of assistance and accompanying affidavit were false in several respects. First, as of May 2, 2003, Father was dead, and rather than disclosing this fact, the motion sought, on Father’s behalf, law enforcement’s assistance to obtain physical custody of his children. Second, Judge Billings had never expressly held that the eldest child was a danger to the younger children, or that Mother was mentally or physically unwell. In addition, the Accused did not disclose that Stepmother was not a party to the modification proceeding. She had neither legal custody nor legal standing to pursue a writ of assistance.

13.

On May 5, 2003, the Accused took the motion and order for assistance and accompanying affidavit to Lane County Circuit Court Judge Hodges’ chambers. Judge Hodges was unfamiliar with the case and did not have the court file before him. The Accused did not tell Judge Hodges that Judge Billings had continuing jurisdiction over the case or that Father had died. The judge, relying on the documents and believing that Mother had violated the conditions of the modification decree and was wrongfully withholding the children, signed the writ of assistance.

14.

After securing the writ of assistance, stepmother traveled to Washington to enforce it. With the assistance of local law enforcement in that state, the children were given to her and she returned with them to Oregon.

15.

On May 19, 2003, the Accused, on stepmother’s behalf, filed a petition for custody. In the petition, the Accused represented that no other litigation for custody involving the children was pending. On the same day, the Accused, on behalf of stepmother, took a temporary order of restraint to Lane County Circuit Court Judge Mitchell’s chambers. Judge Mitchell also was unfamiliar with the background in this matter. The Accused did not disclose the existence of the modification matter, the circumstances surrounding Father’s death, the subsequent issuance and execution of the order of assistance, or the return of the children to stepmother. The judge, relying on the representations contained in the motion and affidavit, signed the order of restraint, which placed numerous limitations on Mother’s access to her children during the pendency of stepmother’s petition for custody.

16.

In mid-May 2003, Mother wrote the Lane County presiding court advising of the removal of her children. In June 2003, Judge Billings convened a hearing, vacated the order of restraint, set aside any order that suggested that stepmother had any legal right to the children, and awarded custody of the children to Mother.

Violations

17.

The Accused stipulates that, by engaging in the conduct described in paragraphs 5 through 16 herein, she violated DR 1-102(A)(3) (dishonesty and misrepresentation); DR 1-102(A)(4) (conduct prejudicial to the administration of justice); DR 7-102(A)(2) (knowingly advancing an unwarranted claim); and DR 7-102(A)(5) (knowingly make a false statement of law or fact).

Merritt Matter

(Case No. 04-35)

Facts

18.

In or about the spring of 2003, the Accused represented a client in connection with his dissolution of marriage. During the course of the representation, the Accused and her client commenced a sexual relationship.

Violations

19.

The Accused stipulates that, by engaging in the conduct described in paragraph 18, she violated DR 5-101(A) (lawyer's self-interest conflict) and DR 5-110(A) (sexual relations with a client).

Sanction

20.

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

A. *Duty Violated.* In the Allison matter, the Accused violated her duty to the public and to maintain her personal integrity. *Standards*, § 5.1. The Accused also violated her duty to the legal system to abide by its rules and to avoid interfering with the proper administration of justice. *Standards*, § 6.1. In the Merritt matter, the

Accused violated her duty to avoid improper personal conflicts of interest. *Standards*, § 4.3.

B. *Mental State*. The Accused acted intentionally or with knowledge.

C. *Injury*. Injury is actual or potential harm to a client, the public, the legal system, or the profession, which results from a lawyer's misconduct. In the Allison matter, there were several levels of injury. First, the legal system was injured by the Accused's deception. More significantly, the children, their mother, and stepmother were injured. Mother was required to retain counsel to undo the harm created by the Accused and stepmother was also required to retain successor counsel to address the consequences of the Accused's misconduct. In the Merritt matter, there was no actual injury; however, the potential for injury is always present when a lawyer becomes sexually involved with a client during the pendency of the representation.

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary record. The Accused was reprimanded in 2002 for violating DR 5-101(A) and DR 6-101(A) (*In re Matthews*, 16 DB Rptr 180 (2002)). *Standards*, § 9.22(a).

2. The victims in the Allison matter were extremely vulnerable, given Father's recent death. *Standards*, § 9.22(h).

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. Remorse. *Standards*, § 9.32(m).

21.

The *Standards* suggest that a suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury to a party to the legal proceeding, or causes an adverse effect on the legal proceeding. *Standards*, § 6.12. 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*, § 7.3. Finally, a suspension is generally appropriate when a lawyer knows of a conflicting 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.

22.

Oregon case law is in accord. See *In re Davenport*, 334 Or 298, 49 P3d 91 (2002) (lawyer who made false representations under oath in a deposition was

suspended for two years.) See also *In re Recker*, 309 Or 633, 789 P2d 663 (1990) (lawyer who, among other things, falsely represented to the court that her client had failed to maintain contact with her was suspended for two years); *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998) (lawyer who, among other things, failed to disclose material information to the court during a hearing was suspended for six months); *In re Dugger*, 334 Or 602, 54 P3d 595 (2002), and cases cited therein for the proposition that knowing or intentional false statements under oath constitute the most serious acts of misconduct that a lawyer can commit.

23.

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 one year, effective immediately upon the approval of this stipulation by the Supreme Court, for violating DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), DR 5-110(A), DR 7-102(A)(2), and DR 7-102(A)(5).

24.

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

EXECUTED this 4th day of May 2005.

/s/ Donna M. Matthews

Donna M. Matthews

OSB No. 97327

EXECUTED this 11th day of May 2005.

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. 05-09
)
TERRENCE KAY,)
)
Accused.)

Counsel for the Bar: Jeffrey D. Sapiro
Counsel for the Accused: Stephen R. Moore
Disciplinary Board: None
Disposition: Violation of DR 3-101(B) and ORS 9.160.
Stipulation for Discipline. Public reprimand.
Effective Date of Order: June 24, 2005

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 24th day of June 2005.

/s/ Michael C. Zusman
Michael C. Zusman
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Jill A. Tanner, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Terrence Kay, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On January 22, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation 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 July 26, 2004, the Accused was suspended from the practice of law for a period of 30 days, pursuant to a stipulation for discipline in *In re Kay*, 18 DB Rptr 138 (2004).

6.

A reinstatement after a short-term disciplinary suspension is not automatic, but is governed by Bar Rule (BR) 8.3, which provides that the suspended lawyer must submit a reinstatement compliance affidavit in which he/she attests to certain things and pay a reinstatement fee. A lawyer remains suspended until the provisions of BR 8.3 are met.

7.

The Accused was eligible to apply for reinstatement as of August 25, 2004. Although prior to that date he paid the Bar the costs that had been awarded in the disciplinary case, the Accused did not file a compliance affidavit with the Bar or pay a reinstatement fee until September 10, 2004. The Accused misread the letter from the Bar regarding reinstatement requirements and mistakenly believed that nothing further needed to be done before he resumed the practice of law. He also relied on his attorney of record from the discipline case, who failed to respond to the Accused's written request for guidance several days before August 25, regarding anything else that needed to be done to complete reinstatement. The Accused was reinstated as an active Bar member on September 13, 2004.

8.

ORS 9.160 prohibits the practice of law by a person who is not an active member of the Oregon State Bar. Between August 25, 2004, and September 10, 2004, the Accused engaged in the practice of law in Oregon at a time when he was not an active Bar member.

Violation

9.

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

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 lawyer'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 reinstate his active membership in the Bar. *Standards*, § 7.0.

B. *Mental State.* The Accused acted with "negligence," defined in the *Standards* as the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the *Standards*, of care that a reasonable lawyer would exercise in the situation. *Standards*, at 7. At or about the time his suspension took effect, the Accused received written notice from the Bar that he was eligible to be reinstated after 30 days, upon the filing of a compliance affidavit and payment of all applicable fees as provided in BR 8.3. However, the

Accused did not read the rule or appreciate its application to his situation. Neither the text of BR 8.3, nor a compliance affidavit was included with the Bar's written notice. The Accused timely paid the Bar's outstanding costs, informed his lawyer that he had done so, and asked his lawyer whether anything further needed to be done before he resumed the practice of law. When his lawyer failed to respond, the Accused mistakenly assumed that he could resume the practice of law on the 31st day following his disciplinary suspension. When he learned otherwise, he promptly filed a compliance affidavit and paid the reinstatement fee.

C. *Injury*. The legal profession and the public were exposed to potential harm from the Accused practicing law when he was not eligible to do so. *Standards*, at 6.

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses (see paragraph 5 above). *Standards*, § 9.22(a).

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

E. *Mitigating Factors*. Mitigating factors include:

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

11.

Drawing together the factors of duty, mental state, and injury, *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 potential injury to a client, the public, or the legal system.

Oregon case law is in accord. See *In re Dixon*, 17 DB Rptr 102 (2003); *In re Bassett*, 16 DB Rptr 190 (2002).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 3-101(B) and ORS 9.160.

13.

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

Cite as *In re Kay*, 19 DB Rptr 200 (2005)

EXECUTED this 14th day of June 2005.

/s/ Terrence Kay

Terrence Kay

OSB No. 81437

EXECUTED this 16th day of June 2005.

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. 05-01
)
PATRICK R. FOLEY,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4) and DR 7-106(C)(7).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: June 24, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 1-102(A)(4) and DR 7-106(C)(7) of the Code of Professional Responsibility.

DATED this 24th day of June 2005.

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

/s/ Michael Zusman
Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Patrick R. Foley, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on August 26, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Curry 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.

At the direction of the State Professional Responsibility Board, on May 14, 2005, the State Professional Responsibility Board directed that the Accused be charged with violating DR 1-102(A)(4), conduct prejudicial to the administration of justice, and DR 7-106(C)(7), intentionally or habitually violating an established rule of procedure or evidence. 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.

Jules Ferron retained the Accused concerning the dissolution of his marriage from Else Ferron. On or about April 28, 2003, the Accused filed a petition for dissolution of the Ferrons’ marriage in the Circuit Court of the State of Oregon for the County of Curry, *Jules Ferron, Petitioner, and Else Ferron, Respondent*, Case No. 03DB0110 (hereinafter “Dissolution Case”). Else Ferron was represented by counsel in the Dissolution Case.

6.

On or about June 9, 2003, the Accused prepared and caused a subpoena for deposition and the production of financial records of Else Ferron, alone and with any

other person, to be served on CHETCO Federal Credit Union (hereinafter “Subpoena 1” and “CHETCO”). The subpoena commanded CHETCO to appear and to produce the records at the Accused’s office on June 16, 2003.

7.

The Accused failed to serve or otherwise provide Else Ferron and her counsel with a copy of Subpoena 1 and notice of the deposition concerning the subpoena as required by Oregon Rules of Civil Procedure (hereinafter “ORCP”) 39 and 55. CHETCO delivered documents to the Accused in response to Subpoena 1.

8.

On June 16, 2004, counsel for Else Ferron notified the Accused that he had been advised by CHETCO that the Accused had subpoenaed financial records of Else Ferron. Counsel for Else Ferron also notified the Accused that the ORCPs required that the Accused give written notice of the deposition and provide a copy of any subpoena to other parties. Counsel for Else Ferron informed the Accused that he had not been provided with notice of the deposition or a copy of the subpoena. Counsel for Else Ferron requested a copy of the subpoena and any documents delivered to the Accused by CHETCO.

9.

On June 19, 2004, counsel for Else Ferron again notified the Accused that the ORCP’s required that the Accused give him notice of the deposition and a copy of any subpoena. Counsel for Else Ferron renewed his request that the Accused provide him with a copy of the subpoena and any documents delivered to the Accused by CHETCO.

10.

On or about June 25, 2003, the Accused prepared and caused a subpoena for deposition and the production of financial records of Jules Ferron, alone and with any other person, on CHETCO (hereinafter “Subpoena 2”). The subpoena commanded CHETCO to appear for deposition and produce documents at the Accused’s office on July 7, 2003. The Accused failed to serve or otherwise provide Else Ferron and her counsel with a copy of Subpoena 2 or a notice of deposition concerning the subpoena as required by ORCP 39 and ORCP 55. CHETCO delivered documents to the Accused in response to Subpoena 2.

11.

On or about July 29, 2003, the Accused prepared and caused a subpoena for deposition and the production of financial records of Jules Ferron, Jean Marie Ferron, Vincent Ferron, Else Ferron, and Ana Kunzelmann, alone and with any other person, on CHETCO (hereinafter “Subpoena 3”). The subpoena commanded CHETCO to appear for deposition and produce documents at the Accused’s office on August 15,

2003. The Accused failed to serve or otherwise provide Else Ferron and her counsel with a copy of Subpoena 3 or a notice of deposition concerning the subpoena as required by ORCP 39 and ORCP 55. CHETCO delivered documents to the Accused in response to Subpoena 3.

12.

Based on the foregoing, the Accused admits that he engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4), and intentionally or habitually violated established rules of procedure in violation of DR 7-106(C)(7).

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 lawyer’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 the legal system. *Standards*, § 6.1.

B. *Mental State.* The Accused’s conduct demonstrates negligence, knowledge and intent. *Standards*, at 7. The Accused was initially negligent when he failed to determine that his procedures did not comply with the law. The Accused should have known that his failure to provide notice of the depositions and the subpoenas for financial records did not comply with the law when he served Subpoena 1. When the Accused served Subpoena 2 and Subpoena 3, opposing counsel had previously notified the Accused that he was required to provide notice. Nevertheless, the Accused served CHETCO with Subpoenas 2 and 3 without providing opposing counsel and the non-parties with notice, including a copy of the subpoenas and notice of the depositions.

C. *Injury.* There was potential injury to the opposing party and to nonparties to the legal proceeding whose records the Accused sought by service of the subpoenas. They were denied notice and thereby denied the opportunity to object and to determine the sufficiency of the subpoenas. CHETCO was also injured because it relied on the language of the Accused’s subpoenas that depositions had been scheduled and, consistent with the Oregon Rules of Civil Procedure, notice thereof had been provided. The Accused did not tell CHETCO that no depositions had been scheduled and no notice of the subpoenas had been given to opposing counsel and the nonparties whose records the Accused commanded be produced.

D. *Aggravating Factors.* Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating factors include:

1. There is a pattern of misconduct. *Standards*, § 9.22(c).
2. There are multiple rule violations. *Standards*, § 9.22(d).
3. Jules Ferron and his counsel and other persons whose financial records the Accused sought by service of the subpoenas were vulnerable in that they were not given notice and were otherwise unaware of the Accused's subpoenas. *Standards*, § 9.22(h).
4. The Accused was admitted to practice in 1980 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors.* Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. 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. *Standards*, § 9.32(e).
3. The Accused is remorseful. *Standards*, § 9.32(m).

14.

The *Standards* 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. Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.22. 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.

Although the *Standards* suggest suspension may be warranted because of the mental state and potential injury, case law suggests a reprimand is an appropriate sanction in this case. See *In re Egan*, 13 DB Rptr 96 (1999) (lawyer reprimanded for violation of DR 1-102(A)(4), DR 7-102(A)(1), and DR 7-106(A) when she repeatedly file a motion not recognized under the rules); *In re Penz*, 16 DB Rptr 169 (2002) (lawyer reprimanded for violation of DR 7-110(B) when she repeatedly failed to provide required notices to opposing counsel); *In re Schenck*, 320 Or 94, 879 P2d 863 (1994) (lawyer reprimanded for violation of DR 7-104(A)(1) and DR 7-110(B)).

15.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(4) and DR 7-106(C)(7) of the Code of Professional Responsibility.

16.

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

DATED this 16th day of June 2005.

/s/ Patrick R. Foley

Patrick R. Foley
OSB No. 80143

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. 05-52
)
LIZA LANGFORD,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Susan D. Isaacs
Disciplinary Board: None
Disposition: Violation of DR 4-101(B)(1) and DR 4-101(B)(2).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: June 24, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 4-101(B)(1) and DR 4-101(B)(2) of the Code of Professional Responsibility.

DATED this 24th day of June 2005.

/s/ Susan G. Bischoff
Susan G. Bischoff, Region 5
Disciplinary Board Chairperson

/s/ Michael Zusman
Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Liza Langford, 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 lawyers.

2.

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

3.

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

4.

On April 8, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation of DR 4-101(B)(1) and DR 4-101(B)(2) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts and Violation

5.

The Accused represented a client concerning a child custody matter. The client notified the Accused that she did not wish the Accused to continue and terminated the representation. Thereafter, the Accused submitted a motion and supporting affidavit to the court to obtain an order allowing her to withdraw from the representation. In the affidavit, the Accused disclosed and used client confidences and secrets to the disadvantage of her client, including communications by the client to the Accused, the Accused’s advice given to her client, and the Accused’s personal judgments about her client’s honesty and the legal matter that was the subject of the representation.

6.

The Accused admits that the aforesaid conduct constituted disclosing client confidences and secrets and using client confidences and secrets to the disadvantage of the client in violation of DR 4-101(B)(1) and DR 4-101(B)(2) of the Code of Professional Responsibility.

Sanction

7.

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

A. *Duty Violated.* In violating DR 4-101(B)(1) and DR 4-101(B)(2), the Accused violated a duty to preserve client confidences and secrets. *Standards*, § 4.2.

B. *Mental State.* The Accused’s conduct demonstrates knowledge and negligence. The Accused knew or should have known that the information included in the affidavit in support of the motion to allow her to withdraw as the client’s lawyer constituted client confidences or secrets and should not have been disclosed or used by the Accused without first providing the client with full disclosure and obtaining the client’s consent. In seeking to establish grounds for the court to allow the Accused to withdraw, she was negligent in failing to understand that her professional obligations to the client precluded her from disclosing the information as she did. *Standards*, at 7.

C. *Injury.* 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). There was actual and potential injury to the Accused’s client in that the Accused delivered the motion and supporting affidavit containing the client’s confidences and secrets to a judge and to opposing counsel. The judge recognized the nature and scope of the information revealed and would not accept the affidavit for filing. The judge also directed the Accused to file another affidavit that did not disclose the same type or the extent of client confidences and secrets. Nevertheless, the judge and opposing counsel had read the affidavit first delivered by the Accused. The information contained in that affidavit was or could have been detrimental to the Accused’s client’s interests in the then pending case and in other proceedings.

D. *Aggravating Factors*. “Aggravating factors” are any considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. The Accused was admitted to practice in 1988 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors*. “Mitigating factors” are any considerations that justify a decrease in the degree of discipline to be imposed. *Standards*, § 9.32. The Accused has no prior record of formal discipline. *Standards*, § 9.32(a). She did not act with dishonest motives. *Standards*, § 9.32(b). The Accused acknowledged and fully disclosed the nature and extent of her conduct to the disciplinary authorities, and has cooperated in the investigation and in resolving this matter. *Standards*, § 9.22(e). The Accused is remorseful. *Standards*, § 9.32(m).

8.

The *Standards* provide that absent aggravating or mitigating circumstances, suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client. *Standards*, § 4.22. Reprimand is generally appropriate when a lawyer negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes injury or potential injury to a client. *Standards*, § 4.23.

Oregon case law is in accord. *See, e.g., In re Schroeder*, 15 DB Rptr 1 (2001) (reprimand for violation of DR 4-101(B)(1), DR 4-101(B)(2), and DR 7-101(A)(3)); *In re Scannell*, 8 DB Rptr 99 (1994) (reprimand for violation of DR 4-101(A) and DR 5-105(C)).

9.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 4-101(B)(1) and DR 4-101(B)(2) of the Code of Professional Responsibility.

10.

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 the stipulation shall be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

DATED this 17th day of June 2005.

/s/ Liza Langford

Liza Langford
OSB No. 88250

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. 04-45
)
STEPHANIE J. TUTTLE,)
)
Accused.)

Counsel for the Bar: Robert A. Heard; Jane E. Angus
Counsel for the Accused: Christopher R. Hardman
Disciplinary Board: Irene Bustillos Taylor, Chair; W. Bradford
Jonasson; Marvin C. Hines, Public Member
Disposition: Violation of DR 7-103(B). Trial Panel Opinion.
30-day suspension.
Effective Date of Order: July 1, 2005*

* A Stipulation to Waive Right and Time to File Request for Review and to Expedite Effective Date of Suspension was signed by parties on June 24, 2005. The Order Approving Stipulation to Waive Right and Time to File Request for Review and to Expedite Effective Date of Suspension was signed on June 28, 2005. Suspension started on July 1, 2005.

**STIPULATION TO WAIVE RIGHT AND TIME TO FILE
REQUEST FOR REVIEW AND TO
EXPEDITE EFFECTIVE DATE OF SUSPENSION**

This matter having been heard upon the Stipulation to Waive Right and Time to File Request for Review and to Expedite Effective Date of Suspension entered into by Stephanie J. Tuttle (hereinafter "Accused") and the Oregon State Bar (hereinafter "Bar") and good cause appearing,

IT IS HEREBY ORDERED that the stipulation is approved. The Accused shall be suspended from the practice of law for 30 days for violation of DR 7-103(B) of the Code of Professional Responsibility, effective July 1, 2005, or two days after the date of this order, whichever is later.

DATED this 28th day of June 2005.

/s/ Jill A. Tanner

Jill A. Tanner, Region 6
Disciplinary Board Chairperson

/s/ Michael C. Zusman

Michael C. Zusman
State Disciplinary Board Chairperson

OPINION OF THE TRIAL PANEL

This matter came before a duly constituted trial panel of the Disciplinary Board of the Oregon State Bar on March 31, 2005, at the Oregon State Bar Center in Lake Oswego, Oregon. The panel consisted of Irene Bustillos Taylor, Esq., Trial Panel Chairperson; W. Brad Jonasson, Esq., Trial Panel Member; and Marvin Hines, Public Panel Member. The Accused was represented by Christopher Hardman, Esq. Jane Angus, Disciplinary Counsel, and Robert A. Heard, Esq. represented the Bar.

FINDINGS OF FACT

Stephanie J. Tuttle (hereinafter “the Accused”) has been an Oregon State Bar member since 1993, and has been employed exclusively as a public prosecutor by the Marion County District Attorney’s office. During all relevant times, the Accused administered a very high caseload of complex and difficult cases. The Accused is held in the highest regard by the bench, Bar, and employer.

In the summer of 2002, the Accused was assigned the prosecution of Sherry Lynn Ricks (hereinafter “Ricks”) in the Marion County Circuit Court. As the deputy responsible for prosecuting the *Ricks* case, the Accused took the case to the grand jury, and obtained an indictment charging Ricks with three counts of Compelling Prostitution and three counts of Delivery of a Controlled Substance to a Minor. The victim in all six counts was a minor, [REDACTED] (hereinafter “[REDACTED]”). Trial was set for the *Ricks* case on March 17, 2003.

On or about March 1, 2003, the Accused was assigned as the trial deputy to *State v. Kenneth L. Ford*, Marion County Circuit Court Case No. 02C48263. Ford was charged with one count each of Rape in the First Degree, Delivery of a Controlled Substance to a Minor, Delivery of a Controlled Substance, Child Neglect in the First Degree, Felon in Possession of a Weapon, and Attempted Compelling Prostitution. Ford was represented by Salem lawyer Paul Ferder (hereinafter “Ferder”). The indictment alleged [REDACTED] as the victim in three of the six charges, namely the Rape, Delivery of a Controlled Substance to a Minor, and the Attempted Compelling Prostitution charges.

On March 17, 2003, Ricks and her lawyer, David Kuhns, appeared in the Marion County Circuit courtroom of Judge Rhoades for trial. Although the parties were prepared to try the case, Judge Rhoades explored the possibility of settlement. The Accused had offered in exchange for Ricks' guilty pleas, to reduce the three counts of Compelling Prostitution, Class B felonies, to Promoting Prostitution, Class C felonies. In addition, Ricks would also have to plead guilty to the three counts of Delivery of a Controlled Substance to a Minor.¹ Two other charges were dismissed.

Defendant Sherry Ricks was known to be erratic, emotional, disruptive, and unpredictable. She was quite hesitant to accept the plea offer. In particular, Ricks wanted the Accused to know, because the Accused was the prosecutor, that [REDACTED] had made false accusations of rape against three named individuals in addition to Ford. Ricks pointed out that at least one of the accusations was in retaliation for one of the men not allowing [REDACTED] into his home because he didn't want her around his children. Ricks also identified a fourth man, [REDACTED]'s mother's boyfriend, with whom [REDACTED] had run away.

The Accused advised the court that she was aware of some of the information provided by Ricks, and stated that this was the type of information she would take into account when presenting the State's recommendation for sentencing.

Ms. Ricks also made statements about [REDACTED] which related to the upcoming Ford trial. Among other things, Ricks stated:

“. . . And [REDACTED] said that she lied about it just to get in the house. So I don't want to go and—'cause I don't know that he's even guilty of that. I don't know if he is or isn't. But I'm saying she told me she lied about it in his face and mine, so I don't want to witness in that, and I don't want it to have no bearing in what you're going to do to me.” (Exhibit 3, pages 16 and 17.)

The Accused immediately addressed the court about [REDACTED] and her existence as a victim in both cases, stating:

“The last time we appeared in front of you, there was a different Deputy D.A. who was handling the Kenneth Ford case. I have now been assigned all of the cases in which [REDACTED] was the victim, including Kenneth Ford's case. I do not at this point expect that I would be calling Ms. Ricks as a witness in that case.” (Exhibit 3, Page 17.)

The Accused continued participating in the discussion with the court, Mr. Kuhns and Ricks. Ricks subsequently pled guilty pursuant to the plea offer.

¹ The case register indicates that two additional charges were dismissed, delivery of a controlled substance to a minor and child neglect. However, the record does not explain why the two dismissed charges were not alleged in the indictment.

The *Ford* case had originally been assigned to another deputy district attorney and had been set for trial in January, 2003. The deputy assigned to the case became ill, and the trial was reset for March 31, 2003. About two weeks before trial, the case had been reassigned to the Accused.

Ferder and the Accused appeared for a bench trial in the *Ford* case in Judge Hart's courtroom on March 31, 2003. The Accused had no communications with Ferder prior to the date of trial. In fact, Ferder was unaware that the case had been reassigned to another deputy district attorney.

At no time prior to March 31, 2003, did the Accused, or anyone at her direction, attempt to provide Ferder with the information pertaining to [REDACTED] that was asserted by Ricks during the March 17, 2003, court proceedings. Ferder had not otherwise received information beforehand from any source about those proceedings.

