DISCIPLINARY BOARD REPORTER

VOLUME 21

January 1, 2007, to December 31, 2007

Report of Lawyer Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2007

16037 S.W. Upper Boones Ferry Rd.
Tigard, OR 97024
(503) 620-0222 *or*
(800) 452-8260 (toll-free in Oregon), ext. 394

DISCIPLINARY BOARD REPORTER

Report of Lawyer Discipline Cases
Decided by the
Disciplinary Board
and
Oregon Supreme Court
for 2007

VOLUME 21

January 1, 2007, to December 31, 2007

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 2007 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 21 DB Rptr ___ (2007).

In 2007, 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 38 of the OSB 2008 Membership Directory or www.osbar.org, click on Rules, Regs & Policies) 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 the Public Records Coordinator at extension 394, 503-620-0222 or (800) 452-8260 (toll-free in Oregon). Final decisions of the Disciplinary Board issued on or after January 1, 2008, are also available at the Oregon State Bar Web site, www.osbar.org. Please note that the statutes, disciplinary rules, and rules of procedure cited in the opinions are those in existence when the opinions were issued. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

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

JEFFREY D. SAPIRO
Disciplinary Counsel
Oregon State Bar

CONTENTS

Justices of the Oregon Supreme Court

Paul J. De Muniz, Chief Justice
Thomas A. Balmer
Robert D. Durham
W. Michael Gillette
Rives Kistler
Martha Lee Walters
Virginia L. Linder

2008
Oregon State Bar Board of Governors

Richard S. Yugler, President
Gerry Gaydos, President-Elect
Timothy C. Gerking, Vice President
Carol DeHaven Skerjanec, Vice President
Bette L Worcester
S. Ward Greene
Robert L. Vieira
Theresa L. Wright
Kathleen A. Evans
Ann L. Fisher
Kellie F. Johnson
Robert M. Lehner
Gina Anne Johnnie
Christopher H. Kent
Audrey T. Matsumonji
Stephen V. Piucci

Karen L. Garst, Executive Director

2008
State Professional Responsibility Board

John F. Folliard, Chair
Richard H. Braun
Liz Fancher
David W. Hittle
James A. Marshall
Martha J. Rodman
Jana Toran
Jolie Krechman
Linda Lee Lynch

2008 DISCIPLINARY BOARD

State Chair
Susan G. Bischoff

State Chair-Elect
Greg Skillman

Region 1
Carl W. Hopp Jr., Chair
John A. Berge
William E. Flinn
Paul B. Heatherman
Darcy A. Kindschy
Thomas J. Maresh (Public Member)
John G. McBee (Public Member)
William J. Olsen (Public Member)
Ronald L. Roome
James R. Uerlings

Region 2
Gregory E. Skillman, Chair
James (Jerry) Casby
Jack A. Gardner
Mitchell P. Rogers (Public Member)
Jens Schmidt
Audun (Dunny) Sorensen (Public Member)
Laurence E. Thorp

Region 3
R. Paul Frasier, Chair
Megan Annand
Peggy Austin
John L. Barlow
James R. Dole
Philip Duane Paquin (Public Member)
Thomas W. Pyle (Public Member)

Region 4
Arnold S. Polk, Chair
William G. Blair
Loni J. Bramson (Public Member)
Craig A. Crispin
Allen M. Gabel (Public Member)
Colin D. Lamb
Pamela E. Yee

Region 5
William Crow, Chair
F. Gordon Allen
Ronald W. Atwood
Alan M. Bacharach (Public Member)
C. Lane Borg
Anthony A. Buccino
Lisanne Butterfiled
Nancy Cooper
Howard I. Freedman (Public Member)
Gail C. Gengler (Public Member)
David Green
Stephen A. Kosokoff (Public Member)
John L. Langslet
Milton C. Lankton
Michael R. Levine
Charles H. Martin (Public Member)
Patricia Martin (Public Member)
Charles J. Pasternoster
Gerard P. Rowe
John Rudoff (Public Member)
Harry L. Turtledove (Public Member)
Norman Wapnick
Ulanda Watkins
Lee Wyatt
Michael C. Zusman

Region 6
Gilbert B. Feibleman, Chair
Walter A. Barnes
James C. Edmonds
Llewellyn M. Fischer
Martin Johnson MD (Public Member)
W. Bradford Jonasson
Joan J. LeBarron (Public Member)
Richard M. Miller (Public Member)
Irene Bustillos Taylor
James D. Van Ness
Robert P. Welch (Public Member)
Mary Kim Wood

2007 DISCIPLINARY BOARD

State Chair
Hon. Jill A. Tanner

State Chair-Elect
Susan G. Bischoff

Region 1
Carl W. Hopp Jr., Chair
William E. Flinn
Paul B. Heatherman
Darcy A. Kindschy
Thomas J. Maresh (Public Member)
John G. McBee (Public Member)
William J. Olsen (Public Member)
Ronald L. Roome
James R. Uerlings
John A. Berge

Region 2
Gregory E. Skillman, Chair
Mitchell P. Rogers (Public Member)
James (Jerry) Casby
Jack A. Gardner
Jens Schmidt
Audun (Dunny) Sorensen (Public Member)
Laurence E. Thorp

Region 3
R. Paul Frasier, Chair
Megan Annand
Peggy Austin
John L. Barlow
Dwayne R. Murray
Philip Duane Paquin (Public Member)
Thomas W. Pyle (Public Member)

Region 4
Arnold S. Polk, Chair
William G. Blair
Loni J. Bramson (Public Member)
Craig A. Crispin
Allen M. Gabel (Public Member)
Colin D. Lamb
Pamela E. Yee

Region 5
Susan G. Bischoff, Chair
F. Gordon Allen
Ronald W. Atwood
Alan M. Bacharach (Public Member)
C. Lane Borg
Anthony A. Buccino
Lisanne Butterfiled
William B. Crow
Howard I. Freedman (Public Member)
Gail C. Gengler (Public Member)
David Green
Sandra Hansberger
Stephen A. Kosokoff (Public Member)
John L. Langslet
Milton C. Lankton
Michael R. Levine
Charles H. Martin (Public Member)
Patricia Martin (Public Member)
Gerard P. Rowe
John Rudoff (Public Member)
Harry L. Turtledove (Public Member)
Norman Wapnick
Ulanda Watkins
Lee Wyatt
Michael C. Zusman

Region 6
Gilbert B. Feibleman
Walter A. Barnes
James C. Edmonds
Llewellyn M. Fischer
Marvin C. Hines (Public Member)
W. Bradford Jonasson
Joan J. LeBarron (Public Member)
Robert P. Welch (Public Member)
Richard M. Miller (Public Member)
Irene Bustillos Taylor
James D. Van Ness
Mary Kim Wood

LIST OF CASES REPORTED

Volume 21
DB Reporter

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

Page No.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-33
	)	
PATRICK T. HUGHES,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	John Fisher
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B), RPC 1.3, and RPC 1.4(a). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	March 3, 2007

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 the 60th day after the date of this order, for violation of DR 6-101(B), RPC 1.3, and RPC 1.4(a).

DATED this 2nd day of January 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1999, and has been a member of the Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On April 12, 2006, 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) of the Code of Professional Responsibility, and RPC 1.3 and RPC 1.4(a) of the Oregon Rules of Professional Conduct. 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.

Between October 2002 and October 2004, the Accused undertook to represent insurance companies in four subrogation matters.

6.

In all four matters, the Accused periodically performed some work, but failed to take constructive action to advance the matters, failed to maintain adequate communications with his clients' representative, and failed to promptly comply with reasonable requests for information from his clients' representative.

Violations

7.

The Accused admits that by engaging in the conduct described in paragraphs 5 and 6, he violated DR 6-101(A), RPC 1.3, and RPC 1.4(a).

Sanction

8.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards,* § 3.0. Once the first three factors are analyzed, the Disciplinary Board should adjust the preliminary determination of the appropriate sanction based upon the existence of aggravating or mitigating circumstances, *In re Knappenberger II,* 337 Or 15, 30, 90 P3d 614 (2004), and then should examine prior case law.

A. *Duties Violated.* The Accused violated his duty to act with reasonable diligence and promptness in representing four clients. *Standards,* § 4.4.

B. *Mental State.* The Accused acted knowingly. He was aware, through multiple requests for information, that he was not attending to these legal matters but nonetheless failed to pursue them and failed to communicate with his clients' representative.

C. *Injury.* All four clients sustained actual injury in the form of frustration stemming from the Accused's failure to act and failure to communicate. *In re Schaffner,* 325 Or 421, 426–427, 939 P2d 39 (1997). One client sustained additional injury in that it was precluded from pursuing its claim because the Accused failed to file a lawsuit on its behalf within the applicable statute of limitations. It is not certain that this client would have been successful had it pursued the claim.

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

1. A pattern of misconduct. The Accused repeatedly failed to act and failed to respond to reasonable inquiries from his clients' representative in four separate matters over the course of a number of years. *Standards,* § 9.22(c). *See In re Schaffner,* 323 Or 472, 480, 918 P2d 803 (1996).

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

E. *Mitigating Circumstances.* 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. Personal issues. At the time of the some of the underlying events, the Accused's daughter was experiencing medical problems, which, in some respects, interfered in his ability to promptly pursue the four matters and adequately communicate with his clients' representative. *Standards,* § 9.32(c).

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

5. Remorse. *Standards,* § 9.32(m).

9.

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards*, §4.42(a). Suspension is also generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards,* § 4.42(b).

10.

Lawyers who have knowingly neglected a single legal matter have been suspended. *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (where the aggravating and mitigating circumstances were equipoise, a 60-day suspension was imposed on a lawyer who knowingly neglected a client's legal matter when, among other things, he failed to serve the defendants and file a proof of service within the time permitted by law); *In re Schaffner, supra,* (where the aggravating circumstances outweighed the mitigating circumstances, a lawyer was suspended for 120 days, 60 days of which were imposed because of the lawyer's knowing failure to pursue a legal matter, failure to return his clients' telephone calls, and failure to communicate important information to his clients).

In this matter, the Accused knowingly neglected four separate matters over the course of a number of years and his misconduct in one matter caused serious actual injury. However, the mitigating circumstances far outweigh the aggravating circumstances, and the lack of a prior disciplinary record is a strong mitigating circumstance. *In re Schaffner, supra*.

11.

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 6-101(B), RPC 1.3, and RPC 1.4(a), the sanction to be effective the 60th day after this Stipulation for Discipline is approved by the Disciplinary Board.

12.

In addition, on or before the Accused is eligible to be reinstated to the practice of law, the Accused shall pay to the Bar its reasonable and necessary costs in the amount of $800.55, incurred for deposition costs. Should the Accused fail to pay $800.55 in full by the date he is eligible to be reinstated to the practice of law, 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 Bar and to approval by the SPRB. If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 13th day of November 2006.

/s/ Patrick T. Hughes
Patrick T. Hughes
OSB No. 99061

EXECUTED this 16th day of November 2006.

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. 04-133, 04-134,
	)	and 05-08
STEVEN BLACK,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stephen R. Blixseth; Martha M. Hicks
Counsel for the Accused:	Stephen R. Moore
Disciplinary Board:	Dwayne R. Murray, Chair; Judith H. Uherbelau; Thomas Pyle, Public Member
Disposition:	Violation of DR 1-102(A)(4), DR 1-103(C), and DR 6-101(A). Trial Panel Opinion. One-year suspension.
Effective Date of Opinion:	January 9, 2007

TRIAL PANEL OPINION

INTRODUCTION

This matter came before a duly constituted trial panel of the Disciplinary Board of the Oregon State Bar on May 15, 16, and 17, 2006, in Corvallis, Benton County, Oregon. The panel was Dwayne R. Murray, Esq., Chair, Judith H. Uherbelau, Esq., Panel Member, and Thomas W. Pyle, Public Member. The Accused was present and represented by Stephen R. Moore, Esq., Stephen R. Blixeth, Esq., and Martha M. Hicks, Esq. Disciplinary Counsel represented the Bar.

The Trial Panel has considered the pleadings, trial memoranda, and arguments of counsel. The Trial Panel also considered all testimony and exhibits presented by the parties.

The Accused is Corvallis attorney Steven Black.

The Bar has alleged the following violations for conduct, with one exception, occurring prior to January 1, 2005.

Kimball Craig Matter

1. DR 5-105(E) (Current client conflict of interest)

2. DR 1-103(C) (Failure to respond fully and truthfully to OSB inquiry)

Jeremy Cobb Matter

1. DR 1-102(A)(3) (Engage in conduct involving dishonesty, fraud, deceit or misrepresentation)

2. DR 1-102(A)(4) (Engage in conduct prejudicial to the administration of justice)

3. DR 7-102(A)(5) (Kowingly make a false statement of law or fact)

Jaemyong Chang Matter

1. DR 1-102(A)(2) (Commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or ability to practice law)

2. DR 1-102(A)(3) (Engage in conduct involving dishonesty, fraud, deceit or misrepresentation)

3. DR 1-102(A)(4) (Engage in conduct prejudicial to the administration of justice)

4. DR 6-101(A) (A lawyer shall provide competent representation to a client)

5. DR 7-102(A)(5) (Knowingly make a false statement of law or fact)

OPINION OF TRIAL PANEL

CRAIG MATTER

Findings of Fact:

1.