On March 31, 2003, as Ferder and the Accused entered the courtroom prior to trial, Ferder inquired if Ricks would be called as a witness for the State. The Accused realized at this point that she should advise Ferder of the exculpatory statements made by Ricks on March 17, 2003, about the *Ford* case. The Accused did not inform Ferder of the content of those statements at that time nor at any time thereafter.

Ferder was unaware of any statements made by Ricks on March 17, 2003. As a result, he did not take any action that he would have taken had he been aware of the statements. He did not move for a continuance, did not withdraw the waiver of a jury trial on behalf of his client, did not investigate further or interview any of the other men allegedly accused of rape by [REDACTED], did not call Ricks to testify to the exculpatory statements she made, and did not cross-examine [REDACTED] as to the recantation that she allegedly made to Ricks.

Ford was convicted of all counts, except for the Attempted Compelling Prostitution charge. The trial court granted a judgment of acquittal as to that charge. On April 29, 2003, Ford was sentenced. Ford received 180 months custody with the Department of Corrections on the Rape conviction and 34 months concurrent time for Delivery of a Controlled Substance to a Minor, the two charges naming [REDACTED] as the victim.

On May 12, 2003, Ferder filed a Motion for a New Trial on behalf of Ford, based upon information he received from Mary Elizabeth Brown, who is the mother of Ricks, and Megan Albers. Both women had allegedly heard [REDACTED] make remarks recanting her accusation that she had been raped by Ford. The Accused received the Motion for a New Trial, and admitted contacting Judge Hart's secretary about whether a hearing was going to be set.

After the Motion for New Trial had been denied, Ferder learned from Ricks that she had made statements in the courtroom of Judge Rhoades during proceedings prosecuted by the Accused. On July 17, 2003, Ferder obtained a transcript of the March 17, 2003 proceedings in Judge Rhoades' courtroom. Based on the potential

conflict caused by his being a witness on Ford's behalf, Ferder withdrew as Ford's lawyer of record on August 21, 2003.

On August 26, 2003, Kenneth Ford's complaint against the Accused was received by the Oregon State Bar. Ford accused Tuttle of failing to disclose exculpatory evidence prior to trial. The Bar wrote to Stephanie Tuttle on October 1, 2003, about the contents of Kenneth Ford's complaint and attached a copy of Ford's letter. The Accused responded by letter on October 10, 2003 as follows:

“. . . and I discussed Ms. Ricks potential testimony. I told Mr. Ferder that I would not be calling Ms. Ricks as a witness. I told him that I considered her wholly unreliable and not credible. I also told him that she was now on his client's side, and that she now claims that [REDACTED] had admitted to lying about the allegations against Mr. Ford. I asked Mr. Ferder if he would be calling Ms. Ricks as a witness. We laughed about how unreliable she is, and he said that he did not think it would be a good idea to call her as a witness.

“We did not, to my memory, discuss the other information given by Ms. Ricks on Pages 10 and 11 of the transcript. When she made those statements, she was rambling and incoherent, and I did not understand what she said to be exculpatory evidence. Had I thought she had made statements that were exculpatory to Mr. Ford, I would have provided that information to Mr. Ferder.” (Bar Exhibit 10)

The Bar wrote back to the Accused on October 22, 2003, suggesting that there may be some disciplinary rule violations, and asking for more information. The Accused telephoned Ferder to inquire about his recollection of their brief conversation about Ricks as a prosecution witness on the morning of the *Ford* trial on March 31, 2003. Ferder advised Tuttle that he recalled no disclosure of any exculpatory statements by Ricks.

The Accused then wrote back to the Bar on November 11, 2003, informing them of her recent conversation with Ferder. The Accused stated in the letter that she did not consider the need to disclose Ricks statements to the defense at the time they were made. She based her actions on her opinion of Ricks' total lack of credibility. On the morning of the *Ford* trial, she recognized that she needed to advise Ferder of Ricks' allegations about [REDACTED]'s recantations. The Accused denied recalling any other allegations made by Ricks against [REDACTED].

The Oregon State Bar filed its formal complaint on or about March 14, 2004. In her Responses to Requests for Admission filed with the Oregon State Bar on or about August 2, 2004, the Accused admitted that Ricks told Judge Rhoades that [REDACTED] had recanted her accusation of rape by Ford to Ricks, and that her statement was required to be disclosed to Ford's lawyer.

At all relevant times, until recently, Dale Penn was the elected District Attorney, and was the Accused's employer. Walt Beglau, the current District Attorney, was the Accused's immediate supervisor at the time of Ford's trial. Beglau was appointed Marion County District Attorney, when Penn left the office in October 2004. The Accused had several discussions with Mr. Penn and with Mr. Beglau about the circumstances of this case. Mr. Penn felt that there was no action to be taken on behalf of the Marion County District Attorney's office as a result of this matter. Mr. Beglau also saw no basis for action to be taken by the Marion County District Attorney's Office. The Accused testified that, in her opinion, there was no prejudice to Ford as a result of her failure to timely disclose the exculpatory information to him or his lawyer.

The Accused admitted that she paid no attention to the actual content of Ricks' statements. She admitted that she failed to realize the importance of Ricks' statements. She explained her failure to disclose the exculpatory statements as due her opinion that Ricks lacked credibility and to her being too busy focusing upon trial preparation matters.

The record reflects that the Accused responded directly to the court as to the exculpatory allegations raised by [REDACTED]. The Accused's response to the court at the time Ricks made the statements demonstrated that she was familiar enough with both cases to know that [REDACTED] was a victim in each.

This panel finds by clear and convincing evidence that the Accused knowingly did not provide timely discovery of exculpatory evidence of [REDACTED]'s recantation to Ford's lawyer. This was a violation of DR 7-103(B) of the Code of Professional Responsibility.

SANCTION

The panel agrees with the parties that there is no case law on point with the facts in the present case. As the parties candidly acknowledge, the question of what sanction to impose for the violation of DR 7-103(B) appears to be an issue of first impression for the Oregon courts. Therefore, the panel looks to the American Bar Association (ABA) Model Rules of Lawyer Disciplinary Enforcement (hereinafter called "ABA Model Rules").

ABA Rules 9 and 10 of the Model Rules for Lawyer Disciplinary Enforcement give guidance as to when conduct requires a suspension and what factors the panel can consider. Rule 9B states when conduct is considered to not warrant a restriction of an accused's license to practice law.

"Lesser misconduct is conduct that does not warrant a sanction restricting the respondent's license to practice law. Conduct shall not be considered lesser misconduct if any of the following considerations apply:

- “(1) the misconduct involves the misappropriation of funds;
- “(2) the misconduct results in or is likely to result in substantial prejudice to a client or other person;
- “(3) the respondent has been publicly disciplined in the last three years;
- “(4) the misconduct is of the same nature as misconduct for which the respondent has been disciplined in the last five years;
- “(5) the misconduct involves dishonesty, deceit, fraud, or misrepresentation by the respondent;
- “(6) the misconduct constitutes a “serious crime” as defined in Rule 19(C);
or
- “(7) the misconduct is part of a pattern of similar misconduct.” (Emphasis added.)

In evaluating whether the Accused’s actions “shall not” constitute lesser misconduct, Rule 9B(2) applies. The trial panel finds that the Accused’s conduct resulted in or was likely to result in substantial prejudice to Mr. Ford.

Additionally, three provisions of the *ABA Standards for Imposing Lawyer Sanctions* (Amended 1992) (hereinafter called “*ABA Standards*”) particularly apply in the present case:

Rule 1.22, which provides, in pertinent part:

“Suspension is generally appropriate when a lawyer in an official or governmental position knowingly fails to follow proper procedures or rules and causes injuries or potential injury to a party or to the integrity of the legal process.”

Rule 6.12, which provides, in pertinent part:

“Suspension is appropriate when a lawyer knows . . . 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.

Rule 7.2, which provides, in pertinent part:

“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.”

In violating DR 7-103(B), the Accused violated her duties to the public, the legal system, and to the profession. Although the Accused may initially have acted negligently, once she realized that she had a duty to disclose Ricks’ statements to Ford’s defense counsel on the morning of the trial, she knowingly failed to do so. The Accused had a conscious awareness of the nature and attendant circumstances of the exculpatory evidence voiced by Ricks. She knew well her public duty to disclose that information in a timely fashion to Ford’s defense lawyer Ferder.

Furthermore, she had the opportunity to come forward with the information even after Ford's trial, and still failed to do so.

There is potential injury to Mr. Ford. Ford was acquitted on one of the charges pertaining to ██████, that of Attempted Compelling Prostitution. Had the Accused disclosed to Ferder the existence of the exculpatory statements voiced by Ricks, he would have requested a continuance to evaluate the new evidence. Ferder would have interviewed Ricks to verify her March 17, 2003, statements and to identify and contact the three other men ██████ had accused of rape. Ferder would have advised Ford to not waive jury and would have called Ricks to testify at Ford's trial. Ferder was aware that the trial judge for Ford's case, Judge Hart, had a negative preconception of Ricks. This was one of the reasons he did not call Ricks as a witness. The exculpatory evidence that Ricks could testify to, however, would have weighed heavier over waiving the jury trial. The impact of Judge Hart's preconceptions about Ricks would have been substantially less with a jury trial, and he could have used her testimony.

Having been able to obtain an acquittal on one charge involving ██████ Ford may have been more successful against the other two counts involving ██████ as the victim, particularly if Ford brought in other evidence and motive for ██████'s accusations to the police. Clearly the record reflects potential injury to Ford due to the Accused's nondisclosure of the exculpatory statements.

The panel is not required to look at whether Ford would have been acquitted of all the charges involving ██████. Even if the panel were to have found that the Accused acted negligently, as opposed to knowingly, the ABA Model Rules look to the effect the Accused's conduct had on another person and whether the Accused's misconduct was likely to cause substantial injury to another person.

Rule 10A of the Model Rules requires the following factors be considered in evaluating the Accused's behavior when imposing sanctions:

“A. Factors to be Considered in Imposing Sanctions. In imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors, as enumerated in the ABA Standards, for Imposing Lawyer Sanctions.

“(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

“(2) whether the lawyer acted intentionally, knowingly, or negligently;

“(3) the amount of the actual or potential injury caused by the lawyer's misconduct; and

“(4) the existence of any aggravating or mitigating factors.”

See also In re Gustafson, 327 Or 636, 652–653, 968 P2d 367 (1998) (acknowledging that “the ABA Standards, require us to analyze the accused's misconduct in light of the following factors: (1) the duty violated; (2) the accused's mental state at the time

of the misconduct; (3) the actual or potential injury caused by the accused's misconduct; and (4) the existence of aggravating or mitigating circumstances.”).

The panel makes the following findings:

(1) *Duty Violated*. As a prosecutor, the Accused has violated her duty to maintain the public's trust by engaging in conduct that was prejudicial to the fair and equal administration of justice. Furthermore, her failure also undermined her duty to the courts and to the legal profession.

(2) *The Accused Acted Knowingly*. The Oregon Supreme Court has defined knowledge as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” *In re Flannery*, 334 Or 224, 232 n 1, 47 P2d 891 (2002).

The Accused may well have acted negligently in not conveying the exculpatory information to Ford's defense lawyer prior to March 31, 2003. However, by the start of Ford's trial, the Accused admitted that she knew and was aware that she needed to advise Ferder of Ricks' statements. Thus, even assuming that she did not recall those statements specifically about the three false rape accusations, the Accused nonetheless failed to disclose Ricks' statements about ██████'s recantations, after she realized and knew that she had an obligation to do so. *See In re Knappenberger*, 338 Or 341, 357, 108 P3d 1161 (2005) (holding that persistence in representing a client after knowing facts that should allow the lawyer to conclude that he had a conflict was “knowing” conduct).

(3) *There Was Injury and Potential Injury*. Ford may very well have been convicted of Rape and Delivery of a Controlled Substance to a Minor, even with due consideration of the exculpatory evidence by the factfinder. However, this panel does not evaluate a prosecutor's conduct based on whether the defendant would have been convicted. Defendant Ford's right to a full, fair, and impartial trial was prejudiced by the Accused's misconduct.

There is significant injury to the public and the courts when a prosecutor realizes that he or she erred, and then takes no action to rectify the error. The panel was concerned to hear the Accused testify that she did nothing to correct the admitted misconduct. The panel was also concerned to hear that the Accused's supervisors felt that no action was necessary to correct the error of their deputy. This implies that because Mr. Ford was guilty, he did not need to be appraised of the exculpatory evidence. It is well known that the duty to disclose is a continuing duty, applicable to facts as they come to the prosecutor's attention, even after conviction. *See United States v. Howell*, 231 F3d 615, 626 (9th Cir 2000) (holding that discovery obligations under federal rules of criminal procedure “impose a continuing duty to disclose.”); *Griffin v. United States*, 183 F2d 990, 993 (DC Cir 1950) (holding that the prosecutor is not to decide what is admissible or useful for the defense).

The concern is not whether Mr. Ford was guilty. The Accused testified that she has done nothing to rectify the situation, and has provided an explanation of why she has not:

“I have not been approached in any way regarding this information. Nobody has requested that we have a new trial. Nobody has requested that we reopen the case. And I believe that’s in large part due to the fact that I still don’t believe that this information is likely to have been presented, but remember that, as a prosecutor I’m in a difficult position. . . . And so I guess the short answer is, no. But the longer answer is I’m not sure what I could really do without having been approached in any way about this.”

3/31/05 Hrg. Tr. 212-13.

Her testimony implies that it was not her responsibility to insure that the error was corrected. However, the prosecutor has a duty to function as a “minister of justice”; insuring that all defendants, whether guilty or innocent, receive any and all information, regardless of it’s significance, that may support a claim of innocence, mitigate the offense, or reduce the punishment in order to insure a full, fair, and impartial resolution of the case. Waiting for someone else to rectify her error, when that error has the potential to affect years of a person’s life, conflicts with that duty. *See* ABA Model Rules for Lawyer Disciplinary Enforcement, *Commentary* to Rule 10 (quoting from Standards, 9 of Standards, for imposing Lawyer Sanctions, “Aggravating factors include: . . . indifference to making restitution. Mitigating factors include: . . . timely good faith effort to make restitution or to rectify consequences of misconduct.”).

The Accused appropriately consulted with her supervisors. Unfortunately, they, too, did not see a need to rectify the error. Had Mr. Ford not complained to the Bar, Ricks’ exculpatory information relevant to Ford’s case would have remained buried. The justice system demands that exculpatory evidence received both before and after trial be communicated to the defense so that a fair and just resolution is achieved. That was not done in this case.

The following aggravating factors apply:

(1) The Accused has substantial experience in the practice of law as a public prosecutor.

(2) The Accused allowed her personal opinion of Ricks’ credibility determine whether she would provide the exculpatory statements to Ford’s lawyer.

(3) The Accused has failed to take steps to rectify her error. The information could have been disclosed and the matter corrected through a hearing on the Motion for New Trial. The fact that Ferder’s motion had already been denied at the time the Accused had contacted the court about its status does not justify not advising Ford’s lawyer of the exculpatory evidence. As a result, Ford was prevented from requesting reconsideration.

The following mitigating factors apply:

- (1) The Accused has no prior record of discipline.
- (2) The Accused has cooperated at all times with the Bar.
- (3) The Accused has a sterling reputation amongst the bench and Bar.
- (4) The Accused has expressed remorse for her error.

For the above reasons, this panel finds that a 30-day suspension from the practice of law is warranted. The panel orders that the Accused shall be suspended from the practice of law for 30 days for violation of DR 7-103(B). This sanction is to be effective on the 30th day after the effective date of this opinion.

DATED this 24th day of May 2005.

/s/ Irene B. Taylor

Irene B. Taylor
OSB No. 83166
Trial Panel Chairperson

/s/ W. Bradford Jonasson

W. Bradford Jonasson
OSB No. 76194
Trial Panel Member

/s/ Marvin C. Hines

Marvin C. Hines
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 04-158
)
STEPHEN E. ANDERSEN,)
)
Accused.)

Counsel for the Bar: Richard A. Weill; Amber Bevacqua-Lynott
Counsel for the Accused: Lawrence H. Reichman
Disciplinary Board: None
Disposition: Violation of DR 9-101(A) and DR 9-101(C)(3).
Stipulation for Discipline. Six-month suspension.
Effective Date of Order: July 11, 2005

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 six months, effective 10 days after this order is signed, for violation of DR 9-101(A) and DR 9-101(C)(3).

DATED this 1st day of July 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Jill A. Tanner, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Stephen E. Andersen, 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 lawyers.

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, at all relevant times, in Clackamas County, Oregon.

3.

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

4.

On January 21, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 9-101(A) (failure to preserve identity of client funds and refrain from depositing personal funds in trust) and DR 9-101(C)(3) (failure to maintain complete records and account for client funds) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts and Violations

5.

Prior to March 2003, the Accused established a lawyer trust account (#050-3603516) (hereinafter “trust account”) at Wells Fargo Bank.

6.

From March 2003 through February 2004, the Accused deposited both personal and client funds into his trust account, including the proceeds from the sale of his personal residence. The Accused also used the trust account to pay personal, business and client obligations. The Accused did not make or maintain sufficient records clearly and expressly reflecting the date, amount, source, and explanation for

all deposits, withdrawals, deliveries, and disbursements of client funds in his trust account.

7.

On or about January 22, 2004, the Accused issued a check from the trust account when there were insufficient funds in the account, although the Accused maintains he believed there were sufficient funds in the account. The bank honored the check and after it did so, the account had a negative balance.

8.

The Accused asserts that he used his trust account for personal business because, due to a prior theft involving his accounts, he believed his business and personal bank accounts were vulnerable to fraudulent activities. The Accused admits that running funds, personal and client, through his trust account and paying obligations, personal and client, from his trust account was not the proper method to protect himself from the potential for theft. This is particularly true when the Accused failed to maintain sufficient records to account for the nature of funds deposited in trust.

9

The Bar does not contend in this proceeding that the Accused misappropriated or converted to his own use client funds.

10.

The Accused admits that, by engaging in the conduct described in this stipulation, he improperly commingled his personal funds in his trust account and failed to maintain complete records of client funds and property in his possession and render appropriate accounts regarding them in violation of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility.

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’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 refrain from commingling his personal and business funds with those of his clients. *Standards*, § 4.1. The most important ethical duties are those obligations that a lawyer owes to clients. *Standards*, at 5.

B. *Mental State.* The most culpable mental state is that of “intent,” when the lawyer acts with the conscious objective or purpose to accomplish a particular result. *Standards*, at 6. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 6. “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*, at 6. The Accused intentionally placed his own funds into his trust account on repeated occasions knowing that it was improper for him to do so, but erroneously believing that it would afford the funds greater protection from suspected fraudulent activities. The Accused also knowingly failed to maintain sufficient accounting records for client funds.

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused potential injury to his clients in that he was unable to accurately track or account for their funds. He also caused potential injury to his clients in that his commingling and direct draws from the trust account created a situation where client funds may have been inadvertently utilized for the Accused’s personal or business expenses.

D. *Aggravating Factors.* Aggravating factors include:

1. A prior record of discipline. *Standards*, § 9.22(a). This factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused received a four-month suspension in July 2004 for violations of DR 1-103(F) (failure to cooperate with SLAC); DR 6-101(B) (neglect); DR 7-102(A)(2) (knowingly advancing an unwarranted claim); DR 9-101(A) (failing to deposit or maintain client funds in trust); and DR 9-101(C)(4) (failure to promptly deliver client property). *In re Andersen*, 18 DB Rptr 172 (2004). One of the prior violations involved the same rule (DR 9-101(A)) as this proceeding. Under the criteria set forth in *Jones*,¹ the seriousness and similarity of the Accused’s prior misconduct serve to heighten his prior discipline as an aggravating factor. However, because the suspension was not effective until after the substantive violations occurred in this matter, any increased importance given the suspension should be tempered by its timing in relation to the misconduct in this case. *See In re Kluge II*, 335 Or 326, 351, 66 P3d 492 (2003) (fact that accused lawyer not sanctioned for offenses before committing

¹ The *Jones* criteria for determining the relative weight to attribute to prior offenses requires evaluating (1) the relative seriousness of the prior offense and resulting sanction; (2) the similarity of the prior offense to the offense in the case at bar; (3) the number of prior offenses; (4) the relative recentness of the prior offense; and (5) the timing of the current offense in relation to the prior offense and resulting sanction, specifically, whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar.

the offenses at issue in current case diminishes weight of prior offense); *In re Huffman*, 331 Or 209, 227–228, 13 P3d 994 (2000) (relevant timing of current offense in relation to prior offense is pertinent to significance as aggravating factor); see also *In re Starr*, 326 Or 328, 347–348, 952 P2d 1017 (1998) (weight of prior discipline somewhat diminished because it occurred at roughly the same time as events giving rise to the present proceeding—i.e., the subsequent misconduct did not reflect a disregard of an earlier adverse ethical determination).

2. A pattern of misconduct. *Standards*, § 9.22(c). The Accused’s transgressions occurred regularly and repeatedly over a substantial period of time. *Standards*, § 9.22(c). See *In re Schaffner I*, 323 Or 472, 480, 918 P2d 803 (1996).

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

4. Substantial experience in the practice of law. The Accused has substantial experience in the practice of law, having been admitted in 1974. *Standards*, § 9.22(i).

E. *Mitigating Factors*. There are no applicable mitigating factors among those listed in the *Standards*.

12.

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

13.

Oregon case also holds that a substantial suspension is appropriate under these circumstances. For example, *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001), the lawyer was given a four-month suspension for violation of DR 9-101(A), DR 2-106(A), and DR 5-105(E). The sanction was aggravated by prior discipline (two prior suspensions); a pattern of misconduct; multiple offenses; refusal to acknowledge any wrongful conduct; substantial experience in the practice of law (1960); and refusal to refund the amount overcharged. Like this matter, there were no mitigating factors. In another matter, *In re Eakin*, 334 Or 238, 258, 48 P3d 147 (2002), the Oregon Supreme Court imposed a 60-day suspension when it found that the lawyer “should have known” that she was dealing improperly with the trust account with respect to one client matter. The lawyer’s imputed knowledge, combined with her substantial experience in the practice of law (similar to that of the Accused), resulted in the multiple-month suspension. Eakin had no prior discipline and there had been delay in her disciplinary proceedings.

The Accused’s conduct is more egregious than *Eakin* in that it was intentional and involved a number of clients over a substantial period of time. He also has prior discipline.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of six months for his violations of DR 9-101(A) and DR 9-101(C)(3), the sanction to be effective 10 days following approval by the Disciplinary Board.

15.

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

EXECUTED this 15th day of June 2005.

/s/ Stephen E. Andersen

Stephen E. Andersen

OSB No. 74013

EXECUTED this 22nd day of June 2005.

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. 05-44
)
NEIL W. JACKSON,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Christopher R. Hardman
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(2), DR 6-101(B),
DR 9-101(C)(3), and DR 9-101(C)(4).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: August 25, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is suspended from the practice of law for 60 days for violation of DR 2-110(A)(2), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility, effective August 25, 2005, or three days after the date of this order, whichever is later.

DATED this 26th day of July 2005.

/s/ Susan G. Bischoff
Susan G. Bischoff, Region 5
Disciplinary Board Chairperson

/s/ Michael C. Zusman
Michael C. Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Neil W. Jackson, 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 lawyers.

2.

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

3.

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

4.

On April 8, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 2-110(A)(2), 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 and Violations

5.

On or about March 14, 1995, Ursula R. Dieringer (hereinafter “Dieringer”) was a passenger on the MAX light rail train operated by Tri-County Metropolitan Transportation District (hereinafter “Tri-Met”). Dieringer alleged that she fell and was injured while riding the MAX train as a result of the negligence of Tri-Met and its employees. On or about September 11, 1995, Dieringer retained the Accused to represent her interests and pursue a personal injury claim against Tri-Met.

6.

On or about March 13, 1997, the Accused filed a civil complaint for Dieringer against Tri-Met for personal injury and damages sustained on March 14, 1995, *Ursula Dieringer v. Tri-County Metropolitan Transportation District*, Multnomah County Circuit Court Case No. 970301977 (hereinafter “Court Action”). On or about May 9, 1997, the court entered an order transferring the Court Action to arbitration.

7.

In or about October 1997, the Accused requested that Dieringer deliver \$1,100 to the Accused for costs incurred and to be incurred in the Court Action. Dieringer delivered the \$1,100 to the Accused on or about October 3, 1997 (hereinafter “Dieringer’s Funds”). The Accused deposited Dieringer’s Funds in his lawyer trust account, and on or about October 3, 1997, withdrew \$630.22 for expenses and costs incurred by the Accused for and on behalf of Dieringer.

8.

On or about November 6, 1997, the court filed and sent notice of pending dismissal of the Court Action to the Accused and counsel for Tri-Met. On December 12, 1997, the court dismissed the Court Action and filed and sent a copy of a judgment of dismissal to the Accused.

9.

In and between about October 1997 and October 2001, the Accused failed to respond to Dieringer’s telephone calls and letters; failed to provide Dieringer with copies of written communications from Tri-Met’s counsel and other persons concerning Dieringer’s case; failed to respond to Tri-Met’s counsel’s inquiries and requests and failed to communicate and timely communicate with Tri-Met’s counsel; failed to provide Dieringer with a copy of the court’s notice of pending dismissal and judgment of dismissal of the Court Action; failed to take action to reinstate the Court Action; failed to notify Dieringer that he was taking no action and was no longer representing or pursuing her interests concerning the Court Action and personal injury claim against Tri-Met; failed to monitor Dieringer’s case; and failed to take action to advance and protect Dieringer’s interests and claim.

10.

In or about October 2001, Dieringer retained a new lawyer to represent her interests to pursue the Court Action and claim against Tri-Met. In or about October 2001, Dieringer’s new lawyer requested a copy of documents contained in the Accused’s file. The Accused failed to deliver the documents. In and between about November 2001 and March 2002, Dieringer’s new lawyer made additional requests for documents contained in the Accused’s file. On or about March 13, 2002, the Accused delivered a copy of his client file to Dieringer’s new lawyer.

11.

In or about October 1997, the Accused constructively terminated the lawyer client relationship with Dieringer without taking reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to Dieringer, allowing time for her employment of other counsel, and delivering all papers and other property to which she was entitled. In and between about October 1997 and June 2004, the Accused failed to deliver the unused balance of Dieringer's Funds, and failed to account for Dieringer's funds.

12.

The Accused admits that the aforesaid conduct constituted improper withdrawal, neglect of a legal matter entrusted to a lawyer, failure to account for client funds, and failure to promptly deliver client property in violation of DR 2-110(A)(2), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

13.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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 lawyer's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* In violating DR 2-110(A)(2), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4), the Accused violated duties to his client. *Standards*, §§ 4.1, 4.4.

B. *Mental State.* The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective 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*, at 7. The Accused knew he had agreed to handle Dieringer's personal injury claim. He knew of the client's and opposing counsel's inquires concerning the Court Action and did not respond. The Accused also knew that the client's new lawyer and the client had requested the delivery of her file to the new lawyer and that he had agreed to do so, but then failed to act. He was negligent in his failure to review his trust account records to account to the client for the client's funds and to refund any unearned funds.

C. *Injury.* 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). The Accused caused actual and potential injury to his client. Whether the client would

have prevailed if her personal injury claim had been pursued has not been determined. Nevertheless, the client was entitled to but did not receive adequate communication and diligent assistance with her legal matter. The personal injury claim became barred by the statute of limitations and the opportunity to obtain judicial determination of the claim was lost. The client and opposing counsel were also frustrated by the Accused's failure to communicate and failure to respond to their inquiries. The client's new lawyer's evaluation and pursuit of the client's claim was delayed when the Accused failed to timely respond and forward the client's file to the new lawyer.

D. *Aggravating Factors.* "Aggravating factors" are any considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. Several aggravating factors are present in this case. The Accused has substantial experience in the practice of law. He was admitted to practice in 1978. *Standards*, § 9.22(i). There are multiple rule violations. *Standards*, § 9.22(d). Dieringer was vulnerable because she relied on her lawyer to advance and protect her interests. *Standards*, § 9.22(h). The Accused has a prior record of discipline consisting of a reprimand and letter of admonition for the same or similar conduct. *See In re Jackson*, 11 DB Rptr 23 (1997); *In re Jackson*, Case No. 89-51 (July 25, 1989). Although a letter of admonition is not formal discipline, when it involves the same or similar conduct, it is considered evidence of past misconduct and an aggravating factor. *In re Cohen*, 330 Or 489, 500–501, 8 P3d 953 (2000). *Standards*, § 9.22(a). When the prior record of discipline is considered, there is also a pattern of misconduct. *Standards*, § 9.22(c).

E. *Mitigating Factors.* The *Standards* also recognize mitigating factors. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed. *Standards*, § 9.32. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). He has acknowledged and fully disclosed his conduct to the Disciplinary Counsel's Office in the investigation and in resolving this matter. *Standards*, § 9.22(e). The Accused has also taken steps to improve his case monitoring and communication activities to avoid problems encountered in this case.

14.

The *Standards* provide that absent aggravating or mitigating circumstances, suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is also appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also 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. *Standards*, § 8.2.

15.

Oregon case law is in accord. *See, e.g., In re Labahn*, 335 Or 357, 67 P3d 381 (2003) (60 days' suspension for violation of DR 6-101(B) when lawyer had previously been admonished for similar misconduct); *In re Wetteland*, 12 DB Rptr 246 (1998) (60 days' suspension for violation of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4), when lawyer had previously been admonished for violation of DR 6-101(B)). *See also In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60 days' suspension for violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) (lawyer had no prior record but had substantial experience in practice of law)).

16.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be suspended for 60 days for violation of DR 2-110(A)(2), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility, the suspension to be effective August 25, 2005, or three days after this stipulation is approved, whichever is later.

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 under the terms of BR 3.6.

DATED this 20th day of July 2005.

/s/ Neil W. Jackson

Neil W. Jackson

OSB No. 78256

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. 04-51, 05-105
)
RANDY RAY RICHARDSON,)
)
Accused.)

Counsel for the Bar: Eric J. Neiman; Martha M. Hicks
Counsel for the Accused: Lawrence Matasar
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 7-102(A)(8),
and DR 7-104(A)(2). Stipulation for Discipline.
Six-month suspension.
Effective Date of Order: August 15, 2005

AMENDED 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 six months, effective August 15, 2005, for violation of DR 1-102(A)(3), DR 7-102(A)(8), and DR 7-104(A)(2).

DATED this 17th day of August 2005, *nunc pro tunc* August 15, 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Randy R. Richardson, 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 lawyers.

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, place of business, or residence in Multnomah County, Oregon.

3.

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

4.

On September 20, 2004, 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)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-101(A), DR 7-102(A)(4), DR 7-102(A)(6), DR 7-102(A)(7), DR 7-102(B)(1), DR 7-102(B)(2), DR 7-104(A)(2), DR 7-109(B), DR 7-109(B), and DR 7-109(C). On July 16, 2005, the SPRB reviewed an additional matter involving the Accused and authorized that he be charged with alleged violations of DR 1-102(A)(3) and DR 7-102(A)(8). 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 above-described matters.

Houdroge Matter

(Case No. 04-51)

Facts

5.

In April or May 2001, the Accused undertook to represent Ali Houdroge (hereinafter “Houdroge”), who had been arrested for domestic violence against his wife, LaTonya Bates (hereinafter “Bates”). Bates’ interests in the matter were adverse to the interests of Houdroge, and Bates was not represented by counsel in the matter.

6.

Between April 1, 2001, and May 20, 2001, the Accused expected Bates to be served with a grand jury subpoena that required her to testify in the criminal investigation of Houdroge's conduct. In response to Bates' questions, the Accused advised Bates about the requirements for valid service of the subpoena, that she was not required to appear unless the subpoena were validly served, but did not advise Bates to secure counsel.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he gave advice to a person who was not represented by counsel when the interests of that person were in conflict with the interests of his client, in violation of DR 7-104(A)(2).

Scruggs Matter (Case No. 05-105)

Facts

8.

At all times relevant to the Scruggs matter, the Accused was employed as a Multnomah County deputy district attorney.

9.

In or about March 2000, Klyln Whitaker (hereinafter "Whitaker"), an acquaintance of the Accused, began a small claims court proceeding against Contessa Diaz (hereinafter "Diaz"), another acquaintance of the Accused, to collect an alleged debt of \$5,000.

10.

On or about March 28, 2000, on behalf of Whitaker, and not in his capacity as a deputy district attorney, the Accused undertook to have Diaz served with the small claims court notice in the proceeding described in paragraph 8 above. The Accused contacted a uniformed Portland police officer, John Scruggs (hereinafter "Scruggs"), and requested that Scruggs serve Diaz with the small claims notice.

11.

The Accused and Scruggs had become acquainted with each other, in part, in the course of the Accused's employment as a deputy district attorney. Scruggs had previously performed police services for the Accused in connection with criminal cases the Accused prosecuted as a deputy district attorney.

12.

The Accused knew or had reason to know that Scruggs believed the Accused was acting within the course and scope of his employment as a deputy district attorney when he asked Scruggs to serve Diaz, but did nothing to correct this misimpression.

13.

With the intent to obtain a benefit or to harm Diaz, the Accused represented to Scruggs that the small claims court notice related to fraud allegedly committed by Diaz. The Accused instructed Scruggs that when he served Diaz, he should advise Diaz that her automobile might be involved in a fraud. He also instructed Scruggs to tell Diaz that the Oregon Attorney General's Office might contact her in the future. These representations to Scruggs were false, and the Accused knew they were false when he made them.

14.

At all times relevant to the Scruggs matter, ORS 162.415 provided as follows:

Official misconduct in the first degree. (1) A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another;

(a) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or

(b) The public servant knowingly performs an act constituting an unauthorized exercise in official duties.

15.

The Accused admits that, by engaging in the conduct described in paragraphs 7 through 13 of this stipulation, he knowingly engaged in conduct that violated DR 1-102(A)(3) and DR 7-102(A)(8).

16.

Upon further factual inquiry, the parties agree that the charges of alleged violations of DR 1-102(A)(2), DR 1-102(A)(3), DR 1-102(A)(4), DR 1-103(C), DR 5-101(A), DR 7-102(A)(6), DR 7-102(A)(7), DR 7-102(B)(1), DR 7-102(B)(2), DR 7-109(B), and DR 7-109(C) as alleged in Case No. 04-51 in the formal complaint should be and, upon the approval of this stipulation, are dismissed.

Sanction

17.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’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 the public to maintain his personal integrity, to abide by the law, and, as a public official, to avoid using his public position to obtain a special advantage. *Standards*, § 5.0. The Accused also violated his duties to the legal system to operate within the bounds of the law and to avoid improper communications with individuals in the legal system. *Standards*, §§ 6.0, 6.3.

B. *Mental State.* A lawyer acts with “intent” when he or she acts with the conscious objective or purpose to accomplish a particular result. A lawyer acts with “knowledge” when he or she is aware of the nature or attendant circumstances of his or her conduct, but does not act with the conscious objective or purpose to accomplish a particular result. A lawyer acts with “negligence” when he or she fails to be aware of 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*, at 7.

In the Houdroge matter, the Accused acted knowingly in that he knew Bates could rely upon his advice regarding service of the grand jury subpoena and avoid service of a grand jury subpoena or fail to appear pursuant to such a subpoena. At the least, the Accused acted negligently in failing to heed the risk that Bates would rely upon his advice and avoid service or fail to appear pursuant to a grand jury subpoena.

In the Scruggs matter, the Accused intentionally created a misimpression that the small claims court action was related to a fraud case under investigation by the Oregon Attorney General and intentionally instructed the police officer to mislead Diaz as to the nature of the proceedings against her.

C. *Injury.* The *Standards* require consideration of both actual and potential injury. *In re Knappenberger*, 338 Or 341, 357, 108 P3d 1161 (2005). Actual injury is harm to a client, the public, the legal system or the profession which results from a lawyer’s misconduct. Potential injury is the harm to a client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, at 7.

In the Houdroge matter, Bates was actually injured in that she did not appear before the grand jury to give evidence against Houdroge, and the criminal charges against him were not prosecuted by the District Attorney's Office. The public and the legal system were actually injured in that the District Attorney's Office was deterred from prosecuting valid criminal charges by Bates' failure to appear pursuant to a grand jury subpoena. The Accused's conduct also caused potential injury in that it was foreseeable that Bates—a person whose interests were adverse to those of the Accused's client—would rely to her detriment on his advice. *See In re Knappenberger, supra*, 338 Or at 358.

In the Scruggs matter, Scruggs was actually injured in that Diaz complained to the Portland Police Department about Scruggs having served her with a small claims court notice. Uniformed Portland police officers were not authorized by the City of Portland to serve civil process, and the police department initiated an Internal Affairs Division investigation into his conduct. The City of Portland was actually injured in having to expend resources on this investigation. The Multnomah County District Attorney's Office also initiated an investigation into the Accused's conduct in the Scruggs matter and was actually injured in having to expend resources on its investigation. The public and Diaz, as well as the legal profession, were also actually injured by the Accused's abuse of his public position to gain a private advantage or harm another.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused acted with a dishonest or selfish motive. *Standards*, § 9.22(b).
2. The Accused committed multiple offenses. *Standards*, § 9.22(d).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused was relatively inexperienced in the practice of law. *Standards*, § 9.32(f).

18.

Standards § 5.2(b) suggests that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously reflects on the lawyer's fitness to practice. *Standards* § 6.32 suggests that suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

19.

Oregon case law suggests that suspension is appropriate for the Accused's conduct. Where lawyers have been found to be lying to others to further their personal interests, the Supreme Court and the Disciplinary Board have determined a period of suspension to be appropriate. See, for example, *In re Cann*, 16 DB Rptr 173 (2002), where the lawyer was suspended for six months for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 5-101(A), and DR 5-104(A) when he used a "straw man" to purchase a piece of property from an estate whose personal representative was his client; *In re Brandt and Griffin*, 331 Or 113, 10 P3d 906 (2000), where the lawyers were suspended for 12 and 13 months, respectively, for violation of DR 2-108, DR 5-101(A), and DR 1-102(A)(3) when they made misrepresentations to the Bar concerning the timing of disclosures they had made to a client about a conflict of interest; *In re Unrein*, 323 Or 285, 917 P2d 1022 (1996), where the lawyer was suspended for 120 days for violating DR 1-102(A)(3) when she made misrepresentations in her applications for unemployment insurance benefits; and *In re Glass*, 308 Or 297, 779 P2d 612 (1989), where the lawyer was suspended for 91 days for violation of DR 1-102(A)(3), DR 1-103(C), and DR 7-102(A)(1) when he made a misrepresentation in an application to register the assumed business name of a person who was suing him in order to prevent the person from maintaining the lawsuit.

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for six months for violation of DR 1-102(A)(2), DR 1-102(A)(3), and DR 7-104(A)(2), the sanction to be effective beginning on the day this stipulation is approved.

The Accused's reinstatement after the six-month suspension shall not be effective until the Accused pays to the Oregon State Bar its reasonable and necessary costs in the amount of \$1,096.20, incurred for the Accused's deposition and deposition transcripts. Should the Accused fail to pay \$1,096.20 in full on or before the last day of the 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.

21.

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 16, 2005. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

Cite as *In re Richardson*, 19 DB Rptr 239 (2005)

EXECUTED this 9th day of August 2005.

/s/ Randy Ray Richardson

Randy Ray Richardson

OSB No. 94418

EXECUTED this 10th day of August 2005.

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. 04-126
)
RICHARD F. LANCEFIELD,)
)
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 9-101(A) and DR 9-101(C)(3).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: October 1, 2005

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 October 1, 2005, or three days following approval by the Disciplinary Board, whichever is later, for violation of DR 9-101(A) and DR 9-101(C)(3).

DATED this 15th day of August 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Richard F. Lancefield, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on July 6, 1971, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On May 17, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 9-101(A) (failure to maintain client funds in trust) and DR 9-101(C)(3) (failure to account for client funds). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Prior to July 2004, the Accused established a lawyer trust account, No. 0026 8110 2290 (hereinafter “trust account”) at Bank of America, N.A.

6.

The Accused deposited client funds into his trust account. The Accused used the trust account to pay personal, business, and client obligations. The Accused did not make or maintain records clearly and expressly reflecting the date, amount, source, and explanation for all deposits, withdrawals, deliveries, and disbursements of client funds in his trust account. Nor did he keep a track of his time for use in charging or accounting to clients except as it may have been reflected in his client

files. Accordingly, the Accused could not know with any precision when he had earned funds in the trust account and how much he had earned.

7.

On July 27, 2004, the Accused issued a check from the trust account when there were insufficient funds in the account. The bank honored the check, thereby drawing on the funds of one or more clients without authorization. After the overdraft, the account had a negative balance of \$10.23, which the Accused rectified following notification.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he failed to maintain client funds in an identifiable trust account and failed to maintain complete records of all client funds and property in his possession and render appropriate accounts regarding them in violation of DR 9-101(A) and DR 9-101(C)(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 lawyer’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 and account for client property. *Standards*, § 4.1. The most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5.

B. *Mental State.* The Accused acted knowingly, in that he acted with conscious awareness of the nature of attendant circumstances of his conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 7. The Accused was aware that he was not taking adequate measures to properly handle client funds and his trust account generally, but he did not intend to draw on any funds prior to his entitlement to those funds.

C. *Injury.* The Accused’s clients were potentially injured by his failure to properly maintain or account for their funds. However, the Bar does not assert that any client suffered actual injury.

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. *Standards*, § 9.22(a). The Accused received an admonition in May 2003 for the identical conduct and violations at issue in this matter, specifically, DR 9-101(A) and DR 9-101(C)(3). A letter of admonition is considered as evidence of past misconduct if the misconduct that gave rise to that letter was of the same or similar type as the misconduct at issue in the case at bar. *In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000).

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

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

4. Substantial experience in the practice of law; the Accused having been admitted in Oregon in 1971 and in Washington in 1969. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. Cooperative attitude toward the disciplinary proceedings. *Standards*, § 9.32(e).

2. Remorse. *Standards*, § 9.32(m).

10.

Combining the factors of duty, mental state, and injury, the *Standards* provide that a suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12.

Oregon case law is in accord. See *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension for violation of DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4)); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (four-month suspension for violation of DR 9-101(A), DR 2-106(A), and DR 5-105(E)); *In re Williams*, 314 Or 530, 840 P2d 1280 (1992) (63-day suspension for violation of DR 9-101(A) among other rules).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violations of DR 9-101(A) (failure to maintain client funds in trust) and DR 9-101(C)(3) (failure to account for client funds), the sanction to be effective October 1, 2005, or three days following approval by the Disciplinary Board, whichever is later.

12.

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 under the terms of BR 3.6.

EXECUTED this 5th day of August 2005.

/s/ Richard F. Lancefield

Richard F. Lancefield

OSB No. 71003

EXECUTED this 5th day of August 2005.

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. 05-97
)
DANIEL SIMCOE,)
)
Accused.)

Counsel for the Bar: Linn D. Davis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: August 26, 2005

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 26th day of August 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On July 16, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for an alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On August 21, 2002, the Accused undertook to represent a wife in claiming various benefits due to her following her husband’s death. The client’s claims included a claim on an annuity account from the National Electrical Annuity Plan (NEAP) and accidental death insurance benefits from Southern Oregon Credit Union (SOCU). On August 22, 2002, using account information supplied by his client, the Accused sent letters to NEAP and SOCU requesting claim forms to collect benefits due to the client.

6.

On or about October 7, 2002, the Accused received a letter from NEAP requesting a signed authorization from his client and a copy of the death certificate for his client’s deceased husband. The letter from NEAP was stamped with a

telephone number and the statement “PLEASE CALL THE OFFICE AT YOUR CONVENIENCE TO DISCUSS THIS MATTER.” Thereafter, in February 2003, the client provided a copy of her husband’s death certificate to the Accused. The Accused took no further action to collect the NEAP annuity between that date and the termination of his representation in May 2004.

7.

On or about June 3, 2003, the Accused delivered an Accidental Death Benefits Claim Form to his client with instructions to complete the form and return the form to the Accused. The Accused’s client immediately returned the form to the Accused with a request that the Accused complete the form. The Accused took no further action to assure that the form was completed and submitted to the insurer between that date and the termination of his representation in May 2004.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(B) 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 lawyer’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 diligently represent his client. *Standards*, § 4.4.

B. *Mental State.* The Accused negligently confused his client’s claim to a NEAP annuity with another pension claim which had been denied and the Accused negligently believed that his client possessed but failed to complete the insurance claim form.

C. *Injury.* The Accused’s client suffered actual injury since the resolution of her claims and collection of benefits were substantially delayed.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused was publicly reprimanded on May 23, 2000, for violation of DR 7-104(A)(2) and DR 9-101(C)(4) of the Code of Professional Responsibility. *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:

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

10.

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

11.

Oregon case law is in accord. *In re Brown*, 18 DB Rptr 147 (2004) (lawyer with prior unrelated disciplinary history publicly reprimanded for one violation of DR 6-101(B)); *In re Fox*, 17 DB Rptr 169 (2003) (lawyer previously admonished for neglect was publicly reprimanded for a single violation of DR 6-101(B)).

12.

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

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 under the terms of BR 3.6.

EXECUTED this 17th day of August 2005.

/s/ Daniel Simcoe

Daniel Simcoe
OSB No. 81024

EXECUTED this 22nd day of August 2005.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis
OSB No. 03222
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 05-95
)
MICHAEL GRANT DAMIANO,)
)
Accused.)

Counsel for the Bar: Linn D. Davis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-110(A)(2) and DR 6-101(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: August 26, 2005

STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 2-110(A)(2) and DR 6-101(B).

DATED this 26th day of August 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Arnold S. Polk
Arnold S. Polk, Esq., Region 4
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael Grant Damiano, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on June 25, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

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

4.

On July 16, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 2-110(A)(2) and DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On or about January 30, 2002, the Accused undertook to represent Karen Pritchard in connection with claims arising from an automobile collision which occurred January 23, 2002. The Accused did not perform any meaningful work on behalf of Pritchard after April 2002.

6.

On or about December 17, 2003, the Accused withdrew from the representation of Pritchard without taking reasonable steps to avoid foreseeable prejudice to Pritchard including failing to file a complaint to protect Pritchard against a defense that the statute of limitations had expired, failing to notify other parties involved in the matter of his withdrawal from the matter, and failing to sufficiently convey the urgent need for Pritchard to take legal action to protect her claim.

Violations

7.

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

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 lawyer’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 owed to his client and his duty owed to the profession to properly withdraw from the representation of a client. *Standards*, §§ 4.4, 7.0.

B. *Mental State.* The Accused negligently failed to act diligently since he was mistaken about whether his client’s treatment was ongoing. The Accused negligently failed to properly withdraw from representation of his client.

C. *Injury.* Although the potential for injury was significant, there was little or no actual injury because the statute of limitations was tolled by the insurer’s advance payment on damages without giving the notice required by ORS 12.155(1), so that subsequent counsel was able to salvage Pritchard’s claim. Some actual injury was caused by the delay in resolving Pritchard’s claim.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

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

9.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client. *Standards*, § 4.43. Where 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 *Standards* provide that reprimand is generally appropriate. *Standards*, § 7.3.

10.

Oregon case law is in accord. Lawyers without any record of prior discipline were publicly reprimanded for conduct that violated DR 2-110(A) and DR 6-101(B) in the following matters: *In re Koch*, 18 DB Rptr 92 (2004) (when accused was also found to have violated DR 9-101(C)(4)); *In re Hanson*, 16 DB Rptr 64 (2002); *In re Coyner*, 16 DB Rptr 315 (2002).

11.

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) and DR 6-101(B) of the Code of Professional Responsibility.

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 under the terms of BR 3.6.

EXECUTED this 18th day of August 2005.

/s/ Michael Grant Damiano

Michael Grant Damiano

OSB No. 96186

EXECUTED this 22nd of August 2005.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 03222

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 05-74
)
GREGORY P. OLIVEROS,)
)
Accused.)

Counsel for the Bar: Lia Saroyan
Counsel for the Accused: Stephen R. Moore
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: September 2, 2005

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 2nd day of September 2005.

/s/ Jill A. Tanner

Hon. Jill A. Tanner, Region 6
Disciplinary Board Chairperson

/s/ Michael C. Zusman

Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Gregory P. Oliveros, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, 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 June 10, 2005, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for an alleged violation of DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In 2003, Robert H. Podesfinski (hereinafter “Podesfinski”) retained the Accused to pursue contempt proceedings against Podesfinski’s former wife, Jeanette Bugay-Podesfinski, for denying court-ordered visitation with Podesfinski’s daughter. At a hearing on May 3, 2004, the court found Bugay-Podesfinski in willful violation of the visitation terms of the parties’ stipulated dissolution judgment and awarded Podesfinski visitation and attorney fees. Bugay-Podesfinski was unrepresented and the court requested that the Accused prepare the judgment.

6.

Between June and August 2004, Podesfinski repeatedly contacted the Accused’s office regarding the status of the judgment. Hearing nothing from the Accused, Podesfinski wrote the court seeking its assistance in August 2004.

7.

Shortly after Podesfinski contacted the court, the Accused met with Podesfinski to prepare and finalize the judgment. The Accused forwarded a draft judgment to Bugay-Podesfinski in late August 2004. Bugay-Podesfinski filed no objection, but the Accused failed to file the judgment and a statement of attorney fees with the court until October 2004.

8.

Shortly after receiving a copy of the submitted judgment, Podesfinski informed the Accused that the judgment contained a clerical error in that it referenced the hearing date as July 26, 2004, rather than May 3, 2004. Not until January 2005 did the Accused submit to the court a form of order correcting the judgment.

9.

In and between May 2004 and January 2005, the Accused failed to timely prepare and file the contempt judgment, failed to respond to numerous requests from Podesfinski for information regarding the matter, and failed to timely file a statement of attorney fees.

Violations

10.

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

Sanction

11.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’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. *Standards*, § 4.4.

B. *Mental State.* The Accused knew he had responsibility for completing the legal matter but was negligent in doing so. In the spring and summer of 2004, the Accused’s workload increased unexpectedly due to the loss of an associate attorney. Moreover, between August and October 2004 the Accused moved his office and the Podesfinski file was temporarily misplaced.

C. *Injury*. Podesfinski incurred actual injury in that he was denied the timely resolution of his legal matter and was frustrated by the Accused's inattention to the matter and lack of communication.

D. *Aggravating Factors*. Aggravating factors include:

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

E. *Mitigating Factors*. Mitigating factors include:

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

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

3. The Accused acknowledged and fully disclosed his conduct to the Disciplinary Counsel's Office in the investigation and is remorseful. *Standards*, § 9.32(e), (m).

12.

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

Oregon case law is in accord. See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (lawyer reprimanded for violating DR 6-101(B)); *In re Mullen*, 17 DB Rptr 22 (2003) (lawyer reprimand for violating DR 6-101(B)).

13.

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

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 under the terms of BR 3.6.

Cite as *In re Oliveros*, 19 DB Rptr 260 (2005)

EXECUTED this 18th day of August 2005.

/s/ Gregory P. Oliveros

Gregory P. Oliveros

OSB No. 91083

EXECUTED this 22nd day of August 2005.

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. 05-83
)
DEAN J. GIBBONS,)
)
Accused.)

Counsel for the Bar: Linn D. Davis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(2). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: September 2, 2005

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).

DATED this 2nd day of September 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Dean J. Gibbons, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On June 10, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(2) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On January 26, 2004, Portland Police forcibly entered the back door of the Multnomah County home of Alfred Peano and discovered the dead body of Alfred Peano within. The Accused, who was a friend of Peano and who lived across the street from Peano’s home, assisted the police in entering the home. While inside the home, the Accused and the police noted valuable property, including artwork, present inside the home. After Peano’s body was removed by employees of the Multnomah County Medical Examiner, police secured the damaged back door of the Peano home with a padlock to seal the scene for the Medical Examiner.

6.

The Accused informed the police that the Accused believed Peano had distributed the keys to his home to other persons and that Peano’s property was not

secure unless all door locks were changed. The Accused offered to change the outside door locks on Peano's home to more fully secure the premises. The police told the Accused that the house was sealed and that the premises were in the custody of the Medical Examiner. The police officer expressly and unequivocally informed the Accused that the Accused was not permitted to enter the premises or change the locks. The police directed the Accused to contact the Medical Examiner about his concerns. Shortly thereafter, the Accused telephoned the Medical Examiner's office and left a message asking that a representative of the office contact the Accused about the premises.