The Accused was appointed by the Benton County Circuit Court in or about July 2003 to represent and defend Kimball Craig in four criminal cases involving: a) possession of a controlled substance 1; b) manufacture / delivery of a controlled substance SC 2; c) possession of a controlled substance 2; and d) two counts of theft involving a bicycle. The Accused was the sixth court-appointed attorney and the seventh attorney overall to represent Craig in these matters.

2.

The Accused did not review all of the material supplied to him during discovery. The accused specifically admitted to not having read the discovery material involving the theft charges. The discovery material contained a police report stating

that a Benton County Deputy Sheriff had been told by Craig that Craig had received the subject stolen bicycle from Cindy Sullivan.

3.

The Accused was later appointed in August of 2003 to represent Cindy Sullivan in another criminal matter. The Accused accepted the appointment despite his continued representation of Craig.

4.

The Accused thought he had discussed a potential conflict with both Craig and Sullivan sometime before he brought the conflict objection of Craig to the attention of the court on December 9, 2003, at the pretrial just prior to Craig's scheduled trial on the drug charges. The court denied Craig's request for new counsel.

5.

During the several court appearances leading up to the first Craig trial the theft cases were "tracking" along with the drug matters but not actively pursued by the prosecution. The prosecutor felt that the strength of the drug cases and the expected conviction on those matters would make a plea negotiation on the theft charges likely. Sullivan was not charged nor called as a witness in the Craig theft matters. Sullivan was not involved in any way with the drug charges against Craig.

6.

In response to the Bar's inquiry into the Craig complaint the Accused made the following statements:

A. "Cindy Sullivan's name was not in any of the police reports for any of Mr. Craig's 3 cases, although one of the cases involved allegations that he knowingly received a stolen bicycle";

B. " . . . both he [Craig] and Cindy Sullivan had agreed, on the record at the last proceeding, that I could continue to represent him";

C. "I reviewed the police reports and notes provided by the prior attorneys to see if any allegations involved present clients"; and

D. "[Craig] originally retained a local attorney to represent him. He discharged the retained attorney and was appointed an attorney, he discharged that attorney and was appointed another, he discharged that attorney and was appointed another, he discharged that attorney. . . ."

In preparing these responses the Accused had only reviewed one of four files assigned to him for Craig. The other three had previously been transferred to another attorney. Statement A was false. Statement B may be false. Statement C was partially false and D was not false.

7.

The Accused was admitted to the practice of law in Oregon in 1978.

Discussion

The Accused clearly represented two different clients on two separate criminal matters at the same time. The question, however, is whether DR 5-105(E) was violated.

The second appointment (Sullivan) was some two months subsequent to the court appointing the accused to represent Craig. Sullivan was a potential witness in the theft cases charged by the Benton County prosecutor. The Accused was not aware and therefore Craig was not aware of the potential or actual conflict until shortly before December 9, 2004, when the conflict was brought before the court by the Accused on Craig's objection. The Accused maintained that he had specific approval from both clients to continue representation of both. The only evidence of this notice is the transcript of December 9, 2004 (Ex. 2), wherein the court denies the request for new counsel by Craig based on arguments that the Accused was the seventh attorney in this matter that had begun 14 months earlier and another attorney for the defendant would force further delay.

The subject Disciplinary Rule reads as follows:

> DR 5-105 Conflict of Interest: Former and Current Clients
>
> (A) Conflict of Interest. A conflict of interest may be actual or likely.
>
> (1) An "actual conflict of interest" exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client.
>
> (2) A "likely conflict of interest" exists in all other situations in which the objective personal, business or property interests of the clients are adverse. A "likely conflict of interest" does not include situations in which the only conflict is of a general economic or business nature. . . .
>
> (E) Current Client Conflict-Prohibition. Except as provided in DR 5-105(F), a lawyer shall not represent multiple current clients in any matters when such representation would result in an actual or likely conflict.

The court (Judge Locke Williams) ruled against the request (Bar Ex. 2), saying it was "not made timely."

Judge Williams, in testimony to the Black trial panel, said that Craig was what he termed a "problem client" who regularly had conflicts with his attorneys. Williams added that had he ruled in his favor, it would have delayed Craig's trial. John Rich became Craig's new counsel on or about February 18, 2004 (Defense Ex. 7).

The trial panel finds that the Accused was not in violation of DR 5-105(E) as a result of his concurrent representation of Kimball Craig and Cindy Sullivan based upon the following:

(1) There is no evidence presented or testimony given that would lead the panel to believe Sullivan would be called as a witness in Craig's trial on possession / delivery / manufacture of a controlled substance, and she was not called;

(2) Testimony indicated the prosecution did not intend to try the other cases against Craig at the same time as the first charge, and, in fact, hoped to not try them at all (meaning Sullivan would not be called to testify at any time against Craig), and did not try them at all;

(3) There was no testimony given or other evidence presented that Craig would be or was ever called to testify in a trial of Sullivan or, in fact, that there ever was any such trial held during or after Black's representation of Craig;

(4) There was a potential conflict if Sullivan were to testify in the drug trials of Craig. There would be a conflict if Sullivan was required to testify in the theft case. Neither of these occurred. The court was presented with the conflict facts and the court ruled against Craig's motion for substitute counsel.

The Accused did not violate DR 5-105(E).

The Bar further alleges that, in making the above representations, the Accused violated DR 1-103(C) of the Code of Professional Responsibility in that he "failed to respond fully and truthfully to inquiries from or cooperate with Disciplinary Counsel's Office, which is empowered to investigate or act upon the conduct of lawyers."

In testimony before the trial panel, counsel for the Accused clarified Black's responses to the charges, stating that he admitted to making all four representations and admitted the falsity of statement A (in Bar Ex. 24), but denied the falsity of statements B, C, and D.

With regard to representation B (in Bar Ex. 24), Black said he was convinced that when he first met with his counsel in the disciplinary proceeding, he had participated in a conversation with Craig and Sullivan in which they waived any conflict that might be present, and that he put that waiver on record. He testified, however, that he tried in vain to find anything to substantiate this claim. The accused stated that the conversation may have happened immediately before the court clerk went on record for the pretrial motion by Craig (Bar Ex. 2) seeking substitute counsel.

When asked, "You still to this day believe that you did put something on the record at some occasion when both Mr. Craig and Ms. Sullivan were in court at the same time?" the Accused replied, "Right. And the record shows that I did put something on the record the morning of the trial" (Tr 589).

While it is clear that there is no evidence that the conference did in fact happen, there is no evidence that the Accused knew his statement asserting that it took place was possibly erroneous at the time he made it in his letter to the Bar and in later testimony to the trial panel.

With regard to representation C, the Accused testified that he had only one file to refer to when he made the statement in a March 7, 2004, letter to the Bar (Bar Ex. 25) and that he read all the police reports in that particular file. He said the statement was true when he made it. He did not, he said, review police reports in the other three files "that I didn't have at the time I made the response to the bar." The statement to the Bar did not clearly make that distinction.

Rich also told the panel that when he took over representation of Craig after Black resigned, he (Rich) received files on the three unresolved cases, but not the one already tried when Black was Craig's counsel. Rich further testified that, after he got the files, he showed Black the theft case which mentioned Sullivan's name.

In his March 7, 2004, letter to the Bar, the Accused answered the question as though he thought it made reference to files in his possession on the date he responded to the Bar's February 11, 2004, letter indicating Craig had concerns about the Accused's conduct while representing Craig. There is a distinct possibility, however, that the alleged false statement in his March 7 letter was in reference to files Black had in his possession on or before Craig's December 9, 2003, trial date, and not on the date of the letter.

The Accused's letter appears to indicate that he searched police reports (which in his answer to allegation A above, he admits he did not) a week before the trial. Black has admitted this was false.

With regard to representation D, the Accused, in his amended answer to the amended formal complaint, states Craig retained Richard Wehmeyer "and subsequently fired him, followed by several appointed attorneys." Wehmeyer testified before the trial panel that he withdrew as Craig's attorney because of a "difference of opinion" with Craig.

Exhibit 21 includes motions to withdraw from Craig attorneys Clark Willes, Nicholas Ortiz, and Robert Corl, in which each cited a conflict of interest regarding a witness as their reason for withdrawing; none said anything about conflicts with his client.

Corl, however, testified to the panel that he did not want to represent Craig because of problems Wehmeyer had with him—problems that he agreed could either lead a lawyer to get fired or resign—so he instructed his secretary to find a conflict that could get him out of it.

The Accused maintains Craig told him he "fired his prior appointed attorneys" because they refused to file a motion to suppress, leading Black to believe his (Black's) statement to the Bar was true when he made it. The trial panel heard nothing, other than the Accused's testimony, to indicate that Craig discharged the attorneys. Whether former counsel were fired or withdrew is a distinction without a difference in this matter.

Craig claimed in his April 19, 2004, letter to the Bar that the attorneys "disqualified themselves" and "the record shows I fired no one." And in his March

26, 2004, letter to the Bar he states, "The reasons 4 of the other attorneys withdrew I repeat withdrew [his underlines] were for conflicts."

Withdrawing as opposed to being fired may have ramifications important in some contexts, but the panel does not attach any significance to the distinction in terms in this matter.

The Bar has shown that the Accused made misleading statements in responses A and C but failed to prove by clear and convincing evidence that the Accused violated DR 1-103(C) by making statements B and D.

COBB MATTER

Findings of Fact

8.

The Accused was appointed in or about June 2003 to represent Cobb in criminal charges of Assault IV and Criminal Mischief II.

9.

On or about December 9, 2003, Cobb was found guilty of the crimes with which he was charged. A sentencing hearing was held on or about February 24, 2004, and the court set a hearing on the issue of restitution for March 25, 2004.

10.

The Accused made attempts on March 24, 2004, to reschedule the restitution hearing set for March 25, 2004, by first speaking with the court calendaring clerk and then the Assistant District Attorney John Haroldson. The court clerk indicated the case would be rescheduled if the assistant district attorney agreed. The Accused met personally with John Haroldson and secured his agreement to reset the matter. The Accused then confirmed the agreement with the calendaring clerk and believed the matter was reset. The Accused did not reconfirm with Haroldson as requested by Haroldson. The Accused believed he had successfully accomplished the postponement and informed Cobb that it was postponed and that Cobb need not appear for the hearing on the 25th. The restitution hearing had not been successfully rescheduled and took place on March 25, 2004. Neither the Accused nor Cobb appeared at the March 25, 2004, hearing. The court ordered Cobb to pay restitution in the amount of $28,000.

11.

A letter from the Accused to Cobb dated April 14, 2004, explaining the events of the restitution hearing, the $28,000 judgment against Cobb, and the potential claim against the Accused was returned marked "no forward order on file." Cobb did not get actual notice of the restitution order and judgment against him until a telephone

conversation between the Accused and Cobb on or about April 26, 2004, according to the Accused, or May 3, 2004, according to Cobb.

12.

The Accused submitted a series of three affidavits in his attempt to have the $28,000 restitution judgment reconsidered or set aside. The first affidavit, dated March 31, 2004, and court stamped March 31, 2004, contained factual errors to which the Accused attested. The Accused believed his statements to be true at the time he made the affidavits.

13.

The restitution summary analysis normally supplied to defense counsel by the District Attorney's office before a restitution hearing was mailed to the Accused on March 24, 2004. The Accused would not have received the summary prior to the scheduled hearing which would have resulted in a probable postponement of the hearing (Tr. 494–495).

14.

The Accused submitted a second affidavit, also dated March 31, 2004, and date stamped on April 1, 2004, withdrawing his erroneous accusations about Haroldson and correcting his belief that another attorney had been present at the restitution hearing.

Discussion

The issue is whether the Accused knew or should have known that the affidavits he submitted to the court were factually wrong.

The first affidavit dated March 31, 2004, court date stamped March 31, 2004, alleged that the opposing Assistant District Attorney Haroldson had not properly informed the court of the agreed postponement. This was not true. Haroldson brought the court's attention to the fact that he and the Accused had spoken of a postponement. The court checked with the docket clerk and was misinformed when told that the defendant was to appear alone. This was true of another of the Accused's cases involving Mr. Bettleyoun but not Cobb. The second affidavit prepared later the same day but filed with the court the next day withdrew substantially all of the erroneous statements in the first.

The Accused is guilty of making untruthful statements in his affidavit. There is nothing in the record that convinces this panel that the Accused maliciously or intentionally misstated anything in his affidavit. He should have checked his facts more thoroughly before swearing to anything. However, because of the immediate submission of a corrective affidavit the next day (which had evidently been prepared later the same day as the first) it is hard for the panel to believe there was any intent

to falsely swear. The Bar's burden of proof by clear and convincing evidence has not been met with regard to the allegations of misconduct in the Cobb matter.

CHANG MATTER

Findings of Fact:

15.

On or about December 6, 2000, the Accused undertook to represent Jaemyong Chang in the defense of two felony criminal charges: delivery of a Schedule II controlled substance (cocaine)—substantial quantity, in violation of ORS 475.992(1)(B); and possession of a Schedule II controlled substance (cocaine)—substantial quantity, in violation of ORS 475.992(4)(B).