7.

The Accused, who has experience in probate matters, believed that Peano had died intestate but that Peano likely had at least one living relative and that the relative lived outside of the United States. The Accused and a second neighbor, Irving Horowitz, were concerned about the safety of Peano's property and about the prospect that the property might escheat to the State of Oregon if a diligent search for heirs was not conducted. The Accused knew there was no instrument appointing either the Accused or Horowitz as executors of Peano's estate and the Accused drafted a petition to probate the Peano estate with Horowitz acting as Peano's personal representative. The Accused intended to file the petition the following day.

8.

The Medical Examiner's Office did not contact the Accused prior to the end of the business day on January 26, 2004. Shortly after 5:00 p.m. that same day, the Accused hired a local locksmith and, without permission or authority to do so, the Accused intentionally caused the locksmith to cut off the police lock, enter the Peano home in violation of the Medical Examiner's seal, and change the outside door locks. The Accused took custody of the keys to the new locks.

9.

The Accused gave one set of keys for the new locks to Horowitz with instructions that Horowitz should enter the home and videotape the contents for an inventory. The Accused then contacted the Office of the Multnomah County Medical Examiner to make the Medical Examiner aware that the Accused had rekeyed the locks. The Accused offered to assist the Medical Examiner in the event that access to the Peano home was required.

10.

The Accused erroneously believed that he could take measures to secure Peano's property, including directing the rekeying of locks and entry to commence an inventory, as acts in advance of filing a petition to probate the Peano estate.

11.

The Accused admits that by causing the locksmith to cut the police lock and by causing others to enter the Peano home, the Accused committed acts of criminal trespass and obstructing governmental administration in violation of ORS 164.255(1)(a) and ORS 162.235, each a Class A misdemeanor.

Violations

12.

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

Sanction

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 lawyer’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to the public to maintain his personal integrity when he acted unlawfully in entering and rekeying the Peano home. *Standards*, § 5.1.

B. *Mental State.* The Accused acted knowingly. The Accused was explicitly informed that he did not have permission or authority to change the locks or to enter the Peano home.

C. *Injury.* The Accused’s unlawful conduct caused injury by obstructing governmental administration so that police and Medical Examiner’s personnel were required to return to the scene to resecure the Peano home and to investigate whether any of Peano’s property had been removed. Additionally, although the Accused’s actions may have increased the security of Peano’s home vis-a-vis others who might have possessed preexisting keys to Peano’s front door, the Accused rendered Peano’s home vulnerable to Horowitz and to the Accused himself.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. The Accused was cooperative in the investigation of the matter. *Standards*, § 9.32(e).

4. The Accused was criminally prosecuted for his unlawful conduct and upon entry of a no-contest plea the criminal matter was dismissed after the Accused complied with certain court-mandated conditions. *Standards*, § 9.32(k).

14.

The ABA *Standards* provide that disbarment is generally appropriate when a lawyer has engaged in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation; the distribution of controlled substances; or the intentional killing of another. *Standards*, § 5.11. Where the criminal conduct does not contain the elements listed in *Standards* § 5.11, but the conduct seriously adversely reflects on the lawyer's fitness to practice, suspension is recommended. *Standards*, § 5.12. Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness. *Standards*, § 5.13.

The Accused's misdemeanor conduct was not serious criminal conduct. However, the unauthorized destruction of the lock, the breaking of the seal, and the entry into the Peano home at the direction of the Accused reflects adversely on his fitness to practice law. Since the evidence is insufficient to suggest that the Accused intended anything other than to secure Peano's property, the conduct does not seriously adversely reflect on his fitness. The Accused's conduct is mitigated by the fact that he has suffered other consequences in the criminal justice system and by his lack of any prior history of discipline. *Standards*, § 9.32(a), (k).

Oregon lawyers who have engaged in criminal conduct that was not serious but that reflected adversely on fitness to practice law have received a public reprimand. See *In re Kumley*, 335 Or 639, 75 P3d 432 (2003) (reprimand when lawyer committed criminal conduct in violation of ORS 9.160 and ORS 162.075); *In re Flannery*, 334 Or 224, 47 P3d 891 (2002) (lawyer who committed criminal act by submitting an application for renewal of his driver's license using false address information reprimanded when he had suffered other penalties and had no prior record of discipline).

15.

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)(2).

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

Cite as *In re Gibbons*, 19 DB Rptr 265 (2005)

(“SPRB”). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

EXECUTED this 24th day of August 2005.

/s/ Dean J. Gibbons

Dean J. Gibbons

OSB No. 91283

EXECUTED this 29th day of August 2005.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 03222

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 05-14
)
Wm. TIMOTHY LYONS,)
)
Accused.)

Counsel for the Bar: Susan R. Cournoyer
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(A) and DR 9-101(C)(4).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: September 21, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 6-101(A) and DR 9-101(C)(4).

DATED this 21st day of September 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Hon. Jill A. Tanner, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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 lawyers.

1.

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

2.

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 August 12, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 6-101(A) (failure to provide competent representation) and DR 9-101(C)(4) (failure to promptly deliver to a client as requested properties the client is entitled to receive) 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 April 10, 1998, Rotish V. Singh (“Singh”) pleaded no contest to two Measure 11 crimes. The trial court imposed two consecutive sentences. Singh’s conviction and sentence were affirmed on direct appeal and the Oregon Court of Appeals issued its judgment on April 13, 1999.

5.

In July 1999, Singh retained the Accused to file a formal petition for post conviction relief. Six months later, on February 1, 2000, the Accused sent Singh a letter advising Singh that Singh had potential claims under both Oregon and federal law. The Accused further advised Singh that he expected to file a postconviction relief petition within the next few weeks.

6.

Under ORS 138.510, a petition for postconviction relief must be filed within two years after the date the direct appeal is final. Under the federal Antiterrorism and

Effective Death Penalty Act of 1996 (“AEDPA”), state prisoners must file a writ of habeas corpus within one year from the date a judgment on the direct appeal becomes final. 28 USC §2244(d)(1)(A). However, the time during which a petition for state postconviction relief is pending shall not be counted toward the AEDPA statute of limitations. 28 USC §2244(d)(2). In Singh’s case, the AEDPA statute of limitations began on April 13, 1999, and ended on April 13, 2000.

8.

The Accused filed Singh’s petition for postconviction relief on September 7, 2000. Although the Accused filed Singh’s petition within the two-year statute of limitations imposed by ORS 138.510, he filed it after the AEDPA statute of limitations had run. The AEDPA statute of limitations was therefore not tolled during the pendency of the state postconviction relief petition.

9.

Singh’s petition for postconviction relief was denied at trial in August 2001. Singh retained the Accused to appeal that denial. The Oregon Court of Appeals affirmed the dismissal without opinion and the Oregon Supreme Court denied review. The appellate judgment denying Singh’s postconviction relief petition was issued on January 29, 2003.

10.

Singh thereafter filed a writ of habeas corpus in federal court on February 24, 2003. In February 2005, the federal magistrate issued his findings and recommendation that the writ be dismissed as untimely, citing the AEDPA. The federal court issued an order on April 13, 2005, adopting this recommendation and dismissing Singh’s writ as untimely.

11.

During the habeas corpus litigation, Singh was represented by the federal public defender’s office. The federal public defender requested that the Accused provide his file from Singh’s postconviction relief case. The Accused did not do so, because he had lost the file and all records of his representation of Singh during a relocation of his office. The Accused provided an affidavit to the federal public defender, which was eventually filed with the federal court, setting out the circumstances of his loss of the file.

12.

When he undertook to represent Singh, the Accused was aware of the two-year statute of limitations under ORS 138.510. However, he was not aware that the one-year AEDPA statute of limitations was also running during the two-year period. The Accused failed to perform the legal research necessary to determine that Singh’s rights to pursue relief in the federal court would be extinguished if the Accused did

not file the state petition within one year after the conviction became final and thus toll the AEDPA's one-year statute of limitations.

Violations

13.

The Accused acknowledges that he failed to apply the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent Singh in the postconviction relief petition. The Accused admits that his conduct violated DR 6-101(A).

14.

The Accused acknowledges that he failed to maintain his file and any records of his representation of Singh. Because he lost his records and files from Singh's postconviction relief case, he did not promptly deliver to Singh upon request Singh's files for use in the federal habeas corpus litigation. The Accused admits that his conduct violated DR 9-101(C)(4).

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 lawyer's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated duties owed to his client to understand relevant legal doctrines or procedures (*Standards*, § 4.5) and to preserve client property (*Standards*, § 4.1). The most important ethical duties a lawyer owes are those to his or her clients. *Standards*, at 5.

B. *Mental State.* The Accused was negligent in determining whether he was competent to handle Singh's matter and was negligent in dealing with Singh's file. "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*, at 6.

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused actual injury to Singh in that Singh's writ of habeas corpus was denied as untimely under the AEDPA. The Accused also caused actual injury to Singh by losing Singh's files, which were not available for review by Singh's subsequent counsel, who sought to

obtain relief from the AEDPA statute of limitations by arguing that the period was equitably tolled due to the Accused's misconduct.

- D. *Aggravating Factors.* Aggravating factors present in this case include:
1. The Accused has substantial experience in the practice of law. *Standards*, § 9.22(i).
 2. The Accused violated two duties owed to his client by failing to provide competent representation and by losing Singh's file. *Standards*, § 9.22(d).
- E. *Mitigating Factors.* Mitigating factors present in this case include:
1. The Accused has no prior discipline. *Standards*, § 9.32(a).
 2. The Accused had no dishonest or selfish motive. *Standards*, § 9.32(b).
 3. The Accused cooperated with the federal public defender's office, including providing an affidavit submitted in support of Singh's writ of habeas corpus, thereby making a good-faith effort to rectify the consequences of his misconduct. *Standards*, § 9.32(d).
 4. The Accused has made full and free disclosure to the Bar and the Clackamas County Local Professional Responsibility Committee. *Standards*, § 9.32(e).
 5. The Accused has expressed remorse in the federal court and to the Bar. *Standards*, § 9.32(m).

16.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer demonstrates a failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client. *Standards*, § 4.53(b). The *Standards* further recommend reprimand when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13.

17.

Oregon case law also holds that a public reprimand is appropriate under these circumstances. *In re Magar*, 296 Or 799, 681 P2d 93 (1984) (lawyer publicly reprimanded for violating former DR 6-101(A)(2): "A lawyer shall not handle a legal matter without the preparation adequate in the circumstances."); *In re Greene*, 276 Or 1117, 277 Or 89, 557 P2d 644 (1976) (lawyer publicly reprimanded and placed on probation for providing incompetent representation and representing parties with conflicting interests); *In re Breckon*, 18 DB Rptr 220 (2004) (public reprimand for a violation of DR 6-101(A)); *In re Graham*, 17 DB Rptr 112 (2003) (public reprimand for violations of DR 9-101(C)(2) (failure to properly safeguard client property) and DR 9-101(C)(4)); *In re Coulter*, 15 DB Rptr 220 (2001) (public reprimand for violations of DR 6-101(B) (neglect of a legal matter) and DR 9-101(C)(4)); *In re Van Loon*, 15 DB Rptr 61 (2001) (public reprimand for

Cite as *In re Lyons*, 19 DB Rptr 271 (2005)

violations of DR 1-102(A)(4) (conduct prejudicial to the administration of justice) and DR 6-101(A)); *In re Stimac*, 14 DB Rptr 42 (2000) (public reprimand for violations of DR 6-101(B) (neglect of a legal matter) and DR 9-101(C)(4)).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for his violations of DR 6-101(A) and DR 9-101(C)(4), the sanction to be effective upon the Disciplinary Board's approval of this stipulation for discipline.

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 under the terms of BR 3.6(e).

EXECUTED this 12th day of September 2005.

/s/ Wm. Timothy Lyons

Wm. Timothy Lyons
OSB No. 78292

EXECUTED this 14th day of September 2005.

OREGON STATE BAR

By: /s/ Susan R. Cournoyer

Susan Roedl Cournoyer
OSB No. 86338
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)	
)	
Complaint as to the Conduct of)	Case Nos. 04-152, 05-69, 05-70
)	
STEVEN D. MARSH,)	SC S52762
)	
Accused.)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3), DR 2-106(A), DR 2-110(A)(3), DR 2-110(B)(3), DR 2-110(B)(4), DR 6-101(A), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4). Stipulation for Discipline. Nine-month suspension.
Effective Date of Order:	September 30, 2005

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 in the State of Oregon for a period of nine months, effective September 30, 2005.

DATED this 27th day of September 2005.

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

STIPULATION FOR DISCIPLINE

Steven D. Marsh, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 20, 2001, 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 December 17, 2004, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for violation of DR 1-102(A)(3), DR 2-110(B)(3), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility, in Case No. 04-152. On June 11, 2005, the SPRB also directed that the Accused be charged with violation of DR 1-102(A)(3), DR 2-106(A), DR 6-101(A), and DR 9-101(C)(3) in Case No. 05-69; and DR 2-106(A), DR 2-110(A)(3), DR 2-110(B)(4), DR 6-101(B), and DR 9-101(C)(4) in Case No. 05-70. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of these proceedings.

Facts and Violations

Heinitz Matter

(Case No. 04-152)

5.

In or about February 2002, Gary Heinitz (hereinafter “Heinitz”) retained the Accused to collect a debt owed to Heinitz by Elleen Deck (hereinafter “Deck”) and Mary MacCormack (hereinafter “MacCormack”). Heinitz delivered his documents concerning the debt and paid \$625 to the Accused for the legal services to be

performed. On or about March 8, 2002, the Accused prepared and filed a civil complaint for breach of contract against Deck and MacCormack, *Gary Heinitz v Eileen Deck and Mary MacCormack*, Washington County Circuit Court Case No. C 020618CV (hereinafter “Court Action”). On March 20, 2002, a process server personally served MacCormack with summons and complaint in the Court Action. On March 20, 2002, a process server served Deck with summons and complaint in the Court Action by substitute service. The Accused did not thereafter complete service on Deck by mailing a copy of the summons and complaint to Deck.

6.

From April 2002 to July 2002, the Accused failed to take substantive action to advance and protect Heinitz’s interests and objectives. On July 1, 2002, the court served the Accused with notice of intent to dismiss the Court Action unless the defendants filed an answer to the complaint or the Accused filed a final judgment. On August 1, 2002, the Accused filed a motion for order of default and proposed order with the court. On August 15, 2002, the court denied the Accused’s motion and on August 28, 2002, filed a judgment dismissing the Court Action, with notice to the Accused.

7.

From August 2002 to January 2003, the Accused failed to take substantive action to advance and protect Heinitz’s interests and objectives. On January 30, 2003, the Accused filed a motion and supporting affidavit with the court to reinstate the Court Action. On January 31, 2003, the court denied the Accused’s motion. Thereafter, the Accused failed to pursue Heinitz’s interests and objectives in the Court Action or adequately communicate with Heinitz.

8.

After January 2003, Heinitz requested that the Accused return Heinitz’s documents concerning the debt and provide Heinitz with a copy of his file, which was property Heinitz was entitled to receive. The Accused failed to promptly deliver the documents and file to Heinitz.

9.

During the representation, the Accused mistakenly represented to Heinitz that he had obtained a judgment against MacCormack and Deck, when he had not. When he learned that no judgment had been obtained, the Accused failed to disclose this to Heinitz, and thereafter did not timely disclose to Heinitz that the Court Action was dismissed.

10.

During the representation, the Accused failed to maintain complete records concerning the receipt and disbursement or application of the funds Heinitz paid to the Accused, and failed to render an appropriate accounting to Heinitz.

11.

During the Accused's representation of Heinitz, the Accused suffered from a serious physical condition that required ongoing medical treatment. The Accused failed to withdraw from the representation when his physical condition rendered it unreasonably difficult for the Accused to carry out the employment effectively.

12.

The Accused admits that the aforesaid conduct constituted misrepresentation; failure to withdraw when his physical condition rendered it unreasonably difficult to carry out the employment effectively; neglect of a legal matter; failure to maintain adequate records of a retainer; and failure to promptly deliver client property as, in violation of DR 1-102(A)(3), DR 2-110(B)(3), DR 6-101(B), DR 9-101(C)(3), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Wilkes Matter
(Case No. 05-69)

13.

On March 15, 2004, Adrienne Wilkes (hereinafter "Wilkes") retained the Accused concerning a forcible entry and detainer claim against a tenant who had failed to pay rent (hereinafter "FED"). Pursuant to a written fee agreement, the Accused agreed to represent Wilkes and appear for hearing in Wilkes' FED for a flat fee, earned upon receipt, of \$500. Pursuant to the terms of the agreement, Wilkes agreed to pay the Accused \$200 an hour for additional services.

14.

On March 17, 2004, the Accused completed an FED summons and complaint for Wilkes and filed them with the court, *Adrienne Wilkes v. Laura Craven and William Craven*, Clackamas County Circuit Court Case No. FE 03040565 (hereinafter "FED Case"). The defendants were served and the case was scheduled for defendants' appearance for March 31, 2004. On March 31, 2004, defendants appeared for hearing before the court. The court ordered the defendants to immediately file an answer in the case, which they did. However, the defendants failed to serve the Accused or Wilkes with a copy of the answer, and failed to pay required fees to the court.

15.

On April 2, 2004, the court filed and served notice of trial for the FED Case for April 14, 2004. The Accused requested an additional \$1,000 from Wilkes for attorney fees to be performed in the FED Case. Wilkes paid the additional amount to the Accused. Except for a deposit slip, the Accused failed to prepare and maintain complete records reflecting the receipt and disbursement or application of the \$1,000.

16.

Defendants failed to pay required fees to the court. On April 14, 2004, the court declared the defendants to be in default and entered judgment in Wilkes' favor, including restitution of the premises together with her costs and disbursements. On April 27, 2004, the Accused filed a petition for the award of \$1,698.90 for attorney fees and costs with the court. The Accused failed to detail his time and activities in the petition for the award of attorney fees claimed in the FED Case. The defendants then filed an objection to the Accused's petition for the award of attorney fees and costs alleging, among other grounds, that the Accused failed to detail his time and activities; failed to identify the facts, statute, or rule that provided the basis for the award; and that the hourly rate and hours claimed by the Accused were not reasonable.

17.

On May 19, 2004, the defendants filed a motion to set aside the default judgment entered against them. The Accused requested an additional \$1,200 from Wilkes for legal services to be performed in the FED Case. Wilkes paid the additional \$1,200 to the Accused. Except for a deposit slip, the Accused failed to prepare and maintain complete records of the receipt and disbursement or application of the \$1,200.

18.

The court ultimately denied the defendants' motion to set aside the default judgment and the Accused filed a supplemental petition for attorney fees in which he sought the award of an additional \$1,200 from the defendants in the FED Case. The Accused failed to detail his time and activities in the petition for the award of additional attorney fees.

19.

In his supplemental petition, by way of explaining the lack of a detailed account of his time, the Accused represented to the court that the fee he charged Wilkes was a flat fee. This representation was not completely true. Only the initial \$500 was a flat fee. Other fees paid by Wilkes to the Accused were not flat fees, but were for the Accused's services at an hourly rate.

20.

On August 10, 2004, the court notified the Accused that he was required to itemize his time and services and resubmit the supplemental petition for consideration. On September 24, 2004, the Accused filed a second supplemental petition for attorney fees with the court. The Accused represented to the court that he did not keep records reflecting the actual time spent concerning the FED Case; that he could only estimate them; and that he was not comfortable attempting to reconstruct hours for the legal services he performed for the client.

21.

Thereafter, the court awarded Wilkes a total of \$1,200 as a reasonable attorney fee in the FED Case, declining to award additional attorney fees on grounds that \$1,200 was a sufficient fee and that the Accused's petitions for attorney fees failed to itemize his time and services.

22.

The Accused admits that the aforesaid conduct constituted misrepresentation; charging or collecting an excessive fee; failure to render competent representation; and failure to prepare and maintain adequate records of client funds, in violation of DR 1-102(A)(3), DR 2-106(A), DR 6-101(A), and DR 9-101(C)(3) of the Code of Professional Responsibility.

Shidaee Matter
(Case No. 05-70)

23.

On or about July 15, 2004, Khosrow Dimitrios Shidaee (hereinafter "Shidaee") retained the Accused to pursue an appeal of an administrative order modifying support for his minor child. Pursuant to a written fee agreement, the Accused agreed to file the appeal and represent Shidaee's interests for a flat fee, earned on receipt, of \$1,500. Pursuant to the agreement, the Accused required Shidaee to initially pay a portion of the fee, with the balance to be paid prior to the Accused's appearance for hearing of the appeal. Shidaee paid \$1,000 to the Accused.

24.

On or about July 26, 2004, the Accused filed a petition for *de novo* review of the administrative order modifying Shidaee's child support obligations in the Circuit Court of the State of Oregon for the County of Multnomah, *In the Matter of Child Support: Shelley R. Aispuro v. Khosrow Shidaee*, Case No. D8701-60875 (hereinafter "Appeal").

25.

After about late July 2004, the Accused failed to adequately communicate with Shaidae, or representatives of the Multnomah County District Attorney's Office, Office of Support Enforcement, and failed to take adequate action to advance and protect Shaidae's interests and objectives.

26.

On or about October 28, 2004, Shaidae terminated the Accused's representation. Thereafter, the Accused failed to file a notice or motion with the court for permission to withdraw. Nor did the Accused return any portion of the fee Shaidae had paid him even though the legal matter was not complete. Shaidae also asked the Accused for his file, but the Accused did not promptly deliver all papers and property that Shaidae was entitled to receive.

27.

The Accused admits that the aforesaid conduct constituted collecting an excessive fee; failure to refund promptly the unearned portion of a fee; failure to properly withdraw upon discharge; neglect of a legal matter; and failure to promptly deliver client property as requested by the client, in violation of DR 2-106(A), DR 2-110(A)(3), DR 2-110(B)(4), DR 6-101(B), and DR 9-101(C)(4) of the Code of Professional Responsibility.

Sanction

28.

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 lawyer's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

A. *Duties Violated.* In the above-described matters, the Accused violated his duties to his clients, the public, and the profession. *Standards*, §§ 4.1, 4.4, 4.5, 4.6, 7.0.

B. *Mental State.* The Accused's conduct demonstrates knowledge and negligence. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective 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 standards of care that a reasonable lawyer would exercise in the situation. *Standards*, at 7. The Accused knew or should have known that he was not properly handling, or maintaining complete records of, clients' funds. The Accused knew that he was

responsible for taking action concerning his clients' legal matters, but failed to act or act timely.

In the Heinitz case, the Accused was negligent in failing to timely and adequately review notices from the court, but later knew that he had not obtained a judgment and that the court had refused to reinstate the Heinitz case. He also knew that he had not timely informed Heinitz that his case had been dismissed, and that the court had refused to reinstate the case. The Accused knew that he was not preparing records detailing his time and activities to be able to account to Wilkes for the funds she paid, and to support a statement for the award of attorney fees from the court. The Accused knew that he had not performed all of the legal services he agreed to perform for Shaidae, and that the client had terminated his representation and requested his file and the unearned portion of the fee.

The Accused suffered from a form of cancer during the periods described above, which necessitated treatments, hospitalizations, and surgeries from time to time. These health issues distracted the Accused from his law practice and contributed to his failure to promptly attend to his clients' legal matters. The Accused knew that his medical condition was serious at times such that he was not adequately attending to his cases and should have known that he needed to notify the clients, withdraw from the representation, and refer the clients to other counsel.

C. *Injury.* The Accused caused actual injury to each of his clients. Heinitz was injured when the Accused failed to complete service on Deck; failed to promptly seek reinstatement of the case; and failed to obtain a judgment and take action to collect amounts due. Wilkes was injured when the Accused failed to prepare records of his time and services such that he could not account to his client or provide those details to the court for the award of attorney fees to Wilkes. As a result, Wilkes could not obtain a supplemental judgment against the defendants for a substantial amount of the money she paid to the Accused for attorney fees. Shaidae was injured when the Accused failed to account for or refund the unearned portion of the fee he paid in advance for legal services.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused engaged in a pattern of misconduct in his handling of clients' matters. *Standards*, § 9.22(c).
2. There are multiple offenses. *Standards*, § 9.22(d).
3. Heinitz, Shaidae, and Wilkes were vulnerable. Each of them relied on the Accused to take action to pursue and protect their interests. *Standards*, § 9.22(h).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused cooperated with the disciplinary authorities in the investigation of the complaints and in resolving the disciplinary proceeding. *Standards*, § 9.32(e).

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

4. At times, the Accused suffered a serious physical medical condition, as described above, which required ongoing medical treatment and the Accused's absence from the office for periods of time. *Standards*, § 9.32(h).

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

29.

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is also generally appropriate when a lawyer knowingly fails to perform services for a client, or engages in a pattern of neglect; or when a lawyer knowingly deceives a client; and causes injury or potential injury to a client. *Standards*, §§ 4.42, 4.62. 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, suspension is also the appropriate disposition. *Standards*, § 7.2.

30.

Case law is in accord. *See, e.g., In re Gresham*, 318 Or 162, 864 P2d 360 (1993) (91 days' suspension for violation of DR 6-101(A), DR 6-101(B), and DR 1-102(A)(4)); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60 days' suspension for violation of DR 6-101(B)). *See also In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (one-year suspension for violation of DR 6-101(B) when lawyer failed during a period of only about two months to take constructive action to advance or protect the client's legal position in a domestic relations matter); *In re Rudie*, 294 Or 740, 662 P2d 321 (1983) (seven-month suspension when a lawyer violated *former* DR 6-101(A)(2) (current DR 6-101(A)), *former* DR 6-101(A)(3) (current DR 6-101(B)), and DR 7-101(A)(2)); *In re Butler*, 324 Or 69, 921 P2d 401 (1996) (one-year suspension for violation of DR 6-101(B) and DR 1-102(A)(3)); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60 days' suspension for violation of DR 9-101(A) and DR 9-101(C)(3)); *In re Barnett*, 14 DB Rptr 5 (2000) (60 days' suspension for violation of DR 2-106(A), DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), DR 9-101(C)(4), and DR 5-105(C)).

31.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for nine months, effective September 21, 2005, or three days after the date of the order approving this stipulation, whichever is later.

32.

The Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$548.40 incurred for the Accused's deposition. The Bar may, without further notice to the Accused, apply for and is entitled to entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date this Stipulation for Discipline is approved, until paid in full. The amount shall be due immediately and shall be paid in full before the Accused is eligible to apply for reinstatement as an active member of the Oregon State Bar.

33.

The Accused shall also make restitution to Shaidae in the amount of \$250 for a portion of the attorney fees he paid to the Accused.

34.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar and the sanction was approved by the State Professional Responsibility Board. The stipulation shall be submitted to the Supreme Court for consideration under the terms of BR 3.6.

DATED this 7th day of September 2005.

/s/ Steven D. Marsh

Steven D. Marsh
OSB No. 01074

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. 04-59, 04-60, 04-61, 04-105,
) 04-106, 05-55, 05-100
DANIEL Q. O'DELL,)
) SC S52761
Accused.)

Counsel for the Bar: Amber Bevacqua-Lynott
Counsel for the Accused: Susan D. Isaacs
Disciplinary Board: None
Disposition: Violation of DR 1-103(C), DR 2-110(A)(2),
DR 2-110(B)(2), DR 6-101(B), and DR 7-
101(A)(2). Stipulation for Discipline. Two-year
suspension.
Effective Date of Order: September 27, 2005

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 in the State of Oregon for a period of two years, and shall run consecutively to the accused's current three-year suspension. The sanction shall be effective as of September 27, 2005.

DATED this 27th day of September 2005.

/s/ Wallace P. Carson, Jr.

Wallace P. Carson, Jr.

Chief Justice

STIPULATION FOR DISCIPLINE

Daniel Q. O'Dell, attorney at law (hereinafter "the Accused"), and the Oregon State Bar (hereinafter "the Bar") hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

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, having his office and place of business in Clackamas County and Multnomah County, Oregon.

3.

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

4.

On September 21, 2004, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of DR 6-101(B) (neglect of a legal matter) (four counts) and DR 1-103(C) (failure to cooperate in a disciplinary investigation) (five counts) in connection with the Accused's representation in five separate client matters: McKnight, Moore, Wright, Ashley, and Lees. That Formal Complaint (Nos. 04-59, 04-60, 04-61, 04-105, 04-106) presently is pending before a trial panel of the Disciplinary Board, which is being asked to hold the Formal Complaint in abeyance until this Stipulation for Discipline is reviewed under BR 3.6(e).

5.

On May 14, 2005, the SPRB authorized separate formal disciplinary proceedings against the Accused for alleged violation of DR 6-101(B) (neglect of a legal matter) in connection with the Yautentzi-Cipriano matter. A formal complaint has not yet been filed in this matter (No. 05-55).

6.

On July 16, 2005, the SPRB authorized additional charges against the Accused for violations of DR 2-110(A)(2) (withdrawal without taking adequate steps to protect client interests); DR 2-110(B)(2) (failure to withdraw when continued representation

violates disciplinary rules); DR 6-101(B) (neglect of a legal matter); and DR 7-101(A)(2) (intentional failure to carry out a contract of employment) for his conduct in the George matter (No. 05-100). The SPRB further directed that the Yautentzi-Cipriano proceeding be consolidated with the George proceeding.

7.

The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceedings, charges, and allegations described in paragraphs 4 through 6 herein.

James McKnight

(Case No. 04-59)

Facts

8.

In March 2003, the Accused was appointed by the court to represent James McKnight (“McKnight”) to appeal a criminal conviction. The Accused did not notify McKnight of his appointment. In or about June 2003, the Accused filed a “Measure 11 Brief,” which outlined the procedural history of the case, but did not identify any substantive issues for appeal. The brief simply challenged the constitutionality of Ballot Measure 11. The Accused did not communicate with McKnight prior to filing the brief. When the Court of Appeals affirmed McKnight’s conviction in October 2003, the Accused failed to inform McKnight and failed to file a petition for review, so that McKnight could be eligible for federal relief.

9.

On February 10, 2004, the Oregon State Bar received a complaint from McKnight’s father regarding the Accused’s conduct. On February 11, 2004, Disciplinary Counsel’s Office forwarded a copy of that complaint to the Accused and requested his response on or before March 3, 2004. The Accused made no response to the Bar’s inquiry despite an additional request from Disciplinary Counsel’s Office on March 15, 2004, that he do so.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 8 and 9 of this stipulation, he violated DR 6-101(B) (neglect of a legal matter) and DR 1-103(C) (failure to cooperate in a disciplinary investigation) of the Code of Professional Responsibility.

Fernando Moore

(Case No. 04-60)

Facts

11.

In September 2002, the Accused was appointed to represent Fernando Moore (“Moore”) to appeal his postconviction trial. The Accused did not notify Moore of his appointment or communicate with him in any manner. The Accused submitted a number of requests to the Court of Appeals to allow him additional time to submit the opening brief, and was notified that the case would be dismissed if the opening brief was not filed by September 5, 2003. The Accused did not file a brief or take any other action. The Accused was replaced by successor counsel in December 2003.

12.

On March 2, 2004, the Oregon State Bar received a complaint from Moore regarding the Accused’s conduct. On March 3, 2004, Disciplinary Counsel’s Office forwarded a copy of that complaint to the Accused and requested his response on or before March 24, 2004. The Accused made no response to the Bar’s inquiry despite an additional request from Disciplinary Counsel’s Office on April 16, 2004, that he do so.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 11 and 12 of this stipulation, he violated DR 6-101(B) (neglect of a legal matter) and DR 1-103(C) (failure to cooperate in a disciplinary investigation) of the Code of Professional Responsibility.

Jason Wright

(Case No. 04-61)

Facts

14.

On March 10, 2004, the Oregon State Bar received a complaint from Jason Wright (“Wright”) alleging that the Accused had neglected Wright’s criminal appeal. On March 12, 2004, Disciplinary Counsel’s Office forwarded a copy of that complaint to the Accused and requested his response on or before April 2, 2004. The Accused made no response to the Bar’s inquiry despite an additional request from Disciplinary Counsel’s Office on April 16, 2004, that he do so.

Violation

15.

The Accused admits that, by engaging in the conduct described in paragraph 14 of this stipulation, he violated DR 1-103(C) (failure to cooperate in a disciplinary investigation) of the Code of Professional Responsibility.

Arthur Ashley (Case No. 04-105)

Facts

16.

In or about January 2003, the Accused was appointed by the court to represent Arthur Ashley (“Ashley”) to appeal a criminal conviction. In or about June 2003, the Accused filed a “Measure 11 Brief,” which outlined the procedural history of the case, but did not identify any substantive issues for appeal. The brief simply challenged the constitutionality of Ballot Measure 11. The Accused did not communicate with Ashley or respond to Ashley’s attempts to contact him. When the Court of Appeals affirmed Ashley’s conviction in December 2003, the Accused failed to inform Ashley and failed to file a petition for review, so that Ashley could be eligible for federal relief.

17.

On April 23, 2004, the Oregon State Bar received a complaint from Ashley regarding the Accused’s conduct. On April 29, 2004, Disciplinary Counsel’s Office forwarded a copy of that complaint to the Accused and requested his response on or before May 20, 2004. The Accused made no response to the Bar’s inquiry despite an additional request from Disciplinary Counsel’s Office on June 1, 2004, that he do so.

Violations

18.

The Accused admits that, by engaging in the conduct described in paragraphs 16 and 17 of this stipulation, he violated DR 6-101(B) (neglect of a legal matter) and DR 1-103(C) (failure to cooperate in a disciplinary investigation) of the Code of Professional Responsibility.

Thomas G. Lees
(Case No. 04-106)

Facts

19.

On May 24, 2002, the Accused was appointed to represent Thomas Lees (“Lees”) to appeal a criminal conviction. Although the Accused filed an initial brief, a supplemental brief was necessary and the Accused requested and received court permission to file a supplemental brief. Thereafter, the Accused did not communicate with Lees or file a supplemental brief. When the Court of Appeals affirmed Lees’ conviction in May 2003, the Accused failed to inform Lees and failed to file a petition for review, so that Lees could be eligible for federal relief.

20.

On May 13, 2004, the Oregon State Bar received a complaint from Lees regarding the Accused’s conduct. On May 18, 2004, Disciplinary Counsel’s Office forwarded a copy of that complaint to the Accused and requested his response on or before June 8, 2004. The Accused made no response to the Bar’s inquiry despite an additional request from Disciplinary Counsel’s Office on June 14, 2004, that he do so.

Violations

21.

The Accused admits that, by engaging in the conduct described in paragraphs 19 and 20 of this stipulation, he violated DR 6-101(B) (neglect of a legal matter) and DR 1-103(C) (failure to cooperate in a disciplinary investigation) of the Code of Professional Responsibility.

Angel Yautentzi-Cipriano
(Case No. 05-55)

Facts

22.

On October 14, 2002, the Accused was appointed to take over the representation of Angel Yautentzi-Cipriano (hereinafter “Yautentzi-Cipriano”) in his appeal from a murder conviction. The Accused missed the filing deadline for the opening brief, resulting in a dismissal of the appeal. The Accused thereafter successfully motioned the court for the dismissal to be vacated and for additional time to file the opening brief.

23.

Upon reinstatement of the appeal, the Accused filed a “Measure 11 Brief,” which outlined the procedural history of the case, but did not identify any substantive issues for appeal. The brief simply challenged the constitutionality of Ballot Measure 11. The form brief contained factual inaccuracies and errors, including citation to the wrong crime for which the client was convicted. The Accused provided Yautentzi-Cipriano with a copy of this brief, but did not communicate with Yautentzi-Cipriano or respond to Yautentzi-Cipriano’s attempts to contact him. When the Court of Appeals affirmed Yautentzi-Cipriano’s conviction in July 2003, the Accused failed to inform Yautentzi-Cipriano and failed to file a petition for review, so that Yautentzi-Cipriano could be eligible for federal relief.

Violation

24.

The Accused admits that, by engaging in the conduct described in paragraphs 22 and 23 of this stipulation, he violated DR 6-101(B) (neglect of a legal matter) of the Code of Professional Responsibility.

Paul George

(Case No. 05-100)

Facts

25.

In March 2003, the Accused was retained by Paul George (hereinafter “George”) to represent him in connection with a criminal charge resulting from an automobile accident. In February 2004, the case was civilly compromised, with George pleading guilty and agreeing to pay restitution to the victim and complete some coursework by a sentencing date set over to November 2004.

26.

In July 2004, the Accused was suspended from the practice of law by the Supreme Court under BR 3.1 (temporary interim suspension); and he began a three-year disciplinary suspension in October 2004. *In re O'Dell*, 18 DB Rptr 233 (2004). The Accused did not notify George or the court of his interim or disciplinary suspension. The Accused did not formally withdraw from George’s representation or otherwise attempt to assist him in locating other counsel.

27.

Neither George nor the Accused appeared on the scheduled sentencing date or at a subsequent date, resulting in a warrant issued for George’s arrest.

Violations

28.

The Accused admits that, by engaging in the conduct described in paragraphs 25 through 27 of this stipulation, he violated DR 2-110(A)(2) (improper withdrawal); DR 2-110(B)(2) (failure to withdraw timely); DR 6-101(B) (neglect of a legal matter); and DR 7-101(A)(2) (intentional failure to carry out a contract of employment) of the Code of Professional Responsibility.

Sanction

29.

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 lawyer’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 clients. *Standards*, § 4.4. The most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5. The Accused also violated his duty to the profession to timely and fully comply with inquiries made in a disciplinary investigation. *Standards*, § 7.0.

B. *Mental State.* The Accused intentionally failed to carry out a contract of employment in the George matter. “Intent” is the conscious objective or purpose to accomplish a particular result. *Standards*, at 7. The Accused acted knowingly in failing to communicate or perform services on behalf of his clients and in failing to respond to the Bar. “Knowledge” is the conscious awareness of the nature or attendant circumstances of his conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 7.

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992).

It is difficult to assess the extent of actual injury to most of the Accused’s clients because criminal appeals and postconviction cases have a very low rate of success, even when pursued appropriately. These clients nevertheless deserved the opportunity to exercise their right of appeal timely and fully. There is actual injury to the client when a lawyer fails to actively pursue his or her case. *See, e.g., In re Parker*, 330 Or 541, 547, 9 P3d 107 (2000). In addition, the Accused’s failure to communicate caused actual injury in the form of client anxiety and frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration

as a result of lawyer neglect can constitute actual injury under *Standards*); *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989).

The Accused's failure to cooperate with the Bar's investigation of his conduct caused actual harm to both the legal profession and to the public because he delayed the Bar's investigation and, consequently, the resolution of the complaints against him. *In re Schaffner II, supra*, 325 Or at 427; *In re Miles*, 324 Or 218, 222, 923 P2d 1219 (1996); *In re Haws*, 310 Or 741, 753, 801 P2d 818 (1990).

D. *Aggravating Factors*. Aggravating factors include:

1. Prior disciplinary offenses. *Standards*, § 9.22(a). This factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused received a reprimand in August 2002 for violations of DR 5-101(A) (personal interest conflict) and DR 6-101(B) (neglect of a legal matter). *In re O'Dell*, 16 DB Rptr 219 (2002). The Accused was also suspended for three years in October 2004 for violations of DR 6-101(B) (neglect of a legal matter), DR 9-101(A) (failure to deposit or maintain client funds in trust), DR 9-101(C)(3) (failure to account for client funds), DR 9-101(C)(4) (failure to promptly return requested client property), and DR 1-103(C) (failure to cooperate in a disciplinary investigation). *In re O'Dell*, 18 DB Rptr 233 (2004).

2. A pattern of misconduct. The Accused's transgressions have occurred over a substantial period of time. *Standards*, § 9.22(c).

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

4. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1989. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

2. The Accused was experiencing difficulties with alcoholism at the time of some of the conduct in these proceedings. The Accused has also reported having problems with depression. *Standards*, § 9.32(c).

30.

Combining the factors of duty, mental state, and injury, the *Standards* provide that a 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. 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.

31.

Oregon case law suggests that a lengthy suspension is appropriate in this case. See *In re Parker*, 330 Or 541, 9 P3d 107 (2000) (four-year suspension for similar violations); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988) (two-year suspension for neglect of five client matters (DR 6-101(B)), failing to provide client files (DR 9-101(C)(4)), and failing to cooperate with Bar authorities (DR 1-103(C))); *In re Recker*, 309 Or 633, 789 P2d 663 (1990) (two-year suspension for neglect of one client matter (DR 6-101(B)), failing to cooperate with Bar (DR 1-103(C)) and State Lawyers Assistance Committee (DR 1-103(F))); *In re Schaffner*, 325 Or 421, 939 P2d 39 (1997) (two-year suspension for single neglect (DR 6-101(B)), failing to return client property (DR 9-101(C)(4)), and failing to fully respond to Bar (DR 1-103(C))).

32.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for two years for violations of DR 1-103(C), DR 2-110(A)(2), DR 2-110(B)(2), DR 6-101(B), and DR 7-101(A)(2). This suspension shall run consecutively to the Accused's current three-year suspension for similar violations. *In re O'Dell*, 18 DB Rptr 233 (2004).

33.

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

EXECUTED this 28th day of July 2005.

/s/ Daniel Q. O'Dell

Daniel Q. O'Dell

OSB No. 89102

EXECUTED this 1st day of August 2005.

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. 04-146
)
CHARLES H. CARREON,)
)
Accused.)

Counsel for the Bar: Kathryn M. Pratt; Amber Bevacqua-Lynott
Counsel for the Accused: Rene C. Holmes
Disciplinary Board: None
Disposition: Violation of DR 3-101(B) and DR 9-101(A).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: October 24, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 60 days, effective October 24, 2005, or three days after this Order is signed, whichever is later, for violation of DR 3-101(B) and DR 9-101(A).

DATED this 30th day of September 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Charles H. Carreon, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1993, and has been a member of the Oregon State Bar continuously since that time, currently having his office and place of business in Jackson County, Oregon.

3.

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

4.

On January 19, 2005, 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) (unlawful practice of law) and DR 9-101(A) (failure to deposit or maintain client funds in trust). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In or around October 2001, the Accused was hired by Sweet Entertainment Group and Sweet Productions, Inc. (hereinafter collectively “SEG”), a U.S. corporation, on a nonexclusive basis to function as house counsel for its U.S. legal matters and business operations in Vancouver, British Columbia, Canada. The Accused is not, and at all times mentioned herein was not, a lawyer duly admitted or licensed to practice law in the province of British Columbia or the country of Canada.

6.

Under British Columbia Law Society Rule (hereinafter “BC Rules”) 2-18, a lawyer wishing to practice only foreign law in British Columbia, Canada, must

complete an application, submit it with a fee to the Executive Director, and obtain a permit to act as a practitioner of foreign law in British Columbia. The Accused did not apply for or obtain admission as a practitioner of foreign law under BC Rule 2-18.

7.

From Fall 2001 through Spring 2002, the Accused acted as house counsel for SEG and engaged in the practice of law in British Columbia, Canada, in violation of BC Rules.

8.

As counsel for SEG, the Accused held in his trust account settlement proceeds for the benefit of SEG, received in connection with a litigation matter. On or about October 11, 2002, without consulting with SEG or obtaining its express consent, the Accused utilized \$1,400 of the settlement proceeds to pay a portion of a money judgment that had been entered against the Accused and his wife for a residential lease they signed in connection with the Accused's employment in Canada. At the time, the Accused knew or should have known that SEG disputed whether the Accused was entitled to payment for the lease as a reimbursable employment expense.

Violations

9.

The Accused admits that, by practicing law in a jurisdiction when to do so was in violation of regulations of the profession in that jurisdiction and by failing to maintain client funds in a lawyer trust account, he violated DR 3-101(B) 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 lawyer's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to his client to preserve client property and his duty to the profession to refrain from the unauthorized practice of law. *Standards*, §§ 4.1, 7.0.

B. *Mental State.* The Accused knowingly engaged in the practice of law in Canada, negligent of his duty to be licensed as a foreign legal consultant in violation of the BC Rules, and negligent in his failure to investigate the licensing

requirements prior to engaging in such practice in Canada. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 7. “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 standards of care that a reasonable lawyer would exercise in the situation. *Standards*, at 7. The Accused also knew or should have known that he was dealing improperly with client property, but utilized the funds believing that SEG would ultimately be responsible for his lease obligation.

C. *Injury*. 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). The Accused caused actual and potential injury to his client. The client was denied the opportunity to challenge the Accused’s use of its funds for payment of the lease judgment. In addition, the BC Rules require proof of malpractice coverage by an applicant as a practitioner of foreign law under BC Rule 2-18. The Accused did not comply with the practitioner of foreign law admissions rule, and did not obtain malpractice coverage for his work on behalf of SEG.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused utilized client funds for a personal obligation. *Standards*, § 9.22(b).
2. Multiple offenses. *Standards*, § 9.22(d).
3. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 1993 and in California in 1987. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior history of discipline. *Standards*, § 9.32(a).
2. The Accused has displayed a cooperative attitude toward the disciplinary proceedings. *Standards*, § 9.32(e).

11.

The *Standards* provide that absent aggravating or mitigating circumstances, suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client funds and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is also appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional (i.e., unauthorized practice of law), and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

12.

Oregon case law is in accord. See, e.g., *In re Eakin*, 334 Or 238, 258–259, 48 P3d 147 (2002) (60-day suspension when lawyer “should have known” that she was

dealing improperly with the trust account, due in part to substantial experience in the practice of law); *In re Wyllie*, 331 Or 606, 19 P3d 338 (2001) (four-month suspension for violation of DR 9-101(A) and other charges, with prior discipline); *In re Starr*, 326 Or 328, 952 P2d 1017 (1998) (six-month suspension for improperly withdrawing disputed funds from trust); *In re Williams*, 314 Or 530, 840 P2d 1280 (1992) (63-day suspension for, among other charges, failing to hold funds in trust pending resolution of dispute). See also *In re Jones*, 308 Or 306, 779 P2d 1016 (1989) (six-month suspension for unlawful practice); *In re Nelson*, 17 DB Rptr 41 (2003) (reprimand for unauthorized appearance in Washington bankruptcy); *In re Kimmell*, 10 DB Rptr 175 (1996) (reprimand for representation of clients in three matters in California while inactive in that state); *In re Butler*, Or S Ct No S40533 (1993) (90-day suspension for filing an answer to a complaint in Nebraska when he was not authorized to practice law in Nebraska).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violation of DR 3-101(B) and DR 9-101(A) of the Code of Professional Responsibility, the suspension to be effective October 24, 2005, or three days after this stipulation is approved, whichever is later.

14.

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

EXECUTED this 9th day of September 2005.

/s/ Charles H. Carreon

Charles H. Carreon

OSB No. 93469

EXECUTED this 23rd day of September 2005.

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. 05-113
)
MIKEL R. MILLER,)
)
Accused.)

Counsel for the Bar: Linn D. Davis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 6-101(B). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: September 30, 2005

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, effective immediately, for violation of DR 6-101(B).

DATED this 30th day of September 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Carl W. Hopp
Carl W. Hopp, Esq., Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 1, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Deschutes County, Oregon.

3.

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

4.

On August 12, 2005, 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.

On May 12, 2004, Thaddeus Stacy consulted the Accused about potential tort claims Stacy believed he might have against the State of Oregon. After interviewing Stacy regarding the claims, the Accused declined to pursue Stacy’s claims on a contingency fee basis but the Accused agreed to file the tort notice required by ORS 30.275 so that any such cause of action Stacy might have against the State would be preserved while Stacy determined whether to proceed with those claims on his own or with another lawyer.

6.

Stacy inquired of the Accused about various matters on a semi-regular basis over the following months and asked the Accused about the tort claim notice on at least one occasion. The Accused assured Stacy that the notice would be timely filed.

However, the Accused did no work to prepare the tort notice and the Accused failed to file such notice before the 180 day period for giving notice had elapsed, or at any time thereafter.

Violations

7.

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

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’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 a client. *Standards*, § 4.4.

B. *Mental State.* The Accused negligently failed to act with reasonable diligence in preparing and filing a tort claim notice for Stacy.

C. *Injury.* Although Stacy’s claims may have been of questionable merit, Stacy was denied the opportunity to pursue his tort claims against the State and have those claims decided on their merits.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused lacked any dishonest or selfish motive. *Standards*, § 9.32(b).

9.

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

10.

Oregon case law is in accord. See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (lawyer reprimanded for violation of DR 6-101(B)); *In re Mullen*, 17 DB Rptr 22 (2003) (lawyer reprimanded for violation of DR 6-101(B)).

11.

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

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 under the terms of BR 3.6.

EXECUTED this 7th day of September 2005.

/s/ Mikel R. Miller

Mikel R. Miller
OSB No. 91475

EXECUTED this 12th day of September 2005.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis
OSB No. 03222
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 04-147
)
MATTHEW W. DERBY,)
)
Accused.)

Counsel for the Bar: James A. Wallan; Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: John L. Barlow, Chair; R. Paul Frasier; Thomas
W. Pyle, Public Member
Disposition: Violation of DR 1-102(A)(4), DR 1-103(C),
DR 6-101(B), DR 7-101(A)(2), and DR
7-106(A). Trial Panel Opinion. One-year
suspension.
Effective Date of Opinion: October 10, 2005

OPINION OF THE TRIAL PANEL

Introduction

On July 8, 2005, this matter came before a trial panel consisting of John L. Barlow, Chair, R. Paul Frasier, Esq., and Public Member Thomas W. Pyle. Amber Bevacqua-Lynott, Assistant Disciplinary Council, and James A. Wallan, Esq. represented the Oregon State Bar. The Accused appeared in person and represented himself.

The Complaint

The Bar charged the Accused with violations of DR 7-106(A) (disregarding an order or rule of a tribunal), DR 7-101(A)(2) (failure to carry out a contract of employment), DR 6-101(B) (neglect), DR 1-102(A)(4) (conduct prejudicial to administration of justice), and DR 1-103(C) (failure to respond to disciplinary investigation). (The Complaint was filed before the Oregon State Bar adopted the Oregon Rules of Professional Conduct on January 1, 2005, so our analysis of the rule violations is based on the then-existing Code of Professional Responsibility.)

The first cause of complaint arises from Accused's representation of Frances Bonebrake, in the probate of her deceased son's estate in Coos County, Oregon. The Bar alleges that after filing a Petition to Administer an Intestate Estate on behalf of the Personal Representative, the Accused persistently failed to file required documents to complete the probate, and failed to provide Coos County Court, despite repeated inquiries from the Honorable Paula Bechtold (hereinafter "Judge Bechtold"), with the requested documents, motions for additional time to complete the documents, or a statement of why such documents could not be timely filed. The Accused's handling of the Bonebrake estate required the court to send numerous notices and citations, including three citations requiring the Personal Representative to appear and show cause as to why she should not be removed for failing to properly file the required documents, at virtually every step of the proceedings. These notices, and the delay which caused them, were tremendously upsetting to the Personal Representative.

In each notice or citation to the Accused, the court informed the Accused of the steps he needed to complete to comply with the court's directions. In some instances the Accused finally complied and in others the Accused simply did not communicate with the court. Ultimately, on December 30, 2003, the court issued a citation ordering the Accused to appear and show cause why he should not be found in contempt of court. The Accused did not respond to the citation, and did not appear for the scheduled hearing, and was therefore found in contempt of court. The Accused was replaced as counsel for the Personal Representative on July 9, 2004, and repair counsel was provided by the Professional Liability Fund.

The second cause of complaint involves the Accused's failure to respond to repeated inquiries from the Oregon State Bar. Judge Paula Bechtold sent copies of her letters to the Accused dated December 29, 2003, and February 11, 2004, to the Oregon State Bar. The Bar notified the Accused of the Complaint in January 2004 and requested information from him. The Accused did not respond to the repeated request(s) of the Bar for information relevant to the Complaint.

The Accused's Answer

The Accused filed an Answer to the Complaint on February 7, 2005, in which he admitted the alleged violation(s) of DR 7-106(A), DR 6-101(B), and DR 1-103(C). The Accused stated that he could not file some of the documents requesting by the court to complete the probate because certain claims against the estate had not been paid, and that other factors existed which made it difficult for him to withdraw from representation of the Personal Representative. The Accused also asserted that he was dealing with depression issues, marital difficulties, and personal bankruptcy as well as a pending complaint from the Oregon State Bar, all of which contributed to his inaction on the probate.