16.

At all relevant times herein, Chang was a permanent resident of the United States, but not a citizen.

17.

During the course of the Accused's representation of Chang, the Accused acted as follows:

A. Negotiated an agreement whereby Chang plead guilty to the charge of delivery of a Schedule II controlled substance (cocaine)—substantial quantity, without knowledge of the consequences to Chang of entering into such an agreement.

B. Advised Chang that a plea of guilty to a charge of delivery of a Schedule II controlled substance (cocaine)—substantial quantity would not result in his being deported.

C. Failed to perform adequate legal research to support the advice described in paragraphs A and B.

D. Failed to provide Chang with the documents he received from the District Attorney's office in discovery.

E. Failed to provide Chang with a copy of an offer from the District Attorney's office for the plea agreement described in paragraph 23 B herein.

18.

Before March 18, 2002, Chang filed a petition for postconviction relief in the criminal matter based upon the Accused's actions described in paragraphs A and B above and alleged ineffective assistance of counsel. On March 18, 2002, a hearing was held in the postconviction relief proceeding and the Accused testified at that hearing.

19.

The Accused testified under oath at Chang's postconviction relief hearing and made the following statements under oath:

A. None of the discovery he received from the District Attorney's office indicated that Chang was not a citizen of the United States.

B. He recalled that there were no police reports discussing Chang's immigration status.

C. In answer to a question from the Accused, Chang had told him he was from California or Portland.

D. As far as the Accused knew, Chang's nationality was Korean, but he was an American citizen.

E. He had had absolutely no discussions with Chang wherein Chang had asked whether or not be would be deported for the criminal charges.

F. He recalled going over the police reports with Chang.

G. A police report authored by Detective Aaron Davis was not provided to him by the District Attorney's office as part of discovery; and

H. He had recently realized that Chang was not a citizen of the United States, and he had not received this information from Chang or from Chang's brother.

Discussion

The Accused's false statements present serious concern in all three cases. His lack of memory, failure to review police reports, and misstatement of the law have made the Accused guilty of ineffective and imprecise representation of his clients. It has also made him guilty of negligence. However, it is the opinion of the Panel that the Bar has failed to prove by clear and convincing evidence that the Accused knowingly and intentionally lied to his clients, the Bar, or under oath at hearing. The Bar argues that accused lawyers rarely if ever admit to knowingly making false statements and that the Panel should infer this knowledge. There is evidence that the Accused should have known or with additional care and preparation he would have known of the falsity of his statement. His statement to the Bar implied that he had reviewed reports in all relevant files when he had not and this was misleading.

The Panel simply is not compelled by this evidence to conclude actual knowledge and therefore intentional false or misleading statements.

Sanction

The Bar has argued that the appropriate penalty for violation of the ten separate counts in the three cases is disbarment, and cites *In re Gustafson*, 333 Or 468, 41 P3d 1063 (2002) as support. The Accused has suggested less than two years' suspension in accordance with *In re Davenport*, 334 Or 298, 49 P3d 91 (2002) and *In re Gustafson* as well.

The *ABA Standards for Imposing Lawyer Sanctions, Section 3* (hereinafter "*Standards*") indicate that we should consider the following factors in considering an appropriate sanction:

1. The duty violated;

2. The lawyer's mental state;

3. The actual or potential injury caused by the lawyer's conduct; and

4. The existence of aggravating or mitigating factors.

Duty: We find the Accused failed his duty of competent representation, failed his duty to fully and fairly inform the Bar of the facts, and therefore his duty not to prejudice the administration of justice.

Mental State: We find the Accused's mental state to be negligent but not intentional.

Actual or potential Injury: We find the actual or potential injury caused by the Accused's conduct to be extreme because one of his clients was deported and denied the right to live in the United States. The profession was also harmed because the Accused did not competently handle the Chang matter.

Aggravating and mitigating factors:

We find the following aggravating factors:

1. Prior disciplinary offenses. Public reprimand in 1992 involving *inter alia* failure to respond to Bar inquiries. And 1996 public reprimand involving violation of DR 1-102(A)(3). *Standards,* § 9.22(a).

2. A pattern of misconduct involving multiple offenses. *Standards,* §§ 9.22(c) and (d). The Accused has three separate cases in which carelessness, negligence, or incompetence were central issues.

3. Vulnerability of the victims. *Standards,* § 9.22(h).

4. Substantial experience in the practice of law. The Accused was admitted to the practice of law in 1978. *Standards,* § 9.22(h).

We find the following relevant mitigating factors:

1. The Accused was enduring personal or emotional problems marriage separation, without office support staff, and losing clientele. *Standards,* § 9.32(c).

2. The Accused made a timely good faith effort to rectify the consequences of his misconduct by submitting additional corrective affidavits in the Cobb matter and by testifying at the Chang postconviction relief hearing. *Standards,* § 9.32(d).

3. The Accused expressed and demonstrated a cooperative attitude towards proceedings. *Standards,* § 9.32(e).

4. The Accused is remorseful for his conduct. *Standards,* § 9.32(m).

5. Remoteness of prior offenses. *Standards,* § 9.32(n).

Sanction Analysis

The Bar is advocating disbarment while the Accused, conceding some violations, maintains no more than a two year suspension is appropriate.

The Accused has been a criminal defense lawyer for many years, having been admitted to practice in Oregon in 1978. The conduct documented in these matters demonstrates a repeated carelessness and negligence about clients' substantive and procedural rights. All clients have some degree of vulnerability but Chang had a particularly high degree of risk which initially was not dealt with on a level demanded of all lawyers. Chang's consequences were extreme. He may well have been punished in the same manner if given competent advice from the outset. In fact Chang chose to re-plead to the offenses a second time and was consequently deported; however, that result does not relieve the Accused.

The Accused convincingly testified to the panel of his remorse for his actions and inaction. He also convinced this panel that he did not, with one exception, intentionally lie or mislead clients, the Bar, or the courts.

We have weighed the factors listed above and reviewed the cases that we believe to be relevant as well as those propounded by the parties listed below.

In re Gustafson, 333 Or 468, 41 P3d 1063 (2002)

In re Holman, 297 Or 36, 682 P2d 243 (1984)

In re Kluge, 332 Or 251, 27 P3d 102 (2001)

In re Kluge, (OSB 98-23; SC S49334)

In re White, 311 Or 573 (1991)

In re Davenport, 334 Or 298 (2002)

In re Wyllie, 327 Or 175 (1998)

In re Martin, 28 Or 177 (1998)

In re Claussen, 322 Or 466 (1996)

In re Morris, 326 Or 493 (1998)

In re Jones, 326 Or 195 (1997)

The factors here warrant a suspension from the practice of law for a period of one year.

Conclusion

We find that the Accused has violated DR 1-103(C) in the Craig matter and DR 1-102(A)(4) and DR 6-101(A) in the Chang matter. We find that the Accused has not violated: DR 5-105(E) in the Craig matter, DR 1-102(A)(3), DR 1-102(A)(4), or

DR 7-102(A)(5) in the Cobb matter, nor DR 1-102(A)(2), DR 1-102(A)(3), nor DR 7-102(A)(5) in the Chang matter.

The Accused is suspended from the practice of law for a period of one year.

DATED this 31st day of October 2006.

/s/ Dwayne T. Murray
Dwayne T. Murray
Trial Panel Chair

/s/ Judith Uherbelau
Judith Uherbelau
Trial Panel Member

/s/ Thomas 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. 06-131
	)	
JASON C. McBRIDE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3. Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	January 9, 2007

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 RPC 1.3.

DATED this 9th day of January 2007.

/s/ Jill A. Tanner
Jill A. Tanner, Esq.
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 2003, 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 18, 2006, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violation of RPC 1.3 [neglect of a legal matter] 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.

In March 2005, Traci Marsh (hereinafter "Marsh") hired the Accused to garnish her former husband's salary pursuant to a monetary judgment. She provided the Accused with a $1,500 retainer. Thereafter, the Accused took very little action on Marsh's behalf.

6.

After hearing nothing for several months, Marsh contacted the Accused in November 2005, and was informed by the Accused that the bank garnishment could not be done. Marsh sent subsequent e-mails requesting advice on what could be done to pursue collection of the judgment. The Accused finally responded to Marsh's e-mails at the end of December, but provided no substantive information on the garnishment proceeding.

7.

When Marsh met with the Accused in January 2006 on another matter, she inquired as to the status of the garnishment. The Accused discussed possible options with Marsh. However, he thereafter failed to implement the discussed alternatives.

8.

In May 2006, in response to a letter of complaint from Marsh, the Accused withdrew from the garnishment matter, refunded Marsh's $1,500 retainer, and apologized for failing to attend to the matter.

Violations

9.

The Accused admits that by engaging in the conduct described in this stipulation, he neglected Marsh's legal matter in violation of RPC 1.3.

Sanction

10.

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

A. *Duty Violated.* The Accused violated his duty of diligence to his client. *Standards*, § 4.4. The *Standards* assume that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5.

B. *Mental State.* Initially, the Accused's inattention to Marsh's garnishment matter may have been negligent. 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. However, within a short period of time, Marsh's inquiries on the status of garnishment made the Accused's avoidance of the matter knowing. 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. *Id.*

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused's inaction caused actual injury to Marsh in terms of delaying her access to funds to which she was entitled under the judgment and in the form of anxiety and frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*,

325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989). However, the Accused's delay did not ultimately affect Marsh's ability to collect on her judgment, so the actual injury was not severe.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused provided the Bar with a somewhat disingenuous explanation that the garnishment matter had slipped through the cracks, when Marsh's inquiries had to have reminded him of his need to act on the matter. *Standards*, § 9.22(f).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused indicated that he was experiencing personal or emotional problems at the time he was representing Marsh. His father was hospitalized on multiple occasions, requiring the Accused to travel out-of-state to care for his parents and their personal affairs. In addition, the Accused's paralegal assistant was killed in a car accident in May of 2005, resulting in emotional and office management struggles. *Standards*, § 9.32(c).

3. When Marsh complained about McBride's services, he immediately refunded her entire retainer, even though some of it had been expended at her request on another legal matter handled by the Accused. *Standards*, § 9.32(d).

4. The Accused was relatively inexperienced in the practice of law when he undertook to represent Marsh. He was admitted in Oregon in 2003. *Standards*, § 9.32(f).

5. The Accused expressed his apologies and remorse to Marsh and the Bar. *Standards*, § 9.32(*l*).

11.

The *Standards* presume, absent the aggravating or mitigating factors, that the Accused's knowing neglect warrants a suspension. *Standards*, § 4.43. However, when the Accused's substantial mitigation is considered, including his lack of prior discipline, a reprimand is more appropriate.

12.

Oregon cases reach the same conclusion. *See, e.g., In re Stevens*, 20 DB Rptr 53 (2006) (reprimand for negligent and knowing failures to timely submit required accountings in probate matter where no prior discipline); *In re Miller*, 19 DB Rptr 302 (2005) (reprimand for failing to file a tort claim notice within applicable period, extinguishing client's potential claim); *In re Oliveros*, 19 DB Rptr 260 (2005) (reprimand for knowing neglect of a contempt matter, where attorney had no prior discipline).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.3, the sanction to be effective upon approval by the Disciplinary Board.

14.

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

EXECUTED this 21st day of December 2006.

/s/ Jason C. McBride
Jason C. McBride
OSB No. 03395

EXECUTED this 26th day of December 2006.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 99028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 06-26 and 06-27
	)	
RICHARD T. PERRY,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	Arnold S. Polk, Chair; Pamela Yee; Loni Bramson, Public Member
Disposition:	Violation of DR 6-101(B), RPC 1.3, DR 7-101(A)(2), RPC 1.4(a), and RPC 1.4(b). Trial Panel Opinion. 97-day suspension.
Effective Date of Opinion:	January 17, 2007

DISCIPLINARY OPINION

SECTION ONE: INTRODUCTION

Date and Nature of Charge: By Formal Complaint dated May 22, 2006, the Oregon State Bar ("OSB") has charged the Accused with violation of DR 6-101(B) and DR 7-101(A)(2) of the Code of Professional Responsibility, and RPC 1.3, 1.4(a), and 1.4(b) of the Oregon Rules of Professional Conduct

Code of Professional Responsibility:

DR 6-101 Competence and Diligence.

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

DR 7-101 Representing A Client Zealously.

> (A) A lawyer shall not intentionally:
>
> > (2) Fail to carry out a contract of employment entered into with a client for professional services but the lawyer may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105.

Oregon Rules of Professional Conduct:

Rule 1.3 DILIGENCE. A lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.4 COMMUNICATION.

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Accused. The Accused is Richard T. Perry, OSB #82103, having an office and place of business in Washington County, Oregon.

Summary of Complaint. The Accused was hired on March 6, 2000, by Jesse and Tammy Bullock (Bullocks) to handle an uncontested adoption. The Bullocks were advised by the Accused that the adoption process would take a month or two. The Accused filed the petition for stepparent adoption on May 4, 2000. The Accused took no further steps to complete the adoption. The petition was dismissed by the court on June 25, 2001.