Witnesses, Exhibits, and Transcript

The Bar called Amber Bevacqua-Lynott, the Honorable Paula Bechtold, Coos County Circuit Judge, and the Personal Representative, Frances Bonebrake, to support its case. Bar exhibits 1–54, 60–67, and 70 were offered and received into evidence. The Accused testified on his own behalf. The Accused’s exhibits 71–74 were offered and received into evidence. Court reporting services were provided by Linda Crago & Associates, LLC.

Admissions at Trial

During the course of the Trial, the Accused admitted one violation of DR 7-101(A)(2), failure to perform a contract of employment, based on his failure to appear at a show-cause hearing on August 18, 2003, which his client personally attended (Tr. 81, ll. 14-19). The Accused also admitted that his conduct in the Bonebrake estate was prejudicial to the administration of justice in violation of DR 1-102(A)(4) (Tr. 80, ll. 14-6).

The Trial Panel considered the pleadings, exhibits, testimony, and arguments of counsel and the Accused and offers the following finding of facts, conclusions, and dispositions.

Findings of Fact

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1994. He worked for attorney Stan Bunn in Newburg, Oregon, but received very little supervision in that office. He subsequently moved to Roseburg, Oregon, and worked for attorney Danny Lang, but again received little supervision or training. Following his employment with Danny Lang, the Accused opened his own office, with his wife functioning as his secretary. He did not have other lawyers or staff in the office.

Prior to taking on the Bonebrake matter beginning in April 2002, the Accused had successfully probated two other intestate estates. The Personal Representative was referred to the Accused by the Accused’s brother, who administered one of the life insurance policies for the decedent. The Accused and the decedent’s mother, Frances Bonebrake, entered into a hourly fee agreement in April 2002 and the Accused undertook to probate the estate. The Petition for Probate was filed on April 3, 2002, in Coos County Circuit Court. Frances Bonebrake was duly appointed as the Personal Representative and Letters of Administration were issued on April 22, 2002. The Accused filed an Inventory on April 30, 2002.

It was at this point that problems began with the estate administration. The court rejected the proposed inventory because it did not contain sufficient information regarding the life insurance policy, which was the principal asset of the estate. On June 3, 2002, Judge Bechtold notified the Accused by letter that he was required to file an Amended Inventory. The Accused did not respond to that letter, either by filing an Amended Inventory or by notifying the court he needed additional time to

do so. The Accused received a second notice from the court dated July 10, 2002, again requesting that an Amended Inventory be filed within 14 days. That letter informed the Accused that the court would issue a citation if no inventory were filed. Coos County had relatively strict timelines for each step in the probate process, but rarely had to take the extraordinary step issuing a citation to the Personal Representative.

When the Accused did not respond to the July 10 notice, Judge Bechtold issued a citation ordering the Personal Representative in Coos County Court on August 12, 2002, and show cause why she should not be removed for failing to properly file the inventory. Prior to that show-cause date, the Accused filed an Amended Inventory on August 8, 2002.

In late September 2002, Judge Bechtold notified the Accused that he was required to submit three compliance affidavits within 28 days, again according to court deadlines. The Accused timely filed only one of the three required compliance affidavits, so in early November 2002, Judge Bechtold again notified the Accused that the two remaining compliance affidavits were outstanding. The Accused did not respond to the court either by filing the affidavits or submitting an explanation for not doing so. On December 12, 2002, Judge Bechtold notified the Accused that he must file the two compliance affidavits within 14 days or the court would issue a citation. When the Accused did not respond, the court issued a citation on December 31, 2002, ordering the Personal Representative to appear and show cause why she should not be removed for failure to file the proper affidavits. The Accused appeared at the hearing on January 13, 2003, and filed one of the remaining affidavits, but did not file the Affidavit of Publication from the local newspaper. He did provide a receipt from the local newspaper showing that he had, on that date, submitted a notice to be published so that an Affidavit of Publication could subsequently be filed.

When the Final Accounting became overdue, Judge Bechtold sent another notice to the Accused dated May 20, 2003, stating that he was required to file it within 28 days or submit a motion and affidavit stating why he needed additional time to do so. Again, the Accused did not respond to the court either by motion and affidavit or by filing the final accounting. Judge Bechtold issued a third citation on August 1, 2003, ordering the Personal Representative to appear and show cause why she should not be removed. The Personal Representative appeared at the hearing but the Accused failed to appear. He did not have an explanation for that failure. Following that hearing, Judge Bechtold sent the Accused a notice on September 2, 2003, stating that Ms. Bonebrake had not been removed as Personal Representative and warning the Accused that he needed to communicate with his client and conclude the probate. She further stated that if the Accused did not take the necessary actions immediately, she would notify the Oregon State Bar.

The Accused subsequently drafted the final accounting but did not submit it to the court. At that point, the Accused had learned that there were a number of additional creditors who had potential claims against the estate and that such creditors

had not been properly notified of the estate proceedings. The Accused did not share this information with the court, but filed a Verified Statement of Personal Representative in lieu of a final account, together with a Distributee's Consent to such procedure and Affidavit of Attorney Fees. The Accused did not submit a proposed order approving these documents or a decree of final distribution of the assets of the estate. Judge Bechtold thereupon sent another notice to the Accused on November 14, 2003, requesting that he submit such an order within 14 days or a citation would be issued.

When the order was not forthcoming, on December 30, 2003, Judge Bechtold issued a citation ordering the Accused to appear on January 23, 2004, to show cause why he should not be found in contempt of court for failure to file the requested Order (Ex. 47). The cover letter accompanying that citation was sent to the Oregon State Bar Disciplinary Counsel. The Accused did not respond to that citation nor did he appear for the hearing on January 23, 2004, and was held in contempt of court. Judge Bechtold sent a letter to the Accused dated February 22, 2004 (Ex. 49), informing him that he had not appeared in court as required on January 23, 2004, and stating that she would turn the contempt matter over to the District Attorney if the Accused did not file the required document. Judge Bechtold also reminded the Accused that the Bar had taken up her previous communication as a complaint and had asked the Accused to respond to it by February 12, 2004.

The Accused was also contacted by the Professional Liability Fund ("PLF") and by a representative from the State Lawyers Assistance Committee ("SLAC"), during the month of March 2004. The PLF worked with the Accused to obtain repair counsel to complete work on the Bonebrake Estate, and the Accused was replaced as counsel on July 9, 2004.

The Oregon State Bar first received the complaint from Judge Bechtold on January 5, 2004. The Bar sent notification of the complaint by letter dated January 14, 2004, and requested that the Accused respond to Judge Bechtold's concerns by February 12, 2004, in a letter dated January 22, 2004. The Accused did not respond, so the Bar sent a subsequent letter by Certified Mail, Return Receipt Requested, on February 23, 2004. That letter was returned to the Bar as unclaimed. The Bar sent a subsequent letter by First Class and Certified Mail on June 9, 2004. The Accused signed for the Certified Mail on June 17, 2004, but still made no response to that inquiry, and did not respond to a subsequent inquiry sent by the Bar by letter dated October 6, 2004. All of the letters mailed by First Class Mail were returned to the Bar.

At the time the Accused undertook work on the Bonebrake Estate, he was experiencing financial difficulties and a marital separation. His wife ceased working in his office as his secretary for several months and he did not replace her. He was also dealing with the Bar on the subject matter of *Derby II*, which ultimately resulted in a disciplinary suspension from practice of 60 days in late 2004 and early 2005. The Accused subsequently followed the recommendation of the SLAC representative,

seeking counseling to deal with the issues of depression, relationship issues and interpersonal communication difficulties. He also met with Carol Wilson from the PLF and adopted some of her suggestions for improving his office procedures and dealing with procrastination. The Accused continues to work as a sole practitioner, has reconciled with his wife who has returned as his secretary, and currently limits his law practice to representing debtors in bankruptcy and related civil matters.

Discussion and Conclusions of Law

First Cause of Complaint

The Accused admits that he violated DR 7-106(A) (disregarding an order or rule of a tribunal) and DR 6-101(B) (neglect of a legal matter), in his Answer. The Accused also admitted that he violated DR 7-101(A)(2) (failure to carry out a contract of employment) in one respect by failing to attend a scheduled hearing. The Accused was also cited for violating DR 1-102(A)(4) (conduct prejudicial to the administration of justice) in the First Cause of Complaint.

The Trial Panel finds that the Bar proved, by clear and convincing evidence, that the Accused violated all four Disciplinary Rules cited above, in the particulars alleged. With regard to the failure to carry out a contract of employment, the Trial Panel finds that the Accused violated that rule not only in failing to appear for one hearing, but in the overall performance of the contract with the personal representative of the Bonebrake Estate. There were multiple failures of performance throughout the two years that the Accused was the lawyer for the personal representative and the Accused did not take adequate steps to find out how to perform those duties that he felt unable to perform.

The Accused also acknowledged that his conduct in the Bonebrake Estate was frustrating to the probate court and Judge Bechtold, although he stopped short of formally admitting violation of DR 1-102(A). The Trial Panel finds and concludes that the Bar established by clear and convincing evidence that the Accused violated this rule, primarily on the testimony of Judge Bechtold. She identified multiple instances of extraordinary measures taken to try to get the accused to perform his duties as the lawyer for the Bonebrake Estate. The Accused offered no legitimate reasons for ignoring the persistent, and potentially helpful, communications from Judge Bechtold. Harm to the administration of justice can occur when a lawyer impairs the procedural functioning of a case and causes the court system to spend considerable time and resources dealing with the Accused's noncompliance *In re Rhodes*, 331 Or 231, 236, 13 P2d 512 (2000).

Second Cause of Complaint

The Accused admitted in his Answer, and we so find, that he failed to respond to multiple inquiries from the Oregon State Bar relating to the Complaint of Judge Bechtold received on January 14, 2004, and that his conduct violated DR 1-103(C) (failure to respond to inquiries in a disciplinary investigation).

Sanctions

In considering an appropriate sanction in this proceeding, the Trial Panel refers to the American Bar Association *Standards for Imposing Lawyer Sanctions* (hereinafter “ABA *Standards*”) and Oregon case law. *In re Kluge*, 335 Or 326, 66 P3d 492 (2003). The ABA *Standards* require us to consider four factors:

- (1) The duty violated;
- (2) The Accused’s mental state;
- (3) The actual or potential injury caused by the Accused’s conduct; and
- (4) The existence of aggravating or mitigating circumstances.

Duty

The Accused’s actions violate the duty to his client to act with reasonable diligence, to carry out his contract of employment and to attend to the legal matters entrusted to him. The Accused also violated his duty to the legal process and to the profession in his conduct prejudicial to the administration of justice, disregard of the Court’s orders and failure to cooperate with the Bar investigation initiated by Judge Bechtold’s Complaint.

Mental State

The Trial Panel finds that the Accused acted knowingly in each Disciplinary Rule violation. While the Accused asserts an unexplainable inability to complete the work on this estate, to respond to letters from the Court, or even to open letters addressed to him by the Oregon State Bar, that professed inability is not a factor that indicates that he was not aware that his failure to perform his duties violated the rules of our profession and did not serve the interest of his client.

Actual or Potential Injury

The Trial Panel finds that the personal representative, Frances Bonebrake, sustained actual injury in the form of unanticipated delays, additional fees for extending the personal representative’s bond beyond its original term, and frustration and anxiety occasioned by the Accused’s failure to communicate with her and appear for necessary Court proceedings. The Coos County Circuit Court suffered actual injury in the expenditure of time and resources on a matter that should not have required the level of attention required.

Aggravating or Mitigating Factors

Without consideration of aggravating or mitigating factors, the ABA *Standards* § 4.42 provides that suspension is generally appropriate in those instances when a lawyer knowingly fails to perform services for a client and thereby causes the client actual or potential injury and a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. ABA *Standards* § 6.22 provides that suspension

is appropriate when a lawyer knowingly violates a court order or rule and there is injury or potential injury to a client or a party or interference or potential interference with a legal proceeding. Finally *ABA Standards* § 8.2 provides that suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system or the profession.

Aggravating circumstances are factors or considerations that may justify an increase in the degree of discipline to be imposed. *See ABA Standards*, § 9.22. In the present case, the Bar has proved by clear and convincing evidence the following aggravating circumstances:

1. Prior Discipline Offenses. The Accused was previously suspended from the practice of law for 60 days effective November 15, 2004, for violations of DR 6-101(B), DR 9-101(A), DR 9-101(C)(3), and DR 1-103(C). *In re Derby*, 18 DB Rptr 252 (2004) (*Derby II*). In March 2002, the Accused was publicly reprimanded for violations of DR 6-101(B) and DR 9-101(C)(4). *In re Derby*, 16 DB Rptr 82 (2002) (*Derby I*).

In determining the weight to give to this prior discipline, the Trial Panel must consider the timing of the current action in relation to the prior offenses and sanctions, the similarity of prior charges to those now at issue, the number of prior offenses, and the relative recentness *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused's prior offenses were relatively serious, particularly the more recent one which resulted in a 60-day suspension. Both *Derby I* and *Derby II* involved sanctions for the Accused's neglect of a legal matter, and the second case also involved a vulnerable client. The Accused asserts that the subject matter of the current complaint should be regarded as an extension of the difficulties in his personal life and practice which contributed in part to the conduct for which he has already been sanctioned.

Given the similarity of the conduct, we give substantial weight to the Accused's prior record. With regard to his mental state, the recentness of the 60-day suspension should have made the Accused aware of the disciplinary process and the particular rules.

2. Multiple Offenses. The Accused has been found to have violated five separate Disciplinary Rules. This is an aggravating factor in the present case, but because the violations involve a single client and matter and stem from the same general course of conduct by the Accused, we do not give great weight to this factor. *See ABA Standards*, § 9.22(d).

3. Substantial Experience in the Practice of Law. The Accused has been licensed to practice law in Oregon since 1994. He argues that the Trial Panel should consider his inexperience in the particular field of law, i.e., probate, because he had probated only two other cases prior to undertaking the Bonebrake Estate. The plain reading of this factor, *ABA Standards*, § 9.22(i), demonstrates that the measuring

standard is the amount of time practicing law, not the amount of experience in a particular area. The Accused had the option not to accept employment in an area where he lacked experience, or he could have contacted other practitioners in this area of law for guidance instead of completely failing to perform his duties to his client, the Court, and the profession.

4. Vulnerability of the Accused's Client. We find by clear and convincing evidence that Frances Bonebrake was relatively unsophisticated during the time that she was represented by the Accused. Her demeanor, both as described by Judge Bechtold and as she testified in the hearing, was one of nearly complete bewilderment at the delay involved in her deceased son's estate. We found nothing to support the Accused's characterization of her as in some ways more astute than the personal representatives he previously represented.

Mitigating circumstances are factors which may justify a reduction in the degree of discipline to be imposed. *See ABA Standards*, § 9.31. The trial panel finds, by clear and convincing evidence, the following mitigating factors:

1. Mental Disability of the Accused. The Stipulation for Discipline resulting in a 60 day suspension in *Derby II*, 18 DB Rptr 252 (2004), included a finding that the Accused was affected by a mental disability at the time of the conduct, i.e., from October 2002 through January 2003. The cited time frame encompasses much of the conduct giving rise to the Complaint in this case. Bar counsel argued at hearing that the trial panel is not bound by that stipulation in the instant case and further asserted that the Accused must produce expert witness testimony to establish his mental disability. Whether or not the *Derby II* stipulation is binding, the Trial Panel regards it, together with the SLAC recommendations (Ex. 74), as clear and convincing evidence of a mental disability affecting the Accused during the relevant time frame.

2. Personal or Emotional Problems. During the relevant time frame, the Accused was experiencing marital difficulties, compounded by his wife's departure from his office and his lack of other support staff. He went through a personal bankruptcy and litigation with a former employer. These factors doubtless contributed to his violations of the disciplinary rules.

3. Lack of Dishonest or Selfish Motive. The Accused did not have a dishonest or selfish motive for his actions. *ABA Standards*, § 9.32(b).

4. Remorse. The Trial Panel expected a more forthright expression of contrition from the Accused, and we have some concerns about whether the Accused fully appreciates the effect his inaction had on his grieving client. However, the Accused candidly acknowledged, throughout his testimony, most of his violations of the Disciplinary Rules and was appropriately regretful for those lapses. We decline to attribute talismanic significance to certain words which must be said in order for an Accused to be given the benefit of this mitigating factor. On the other hand, part

of the lesson we hope the Accused has learned is that his repeated derelictions of duty caused real harm to his clients.

Considering the totality of the circumstances, the ABA *Standards*, and Oregon law, the Trial Panel concludes that a suspension from practice of one year is appropriate. The Bar cited *In re Rhodes*, 331 Or 231, 13 P3d 512 (2000), as the only case involving a lawyer cited for contempt of court as the basis for violations of DR 1-102(A)(4) and DR 7-106(A). *Rhodes* imposed a two-year suspension for those violations. Unlike the instant case, *Rhodes* involved no mitigating factors. The Trial Panel believes that a one-year suspension is sufficient to satisfy the interests of the client, the courts, and the profession while yet providing an opportunity for the Accused to continue corrective efforts that may allow him to practice law ethically and productively. The Trial Panel admonishes the Accused to regard this suspension as a final opportunity, and specifically advises any future panel evaluating the conduct of the Accused that it should regard the rules violations found in this case to be quite serious.

Conclusion and Disposition

Having found by clear and convincing evidence that the Accused violated Disciplinary Rules DR 7-106(A), DR 7-101(A)(2), DR 6-101(B), DR 1-102(A)(4), and DR 1-103(C) and considering the Oregon case law and relevant ABA *Standards*, the Trial Panel makes the following disposition:

The Accused is suspended from the practice of law for a period of one year.

DATED this 8th day of August 2005.

/s/ John L. Barlow

John L. Barlow, Trial Panel Chair

/s/ R. Paul Frasier

R. Paul Frasier, Esq., Trial Panel Member

/s/ Thomas W. Pyle

Thomas Pyle, Trial Panel Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 05-108
)
DAMIAN M. IDIART,)
)
Accused.)

Counsel for the Bar: Susan Roedl Cournoyer
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of Oregon RPC 5.3(b), RPC 7.3(b)(1),
and RPC 8.4(a)(1). Stipulation for Discipline.
Public reprimand.
Effective Date of Order: October 7, 2005

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 Oregon RPC 5.3(b), RPC 7.3(b)(1), and RPC 8.4(a)(1).

DATED this 7th day of October 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Damian M. Idiart, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 20, 2001, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

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

4.

On August 12, 2005, the State Professional Responsibility Board (“SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 5.3(b), RPC 7.3(b)(1), and RPC 8.4(a)(1) of the Oregon Rules of Professional Conduct. 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.

Prior to May 2005, the Accused established a direct-mail solicitation procedure, the day-to-day operation of which the Accused delegated to a nonlawyer employee (“the employee”). The Accused instructed the employee: to review online news reports about automobile accidents and to determine whether any dispute of liability had been asserted or citations issued; if there were no dispute of liability or if citations had been issued, to confirm that there were injuries for which recovery could be sought; if there were such injuries, to contact the injured party to solicit professional employment by sending a form letter previously drafted by the Accused. The Accused did not instruct the employee that the Accused was prohibited from soliciting professional employment by written communication when the Accused knew or reasonably should know that the physical, emotional or mental state of the

prospective client was such that the prospective client could not exercise reasonable judgment in employing a lawyer.

6.

Noah Cardamon (“Cardamon”), a 23-year-old Portland resident, was killed on May 30, 2005, when he was hit by a car while riding his bicycle. Cardamon’s death was reported in an online news article on Tuesday, May 31, 2005. The article quoted Cardamon’s grandmother stating that the family “is reeling” from his death.

7.

On May 31, 2005, the employee read the online article reporting Cardamon’s death. Upon reviewing the article, the employee determined that Cardamon was not at fault in the accident and that the employee should therefore contact Cardamon’s family on behalf of the Accused to solicit professional employment. That day, the employee sent a form solicitation letter from the Accused to “the Family of Noah Cardamon.”

8.

Cardamon’s father received the letter the next day, two days after Cardamon was killed. At the time he was contacted on behalf of the Accused, Cardamon’s father’s emotional state was such that he could not exercise reasonable judgment in employing a lawyer to pursue a wrongful death claim arising from Cardamon’s fatal accident.

9.

On the Accused’s behalf, the employee sent a written communication to Cardamon’s family soliciting professional employment when the Accused knew or reasonably should have known that the physical, emotional, or mental state of Cardamon’s family was such that they could not exercise reasonable judgment in employing a lawyer, in violation RPC 7.3(b)(1). The Accused violated RPC 7.3(b)(1) through the acts of another, in violation of RPC 8.4(a)(1).

10.

By failing to instruct the employee of his ethical obligations relating to communication with prospective clients to solicit professional employment, the Accused failed to take reasonable efforts to ensure that his nonlawyer employee’s conduct was compatible with his professional obligations, in violation of RPC 5.3(b).

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 5.3(b), RPC 7.3(b)(1), and RPC 8.4(a)(1) of the Oregon Rules of Professional Conduct.

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* (“Standards”). The *Standards* require that the Accused’s conduct be analyzed by considering the following factors: (1) the ethical duty violated; (2) the lawyer’s mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty owed to the legal profession to adhere to restrictions on advertising and recommending employment when he engaged in improper solicitation of professional employment from a prospective client. *Standards*, § 7.0. The Accused also violated his duty to the profession to supervise his nonlawyer employee to ensure that the employee complied with his ethical obligations regarding communication with prospective clients.

B. *Mental State.* The Accused acted negligently. Negligence is defined as the failure to heed a substantial risk that circumstances exist or that a result will follow which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, at 7.

C. *Injury.* The Accused’s improper solicitation caused injury to the legal profession by casting the profession in a poor light when he contacted Cardamon’s family to solicit professional employment within 48 hours of Cardamon’s death. Cardamon’s father was deeply offended by the Accused’s solicitation of professional employment less than two days after Cardamon’s death.

D. *Aggravating Factors.* No aggravating factors, which may justify an increase in the degree of discipline to be imposed, are present in this case. *Standards*, § 9.21.

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

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a dishonest motive. *Standards*, § 9.32(b).
3. Full and free disclosure and a cooperative attitude in this matter. The Accused responded promptly and completely to all inquiries by Disciplinary Counsel. *Standards*, § 9.32(e).

4. The Accused has taken steps to rectify the consequences of his conduct by implementing a reasonable waiting period before contacting prospective clients in cases involving serious injury or death and has sought additional guidance from the Bar on this issue. *Standards*, § 9.32(k).

13.

The ABA *Standards* provide that a public reprimand is appropriate when a lawyer negligently engages in conduct that violates a duty to the profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

14.

Although Oregon case law offers no specific authority on the timing considerations relating to communication with prospective clients to solicit professional employment, lawyers have been publicly reprimanded for other violations involving communications about their legal services: *In re Kimmell*, 10 DB Rptr 175 (1996) (lawyer's letterhead was misleading when it indicated a California license when he was an inactive member and ineligible to practice law in California.); *In re Fellows*, 9 DB Rptr 197 (1995) (yellow pages advertisement for referral service was misleading because some referrals were made to lawyer's partners or associates and some of lawyers to whom cases might be referred were not experienced or had not consented to the use of their names.); *In re Smith*, 9 DB Rptr 79 (1995) (paralegal's yellow pages advertisement was misleading in that it did not disclose that customers were required to retain a lawyer's services and that the advertisement was for legal services, not merely for the paralegal service). See also *In re Mendez*, 10 DB Rptr 129 (1996), in which a lawyer was suspended for 30 days when he sent direct mail solicitation that was materially misleading. The lawyer's solicitation letter described the actions of the potential clients' former employer as unlawful when no such investigation or court determination had been made.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of Oregon RPC 5.3(b), RPC 7.3(b)(1), and RPC 8.4(a)(1). The sanction shall be effective immediately upon approval by the Disciplinary Board of this Stipulation for Discipline.

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel 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 under the terms of BR 3.6.

EXECUTED this 22nd day of September 2005.

/s/ Damian M. Idiart

Damian M. Idiart

OSB No. 01061

EXECUTED this 26th day of September 2005.

OREGON STATE BAR

By: /s/ Susan R. Cournoyer

Susan Roedl Cournoyer

OSB No. 86338

Assistant Disciplinary Counsel

Cite as 339 Or 452 (2005)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
STEVEN A. CHASE,)
)
Accused.)

(OSB No. 03-05; SC S51613)

En Banc

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

Argued and submitted May 4, 2005. Decided October 27, 2005.

Brenda K. Baumgart, Barran Liebman, LLP, Portland, argued the cause and filed the brief for the Accused. With her on the brief was Bradley F. Tellam, Portland.

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

PER CURIAM

The Accused is suspended from the practice of law for 30 days, commencing 30 days from the date of filing of this decision.

SUMMARY OF THE STATE COURT DECISION

The Accused repeatedly failed to pay child support and the circuit court entered a judgment of contempt finding that his failure to comply with the child support order was willful. The Accused stipulated he violated the Oregon Code of Professional Responsibility Disciplinary Rule (DR) 7-106(A) (prohibiting disregard of rulings of tribunal) by failing to comply with the child support order. *Held:* (1) The Accused is not precluded from arguing that he did not act intentionally in violating DR 7-106(A), despite the circuit court's finding that the Accused's failure to comply with the child support order was willful under the contempt of court statute; and (2) the mitigating factor of mental disability is inapplicable because the Accused failed to show that he recovered from the disability or that his recovery, if it existed, arrested the likelihood of future misconduct. The Accused is suspended

from the practice of law for 30 days, commencing 30 days from the date of filing this decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 04-95
)
THOMAS JOHNSON,)
)
Accused.)

Counsel for the Bar: Floyd H. Shebley; Martha M. Hicks
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(3), DR 6-101(B),
and DR 7-102(A)(5). Stipulation for Discipline.
90-day suspension.
Effective Date of Order: November 5, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 90 days, effective three days after this Order is signed, for violation of DR 1-102(A)(3), DR 6-101(B), and DR 7-102(A)(5).

DATED this 2nd day of November 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Thomas 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 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 November 23, 2004, 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 6-101(B), and DR 7-102(A)(5) 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 August 14, 2003, the Accused undertook to represent Nicole Carr (hereinafter “Carr”) to obtain appointment as guardian of her nephew, Airin. On or about September 12, 2003, the Accused provided a draft petition for guardianship to Carr for her review. Thereafter, the Accused failed to take any substantial action on the Carr guardianship and failed to communicate with Carr except as alleged in paragraphs 6 and 7 below.

6.

On January 29, 2004, the Accused made the following representations in an e-mail message transmitted to Carr’s sister:

“Last fall I was in a ‘meaningful’ car crash and I have had a prolonged recovery period that is not yet complete. I left instructions for the other attorneys in the firm to move your case along, but I am afraid that the ball was dropped. I only learned of this on Monday when I returned to the office. Even though I am really not back, I will personally handle this matter through completion.”

These representations were false, and the Accused knew they were false when he made them. The Accused had not been in an automobile accident, had not delegated responsibility for Carr’s case to other lawyers, and had not just returned to work after recovering from injuries sustained in an automobile accident.

7.

On or about February 26, 2004, the Accused made the following representations in an e-mail message transmitted to Carr’s sister:

“Here is the status of the case. The petition is filed and I am waiting to hear from the court about waiving notice on Airin’s father. I left the motion with the clerk as no judge was available when the petition was filed.”

These representations were false, and the Accused knew they were false when he made them. The Accused had not filed the petition for appointment of guardian or any motion with the court.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3), DR 6-101(B), and DR 7-102(A)(5) 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 lawyer’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 be candid and to represent her diligently. *Standards*, §§ 4.4, 4.6. The Accused also violated his duty to the public to maintain his personal integrity. *Standards*, § 5.1.

B. *Mental State.* The Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of his conduct, but without the conscious objective or purpose to accomplish a particular result. While the Accused

intended by his misrepresentations to Tomassi to excuse his delay in obtaining the appointment of a guardian and thereby gain additional time in which to obtain it, he did not intend to harm Carr, Tomassi, or the proposed ward.

C. *Injury*. The Accused's client suffered no actual injury. The delay in the resolution of the client's case and the Accused's having misrepresented the cause of this delay could have caused the client to postpone taking other steps to prosecute her case until actual injury did occur.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused acted with a selfish motive. *Standards*, § 9.22(a).
2. The Accused engaged in a pattern of misconduct extending over about seven months. *Standards*, § 9.22(c).
3. The Accused committed multiple disciplinary offenses. *Standards*, § 9.22(d).

E. *Mitigating Factors*. Mitigating factors include:

1. The Accused has no prior disciplinary record. *Standards*, § 9.32(a).
2. The Accused has displayed a cooperative attitude toward these proceedings. *Standards*, § 9.32(e).
3. The Accused was experiencing personal or emotional problems. *Standards*, § 9.32(c).

F. *Preliminary Sanction*. *Standards* § 4.42 suggests that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards* § 4.62 suggests that suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

10.

Oregon case law is in accord. See *In re Morrow*, 297 Or 808, 688 P2d 820 (1984) (lawyer suspended for 60 days for violation of DR 1-102(A)(3), DR 6-101(A), and ORS 9.480(4)); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (lawyer suspended for 60 days for a single violation of DR 6-101(B)); *In re Morrow*, 303 Or 102, 109, 734 P2d 867 (1987) (when court wrote that a suspension of from 60 to 120 days would be appropriate when a lawyer neglected a legal matter and then lied to his client about his failure to act).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 90 days for violation of DR 1-102(A)(3), DR 6-101(B), and DR 7-102(A)(5), the sanction to be effective beginning on the third day after the approval of this Stipulation by the Disciplinary Board.

12.

In addition, on or before January 15, 2006, and as a condition to reinstatement to active membership in the Bar, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$451.40, incurred for deposition costs and transcripts and expert witness fees. Should the Accused fail to pay \$451.40 in full by January 15, 2006, 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.

13.

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 17, 2004. If approved by Disciplinary Counsel, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

EXECUTED this 20th day of October 2005.

/s/ Thomas Johnson

Thomas Johnson

OSB No. 95312

EXECUTED this 25th day of October 2005.

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. 05-41
)
STEPHEN EICHELBERGER,)
)
Accused.)

Counsel for the Bar: Michael J. Gentry; Amber Bevacqua-Lynott
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A) and DR 5-105(C).
Stipulation for Discipline. 60-day suspension.
Effective Date of Order: November 9, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 60 days, effective November 9, 2005, or the day after approval by the Disciplinary Board, whichever is later, for violation of DR 5-101(A) (two counts) and DR 5-105(C) (two counts).

DATED this 2nd day of November 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Jill A. Tanner, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Stephen Eichelberger, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1979, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On April 13, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 4-101(B) (disclosure of client confidences or secrets), DR 5-101(A) (personal interest conflict) (two counts), DR 5-104(A) (business with a client conflict), and DR 5-105(C) (former-client conflict of interest) (two counts). 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.

Freedom Matter

Facts

5.

From early 2001 through approximately October 2003, the Accused represented Bob Harris (hereinafter “Harris”) in various business and litigation matters related to Harris’s construction company, Eagle Crest Homes (hereinafter “ECH”) and Harris’s development company, Custom Development Corporation (hereinafter “CDC”).

6.

In February 2001, the Accused and his law office manager formed a company called Freedom Investments (hereinafter “Freedom”). Shortly thereafter, Freedom contracted with Harris, ECH, and CDC for the purchase of five lots and the construction of seven houses thereupon. Between February 2001 and October 2003, Freedom purchased five properties from CDC and contracted with ECH for building services in connection with seven of those properties (all properties hereinafter “projects”). Five of the lots were located in the Glen Eden IV subdivision. The Accused drafted financing agreements for Freedom and used between Freedom and ECH in connection with three of the Glen Eden IV projects, which were presold to purchasers.

7.

The Accused and Harris (as buyer and seller, owner and contractor) had differing interests in the projects. The exercise of the Accused’s professional judgment as lawyer for Harris, ECH, and CDC was or could reasonably have been affected by his own financial, business, property, or personal interests as a principal of Freedom doing business with Harris, ECH, and CDC. Although the Accused wrote and discussed the concept of conflicts with Harris, he did not specifically identify the ways in which their interests might be adverse or explain to Harris the ways in which Accused’s professional advice might be impaired by the Accused’s own interests. Furthermore, while the Accused identified for Harris in a fax that Harris would need to obtain new counsel if a legal dispute arose in connection with the projects, the Accused did not advise Harris to obtain independent legal advice as to whether to enter into these projects with the Accused, as required by DR 10-101(B).

8.

Freedom realized profits from the sale of two of the homes. However, when three of the latter projects were not completed by the time contracted, and were not likely to be completed by Harris, the Accused came to realize that his interests in the projects created an actual conflict of interest between himself and Harris. Accordingly, in late August 2003, the Accused began rejecting representation of Harris and his companies in selected new legal matters. In mid-September, 2003, the Accused formally withdrew from all cases in which he represented Harris or his companies, and resigned as the registered agent for CDC and ECH.

9.

Around this same time, the buyers of one of the pre-sold projects (hereinafter “the Fletchers”) defaulted on their promissory note to ECH which had been transferred to Freedom in conjunction with Freedom’s financing agreement. In late September 2003, the Accused brought an action on behalf of Freedom against the

Fletchers. In November 2003, the Fletchers filed an answer, asserted counterclaims, and joined Harris and ECH as third-party defendants.

10.

In January 2004, Freedom settled its litigation against the Fletchers for a small percentage of the claim, in exchange for the Fletchers' cooperation and assignment of their third-party claims against Harris and ECH to Freedom and the Accused. The Accused thereafter pursued the third-party claims against Harris and ECH—by then his former clients. The Accused did not make any disclosures to Harris or obtain Harris's or ECH's consent to this adverse representation.

Violations

11.

The Accused admits that, by contracting with Harris while continuing to represent Harris in various litigation and other matters related to Harris's construction companies, without providing him with adequate written disclosures or obtaining Harris's informed consent, the Accused engaged in a personal interest conflict in violation of DR 5-101(A). The Accused further acknowledges that by undertaking representation of Freedom in litigation adverse to the interests of Harris, the Accused violated DR 5-105(C). Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 5-104(A) related to the Freedom Matter should be and, upon the approval of this stipulation, is dismissed.

Wendt Matter

Facts

12.

In December 2002, ECH entered into an agreement (hereinafter "construction contract") with Chris Wendt (hereinafter "Wendt") and another investor to build a custom home on a lot in Glen Eden IV that Wendt and the other investor had purchased from CDC. Harris did not complete construction of the house by the time agreed in the construction contract, and Wendt became concerned about the liens that were accumulating against his title.

13.

In January 2004, the Accused undertook to represent Wendt, and on behalf of Wendt, terminated the construction contract in Glen Eden IV and ordered Harris and ECH to do nothing further on the project. Wendt's interests were in actual conflict with those of Harris. The Accused did not provide full disclosure to Harris or obtain Harris's informed consent to represent Wendt.

Violation

14.

The Accused admits that, by undertaking to represent Wendt, without providing full disclosure and obtaining informed consent, the Accused violated DR 5-105(C).

Leung Matter

Facts

15.

In October 2000, CDC formed Glen Eden III, LLC (hereinafter “Glen Eden III”), with a California investor, Gary Leung (hereinafter “Leung”), to develop the third phase of the Glen Eden subdivision. Harris and Leung had discussions in August and September 2003 about Harris’s proposals to modify the terms of their operating agreement to alleviate Leung’s recent concerns about Harris’s ability to perform under the agreement.

16.

Around this same time, the City was due to release approximately \$45,000 in funds owed to Glen Eden III for modifications it required to that phase of the development. Harris promised the Accused these funds for payment toward his outstanding legal fees. However, the City’s release required both Harris’s and Leung’s approval and Harris reported to the Accused that Leung was resisting due to liability concerns. Accordingly, when Leung came into town to meet with Harris, the Accused was motivated to talk with Leung about Leung’s apparent opposition to releasing the City funds for the Accused’s benefit. Harris, on the other hand, expected the Accused to represent CDC’s legal interests in negotiating with Leung to modify the Glen Eden III operating agreement. The Accused did not sufficiently clarify to Harris that he was acting in his own interests in meeting with Leung and modifying the Glen Eden III agreement, nor did the Accused instruct Harris to obtain independent advice as to whether Harris should allow the Accused to participate in those meetings or undertake those modifications.

Violation

17.

The Accused admits that, by participating in the meeting with Leung and Harris and performing legal services for Harris and his companies in conjunction with that meeting, solely for the Accused’s own benefit in obtaining his fees, the Accused violated DR 5-101(A). Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 4-101(B) related to the Leung Matter, should be and, upon the approval of this stipulation, is dismissed.

Sanction

18.

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

A. *Duty Violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards*, § 4.3. The *Standards* provide that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5.

B. *Mental State.* The Accused acted knowingly with respect to the personal interest conflicts and the multiple client conflicts. “Knowledge” is defined as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 7.

C. *Injury.* Injury may be actual or potential. The Accused’s continued representation of Harris and his companies without sufficient disclosures and informed consent regarding the Accused’s possible impaired judgment caused potential injury to Harris on those projects. In representing Freedom in pursuing the Fletchers’ claims and Wendt in matters contrary to Harris, the Accused placed Harris at an actual disadvantage in any negotiations and dealings with the Fletchers and in responding to and defending against the claims of Wendt.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused’s conduct related to Harris was selfishly motivated. *Standards*, § 9.22(b);
2. There is a pattern of misconduct. *Standards*, § 9.22(c);
3. There are multiple offenses. *Standards*, § 9.22(d);
4. The Accused has substantial experience in the practice of law, having been admitted in 1979. *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 motive. *Standards*, § 9.32(b).
3. The Accused was experiencing personal or emotional problems at the time of some of the misconduct herein, including undergoing a divorce and adverse financial issues related to the projects (in that Harris’s failures to complete the projects exposed the Accused to an \$875,000 liability), as well as medical problems, presumably related to the stress of the projects. *Standards*, § 9.32(c).

4. The Accused made full disclosure to the Bar in these proceedings. *Standards*, § 9.32(e).

5. The Accused has a good reputation in the construction practice area of law and in the Salem community. *Standards*, § 9.32(g).

6. The Accused is remorseful for any injury he may have caused to Harris and for failing to follow the rules of the profession. *Standards*, § 9.32(m).

19.

The *Standards* provide that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards*, § 4.32.

20.

Oregon case law is in accord. The Oregon Supreme Court has stated that a single violation of DR 5-105, by itself, justifies a 30-day suspension. *In re Knappenberger*, 337 Or 15, 33, 90 P3d 614 (2004); *In re Wyllie*, 331 Or 606, 625, 19 P3d 338 (2001) (four-month suspension for knowing failure to disclose conflict and fee issues); *In re Hockett*, 303 Or 150, 164, 734 P2d 877 (1987). *See also In re Robertson*, 290 Or 639, 624 P2d 603 (1981) (30-day suspension for representing buyers and sellers in transaction).

This case is similar to *In re Baer*, 298 Or 29, 688 P2d 1324 (1984), in which the court determined that a 60-day suspension was appropriate for violations similar to that of the Accused. *See also In re Gant*, 293 Or 130, 645 P2d 293 (1982) (30-day suspension for violation of DR 5-101(A), 5-105(C), and other rules in connection with business ventures with a client followed by adverse representation of that same client); *In re Wittemyer*, 328 Or 448, 980 P2d 148 (1999) (four-month suspension for a conflict of interest in representing both an individual client and a corporate client as to a loan from individual client and lawyer to the corporate client); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997) (120-day suspension for violations of DR 5-101(A), and other rules, for failing to obtain consent from a client after full disclosure for transfer of title to the client's vehicle to the lawyer's professional corporation).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violations of DR 5-101(A) (two counts) and DR 5-105(C) (two counts), the sanction to be effective November 9, 2005, or the day after approval by the Disciplinary Board, whichever is later.

22.

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 under the terms of BR 3.6.

EXECUTED this 24th day of October 2005.

/s/ Stephen Eichelberger

Stephen Eichelberger

OSB No. 79217

EXECUTED this 31st day of October 2005.

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. 05-71
)
RODOLFO A. CAMACHO,)
)
Accused.)

Counsel for the Bar: Jane E. Angus
Counsel for the Accused: Mark J. Fucile
Disciplinary Board: None
Disposition: Violation of DR 1-102(A)(4) and DR 7-110(B).
Stipulation for Discipline. Public reprimand.
Effective Date of Order: November 22, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 1-102(A)(4) and DR 7-110(B) of the Code of Professional Responsibility.

DATED this 22nd day of November 2005.

/s/ Jill A. Tanner
Jill A. Tanner, Region 6
Disciplinary Board Chairperson

/s/ Michael Zusman
Michael Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Rodolfo A. Camacho, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 23, 1995, 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 June 10, 2005, the State Professional Responsibility Board directed that the Accused be charged with violating DR 1-102(A)(4), conduct prejudicial to the administration of justice, and DR 7-110(B), ex parte communication with the court. 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 4, 2004, Karina Dillree, doing business as A Perfect Balance, LLC (hereinafter “Dillree”), filed a small claims action against Cascade Wholesale Building, Supply, Inc. (hereinafter “Cascade”), and Edward Herrera (hereinafter “Herrera”) in the Circuit Court of the State of Oregon for the County of Marion (hereinafter “Court Action”).

6.

On or about June 9, 2004, Notice of Small Claim action was personally served on Herrera and Cascade. On June 23, 2004, Dillree filed a Request for Default Judgment and Defendant Status Affidavit with the court. On June 30, 2004, the court signed and on July 1, 2004, filed a Small Claims General Judgment in favor of Dillree and against Cascade and Herrera. On July 8, 2004, the clerk of the court

issued a Writ of Garnishment, a copy of which Dillree caused to be served on Umpqua Bank.

7.

On or about July 9, 2004, Herrera and Cascade retained the Accused to represent their interests in the Court Action. On July 9, 2004, the Accused, without notice to Dillree, appeared *ex parte* before the court and presented a Motion for Order to Vacate General Judgment and Garnishment, together with supporting affidavits signed by Herrera and other persons associated with Herrera, and a proposed form of judgment. At the time, the Accused failed to submit a responsive pleading to Dillree's complaint. Without sufficient investigation, the Accused represented to the court that Cascade and Herrera had never been served, personally or by mail, with a copy of the summons and complaint. The representation was not accurate. On July 9, 2004, the court granted the Accused's Motion for Order to Vacate General Judgment and Garnishment and signed the order presented by the Accused with the additional requirement that Cascade and Herrera file their answers to the complaint by July 16, 2004.

8.

Later on July 9, 2004, the Accused caused a copy of the signed Order to Vacate General Judgment and Garnishment to be served on Dillree. Dillree did not receive a copy of the motion and supporting affidavits, and was otherwise unaware of the information upon which Cascade and Herrera based their motion.

9.

On July 21, 2004, the Accused filed Cascade's and Herrera's answer denying Dillree's claim and asserting a counterclaim against Dillree.

10.

Dillree retained the services of an attorney to represent her interests and on August 9, 2004, filed a Motion for Order Setting Aside Order Vacating Judgment, a copy of which was served on the Accused as counsel for Cascade and Herrera. On October 6, 2004, the court held a hearing and granted Dillree's motion. On November 18, 2004, the court signed a Limited Judgment Order re: Vacating Previous Order of July 9, 2004.

11.

Based on the foregoing, the Accused admits that he engaged in conduct prejudicial to the administration of justice in violation of DR 1-102(A)(4), and *ex parte* communication with the court in violation of DR 7-110(B).

Sanction

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”) are considered. The *Standards* require that the Accused’s conduct be analyzed by the following factors: (1) the ethical duty violated; (2) the lawyer’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 the legal system. *Standards*, §§ 6.1, 6.2, 6.3.

B. *Mental State.* The Accused’s conduct demonstrates negligence and knowledge. *Standards*, at 7. The Accused was negligent when he failed to determine that his procedures did not comply with the law. He should have conducted additional investigation to determine whether Herrera’s claim that he and Cascade had not been served with notice of the small claims action was accurate. The Accused should also have known that he was required to provide Dillree with advance notice of his intended court appearance to set aside her judgment so that she would have an opportunity to be heard. The Accused knew that he had not provided Dillree with notice of his appearance and nevertheless requested and obtained an order setting aside the judgment previously entered in her favor.

C. *Injury.* There was actual injury to Dillree and to the court. Dillree was denied notice and the opportunity to object to the Accused’s motion to set aside the judgment she had obtained against Herrera and Cascade. Dillree had to hire a lawyer and incurred attorney fees to reinstate the judgment she had previously obtained against Herrera and Cascade. Because Dillree’s judgment was set aside, her efforts to collect Cascade’s and Herrera’s debt was delayed. The court was injured because it relied on the Accused. Also, the court devoted valuable time to the case, which could have been avoided if the Accused had in the first instance investigated Herrera’s claim concerning service and given notice and opportunity to be heard to Dillree.

D. *Aggravating Factors.* Aggravation or aggravating circumstances are considerations or factors that may justify an increase in the degree of discipline to be imposed. Aggravating factors include:

1. There are multiple rule violations. *Standards*, § 9.22(d).
2. Dillree was vulnerable insofar as she was not given notice and was otherwise unaware of the Accused’s intention to appear before the court to seek an order to set aside the judgment she had obtained against the Accused’s clients. Dillree did not have an opportunity to be heard before the court set aside her judgment. *Standards*, § 9.22(h).

3. The Accused was admitted to practice in 1995 and has substantial experience in the practice of law. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigation or mitigating circumstances are considerations or factors that may justify a reduction in the degree of discipline to be imposed. Mitigating factors include:

1. The Accused has no prior record of discipline. *Standards*, § 9.32(a).
2. The Accused voluntarily reimbursed Dillree for the attorney fees she incurred as a result of his conduct. *Standards*, § 9.32(d).
3. The Accused cooperated with the disciplinary authorities during the investigation of his conduct and in resolving this proceeding. *Standards*, § 9.32(e).
4. The Accused is remorseful. *Standards*, § 9.32(m).

13.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.13. Reprimand is 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. Reprimand is also generally appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding. *Standards*, § 6.33.

Case law suggests a reprimand is an appropriate sanction in this case. See *In re Egan*, 13 DB Rptr 96 (1999) (reprimand for violation of DR 1-102(A)(4), DR 7-102(A)(1), and DR 7-106(A) when lawyer repeatedly filed a motion not recognized under the rules); *In re Penz*, 16 DB Rptr 169 (2002) (reprimand for violation of DR 7-110(B) when lawyer failed to provide required notices to opposing counsel); *In re Schenck*, 320 Or 94, 879 P2d 863 (1994) (reprimand for violation of DR 7-104(A)(1) and DR 7-110(B)).

14.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(4) and DR 7-110(B) of the Code of Professional Responsibility.

15.

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

Cite as *In re Camacho*, 19 DB Rptr 337 (2005)

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

DATED this 24th day of October 2005.

/s/ Rodolfo A. Camacho

Rodolfo A. Camacho

OSB No. 95520

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. 04-124, 05-56
)
JAMES EDUARD WHITE,)
)
Accused.)

Counsel for the Bar: Timothy M. Bowman; Martha M. Hicks
Counsel for the Accused: Thomas E. Cooney
Disciplinary Board: None
Disposition: Violation of DR 3-101(A), DR 3-102(A), and
DR 6-101(A). Stipulation for Discipline.
Six-month suspension.
Effective Date of Order: December 10, 2005

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 six months, effective December 10, 2005, for violation of DR 3-101(A), DR 3-102(A), and DR 6-101(A).

DATED this 23rd day of November 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Jill A. Tanner
Jill A. Tanner, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

James Eduard 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 26, 1991, 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 December 10, 2004, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of DR 3-102(A) and DR 6-101(A) of the Code of Professional Responsibility in Case No. 04-124. On May 24, 2005, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the SPRB, alleging violation of an additional disciplinary rule, DR 3-101(A), in Case No. 05-56. 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, Florentino Aleman (hereinafter “Aleman”) was the proprietor of Aleman’s Interpreter Translator Service. In addition to performing interpretation and translation services for Spanish-speaking clients, Aleman also assisted and advised clients in immigration matters and prepared documents for submission to the Immigration and Naturalization Service (hereinafter “INS”). Aleman was not an active member of the Oregon State Bar.

The Maria Sanchez-Reyes Matter
(Case No. 04-124)

6.

In December 2000, Adolfo and Maria Sanchez-Reyes consulted with Aleman about an immigration matter. Maria Sanchez-Reyes had illegally entered the United States from Mexico. The Sanchez-Reyeses requested Aleman to assist Maria Sanchez-Reyes to prepare and pursue an application to adjust her immigration status to that of a legal permanent resident in the United States (hereinafter “application to adjust status”).

7.

In or around December 2000, the Accused entered into an arrangement with Aleman for the two to share office space and for Aleman to assist the Accused in his immigration law practice. Thereafter, the Accused regularly relied on Aleman to provide translation services to the Accused’s clients and to assist him by interviewing clients; providing, selecting and preparing INS forms for clients using a facsimile of the Accused’s signature; drafting and sending correspondence to third persons about clients’ cases using a facsimile of the Accused’s signature; meeting with clients while their applications were pending before the INS; providing services and documents necessary to support clients’ applications to the INS; and answering clients’ questions about their INS applications.

8.

On or about January 4, 2001, the Accused undertook to represent Maria Sanchez-Reyes in her application to adjust status. With the Accused’s knowledge and consent, Aleman thereafter provided the services described in paragraph 7 to Maria Sanchez-Reyes. The Sanchez-Reyeses paid the Accused \$200 on January 4, 2001, and \$200 on January 19, 2001, for legal services. The Accused shared these legal fees with Aleman.

9.

Between January 4, 2001, and October 10, 2003, when Maria Sanchez-Reyes terminated his employment, the Accused failed to exercise or acquire the legal knowledge, skill, thoroughness, or preparation necessary for the representation of Maria Sanchez-Reyes as follows:

A. He failed to adequately supervise Aleman’s activities on and related to Maria Sanchez-Reyes’s application to adjust status;

B. He failed to determine the necessity of appearing with Maria Sanchez-Reyes at a March 13, 2002, interview with the INS;

C. He failed to take any action, or to direct Aleman to take action, in response to a notice from the INS that Maria Sanchez was required to provide an

affidavit from a joint sponsor and proof of her presence in the United States to the INS by June 12, 2002;

D. He failed to submit a properly documented joint sponsor affidavit and proof of Maria Sanchez-Reyes's presence in the United States after June 12, 2002;

E. He failed to adequately prepare himself or Maria Sanchez-Reyes for a removal hearing before the US Immigration Court on August 26, 2003;

F. He failed to submit the documents described in paragraph 9C to the US Immigration Court at the August 26, 2003, removal hearing;

G. He failed to submit to the US Immigration Court the documents requested by the court at the August 26, 2003, removal hearing;

H. He failed to submit a properly documented joint sponsor affidavit to the US Immigration Court at a hearing on September 20, 2003;

I. He failed to submit any documents previously requested by the US Immigration Court at a hearing on October 9, 2003, and failed to explain adequately this failure to produce documents;

J. He delegated responsibility for handling Maria Sanchez-Reyes's legal matter to Aleman, who was not competent to handle it; and

K. He failed to acquire sufficient knowledge of and competence in immigration law to represent Maria Sanchez-Reyes or to supervise Aleman's activities on her behalf.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 6 through 9 of this stipulation, he violated DR 3-102(A) and DR 6-101(A).

The Celia Perez Matter

(Case No. 05-56)

Facts

11.

On or about August 16, 1994, Aleman signed an agreement with the Oregon State Bar's Unlawful Practice of Law Committee to cease and desist from giving advice about immigration law, drafting any immigration documents, and completing immigration documents for third persons. At all relevant times herein, the Accused was aware of this agreement between Aleman and the Oregon State Bar.

12.

In December 2000, Aleman signed an assurance of voluntary compliance with the Oregon Department of Justice which required him to abide by the cease and

desist order described in paragraph 11 above; to remove all materials relating to immigration law and practice from his business premises, including but not limited to immigration forms, the Immigrants' Rights Manual, and INS publications of any kind; to not represent to consumers that he had any expertise or special knowledge about immigration law; and to not use the Internet to provide any information or documents to consumers relating to immigration matters. At all relevant times, the Accused was aware of the terms of this assurance of voluntary compliance, and represented Aleman in the negotiation of the terms of the assurance of voluntary compliance.