The Bullocks repeatedly attempted to contact the Accused. When they finally made contact, the Accused told the Bullocks there was a problem and he would have to re-file the petition, which was filed July 1, 2004. The Accused did not inform the Bullocks that the petition had been dismissed by the court due to his inaction. The Accused took no further action, and the petition was dismissed in February 2005.

The Bullocks attempted to contact the Accused on several occasions for a status. The Bullocks then discovered that the Accused had moved and not notified them. The Accused avoided the Bullocks and would not meet with them. The Bullocks eventually hired another attorney after tracking down the Accused. The adoption was completed by the new attorney in 90 days.

Default. The Accused was served by first-class mail on June 28, 2006, with the Formal Complaint and Notice to Answer. A Notice of Intent to Take Default was served on the Accused by first class mail on July 20, 2006, specifically stating that the OSB intended to apply for a default if an Answer was not filed by July 31, 2006. The Accused has failed to appear within the time provided by the OSB Rules of Procedure.

An Order of Default was entered of record by the Disciplinary Board Chairperson on August 4, 2006. The Disciplinary Counsel's Office submitted a Memorandum Re: Sanction dated October 17, 2006, which was mailed to the Accused. No responsive memorandum was received by the Trial Panel from the Accused.

SECTION TWO: FINDINGS OF FACT

When an Order of Default is entered, the allegations in the Formal Complaint are deemed true. BR 5.8(a). Therefore, the Accused is found to have represented to clients that he would prepare and complete the stepparent adoption as requested by the Bullocks. The Accused accepted a fee, prepared and filed the initial petition, and then did nothing further. The Accused took no action for four years until he had a personal meeting with the Bullocks. The Accused only advised the Bullocks there was a problem and he would have to re-file. A second petition was filed and then the Accused took no further action. Both petitions for adoption were dismissed by the court for lack of prosecution.

SECTION THREE: CONCLUSIONS OF LAW

DR 6-101(B) and RPC 1.3. See SECTION ONE for verbatim of Rules.

The OSB must establish by clear and convincing evidence that the Accused's misconduct violated the standards governing professional responsibility. Since the Accused did not respond, the facts as alleged are deemed true and the violations are admitted.

There is no reason put before the Trial Panel as to why the first petition for adoption was not completed, nor the second petition. The length of time that elapsed from the time of filing until the Accused next took action was clearly neglect, if not deliberate. The Accused knew that he had not completed the adoption timely, yet failed to rectify the situation and failed to communicate with the clients. It appears the Accused ignored his clients and the court. The actions by the Accused through December 2004 violate DR 6-101(B), and thereafter RPC 1.3. The lack of diligence, which was owed to the Bullocks, is a breach of the Accused's duty to his clients. This caused anxiety and frustration to the Bullocks, which is one of the primary focus points of DR 6-101(B) and RPC 1.3. *In re Cohen*, 330 Or 489, 496 (2000).

DR 7-101(A)(2) and RPC 1.4. See SECTION ONE for verbatim of Rules.

The Bullocks engaged the services of the Accused. The Accused represented that he could prepare and complete the legal services requested. The Accused then failed to carry out and complete the adoption, which were the services for which he was retained. The Accused knew the petition had been dismissed by the court, yet failed to reinstate or complete the adoption, and then failed to communicate that status to his clients. Since the Bullocks were not informed about (1) the status of the adoption, (2) the fact that the first dismissal was due to the Accused's failure to act, and (3) that the Accused had moved, the Bullocks were not able to make informed decisions regarding continued representation by the Accused. The Accused knowingly let both adoption petitions be dismissed and knowingly misled the Bullocks as to the problem with the first petition and his failure to act. *In re Recker*, 309 Or 633 (1990). These actions violate DR 7-101(A)(2) and RPC 1.4(a) and 1.4(b).

SECTION FOUR: SANCTIONS

Under the ABA *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) there are three factors to use to determine the appropriate sanction: 1) the duty violated, 2) the Accused's mental state, and 3) the actual or potential injury caused by the misconduct. ABA *Standards*, 3.0. *In re Conduct of Kluge*, 66 P3d 492, 507 (2003). The primary purpose of disciplinary proceedings is protection of the public. *In re Houchin*, 290 Or 433 (1981).

The duty violated was that of diligence owed to the client and the requirement to keep the client informed. *In re LaBahn*, 335 Or 357 (2003). The Accused's actions were intentional. The record does not reflect lack of notice from the court nor the inability to reach his clients to inform them of the situation after the dismissal. See *Recker, supra*.

In light of the primary purpose of the disciplinary proceedings to protect the public, there need not be actual injury. In the instant case, there was actual injury to the Bullocks consisting of anxiety, frustration, and additional court costs and fees. *In re Cohen, supra*, at 496. *In re McKee*, 316 Or 114 (1993).

After considering the three factors to determine the appropriate sanction, any aggravating or mitigating circumstances are examined for adjusting the sanction. ABA *Standards*, 9.2 sets forth the factors which may be considered for aggravation. Mitigating factors are set forth at 9.3.

The only mitigating factor applicable is that the Accused has no prior disciplinary record.

The aggravating factors are the following: Substantial experience in the practice of law (Accused admitted to the Oregon State Bar in 1982); a pattern of misconduct (four years with no action and then allowing a second dismissal); multiple offenses (filing the second petition and then failing to complete the adoption process); a dishonest motive (Accused made excuses and failed to truthfully inform the Bullocks about the cause of the dismissal); and refusal to acknowledge wrongful conduct (failed to respond to Bar Disciplinary Counsel). The Bar contends that the aggravating factor of the Bullocks' son being a vulnerable victim is present. The Trial Panel does not have any facts before it to make this determination. There is no evidence as to why the Bullocks as parents could not protect their son and no evidence which would support that the Bullocks could not have taken action sooner to protect their son.

In weighing the aggravating and mitigation circumstances, the sanction can be adjusted. The sanction can be reprimand, suspension, or disbarment. 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 causes 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.

There was knowing neglect of the Bullocks' case and actual injury, and therefore, the Trial Panel finds suspension is warranted for the Accused. The Trial Panel noted that the cases cited by the Bar involved violations of additional rules such as fraud, misrepresentation, and conflict of interest which would increase the suspension time. Since those factors are not present, the Trial Panel finds that the conduct warrants a 97-day suspension.

SECTION FIVE: DISPOSITION

It is the decision of the Trial Panel that the Accused be suspended for 97 days for violation of DR 6-101(B) and 7-101(A)(2) of the Code of Professional Responsibility and RPC 1.3, 1.4(a), and 1.4(b) of the Oregon Rules of Professional Conduct.

DATED this 15th day of November 2006.

/s/ Pamela E. Yee
Pamela E. Yee
OSB No. 87372
Trial Panel Member

CONCURRING MEMBERS:

/s/ Arnold S. Polk
Arnold S. Polk
OSB No. 81486
Trial Panel Chair

/s/ Loni Bramson
Loni Bramson
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-29
	)	
J. KEVIN HUNT,	)	
	)	
Accused.	)	

Counsel for the Bar:	Samuel J. Imperati; Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.4(a) and RPC 8.1(a)(2). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	January 18, 2007

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 RPC 1.4(a) and RPC 8.1(a)(2).

DATED this 18th day of January 2007.

/s/ Jill A. Tanner
Jill A. Tanner, Esq.
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1984, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On May 23, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter); RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); and RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

The Accused, in response to a human interest story broadcast on local television news, volunteered to represent an elderly, indigent person, Helen Schneider (hereinafter "Schneider") on a *pro bono* basis regarding the potential appeal of an unemployment benefits compensation matter arising from two adverse Employment Department decisions. On April 8, 2005, the Accused received materials from, and undertook to represent, Ms. Schneider. At the time the Accused received the file materials, however, the appeal period had lapsed on one of the decisions.

6.

In reviewing Schneider's cases, the Accused determined that neither a petition for judicial review nor a petition for reconsideration would be effective due to lapse of the appeal period on the first decision, and application of issue preclusion regarding the second decision. Accordingly, based on prior experience in similar cases, the Accused attempted to persuade the director of the State of Oregon Employment Department to civilly compromise its claim against Schneider, by letter dated April 8, 2005. The Accused provided Schneider a copy of that letter, but did not thereafter provide Schneider a copy of the response he received from the Employment Department, or respond to Schneider's subsequent inquiries regarding the status of her matter.

7.

Schneider complained to the Bar. The Accused responded to several requests by the Bar for information. The Accused did not respond, however, to follow-up inquiries from the Bar requesting that the Accused provide additional details on two specific issues. Believing he had already provided information responsive to the stated inquiries, the Accused made no further response to the Bar, despite additional correspondence from the Bar requesting that he do so.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he failed to adequately communicate with his client in violation of RPC 1.4(a) and failed to respond to some of the Bar's follow-up requests for additional information, in violation of RPC 8.1(a)(2).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.4(b) should be and, upon the approval of this stipulation, is dismissed.

Sanction

9.

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

A. *Duty Violated.* The Accused violated his duty of diligence to his client. *Standards,* § 4.4. The *Standards* assume that 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 fully respond to disciplinary inquiries. *Standards*, § 7.0.

B. *Mental State.* There are three possible mental states under the *Standards*: "Intent" is the conscious objective or purpose to accomplish a particular result; "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result; and "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 knowingly failed to communicate with his client. He was aware that she was attempting to reach him regarding the status of her case, but the Accused allowed other, more pressing criminal matters to take precedence over his duty to respond to both the Bar's and Schneider's follow-up inquiries. The Accused negligently failed to respond to the Bar. More specifically, the Accused *knew* that he was not responding to the Bar's additional inquiries, however, he *negligently* believed he had already provided information responsive to those inquiries.

C. *Injury*. Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused's failure to communicate with Schneider after he sent the April 2005 letter to the Employment Department caused actual injury to Schneider in the form of anxiety and frustration. *See In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997) (same); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989) (same). Nonetheless, because the statute of limitations had already lapsed when Schneider forwarded the Accused her file materials, the Accused's lack of communication did not ultimately affect Schneider's legal matter.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused was previously admonished for neglect in 1993, including a failure to communicate with his client regarding the status of an expunction. *Standards*, § 9.22(a). *See In re Cohen*, 330 Or 489, 500, 8 P3d 953 (2000) (a prior letter of admonition should be 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);

2. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 1984 (*Standards*, § 9.22(i)); and

3. Schneider was a vulnerable victim (*Standards*, § 9.22(h)).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused did not act selfishly or dishonestly. *Standards*, § 9.32(b). To the contrary, he agreed to represent Schneider *pro bono* in an effort to assist her

in a time of crisis, in response to a television news human interest story depicting her plight;

2. Prior to and during the time the Accused represented Schneider, he was suffering from a physical disability resulting from a serious medical condition stemming back to 2002. *Standards,* § 3.2(h). This condition had a substantial impact on the Accused's ability to practice during certain periods, including during some of the time he was assisting Schneider;

3. Prior to and during the time the Accused represented Schneider, he was also experiencing personal and emotional problems arising from the period of physical disability. *Standards,* § 9.32(c);

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

5. The Accused has expressed remorse for failing to communicate with Schneider as much as he should have. *Standards,* § 9.32(*l*).

10.

Absent aggravating and mitigating factors, the *Standards* presume that a suspension is warranted for the Accused's failure to communicate, and that a reprimand is sufficient for the Accused's failure to fully respond to the Bar. *Standards*, §§ 4.42, 7.3. When both the aggravating and mitigating factors are also considered, however, a reprimand is the appropriate sanction under the *Standards* for the Accused's misconduct.

11.

Oregon cases have reached a similar result. *See In re Cohen,* 330 Or 489, 8 P3d 953 (2000) (where attorney suffered from personal and emotional problems when neglect occurred and the only evidence of actual injury to the client was that of anxiety and frustration, reprimand was sufficient sanction); *In re Nelson*, 17 DB Rptr 41 (2003) (reprimand for failure to respond to the Bar and unlawful practice, where lawyer was out-of-state with her dying mother during part of the time the Bar was requesting her response); *In re Childs,* 17 DB Rptr 253 (2003) (reprimand for failure to respond to the Bar, neglect and other rules where the lawyer was undergoing disruptive medical treatment for cancer during some of the period when he failed to respond). *See also In re Klahn,* 14 DB Rptr 65 (2000) (reprimand for failing to respond to the Bar and violation of another rule, where referral to LPRC prompted cooperation); *In re Edelson*, 13 DB Rptr 72 (1999) (reprimand for failure to fully respond where cooperation with LPRC resulted in dismissal of other charges).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for his violations of RPC 1.4(a) and RPC 8.1(a)(2), the sanction to be effective upon approval by the Disciplinary Board.

13.

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

EXECUTED this 5th day of January 2007.

/s/ J. Kevin Hunt
J. Kevin Hunt
OSB No. 84252

EXECUTED this 5th day of January 2007.

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. 06-96
	)	
GARY A. BISACCIO,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Eric A. Lindenauer
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B), RPC 1.3, and RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	January 18, 2007

ORDER APPROVING STIUPLATION 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), RPC 1.3, and RPC 8.4(a)(4).

DATED this 18th day of January 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On August 24, 2006, 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) and RPC 1.3 (neglect of a legal matter); DR 7-106(A) and RPC 3.4(c) (failure to comply with the rules or ruling of a tribunal); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice). 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 brought a personal injury action in Clackamas County on behalf of [redacted] (hereinafter "[redacted]"), a minor. Simultaneously, the Accused had [redacted]'s mother, Jodi Lyons (hereinafter "Lyons"), appointed as guardian ad litem for [redacted].

6.

In June 2004, a settlement was reached in the personal injury action and submitted to the court for approval. The Accused established a conservatorship for [redacted] in the probate court to allow for the payment of the settlement proceeds through a structured settlement.

7.

On August 30, 2004, the court issued an order appointing Lyons as conservator, approving the settlement, and approving the allocation of proceeds. No bond was required, but the settlement proceeds were to be deposited in a restricted account.

8.

The Accused was required by UTCR 9.050 on or before September 30, 2004, to submit a writing signed by the depository acknowledging that the assets were held and subject to withdrawal only on further order of the court (hereinafter "Acknowledgment of Restriction"). The Accused did not file an Acknowledgment of Restriction by September 30, 2004, or thereafter.

9.

In August 2005, the Clackamas County Probate Coordinator sent a notice to the Accused, reminding him that the Acknowledgment of Restriction had been due on September 30, 2004, and requesting that it be submitted within 30 days. The Accused did not respond or file the requested Acknowledgment of Restriction.

10.

In late September 2005, the probate court issued a Citation for Removal, ordering Lyons to appear on October 17, 2005, to show cause why she should not be removed as conservator for [redacted] for failing to file the Acknowledgment of Restriction.

11.

On October 7, 2005, the Accused wrote to the probate court, requesting a set-over of the October 17, 2005, show cause hearing; acknowledging the need for the submission of some documentation; and promising to communicate with the Probate Coordinator the following week to furnish everything needed by the court. The show cause hearing was cancelled. However, the Accused did not thereafter communicate with the Probate Coordinator and did not provide the Acknowledgment of Restriction.

12.

On December 13, 2005, the probate court issued a Citation for Removal, which ordered the Accused to appear personally on February 6, 2006, to show cause why he should not be removed as attorney for the conservator for failing to file the Acknowledgment of Restriction. The Accused did not respond to this citation, did not file the Acknowledgment of Restriction, and (having failed to calendar the date) did not appear for the show cause hearing on February 6, 2006. Thereafter, the probate court filed a complaint with the Bar concerning the Accused's conduct.

13.

On May 15, 2006, the Accused filed the appropriate Acknowledgment of Restriction with the probate court.

Violations

14.

The Accused admits that by engaging in the conduct described in this stipulation, he neglected a legal matter in violation of DR 6-101(B) and RPC 1.3, and engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4).

Upon further factual inquiry, the parties agree that the charges of alleged violations of DR 7-106(A) and RPC 3.4(c) should be and, upon the approval of this stipulation, are dismissed.

Sanction

15.

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

A. *Duty Violated.* The Accused violated his duties of diligence to his client and the court. *Standards,* § 4.4. The *Standards* presume that 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 legal system to avoid abuse of the legal process. *Standards,* § 6.2.

B. *Mental State.* The Accused acted negligently in failing to attend to the requirements of the conservatorship prior to being reminded of his obligation by the court approximately a year after he obtained the order. "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. However, beginning in August 2005, the Accused was aware of the need to attend to the conservatorship, and therefore his failure to do so was a knowing one. "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. *Id.*

Similarly, the Accused's conduct prejudicial to the administration of justice was initially negligent prior to his failure to follow through with his promised submission of the Acknowledgment of Restriction in October 2005. It was thereafter

knowing. However, the Accused's failure to appear for the February 6, 2006, hearing was a result of his negligent failure to properly calendar the appearance.

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992). The Accused's inaction caused potential, but no actual injury to his client. The court could have removed Lyons from her appointment as conservator, but did not. However, the Accused caused actual injury to the court in terms of the additional time and resources that were required to compel his attention to his obligations.

The Bar does not allege that the Accused mishandled the settlement funds. At all times, the settlement funds which were the subject of the Acknowledgment of Restriction were properly deposited with and maintained by the insurance company as directed by the court.

D. *Aggravating Factors.* Aggravating factors include:

1. There are multiple violations, insofar as the Accused's conduct violated more than one ethics rule. *Standards,* § 9.22(d); and

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

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no prior applicable discipline history. *Standards,* § 9.32(a);

2. There is no indication that the Accused acted with a dishonest or selfish motive. *Standards,* § 9.32(b);

3. The Accused has been candid and cooperative in these proceedings. *Standards,* § 9.32(e); and

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

16.

The *Standards* provide that either a reprimand or suspension is warranted for the Accused's neglect. *Standards,* §§ 4.42, 4.43. Similarly, a reprimand or suspension is warranted for his conduct prejudicial to the administration of justice. *Standards,* §§ 6.22, 6.23. Given the primarily negligent nature of the Accused's conduct combined with the weight of the applicable aggravation and mitigation, a reprimand is the appropriate sanction.

17.

Oregon case law is in accord. *See, e.g., In re Putnam,* 20 DB Rptr 162 (2006) (reprimand for violations of DR 6-101(B) and DR 1-102(A)(4) where minimal injury and no prior discipline); *In re McGraw,* 18 DB Rptr 14 (2004) (trial panel publicly reprimanded lawyer for violation of DR 1-102(A)(4) and DR 6-101(B) in five probate

matters); *In re Willes,* 17 DB Rptr 271 (2003) (reprimand for attorney with no prior discipline where attorney repeatedly failed to appear or appear timely at hearings on behalf of his client and failed to communicate with his client despite multiple inquiries).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of DR 6-101(B), RPC 1.3, and RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.

19.

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

EXECUTED this 11th day of January 2007.

/s/ Gary A. Bisaccio
Gary A. Bisaccio
OSB No. 73030

EXECUTED this 12th day of January 2007.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 99028
Assistant Disciplinary Counsel

Cite as 342 Or 279 (2007)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
MICHAEL G. BALOCCA,	)
	)
Accused.	)

(OSB 05-02; SC S53380)

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

Argued and submitted November 2, 2006. Decided January 19, 2007.

Michael G. Balocca, Ashland, argued the cause and filed the brief for himself.

Jane Angus, Assistant Disciplinary Counsel, Lake Oswego, argued the cause and filed the brief for the Oregon State Bar. With her on the brief was Charles M. McNair, Bar counsel.

Before De Muniz, Chief Justice, and Carson, Gillette, Durham, Balmer, Kistler, and Walters, Justices. (Carson, J., retired December 31, 2006, and did not participate in the decision of this case. Linder, J., did not participate in the consideration or decision of this case.)

PER CURIAM

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

SUMMARY OF THE SUPREME COURT OPINION

The attorney was admitted to practice law in Oregon in 1983. Three factual disputes were presented: (1) whether a client signed a written fee agreement that specified that the fees that he paid to the attorney were deemed earned upon receipt, (2) whether the $300 that the attorney collected from the client was an excessive fee for the work that he performed for the client, and (3) whether the attorney obtained confidences or secrets from the client such that the attorney's subsequent representation of another client resulted in a conflict of interest. The Bar argued that the $300 from the client should have been deposited into a lawyer trust account, and the attorney never provided an accounting of that money. The supreme court found that the attorney should have promptly refunded the funds; however, the violation of DR 2-110(A)(3) was based on the same conduct as the violation of DR 2-106(A). As

to the conflict on interest, the attorney did not obtain consent from the current client or from the former client. As to the sanction, the supreme court noted that the aggravating circumstances in this case were not as severe as in previous cases before the supreme court. The supreme court concluded that a 90-day suspension was appropriate.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-56
	)	
JAMES J. KOLSTOE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	Laurence E. Thorp, Chair; James (Jerry) Casby; Peter Bergreen, M.D., Public Member
Disposition:	Violation of DR 1-102(A)(2). Trial Panel Opinion. 4-year suspension.
Effective Date of Opinion:	January 22, 2007

TRIAL PANEL OPINION

INTRODUCTION

The Oregon State Bar (hereinafter "Bar"), at the direction of the State Professional Responsibility Board, charged James J. Kolstoe (hereinafter "Accused") with violating DR 1-102(A)(2), criminal conduct reflecting adversely on his honesty, trustworthiness, or fitness to practice law.

The Bar filed its Formal Complaint against the Accused on May 25, 2006. The Accused accepted service of a copy of the complaint and Notice to Answer on June 8, 2006. Pursuant to BR 4.3(a), he was required to file an answer or other appearance within 14 days after service. The Accused did not appear. On July 5, 2006, the Bar served the Accused with a copy of the Bar's Notice of Intent to Take Default on or after July 19, 2006, unless he filed an answer by the close of business on July 18, 2006.

The Accused did not file an answer or other appearance and on July 19, 2006, the Bar filed its Motion for Order of Default. On July 26, 2006, the region Disciplinary Board chair granted the Bar's motion and signed an Order of Default. Pursuant to BR 5.8(a), the allegations of the Bar's Formal Complaint are deemed true. The sole issue before the trial panel is the sanction to be imposed for the misconduct. *In re Staar,* 324 Or 283, 288, 924 P2d 308 (1996).

FACTS

The allegations in the Bar's Formal Complaint are deemed admitted due to the Order of Default. They include allegations that the Accused knowingly and willfully failed to file federal personal income tax returns for the calendar years 1998, 1999, 2000, 2001, 2002, 2003, and 2004 in violation of Title 26, United States Code, Section 7203, and knowingly and willfully failed to file Oregon personal income tax returns for the calendar years 1998, 1999, 2000, 2001, 2002, 2003, and 2004 in violation of ORS 314.075(1). The Accused's conduct constituted criminal acts that reflect adversely on his honesty, trustworthiness, or fitness to practice law in violation of DR 1-102(A)(2) of the Code of Professional Responsibility.

SANCTION

I. ABA STANDARDS.

The ABA *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) (hereinafter "*Standards*") are considered in determining the appropriate sanction. *In re Gustafson*, 327 Or 636, 652–653, 968 P2d 367 (1998). The *Standards* require that the Accused's conduct be analyzed by the following factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards,* § 3.0.

A. *Duty Violated.* The Accused violated his duty to the public to maintain his personal integrity when he failed to uphold and comply with the law. Standard, § 5.1. The public expects the lawyer to abide by the law. Public confidence in the integrity of the officers of the court is undermined when lawyers engage in illegal conduct. *Standards,* p 36.

B. *Mental State.* The Accused acted with knowledge and intent. *Standards*, p 7. The Accused knew he had a legal duty and was required to file federal and state income tax returns and to pay taxes according to his income. He knowingly, deliberately, and repeatedly did not file the returns for at least 7 years. That the Accused may have intended to file the returns at some future time does not negate his intentional conduct.

C. *Injury*. The Accused's failure to prepare and file tax returns, whether taxes were owed or not, caused actual injury by hindering the federal and state government in their ability to administer the tax system. His conduct also caused injury or potential 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. The Accused was admitted to practice in Oregon on September 20, 1985, and has substantial experience in the practice of law. *Standards*, § 9.22(i). There is a pattern of misconduct, demonstrated by the Accused's repeated

failure to file federal and state income tax returns for a period of at least 7 years. *Standards,* § 9.22(c).

Also, the Accused has a prior record of discipline. In 1997, the Accused was admonished for violation of DR 9-101(C)(4) (failure to promptly deliver client funds) and DR 1-103(C) (failure to cooperate with Disciplinary authorities). In 2006, the Accused was suspended for 60 days for violation of DR 1-102(A)(3) (misrepresentation), DR 2-110(B)(3) (improper withdrawal), DR 5-101(A) (lawyer self-interest conflict), and DR 6-101(B) (neglect). *In re Kolstoe*, 20 DB Rptr 28 (2006). *Standards,* § 9.22(a). It should, however, be noted that discipline for the misconduct was not imposed until after the conduct alleged in this case occurred. Some of the Accused's misconduct in this case predated the conduct in the previous case and some of it overlapped.[1]

E. *Mitigating Factors.* The *Standards* also recognize mitigating factors. *Standards,* § 9.32. There is no evidence of any mitigating factors to be considered in this case.[2]

II. CASE LAW.

Cases involving other lawyers may be distinguished on their facts. However, the court's treatment of lawyers provides some guidance where similar rule violations have occurred. Case law presents a range of sanctions for failure to file income tax returns. As a general observation, the greater number of years where the lawyer has failed to file returns and/or pay taxes, the greater the sanction. Also, when a lawyer fails to file tax returns after being previously disciplined for such misconduct, disbarment may result.

In *In re Means,* 207 Or 638, 298 P2d 983 (1956), the court suspended the lawyer for 6 months for failure to file income tax returns for 2 years. The lawyer was also convicted of tax evasion and sentenced to a 6-month prison term. The record of the case demonstrated that the lawyer kept complete and accurate records of his

---

[1] When evaluating "prior offenses" to determine a sanction for lawyer misconduct, the court reviews all offenses prior to imposition of the sanction in the current case. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). In determining the weight of each offense, the court considers:

> (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 recency 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. (*Id.*)

[2] It should also be noted that there is no evidence that the Accused actually underpaid or owed any taxes, although the evidence is clear that he had sufficient income to require the filing of income tax returns.

income and expenditures. He turned over those records and fully cooperated with the federal authorities in the criminal investigation. The lawyer did not dispute the Bar's allegations. In *In re Means,* 218 Or 480, 343 P2d 1119 (1959), the same lawyer was convicted of willful failure to pay federal income taxes for a later year. The court found that the record warranted the lawyer's disbarment.