13.

In 2003, a former immigration law client of the Accused, Celia Perez, contacted Aleman regarding her application for US citizenship. Aleman rendered legal advice to and selected and completed INS forms for Perez.

14.

Between 2000 and about April 2004, when he ended his association with Aleman, the Accused aided Aleman in the unlawful practice of law as described in paragraph 7 above, placed Aleman in a situation where he could continue unlawfully to practice law, made INS forms and immigration law resources available to Aleman, and took no steps to assure that Aleman was not engaged in the unlawful practice of law or to determine whether Aleman had the ability to recognize when clients needed legal assistance.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 7 and 11 through 14 of this stipulation, he violated DR 3-101(A).

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 lawyer'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 Maria Sanchez-Reyes to represent her competently. *Standards*, § 4.5. The Accused also violated his duties as a professional not to aid the unauthorized practice of law and to avoid sharing legal fees with a nonlawyer. *Standards*, § 7.0.

B. *Mental State.* The Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, at 7.

C. *Injury.* The Accused's conduct caused serious actual injury to Maria Sanchez-Reyes, whose removal proceedings resulted in her having to agree to leave the United States voluntarily to avoid deportation, and who, over the course of the Accused's representation of her, suffered great anxiety about the possibility she could be separated from her family. Sanchez-Reyes and her husband also incurred \$3,568.48 in legal fees, travel expenses, and lost wages in their ultimately successful attempt to correct the results of the Accused's conduct. The Professional Liability Fund was also actually injured by the Accused's conduct in that it paid Sanchez-Reyes's malpractice claim against the Accused.

The Accused's conduct also caused serious actual injury to Celia Perez, who, upon Aleman's advice, left the United States, and when she attempted to apply for an immigrant visa at the US Consulate in Ciudad Juarez, Mexico, was barred from entering the United States for 10 years. Perez was required to remain in Mexico and was separated from her husband. Her children, who are U.S. citizens, were separated from their father when they returned to Mexico with their mother and have had to forego the educational and other advantages they would have received as citizens and residents of United States.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of discipline, having been publicly reprimanded in 1997 for violation of DR 7-102(A)(1).¹ *Standards*, § 9.22(a).

2. The Accused acted with a selfish motive. Over the four years during which he was associated with Aleman, the Accused earned significant revenue from immigration clients for whom Aleman performed legal services. *Standards*, § 9.22(b).

3. The Accused engaged in a pattern of misconduct that extended over four years and involved a significant number of clients. *Standards*, § 9.22(c).

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

5. Because of their status as illegal immigrants and because of their ignorance of the immigration system and inability to speak English, Maria Sanchez-Reyes and Celia Perez were vulnerable victims who faced serious consequences if their INS applications were improperly handled. *Standards*, § 9.22(h).

6. The Accused had substantial experience in the practice of law, having been admitted to the Oregon Bar in 1991. *Standards*, § 9.22(i).

¹ This factor is probably not entitled to great weight under the factors set forth in *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997), because it did not involve similar conduct and was a single rule violation.

E. *Mitigating Factors*. Mitigating factors include:

Full and free disclosure to Disciplinary Counsel's Office and a cooperative attitude toward these proceedings. *Standards*, § 9.32(e).

17.

Standards § 4.52 suggests that a suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. *Standards* § 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 serious or potentially serious injury to a client, the public, or the legal system.

18.

Oregon case law supports this result. See *In re Jones*, 308 Or 306, 779 P2d 1016 (1989), where the lawyer was suspended for six months for aiding a nonlawyer in the unlawful practice of law under circumstances similar to this case.

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of six months for violation of DR 3-101(A), DR 3-102(A), and DR 6-101(A), the sanction to be effective beginning on December 10, 2005.

In addition, on or before he is reinstated to the practice of law, and as a condition to his reinstatement, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$652.20, incurred for deposition fees and transcripts. Should the Accused fail to pay \$652.20 in full by June 1, 2006, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

20.

The sanction provided for herein was approved by the SPRB on September 28, 2005. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. If approved by the Disciplinary Counsel, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

Cite as *In re White*, 19 DB Rptr 343 (2005)

EXECUTED this 14th day of November 2005.

/s/ James Eduard White

James Eduard White

OSB No. 91121

EXECUTED this 16th day of November 2005.

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. 05-136
)
GARY KAHN,)
)
Accused.)

Counsel for the Bar: Linn D. Davis
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-105(E). Stipulation for
Discipline. Public reprimand.
Effective Date of Order: November 29, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 5-105(E).

DATED this 29th day of November 2005.

/s/ John A. Berge
John A. Berge
State Disciplinary Board Chairperson-Elect

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

Editor's Note: This matter concerns Gary Kahn, OSB No. 81481, who practices in southeast Portland, not to be confused with Garry L. Kahn, OSB No. 62042, who practices in southwest Portland.

STIPULATION FOR DISCIPLINE

Gary Kahn, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 20, 1981, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 9, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-105(E) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

Barney Barnes formed and operated Cascade Structural Services, Inc. (“Cascade Structural”), a home inspection business wholly owned by Barnes. In October 2001, Barnes formed and incorporated a second business, Blue Water, Inc. (“Blue Water”) to operate a pest extermination business. Reed Gibson, a long time client of the Accused, elected to become a shareholder in Blue Water. At all relevant times, Gibson was a client of the Accused. At Gibson’s request, the Accused undertook legal services for Blue Water. In October and November 2001, the Accused drafted various organizational documents and agreements for Blue Water and the Accused also became the registered agent for Blue Water.

6.

After being retained by Blue Water, the Accused drafted a promissory note to record a \$100,000 loan from Gibson to Blue Water and Blue Water's obligation to repay the loan. The Accused submitted his bills for the above-described services to Blue Water and Blue Water paid for the services. Blue Water and Gibson each had a reasonable expectation that the Accused would represent their interests in the loan transaction. The Accused's representation of Blue Water as debtor was in actual conflict to his representation of Gibson as creditor.

7.

A truck owned by Barnes and used by Cascade Structural was involved in a motor vehicle collision in October 2001. Barnes' sons were injured in the collision and the truck was damaged. In November 2001, Barnes asked the Accused to pursue the civil claims potentially resulting from the personal injuries to his sons and the property damage to the truck. The Accused informed Barnes that the Accused did not perform such work, but the Accused introduced Barnes to an associate at the Accused's firm who could handle the matter. On November 13, 2001, Barnes retained the associate of the Accused to pursue civil claims arising from the collision, including claims arising from the damage to the truck.

8.

Barnes arrived at a plan to reduce administrative expenses for Blue Water and Cascade Structural by unifying various common functions such as payroll in a third entity, Blue Cascade. Gibson assented to the plan. Beginning November 15, 2001, the Accused prepared and filed articles of organization for Blue Cascade, LLC, a limited liability company whose members were Barnes and Gibson. Subsequently, the Accused performed additional work related to Blue Cascade, including serving as registered agent. The Accused billed Blue Water for services related to Blue Cascade. On November 19, 2001, the Accused conducted a meeting at his office in which Gibson and Barnes executed various documents including the promissory note securing Gibson's loan to Blue Water.

9.

The Accused drafted a second promissory note which provided that Barnes and Cascade Structural each guaranteed Blue Water's debt to Gibson. On December 2, 2001, the Accused presented the second note to Barnes and Barnes executed the note on behalf of himself and Cascade Structural. At the time, although the Accused did not represent Barnes in the transaction, Barnes and Cascade Structural continued to be represented by an associate at the Accused's firm in the unrelated matter of the property damage claim. The objective interests of Gibson and Blue Water were adverse to the interests of Barnes and Cascade Structural. The Accused did not obtain client consent after full disclosure of the likely conflict resulting from the adverse interests of Gibson, Blue Water, Barnes, and Cascade Structural.

10.

In June 2002, Barnes suffered serious health difficulties. The Accused represented Gibson and others in a transaction to acquire the assets of Cascade Structural from Barnes. On August 7, 2002, the Accused formed Omega Services, Inc. (“Omega”) for Gibson and others. Omega was formed to acquire the assets of Cascade Structural and to operate a home inspection business. Wackerly and Gibson related the terms of a proposed purchase and sale agreement to the Accused and the Accused prepared a purchase and sale agreement for Omega’s purchase of the assets of Cascade Structural. The Accused’s clients presented the purchase agreement to Barnes, and, on August 7, 2002, on behalf of Barnes and Cascade Structural, Barnes signed the agreement. On August 30, 2002, based upon information related to him by Gibson and Wackerly, the Accused prepared an addendum to the purchase and sale agreement which provided that Barnes and Cascade Structural released Omega and Gibson from any claims except breach of the purchase and sale agreement. The Accused’s clients presented the addendum to Barnes and Barnes signed the addendum on behalf of himself and Cascade Structural. At all relevant times, Barnes and Cascade Structural continued to be represented by an associate of the Accused on the unrelated property damage claim, creating a likely conflict of interest. The Accused did not obtain the necessary disclosure and consent prior to undertaking legal services in which the objective interests of Omega and Gibson were adverse to those of Barnes and Cascade Structural.

11.

In November 2002, as a result of continuing difficulties between Barnes and Omega, the Accused realized that the firm’s representation of Barnes and Cascade Structural in the unrelated property damage claims arising from the truck collision, was a potential conflict of interest and the Accused directed his associate to withdraw from further representation of Barnes and/or Cascade Structural. On November 18, 2002, the Accused’s firm withdrew from any further representation of Barnes or Cascade Structural.

Violations

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-105(E) (multiple current client conflict of interest).

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 lawyer'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 a conflict of interest. *Standards*, § 4.3.

B. *Mental State.* The Accused acted negligently. The Accused viewed Gibson as his only client without appreciating that his firm's separate lawyer-client relationship with Blue Water, Barnes, and Cascade Structural gave rise to conflicts of interest. The failure to recognize a substantial risk that such conflicts of interest existed was a deviation from the Standards, of care a reasonable lawyer would exercise in the situation.

C. *Injury.* There was potential injury to Barnes, Cascade Structural, Blue Water, and Gibson as a result of the divided loyalties of the Accused.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused committed multiple offenses of the Code of Professional Responsibility. *Standards*, § 9.22(d).

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 no prior disciplinary history. *Standards*, § 9.32(a).

2. The Accused showed a cooperative attitude toward disciplinary proceedings. *Standards*, § 9.32(e).

14.

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

15.

Oregon case law is in accord. *In re Brownstein*, 288 Or 83, 87, 602 P2d 655 (1979) (public reprimand when lawyer represented a small closely held corporation and a third party who became a shareholder loaning money to the corporation); *In re Banks*, 283 Or 459, 584 P2d 284 (1978) (public reprimand issued to lawyer who represented formerly closely held corporation against its former principal); *In re Drake*, 18 DB Rptr 225 (2004) (public reprimand when lawyer engaged in multiple offenses when she mistakenly represented corporation against employee who was a firm client in other matters related to the corporation).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-105(E), the sanction to be effective immediately 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 was approved by the State Professional Responsibility Board on September 9, 2005. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

EXECUTED this 4th day of November 2005.

/s/ Gary Kahn
Gary Kahn
OSB No. 81481

EXECUTED this 10th day of November 2005.

OREGON STATE BAR

By /s/ Linn D. Davis
Linn D. Davis
OSB No. 03222
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case No. 05-72
)
B. LEE WILSON,)
)
Accused.)

Counsel for the Bar: Richard D. Rodeman; Stacy J. Hankin
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 2-106(A), DR 3-101(B),
DR 6-101(A), and DR 6-101(B). Stipulation
for Discipline. 60-day suspension.
Effective Date of Order: December 18, 2005

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 seven days after the date of this Order, for violation of DR 2-106(A), DR 3-101(B), DR 6-101(A), and DR 6-101(B).

DATED this 11th day of December 2005.

/s/ Michael Zusman
Michael Zusman, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

B. Lee Wilson, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 8, 1998, and at all material times herein, had her office and place of business in Linn 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 28, 2005, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 2-106(A), DR 3-101(B), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 2003, the Accused was retained by Laura J. Shepard (hereinafter “Shepard”). On May 28, 2003, the Accused, on Shepard’s behalf, filed a petition to probate the estate of Shepard’s mother. On June 4, 2003, the court appointed Shepard as personal representative of her mother’s estate.

6.

ORS 113.145(6) requires a personal representative to provide certain information to the Department of Health Services. The Accused failed to provide that information on Shepard’s behalf.

7.

ORS 113.155 requires a personal representative to publish a notice to interested persons. The Accused failed to cause that notice to be published on Shepard's behalf.

8.

ORS 116.013 requires court approval before a personal representative may make a partial distribution of estate property. On December 30, 2003, and January 9, 2004, Shepard made substantial partial distributions of her mother's estate. The Accused failed to obtain court approval before Shepard made the partial distributions described above.

9.

ORS 116.083 requires a personal representative to make an annual accounting within 30 days after the anniversary date of the personal representative's appointment. The Accused failed to file an annual accounting on Shepard's behalf within 30 days after June 4, 2004.

10.

ORS 116.183 requires court approval before a personal representative may pay attorney fees. The Accused accepted funds in payment of attorney fees from Shepard. The Accused failed to obtain court approval before accepting those funds from Shepard.

11.

Effective July 2, 2004, the Accused was suspended from the practice of law for failing to pay Bar membership fees. After July 1, 2004, the Accused continued as attorney of record for Shepard and filed a motion on Shepard's behalf requesting an extension of time in which to file an accounting.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11, she violated DR 2-106(A), DR 3-101(B), DR 6-101(A), and DR 6-101(B) 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 lawyer'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 act with reasonable diligence and promptness in representing Shepard and her duty to provide Shepard with competent representation. *Standards*, §§ 4.4, 4.5. The Accused also violated duties she owed to the profession to avoid collecting an illegal fee and avoid the unlawful practice of law. *Standards*, § 7.0.

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*, at 7. The Accused knew that she did not have sufficient legal knowledge about probate law and should not have undertaken to represent Shepard. Under those circumstances the Accused acted knowingly when she failed to provide competent representation and neglected Shepard's legal matter. The Accused also acted knowingly when she failed to obtain court approval before collecting her fees as a lawyer is presumed to know the law. *In re Devers*, 328 Or 230, 974 P2d 191 (1996). The Accused also knowingly engaged in the unlawful practice of law. Through numerous notices, the Accused knew that if she did not pay her Bar membership dues by a date certain then she would be automatically suspended from the practice of law. Despite that knowledge, and after the automatic suspension date, the Accused continued to represent Shepard and filed a motion for extension of time on her behalf.

C. *Injury.* Injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Shepard sustained actual injury in that her ability to properly probate her mother's estate was hampered and delayed as a result of the Accused's incompetence and neglect. Shepard was also exposed to potential injury when the Accused engaged in the unlawful practice of law as the court could have rejected the motion for extension filed by the Accused had it known she was suspended. The court sustained actual injury when the Accused practiced law while she was suspended. The court sustained additional injury in that as a result of the Accused's conduct it could not fulfill statutory responsibilities to supervise proper distribution of estate assets and payment of attorney fees.

D. *Aggravating Factors.* 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 a lawyer in Oregon since 1998. *Standards*, § 9.22(i).

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

1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
3. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

14.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to the client; engages in an area of practice in which the lawyer knows he or she is not competent and causes injury or potential injury to a client, or knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system. *Standards*, §§ 4.42(a), 4.52, 7.2.

15.

Oregon case law is consistent with the imposition of a short suspension under these circumstances. *In re Sorensen*, 18 DB Rptr 34 (2004) (30-day suspension when a lawyer mishandled a probate matter and on more than one occasion collected fees without prior court approval); *In re Fritzler*, 17 DB Rptr 75 (2003) (60-day suspension of lawyer who knowingly engaged in the unlawful practice of law for two months); *In re Galaviz*, 15 DB Rptr 176 (2001) (30-day suspension when lawyer, without being competent to do so, undertook to represent a personal representative in a probate matter and related wrongful death case and then collected fees without court approval).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 60 days for violation of DR 2-106(A), DR 3-101(B), DR 6-101(A), and DR 6-101(B) of the Code of Professional Responsibility, the sanction to be effective seven days after this Stipulation for Discipline has been approved.

17.

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 under the terms of BR 3.6.

Cite as *In re Wilson*, 19 DB Rptr 357 (2005)

EXECUTED this 17th day of November 2005.

/s/ B. Lee Wilson

B. Lee Wilson

OSB No. 98123

EXECUTED this 28th day of November 2005.

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. 05-43
)
DANIEL W. DICKERSON,)
)
Accused.)

Counsel for the Bar: Lia Saroyan
Counsel for the Accused: None
Disciplinary Board: None
Disposition: Violation of DR 5-101(A), DR 5-104(A), and
DR 5-105(E). Stipulation for Discipline. Public
reprimand.
Effective Date of Order: December 11, 2005

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E).

DATED this 11th day of December 2005.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

/s/ Michael C. Zusman
Michael C. Zusman
State Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Daniel W. Dickerson, 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 lawyers.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 6, 1998, 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.

4.

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).

5.

On September 9, 2005, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

6.

Sometime prior to August 2003, the Accused formed business entities with Mark Byrum (hereinafter “Byrum”) named Sterling Restaurant Management Group, Inc. (hereinafter “Sterling”) and Bartini, LLC (hereinafter “Bartini”). Thereafter, the Accused represented himself, Byrum, Sterling and Bartini (hereinafter collectively referred to as “the Sterling Group”) in their business affairs.

7.

At all times relevant to this complaint, Warren Steinberg and his company Renaissance Project, Inc. (hereinafter collectively “Steinberg”) owned and operated a restaurant in Portland called the Salatto Lounge (hereinafter “Salatto”). Steinberg leased the restaurant premises from another entity and subleased a portion of the premises to Nancy Lee (hereinafter “Lee”).

8.

In or about August 2003, the Accused began to negotiate, on behalf of the Sterling Group, for the purchase of the Salatto and lease of the restaurant premises from Steinberg.

9.

In or about September 2003, while the negotiations described in paragraph 7 were pending, the Accused undertook to represent Steinberg to terminate Steinberg's sublease to Lee. At the time, the Sterling Group was interested in leasing or subleasing the Salatto premises, including that portion then occupied by Lee.

10.

The Accused's independent professional judgment on behalf of Steinberg in the Lee sublease-termination matter reasonably may have been affected by the Accused's financial, business, property or personal interests as a principal in the Sterling Group and its interest in purchasing the Salatto and leasing the Salatto premises.

11.

The interests of the Sterling Group in purchasing the Salatto restaurant and leasing the premises differed from the interests of Steinberg as seller and lessor or sublessor. Nevertheless, Steinberg expected the Accused to exercise his independent professional judgment on Steinberg's behalf insofar as the Lee sublease-termination matter was concerned.

12.

The interests of the Sterling Group in purchasing the Salatto restaurant and leasing the premises were objectively adverse to the interests of Steinberg.

13.

To the extent that full disclosure and consent were available to cure any conflicts of interest described herein, the Accused failed to make full disclosure to and obtain consent from Sterling or Steinberg before he proceeded to represent them.

Violations

14.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-101(A), DR 5-104(A), and DR 5-105(E).

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 lawyer’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 loyalty to a current client. *Standards*, § 4.3.

B. *Mental State*. “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*, at 7.

The Accused was negligent in realizing that his representation of Steinberg in the termination of the Lee tenancy gave rise to conflicts of interests because of Sterling’s desire to purchase and lease the Salatto space.

C. *Injury*. Injury can be either actual or potential. In this case, there was potential injury to Steinberg and Sterling in that neither client was given an opportunity to consent to the conflicts of interests after full disclosure under DR 10-101(B).

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 motive. *Standards*, § 9.32(b).
3. Cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

16.

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

17.

Prior Oregon authority suggests that a reprimand is appropriate. *In re Cohen*, 316 Or 657, 664, 853 P2d 286 (1993); *In re Trukositz*, 312 Or 621, 634, 825 P2d 1369 (1992); *In re Carey*, 307 Or 315, 767 P2d 438 (1989); *In re Harrington*, 301 Or 18, 33–34, 718 P2d 725 (1986).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A), DR 5-104(A), and DR 5-105(E).

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 under the terms of BR 3.6.

EXECUTED this 28th day of November 2005.

/s/ Daniel W. Dickerson

Daniel W. Dickerson

OSB No. 98049

EXECUTED this 30th day of November 2005.

OREGON STATE BAR

By: /s/ Lia Saroyan

Lia Saroyan

OSB No. 83314

Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of) Case Nos. 04-135, 05-102
)
TODD A. PETERSON,)
)
Accused.)

Counsel for the Bar: Sonia A. Montalbano; Martha A. Hicks
Counsel for the Accused: John M. Petshow
Disciplinary Board: None
Disposition: Violation of Oregon RPC 4.2. Stipulation for
Discipline. 30-day suspension.
Effective Date of Order: February 2, 2006

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 February 2, 2006, for violation of Oregon Rule of Professional Conduct 4.2.

DATED this 11th day of December 2005.

/s/ Michael C. Zusman
Michael C. Zusman, Esq.
State Disciplinary Board Chairperson

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1991, 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 28, 2005, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 1-103(C), DR 6-101(A), and ORPC 4.2. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On or about March 26, 2003, the Accused undertook to represent Bradley Nikko (hereinafter “Nikko”) in a personal injury matter. On or about August 30, 2004, Nikko terminated the Accused’s employment and retained new counsel to represent him in the personal injury matter. At all relevant times herein, the Accused knew Nikko was represented by other counsel in the personal injury matter.

6.

Beginning in about September 2004, a dispute arose between the Accused and Nikko about the amount of the Accused’s fee and his entitlement to a lien against any proceeds from the settlement of the personal injury matter to secure the fee. Nikko’s new counsel undertook to represent Nikko in this dispute. At all relevant times herein, the Accused knew Nikko was represented by other counsel in the

dispute about the amount of the Accused's fee and his entitlement to a lien against any settlement proceeds.

7.

On January 19, 2005, the Accused communicated directly with Nikko by letter on the subject of the personal injury matter, the amount of his fee, and his entitlement to recover his fee from the proceeds of the settlement of the personal injury matter as follows:

"I contacted Country Insurance to inquire about the status of your case. They have informed me that Mr. Morrison, who told me he was your attorney, has yet to send them a letter stating he was actually representing you.

It is my belief that Mr. Morrison will not represent you as he knows the current offer of \$15,000 is the carrier's final position, and as indicated below, it is outside of recent verdicts on cases like yours.

Your case may indeed be in jeopardy. Your statute of limitations will run on March 12, 2005. Unless the case is settled or filed before then you will have no recovery whatsoever.

My proposal to you is this: sign the enclosed settlement statement and authorization to settle and your case will be concluded. I earlier wanted to discuss your case, but you elected to (retain?) new counsel ie (sic) apparently, Mr. Morrison."

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated ORPC 4.2.

Upon further factual inquiry, the parties agree that the charges of alleged violations of DR 1-103(C) and DR 6-101(A) 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 lawyer's mental state; (3) the actual or potential injury; and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The Accused violated his duty to the legal system to refrain from improperly communicating with an opposing party. *Standards*, § 6.6.

B. *Mental State*. The Accused acted intentionally in contacting Nikko. *Standards*, at 7.

C. *Injury*. Nikko was exposed to potential injury by the Accused's communication with him: the Accused's January 19, 2005, letter might have caused Nikko to act to his detriment without the advice of counsel. *Standards*, at 6.

D. *Aggravating Factors*. Aggravating factors include:

1. The Accused acted with a selfish motive. *Standards*, § 9.22(b).
2. The Accused had substantial experience in the practice of law, having been admitted to the Bar in 1991. *Standards*, § 9.22(i).

E. *Mitigating Factors*. Mitigating factors include:

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

10.

Standards § 6.32 suggests that suspension is generally appropriate when a lawyer engages in communication with an individual in the legal system when the lawyer knows that such communication is improper and causes injury or potential injury to a party.

11.

Oregon case law is in accord. See *In re Lewelling*, 296 Or 702, 678 P2d 1229 (1984) (lawyer suspended for violation of DR 7-104(A)(1) and DR 7-105(A)); *In re Knappenberger*, 338 Or 341, 108 P3d 1161 (2005) (lawyer suspended for two violations of DR 7-104(A)(1) and DR 5-105(C)).

12.

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 ORPC 4.2, the sanction to be effective beginning on February 2, 2006.

13.

In addition, on or before March 3, 2006, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$655.30, incurred for the Accused's deposition. Should the Accused fail to pay \$655.30 in full by March 3, 2006, 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.

14.

The terms of this Stipulation for Discipline were approved by the Chair of the SPRB on December 2, 2005, and are subject to review by Disciplinary Counsel of

Cite as *In re Peterson*, 19 DB Rptr 368 (2005)

the Oregon State Bar. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration under the terms of BR 3.6.

EXECUTED this 5th day of December 2005.

/s/ Todd A. Peterson

Todd A. Peterson

OSB No. 91394

EXECUTED this 6th day of December 2005.

OREGON STATE BAR

By: /s/ Martha M. Hicks

Martha M. Hicks

OSB No. 75167

Assistant Disciplinary Counsel

Cite as 339 Or 595 (2005)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:)
)
Complaint as to the Conduct of)
)
GRAEME H. STRICKLAND, JR.,)
)
Accused.)

(OSB No. 04-32; SC S52490)

En Banc

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

Argued and submitted November 1, 2005. Decided December 15, 2005.

Graeme H. Strickland, Jr., Lake Oswego, 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.

PER CURIAM

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

SUMMARY OF THE SUPREME COURT DECISION

The Accused was convicted of three crimes: improper use of the emergency reporting system, ORS 165.570; initiating a false report, ORS 162.375; and disorderly conduct, ORS 166.025. As a result of those convictions, the Oregon State Bar charged the Accused with violating ORS 9.527(2) and Oregon Code of Professional Responsibility Disciplinary Rules (DR) 1-102(A)(2) and DR 1-102(A)(3). A trial panel of the Disciplinary Board concluded that the Accused was guilty of all disciplinary charges, and it imposed a three-year suspension from the practice of law. The Accused appealed. *Held:* The Accused violated DR 1-102(A)(2) and (3). The Accused is suspended from the practice of law for a period of one year, effective 60 days from the date of filing of this decision.

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