In *In re McKechnie,* 214 Or 531, 330 P2d 727 (1958), the lawyer pleaded guilty to violating the federal criminal law for failing to file tax returns for 2 consecutive years. In the subsequent Bar disciplinary proceeding, the lawyer was suspended from the practice of law for 6 months. The court found that the lawyer's professional life had been exemplary, except for the offense. He also had an excellent reputation in the community for honesty, integrity, and ability as a practicing lawyer. Because the lawyer's income had actually been disclosed in a partnership return filed by the partnership with the Treasury Department, federal revenues were not expected to suffer a loss as a result of the lawyer's failure to file his personal income tax return.

In *In re Morris,* 215 Or 180, 182, 332 P2d 885 (1958), the lawyer pled guilty and was convicted of 3 charges of failing to file returns. The court suspended the lawyer for 1 year and warned lawyers that it would not be lenient in disciplining lawyers who fail to file tax returns in compliance with law.

In *In re Corcoran,* 215 Or 660, 337 P2d 307 (1959), the court suspended the lawyer for 18 months when he failed to file tax returns for 2 years. The lawyer also pleaded *nolo contendere* and was convicted of failing to file tax returns. The lawyer had substantial experience in the practice of law and attributed his failure of file income tax returns to excessive drinking and serious illness.

In *In re Lomax,* 216 Or 281, 338 P2d 638 (1959), the court suspended the lawyer's license to practice law for 1 year for failure to file 2 years of income tax returns. The lawyer was also criminally prosecuted and convicted of violating 26 USC §7203 (2 counts), failing to file tax returns. He served 6 months in prison, which was followed by a term of probation.

In *In re Pennington,* 220 Or 343, 348 P2d 774 (1960), the lawyer was disbarred for filing false and fraudulent partnership returns for 2 years, and a separate cause for filing fraudulent federal returns for personal income. The court distinguished the seriousness of such misconduct from misconduct in simply failure-to-file cases. The lawyer was convicted of federal felony crimes and paid the penalties and interest that due because of his late filings.

In *In re DesBrisay,* 288 Or 625, 606 P2d 1148 (1980), the court suspended the lawyer's license to practice law for 4 years when he failed to file 4 years of tax returns and was criminally prosecuted and convicted of tax evasion. The lawyer served 4 months in prison for his crimes.

In *In re Lawrence,* 332 Or 502, 31 P3d 1078 (2001), the court suspended the lawyer for only 60 days when he failed to file federal and state returns for 3 tax years. Although the court stated that a suspension from 6 months to 2 years is the appropriate sanction in most cases involving a lawyer's failure to file taxes, it was reduced in part due to the delay encountered in the prosecution of the case. The court also characterized the misconduct as stemming from "errors in judgment" in failing to keep copies of the records that he sent to an accountant and persisting to rely on the accountant to get the job done.

CONCLUSION

Unlike many of the lawyers in the cases cited above, there is no evidence that other penalties have been imposed. *Standards*, § 9.32(k). There has been no delay. *Standards,* § 9.32(*l*). There is no evidence that physical or mental disability or chemical dependency caused his misconduct. *Standards,* § 9.32(h), (i) (commentary, 1992 amendments). More importantly, there is no evidence that the Accused has taken action to rectify his misconduct. *Standards,* § 9.32(d). Given those facts, and the Accused's prior disciplinary history, the Accused is suspended from the practice of law for 4 years.

DATED this 20th day of November 2006.

/s/ Laurence E. Thorp
Laurence E. Thorp, Chair

DATED this 17th day of November 2006.

/s/ James (Jerry) Casby
James (Jerry) Casby

DATED this 17th day of November 2006.

/s/ Peter Bergreen
Peter Bergreen, M.D.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-181
	)	
ERIC M. CUMFER,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	Gilbert Feibelman, Chair; Mary Kim Wood; Jon Paul Levine, Public Member
Disposition:	Violation of DR 1-102(A)(3), RPC 1.4(a), RPC 1.15-1(d), DR 2-110(A)(1), DR 2-110(A)(2), DR 2-110(A)(3), DR 7-101(A)(1), DR 7-101(A)(2), and RPC 8.1(a)(2). Trial Panel Opinion. 2-year suspension.
Effective Date of Opinion:	January 22, 2007

OPINION OF TRIAL PANEL

INTRODUCTION

Assistant disciplinary counsel for the bar was Jane Angus. The Accused did not appear personally or by counsel and made no written response or submission to the panel.

The Bar filed its Formal Complaint against the Accused on February 21, 2006. The Accused accepted service of a copy of the complaint and Notice to Answer on March 8, 2006. Pursuant to BR 4.3(a), the Accused was required to file an answer or other appearance within 14 days after service. When the Accused failed to appear or make any response to the complaint, the Bar filed a Motion for Default which was granted on March 24, 2006, by the region Disciplinary Board chair. The allegations of the Bar's Formal Complaint are therefore deemed true. BR 5.8(a). The sole issue before the trial panel is the sanction to be imposed for the misconduct. *In re Staar*, 324 Or 283, 288, 924 P2d 308 (1996).

The allegations made against the Accused include violating DR 1-102(A)(3), dishonesty or misrepresentation; DR 2-110(A)(1), (2), and (3), improper withdrawal;

DR 7-101(A)(1), intentional failure to carry out the lawful objectives of the client; DR 7-101(A)(2) intentional failure to carry out a contract of employment; and RPC 1.4, failure to communicate with the client. (FC §§1–21).

The Accused was also charged with violating RPC 1.15-1(d), failing to promptly deliver funds the client was entitled to receive, and RPC 8.1(a)(2), failing to respond to lawful demands for information from disciplinary counsel. (FC §§ 22–32).

BURDEN OF PROOF / EVIDENTIARY STANDARD

In the usual disciplinary proceeding, the Bar has the burden of establishing the Accused's misconduct in by clear and convincing evidence. BR 5.2. Clear and convincing means that the truth of the facts asserted are highly probable. *In re Taylor*, 319 Or 595, 600, 878 P2d 1103 (1994). In the instant action, however, the failure of the Accused to make any response to the complaint and the issuance of the default relieves the Bar of this burden as all its allegations are deemed true. BR 5.8(a). The only remaining burden to be met by the Bar is to establish that the sanction sought is appropriate for the misconduct deemed proven.

SANCTION

In fashioning an appropriate sanction, one first looks to the ABA *Standards for Imposing Lawyer Sanctions* (*Standards*). Those *Standards* require that the Accused's conduct be analyzed by the following factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances.

In the instant action, the ethical duty violated is significant. The Accused engaged in a series of false and misleading representations to his client, when he communicated with her, and with her father who was assisting in her defense due to her incarceration. Some of the representations made were designed to lull the client and her father into a false sense of security and belief that the Accused was pursuing client's appeal when in fact the Accused knew the appeal had been dismissed due to his failure to pursue. The Panel is persuaded that the Accused made at least some of these representations to conceal his own wrongful conduct. Of equal significance is the Accused's representation to the bar that he had deliberately failed to pursue client's appeal based upon his conclusion that it lacked merit—a conclusion he failed to communicate to the client. One additional, and very troubling, aspect of this case is that it appears the Accused had made his decision and ceased work at the same time he was seeking and receiving additional funds to continue with the client's case.

In taking the actions referenced above and detailed in the Bar's complaint, it is clear that the Accused acted intentionally and to protect his own interest at the expense of his client. The Panel also finds that his refusal to respond to the Bar, despite multiple requests that he do so, was intentional. Finally, in light of his failure to return client funds despite an acknowledgment of his obligation to and promise to

do so, the Panel concludes that the Accused deliberately and intentionally kept money that did not belong to him.

The harm Accused did to the client is actual and obvious. His client was incarcerated. Her request for postconviction relief might not have been successful, but due to the Accused's actions she lost that possibility. His failure to notify client or her father of his decision not to pursue the appeal prevented them from retaining other counsel and foreclosed client's opportunity to contest the trial court verdict. Finally, in seeking additional money from his client at a time he had already decided not to pursue her claim, the Accused perpetrated a fraud. His refusal to return the money effectively constitutes a theft.

Of equal concern to the Panel was the harm done by the Accused to the legal system. In this case, the client was incarcerated. While all legal matters are important, those of a person whose life or liberty are in jeopardy require the utmost attention and diligence by counsel. The Accused's failure to provide the representation needed by his client, and his constructive withdrawal from her case with no notice, harms the legal professions and the legal system.

In its Sanction Memo, the Bar cites to the Accused's prior disciplinary record as an aggravating factor. The Panel does not find it so. The events which gave rise to the instant proceeding are similar to those for which the Accused was previously disciplined. However, they occurred at about the same time, so the Accused has not been the subject of any disciplinary proceeding or censure of his behavior before he engaged in the wrongful conduct reference above.

There were no other aggravating factors identified by the Bar or the Panel and no mitigating factors appear to exist.

Accepting the allegations of the Bar's complaint as true and following its own review of the circumstances provided, the Panel has unanimously concluded that a two year sanction is appropriate. As the Accused is currently under suspension from the prior disciplinary action, the Panel believes the current sanction should run consecutively so as not to dissipate its impact.

DATED this 21st of November 2006.

/s/ Gil Feibelman
Gil Feibelman, Chair
Trial Panel Chair

/s/ Mary Kim Wood
Mary Kim Wood
Trial Panel Member

/s/ Jon Paul Levine
Jon Paul Levine
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 05-150, 05-179, 05-148,
	)	05-149, and 06-28
DANIEL BERTAK,	)	
	)	
Accused.	)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	None
Disciplinary Board:	Jens Schmidt, Chair; James (Jerry) Casby; Peter W. Bergreen
Disposition:	Violation of RPC 1.3, RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(d), RPC 5.5(a), RPC 8.1(a)(1), RPC 8.1(a)(2), RPC 8.4(a)(3), RPC 8.4(a)(4), ORS 9.160, and DR 9-101(A). Trial Panel Opinion. 4-year suspension.
Effective Date of Opinion:	January 29, 2007

TRIAL PANEL DECISION

This matter came before a Region 2 Trial Panel of the Oregon State Bar Disciplinary Board on October 3, 2006, in Eugene, Oregon. The Accused failed to appear before the Trial Panel in person or in writing and failed to appear throughout the proceedings instituted by the Bar, and Orders of Default have been entered as to all allegations against him, the Second Amended Formal Complaint as to the above-referenced cases. Therefore, pursuant to BR 5.8(a), the allegations against the Accused set forth in the Second Amended Formal Complaint are deemed to be true, and the Trial Panel's duty is limited to the determination of an appropriate sanction.

As explained below, the Trial Panel finds that the Accused should be suspended from the practice of law for four years, and that he be restored to practice only upon meeting the requirements of BR 8.1. In making its determination, the Trial Panel considered the Oregon State Bar's September 14, 2006, Memorandum Re: Sanction and supporting Affidavits.

The Trial Panel agrees with the Bar regarding the professional duties violated by the Accused. The Panel finds that Accused violated his duty of diligence to his clients Barner-Walton, Verrinder, and Vetkos. He violated his duty of candor to Verrinder and Miller. The Accused violated his duty to preserve the property of Verrinder, Vetkos, and Miller, and violated his duties to all of his clients by failing to protect their interests when he withdrew from representing them. Further, the Accused violated his duty of honesty and prejudiced the administration of justice when he lied to his clients and the court, resulting in a contempt of court sanction. The Accused also violated his professional duties when he engaged in the unauthorized practice of law and failed to cooperate with the Bar's investigation of his conduct.

The Trial Panel finds that the Accused violated the Rules of Professional Conduct with regard to four different clients over a period of about one year, and for a brief period engaged in the practice of law while suspended. The Accused's failures were primarily inaction on behalf of his clients and failure to respond to contacts from his clients. In addition, he failed to return or lost documents and property of his clients and was found in contempt of court for failure to appear on behalf of one of his clients.

Although the financial impact of his conduct was not major, it was not inconsequential. No permanent damage appears to have occurred to anyone, despite the Accused's conspicuous disregard of his obligations to his clients and the Bar. To a large extent this absence of major impact on his clients, the Bar, as well as the administration of justice was a result of good luck and the prompt actions of the court, other attorneys, and clients with the energy and knowledge to engage in self-protection. Nonetheless, the consequences of the Accused's conduct could have been much worse.

The Accused practiced law for over ten years without violations of record. Because the Accused failed to respond, the Trial Panel has no other basis for mitigating the sanction. The Trial Panel concludes that the Accused had knowledge of what was occurring, but does not find that he intended the effects of his failures to act. Although his clients, the court, and the public suffered some harm and inconvenience, we do not find that the harm caused by the Accused was severe as to any particular client or the public. For these reasons, therefore, rather than disbarment, the Trial Panel finds that the Accused should be suspended for four years as stated above.

DATED this 22nd day of November 2006.

/s/ James (Jerry) Casby
James (Jerry) Casby
Trial Panel Chair

/s/ Peter W. Bergreen
Peter W. Bergreen, MD
Trial Panel Public Member

/s/ Gregory E. Skillman
Gregory E. Skillman
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 06-34, 06-35, and 06-36
	)	
SAMUEL J. NICHOLLS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	James D. Van Ness, Chair; Mary Kim Wood; Joan LeBarron, Public Member
Disposition:	Violation of DR 6-101(B), RPC 1.3, DR 9-101(C)(3), RPC 1.15-1(d), DR 2-106(A), DR 2-110(A)(3), RPC 1.4(a), and RPC 8.1(a). Trial Panel Opinion. 3-year suspension.
Effective Date of Opinion:	February 13, 2007

OPINION OF TRIAL PANEL

INTRODUCTION

Assistant disciplinary counsel for the Bar was Stacy Hankin. The Bar submitted exhibits and offered testimony by the individuals whose complaints initiated this proceeding. The Accused appeared personally and testified on his own behalf, but called no witnesses and offered no exhibits.

The Bar filed its Formal Complaint against the Accused on April 11, 2006. An Amended Formal Complaint was filed on May 31, 2006. The Accused filed his Answer to the Amended Complaint on June 19, 2006. From that time forward the Accused refused to communicate with the Bar or to cooperate in discovery. In response to that refusal, the Bar filed a Motion to Compel Discovery on September 6, 2006. That Motion was granted as reflected in the Order of September 11, 2006. When the Accused continued his refusal to provide any requested discovery, the Bar filed a Motion for Sanctions, asking the panel Chair to strike the Accused's Answer and enter a default. That motion was granted on October 10, 2006.

As a consequence of the default, all allegations in the Amended Complaint were deemed true. BR 5.8(a). Accordingly, the sole issue before the trial panel is the

sanction to be imposed for the misconduct alleged by the Bar. *In re Staar*, 324 Or 283, 288, 924 P2d 308 (1996).

The allegations made against the Accused arise from three separate matters and include violating DR 6-101(B) and RPC 1.3 (neglect of all three legal matters); DR 9-101(C)(3) and RPC 1.15-1(d) (failure to render an appropriate accounting of client funds in two of the matters); DR 2-106(A) (collecting an excessive fee); DR 2-110(A)(3) (failing to promptly refund an unearned fee upon withdrawing from employment); and RPC 1.4(a) (failure to keep a client reasonably informed and to promptly comply with a client's reasonable requests for information in separate matters). Finally, by refusing to respond to a lawful demand for information for the Bar, a disciplinary authority, the Accused violated RPC 8.1(a) in all three cases.

BURDEN OF PROOF / EVIDENTIARY STANDARD

In the usual disciplinary proceeding, the Bar has the burden of establishing the Accused's misconduct by clear and convincing evidence. BR 5.2. Clear and convincing means that the truth of the facts asserted are highly probable. *In re Taylor*, 319 Or 595, 600, 878 P2d 1103 (1994). In the instant action, the failure of the Accused to cooperate with discovery, and the subsequent striking of his answer and entry of a default, relieves the Bar of this burden as all the allegations of its Amended Complaint are deemed true. BR 5.8(a). The only remaining burden to be met by the Bar is to establish that the sanction sought is appropriate for the misconduct deemed proven.

SANCTION

In fashioning an appropriate sanction, one first looks to the ABA *Standards for Imposing Lawyer Sanctions* (*Standards*). To determine the appropriate sanction, this court first considers the duty violated, the accused's mental state, and the actual or potential injury caused by the accused's misconduct. *In re Lackey*, 333 Or 215, 228–229, 37 P3d 172 (2002). Considering those three factors leads to a suggested sanction, which this court may choose to impose or may modify after examining aggravating and mitigating circumstances and this court's case law. *In re Paulson*, 335 Or 436, 441 (2003). The purpose of imposing sanctions in attorney discipline cases is not to punish the accused, but to protect the public and to uphold the integrity of the legal profession. *In re Miller*, 303 Or 253, 258, 735 P2d 591 (1987).

Duty Violated. One of an attorney's foremost duties is the diligent and zealous representation of his client. The Accused violated that duty in the three matters which gave rise to this disciplinary action.

A) Johnson Matter: DR 6-101(B) and RPC 1.3; DR 9-101(C)(3) and RPC 1.15-1(d); RPC 8.1(a)

In the Johnson matter, the Accused failed to vigorously pursue ejectment of tenants who remain in possession of a house they have wrongfully occupied for nearly six years, over three of which years have passed since the Accused was

retained to evict them. When the tenants filed bankruptcy, staying the ejectment proceeding, the Accused told the client that he did not practice in that area. However, instead of referring the client to a bankruptcy attorney, the Accused said there were attorneys in his office who practiced in that area and he would consult them. He then failed to properly and timely pursue relief from the stay and ejectment of the tenants.

The tenants' continued possession of the property frustrated the elderly owners' ability to sell the property to provide funds needed for their care. The Accused's failure to act and to respond to his client's repeated requests that he provide the representation for which he had been retained, eventually pushed his client into filing a complaint against him. At that point he told the client that he would need to withdraw as her counsel. He did so without the consent of, or even notice to, the state or federal courts. His conduct not only harmed, and continues to harm, his client, but has been injurious to the legal system as a whole.

B) Bolles Matter: DR 2-106(A); DR 2-110(A)(3); DR 6-101(B); RPC 8.1(a)

In the Bolles matter, the Accused was asked by a long-time client to draft and record a deed to clarify the chain of title on real property. She had acquired the property under a land sale contract, completing the purchase in 1991.[1] The Accused failed to record the deed although he contended that he had prepared one. He admitted closing his file with the work undone and had no explanation for doing so or his failure to complete the client's work. He also ignored requests by his client to complete the deed although he made repeated representations to her that the work would be done.

At the same time he was receiving and ignoring Bolles' calls, the Accused was reporting to the Bar that he was conducting ongoing reviews of his files and that all matters were either current or had been transferred to other counsel. This report was a requirement of his probation pursuant to a disciplinary stipulation entered into in 2002. The client ultimately had to retain other counsel to complete the necessary work. Despite the fact that he had not done the work for which he had been retained, the Accused kept the $200.00 fee paid by Bolles.

C) Brent Matter: DR 6-101(B) and RPC 1.3; RPC 1.4(a); DR 9-101(C)(3); RPC 8.1(a)

In the Brent matter, the client was incarcerated. The client's father, who contacted and paid the $500.00 retainer, testified that he understood the Accused would be pursuing postconviction relief for his son. The Accused testified that he did not practice in the area of criminal law, told that to Brent, and only agreed to review the file and try to locate other counsel to take the case. The $500.00 retainer is consistent with a limited scope of representation. However, the Accused failed to

[1] Some evidence was received that the problem in the chain of title arose from the Accused's failure to properly complete his client's purchase of the property in 1991, a failure which was only discovered in 2003.

find criminal counsel for Brent. Additionally he continued to have sporadic communications with the father over a ten (10)-month period on the issue of the client's postconviction relief options. These actions are incompatible with representation limited to file review.

While all legal matters are important, when fundamental constitutional rights—such as life or liberty are at issue—counsel must proceed with the utmost diligence. The Accused's failure to provide the postconviction representation needed by his client, or to make a speedy file review and recommendation to other counsel, delayed the progress of the client's legal matter for nearly a year. The Accused added insult to the injury done to the client by keeping the $500.00 he had been paid although he did not take any action on the client's behalf and failed to find him experienced criminal counsel.

Mental State of the Accused. In taking the actions referenced above and more fully detailed in the Bar's Amended Complaint, it is clear the Accused acted knowingly even if he did not act intentionally to harm his clients. Knowledge is defined as a conscious awareness of the nature or attendant circumstances of the conduct, but without a conscious objective or purpose to accomplish a particular result. ABA *Standards,* at 7. In response to numerous inquiries from clients as to the status of their legal matter, on the occasion he communicated with his clients, the Accused represented that he would take the actions necessary to protect their interest. In failing to do so the Accused neglected their legal matter. The Accused also acted knowingly when he charged a clearly excessive fee and failed to refund unearned fees.

While the Accused raised the issue of mental impairment due to depression, he failed to offer expert testimony as to how this would negate a culpable mental state. *Compare In re Conduct of Holman*, 297 Or 36, 62 (1984) (expert medical testimony as to drug addition negated a culpable mental state).

Potential or actual injury. Clearly the Bar has met its burden of proof and established that the Accused violated his duties to his clients by neglecting their legal matters and failing to respond to their reasonable requests for information. Equally clearly, the violation of those duties resulted in harm to his clients. Additionally, testimony from the Accused established that he kept funds paid to him even when he did not do the work and failed to provide clients with any statement or accounting of funds received or work done.

The Panel also finds that the Accused violated his duties to the legal profession. He assumed or remained involved in legal matters for which he admits he was not qualified. He improperly withdrew from representation of a client. He failed to clearly establish the scope of his representation or to adequately communicate those limits to his clients. Finally, he refused the Bar's requests for information in this proceeding increasing its burden in investigating and prosecuting this action.

Aggravating Factors. In its Sanction Memo, the Bar cites the Accused's prior disciplinary record as an aggravating factor. The Panel concurs. The first discipline, an admonition, was imposed in 1991 for neglect of a legal matter. In 2002 the Accused was suspended for two (2) years, 90 days actual, the rest stayed subject to a two-year probation, for multiple instances of neglecting client matters and failing to cooperate in the Bar investigation. Those are the same type of ethical violations which gave rise to the instant proceeding. Moreover, at the time of the misconduct in this case, the Accused was still on probation under the 2002 disciplinary stipulation. As noted above, that stipulation required the Accused to review his files and make periodic reports to the Bar confirming that his files were current or had been referred to other counsel. The reports were made, however, the representations contained therein were untrue.[2]

The Bar contends the Accused failed to cooperate with their investigation in order to avoid or postpone the consequences of his misconduct. The Panel finds that his refusal to respond to the Bar, despite multiple requests that he do so, was intentional and knowing, but not done with intent to obstruct the disciplinary process, or with a dishonest or selfish motive.[3] *Standards,* §9.32(b). However, the Panel does find that in light of his substantial experience in the practice of law, the Accused's admitted failure to maintain a tickler system; utilize engagement and disengagement letters; define the scope of representation; make timely responses to clients; account for funds; and his undertaking matters for which he admits he was not qualified, raises questions as to his professional judgment. (RPC 1.1). The Panel also notes that the instant action involves multiple offenses (*Standards*, § 9.22(d)) and that these offenses involve the same pattern of wrongful conduct which gave rise to the 1991 and 2002 discipline (*Standards,* § 9.22(c)).

Mitigating Factors. In its sanction brief, the Bar states there are no mitigating factors. The Panel disagrees. Exhibits 41 through 47, submitted by the Bar, confirm the Accused's claim to suffer from clinical depression and the Bar's knowledge of that fact. (*Standards,* §9.32(c)) In a previous disciplinary proceeding involving similar charges, the Accused established mitigation in the form of depression. *In re Nicholls*, 16 DB Rptr 334 (2002). The Accused entered into a stipulation for discipline wherein he received a two-year suspension with all but 90 days stayed upon the successful completion of a two-year probation. Said probation required, *inter alia*, that the Accused obtain psychological therapy. While the therapy was obtained, it failed to change the Accused's conduct as it related to the practice of law. *Cf. In re Cohen*,

[2] The Panel does not believe the Accused made intentional misrepresentations in his reports, but that he failed to appreciate the fact that his conduct in these matters was negligent and should have been reported.

[3] The Accused stated that he failed to respond to the Bar as he intended to submit a Form B resignation. However, he never did so and testified that he decided not to resign approximately one week before the hearing.

330 Or 489, 494 (Or 2000) (repeated misconduct, depression a factor, Accused successfully addressed his deficiencies and improved his law practice).

The Accused acknowledges that some sanction is required and suggests that a renewal of the actual 90-day suspension from the 2002 stipulation would be reasonable. The Bar requests a five-year suspension or disbarment.

CONCLUSION AND DISPOSITION

Accepting the allegations of the Bar's Amended Complaint as true, and following its own review of the documentary and testimonial evidence, the Panel unanimously concluded that a three-year suspension is the appropriate sanction. The Panel is guided by *In re Conduct of Knappenberger,* 340 Or 573 (2006) (one-year suspension for a single allegation of violating DR 6-101(B), but as repeat discipline); *In re Conduct of Cue,* 336 Or 281, 283 (2003) (disbarment for violation of DR 9-101(C)(3)); *In re Conduct of Stauffer,* 327 Or 44 (1998) (two-year suspension, multiple violations of DR 2-106(A)); *In re Conduct of Parker,* 330 Or 541 (2000) (four-year suspension for violation of DR 2-110(A), DR 6-101(B)). The Panel considered and rejected the Accused's request that he be given credit for the period of time he has been suspended during the pendency of this matter. Although it cannot impose, and did not consider it in reaching its decision, the Panel acknowledges, accepts, and incorporates into this Opinion, the Accused's good faith offer to submit to an independent evaluation to determine his fitness to resume the practice of law before he shall be reinstated at the end of this suspension. Finally, the Panel orders that the Accused refund to Bolles the sum of $200.00 and to Brent the sum of $500.00.

DATED this 13th of December 2006.

/s/ James D. Van Ness
James D. Van Ness, Chair

/s/ Mary Kim Wood
Mary Kim Wood

/s/ Joan J. LeBarron
Joan J. LeBarron

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-95
	)	
RICHARD T. PERRY,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	Arnold S. Polk, Chair; Pamela Yee; Loni Bramson, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). Trial Panel Opinion. Six-month suspension.
Effective Date of Opinion:	April 25, 2007

DISCIPLINARY OPINION

SECTION ONE: INTRODUCTION

Date and Nature of Charge: By Formal Complaint dated September 18, 2006, the Oregon State Bar, "OSB," charged the Accused with violation of the following sections of the Oregon Rules of Professional Conduct:

RPC 1.3 Neglecting a legal matter entrusted to the lawyer;

RPC 1.4(a) Keeping a client reasonably informed about the status of matter;

RPC 1.15-1(d) Accounting for and delivering property to the client or third persons; and

RPC 8.1(a)(2) Failing to respond to a lawful inquiry from OSB.

The Accused. The Accused is Richard T. Perry, OSB # 82103, having an office and place of business in Washington County, Oregon.

Summary of the Complaint. In November 2005, Richard Evig, "Evig," contacted the Accused seeking representation for a personal injury Evig received on a fishing trip in Oregon. The Accused expressed an interest in representing Evig and Evig sent the Accused materials about the injury.

In February, 2006, Evig asked the Accused about the status of his case. The Accused acknowledged receiving the materials Evig had sent him in November 2005. The Accused also stated that he would send a representation agreement to Evig.

In March 2006, not having heard from the Accused, Evig requested in writing that the Accused take some action on his case or return the materials. The Accused did not respond to Evig's letter.

The Accused did not respond to OSB's inquiries regarding Evig.

Default. The Formal Complaint and Notice To Answer was served on the Accused by first class mail on September 20, 2006. A Motion For Order of Default was served on the Accused on October 31, 2006. The Accused has failed to appear within the time provided by the OSB Rules of Procedure.

An Order of Default was entered of record by the Disciplinary Board Chairperson on November 2, 2006. OSB's Disciplinary Counsel's Office submitted a Memorandum Re: Sanction on November 28, 2006. OSB mailed a copy of said Memorandum to the Accused on November 28, 2006. The Accused has not filed a responsive memorandum with the Trial Panel.

SECTION TWO: FINDINGS OF FACT

When an Order of Default is entered the allegations in the Formal Complaint are deemed true. BR 5.8(a). Therefore, the Accused is found to have:

a. Neglected a legal matter entrusted to him;

b. Failed to keep his client reasonably informed about the status of his matter;

c. Failed to account for and deliver property to the client; and

d. Failed to respond to a legal inquiry from the OSB.

SECTION THREE: CONCLUSIONS OF LAW

The OSB must establish by clear and convincing evidence that the Accused's conduct violated the standards governing professional responsibility. Since the Accused did not respond, the facts alleged are deemed true and the violations admitted.

The Accused's failure to take any action on behalf of Evig constituted neglect of a legal matter in violation of RPC 1.3.

The Accused's failure to communicate with Evig and the Accused's failure to respond to reasonable inquiries from Evig violated the Accused's duty to keep Evig reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of RPC 1.4(a).

The Accused's failure to promptly return Evig's original documents (property Evig was entitled to receive) constituted a violation of RPC 1.15-1(d).

The Accused's failure to respond to lawful demands for information from OSB during the course of this disciplinary matter constituted a violation of RPC 8.1(a)(2).

SECTION FOUR: SANCTIONS

Under the ABA *Standards For Imposing Lawyer Sanction* (1991) (amended 1992) four factors are to be used to determine the appropriate sanctions: (1.) the duty violated, (2.) the Accused's mental state, (3.) the actual or potential injury caused by the misconduct, and (4.) the existence of aggravating and mitigating circumstances. ABA *Standards*, 3.0. *In re Conduct of Kluge*, 66 P3d 492, 507 (2003). The primary purpose of disciplinary proceedings is the protection of the public. *In re Houchin*, 290 Or 433 (1981).

A. ABA Standards

1. *Duties Violated.* The Accused violated his duty to: (1) act with reasonable diligence and promptness in representing his client, and (2) his duty to return client property to the client. *Standards*, 4.4. The most important ethical duties are those obligations a lawyer owes to his client. *Standards*, 5. The Accused also violated his duty to the profession to cooperate with a disciplinary investigation. *Standards*, 7.

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

The OSB may rely upon the facts alleged in the complaint to establish the mental state of an accused lawyer. *In re Kluge*, 332 Or 251, 262 (2001). Based upon the facts alleged in the complaint we find that the Accused knowingly failed to communicate with or keep his client reasonably informed about the status of the client's matter. We further find that the Accused knowingly failed to take any substantive action on behalf of his client. We further find that the Accused knowingly failed to respond fully to legal inquiries of the OSB in connection with a disciplinary proceeding.

3. *Injury*. Because the primary purpose of disciplinary proceedings to protect the public, there need not be actual injury. In the instant case there was actual injury to Evig consisting of anxiety and frustration.

The Accused's failure to cooperate with the OSB's investigation caused actual injury to the public and the legal profession because multiple requests were necessitated by his failures to respond to the OSB, thereby delaying the investigation and resolution of the complaint against the Accused.

Absent aggravating or mitigating circumstances, *Standards*, 4.42 provides that a 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; (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client; and

(c) a lawyer knowingly engages in conduct that is a violation of a duty owed to the legal profession and causes injury or potential injury to a client, the public, or the legal system. *Standards*, 7.2.

4. *Aggravating / Mitigating Circumstances.*

The following aggravating factors apply in this case:

a. A prior record of discipline. *Standards*, 9.22(a). The Accused was recently suspended for 97 days for violations of DR 6-101(B) and RPC 1.3; DR 7-101(A)(2); RPC 1.4(a); and RPC 1.4(b). *In re Perry*, 21 DB Rptr 24 (2007) ("*Perry I*").

b. A pattern of misconduct. *Standards*, 9.22(c). The Accused's conduct in his prior disciplinary matter demonstrates neglect of multiple client matters.

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

d. Substantial experience in the practice of law. *Standards*, 9.22(i). The Accused was admitted to the OSB in 1982.

There are no mitigating factors.

DISPOSITION

The Trial Panel finds that suspension of 6 months consecutive to the suspension imposed in *Perry I* is warranted for the Accused for violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct.

DATED this 18th day of December 2006.

/s/ Arnold S. Polk
Arnold S. Polk
OSB No. 81-486
Trial Panel Chair

CONCURRING MEMBERS:

/s/ Loni Bramson
Loni Bramson, Public Member

/s/ Pamela E. Yee
Pamela E. Yee
OSB 87-372

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-81
	)	
A.E. BUD BAILEY,	)	
	)	
Accused.	)	

Counsel for the Bar:	Thomas P. Busch; Stacy J. Hankin
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violation of DR 5-101(A) and DR 5-104(A). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	February 20, 2007

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 5-101(A) and DR 5-104(A).

DATED this 20th day of February 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 25, 1987, and has been a member of the Oregon State Bar continuously since that time. Until October 2004, the Accused had his office and place of business in Washington County, Oregon. Thereafter, he relocated his office to Clark County, Washington.

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 22, 2006, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 5-101(A) and DR 5-104(A) in two Causes of Complaint. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In November 1990, Michael Moodhe (hereinafter "Moodhe") and his business partner incorporated Pro Car Care Inc. (hereinafter "PCC"). In early 1996, Moode became PCC's sole owner and shareholder. Between late 1990 and late 2002, the Accused represented PCC in various matters.

6.

In late 1996, the Accused's wife and John Edwards (hereinafter "Edwards") became shareholders in PCC. The Accused had represented Edwards in a number of

legal matters. The Accused obtained consent after full disclosure from Moodhe and Edwards before the Accused's wife became a shareholder in PCC. As of January 1, 1997, PCC was no longer wholly owned by Moodhe and, to the extent the Accused thereafter represented PCC, he represented the corporation only.

7.

In late 1999, Moodhe informed the other PCC shareholders that for various reasons, he wished to retire from working at PCC. Moodhe wanted to receive wages and continued health insurance coverage for a period of time, and also payment for his shares of PCC stock. The Accused and Edwards informed Moodhe that they would discuss the matter and would make a proposal.

8.

In early May 2000, the Accused prepared alternative draft stock purchase agreements between himself and Moodhe, and PCC and Moodhe. Under the former, Moodhe's stock in PCC would be transferred to the Accused; under the latter, Moodhe's stock in PCC would be transferred to PCC. Both agreements obligated PCC to make monthly payments to Moodhe and to pay Moode's health insurance premiums for a number of years. The Accused's financial interests as a party to at least one of the draft stock purchase agreements reasonably might have affected his professional judgment on behalf of PCC.

9.

The stock purchase agreement in which Moodhe's stock in PCC would be transferred to the Accused became effective as of May 10, 2000.

10.

In July 2000, the Accused loaned $50,000.00 to PCC. The funds from that loan were used to pay PCC's debt to various creditors so that its operating income could be used to pay Moodhe as provided in the stock purchase agreement referenced in paragraph 9 herein. Beginning in July 2000, PCC made payments to Moodhe and paid Moodhe's health insurance premiums, as provided for in the stock purchase agreement.

11.

Between July 2000 and July 2002, the Accused made additional loans of $109,000.00 to PCC. In 2003, Edwards loaned $15,000.00 to PCC.

12.

The Accused's financial interests in the loans described in paragraphs 10 and 11 herein, and his subsequent status as a creditor of PCC, reasonably might have affected his professional judgment on behalf of PCC. The Accused's interests in the

loan transactions differed from those of PCC, and PCC expected the Accused to exercise his professional judgment for the protection of PCC in the loan transactions.

13.

In connection with the preparation of the draft stock purchase agreements the Accused made some disclosures at PCC Board meetings. Edwards, the sole PCC Board member who was capable of giving consent, was present at those meetings and orally consented. Moodhe, because he had a personal interest in the stock transaction, could not vote or give consent. In making the disclosures described above, the Accused failed to fully comply with DR 10-101(B), such that he did not obtain consent after full disclosure from Edwards to his continued representation of PCC, and to his participation in the transactions.

14.

In connection with the loans, the Accused made some disclosures at PCC Board meetings. Edwards was present at those meetings and orally consented. Moodhe did not attend those meetings because as of May 10, 2000, he believed that he no longer was a member of the Board, having transferred his PCC shares to the Accused. In making the disclosures described above, the Accused failed to fully comply with DR 10-101(B), such that he did not obtain consent after full disclosure to his continued representation of PCC, and to his participation in the transactions.

Violations

15.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 14, he violated DR 5-101(A) and DR 5-104(A).

Sanction

16.

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

A. *Duty Violated.* The Accused violated his duty to obtain consent after full disclosure as required by DR 5-101(A) and DR 5-104(A). *Standards*, § 4.3.

B. *Mental State.* The Accused acted negligently. The Accused recognized that he needed to obtain consent after full disclosure, and made some disclosures to his client, but negligently failed to comply with the requirements of DR 10-101(B).

C. *Injury.* The Accused's conduct did not cause actual injury to PCC. There was subsequent litigation between Moodhe and the Accused concerning the stock purchase agreement, but the violations here arose out of the Accused's relationship with PCC and not with Moodhe. PCC was potentially injured as a result of the Accused's failure to obtain consent after full disclosure in connection with the stock purchase agreement and the loans.

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

1. Selfish motive in that the Accused may have been motivated to protect his own financial investment. *Standards,* § 9.22(b).

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

3. Substantial experience in the practice of law as the Accused has been an Oregon lawyer since 1987. *Standards,* § 9.22(i).

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

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 proceeding. *Standards,* § 9.32(e).

4. Good character. *Standards,* § 9.32(g).

17.

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 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.

18.

Oregon case law supports the imposition of a public reprimand where a lawyer negligently engages in improper conflicts of interest and the violations cause only potential injury. *In re Dickerson,* 19 DB Rptr 363 (2005); *In re Cohen,* 316 Or 657, 853 P2d 286 (1993); *In re Harrington,* 301 Or 18, 718 P2d 725 (1986).

Suspensions are generally imposed where there are other rule violations, or where the lawyer borrowed funds from the client or otherwise financially benefited from the transaction with the client. See *In re Leutjen,* 18 DB Rptr 41 (2004) (one-year suspension of lawyer who violated DR 2-106(A), DR 5-101(A), and DR 5-104(A) when he borrowed significant sums from a client and then entered into an agreement with the client whereby she agreed to forego collecting interest payments from the accused lawyer in exchange for legal work where the value of the legal

work the accused lawyer performed was significantly less than the value of the interest payments waived by the client); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997) (four-month suspension imposed on lawyer who prepared a trust deed for a client that constituted a gift to the lawyer, who failed to obtain his client's consent before transferring title of her vehicle to the lawyer's professional corporation, and who failed to make full disclosure to the client regarding signing a trust deed on her property to the lawyer); *In re Baer*, 298 Or 29, 688 P2d 1324 (1984) (suspension of not less than 60 days where lawyer violated DR 5-101(A), DR 5-104(A), and DR 5-105(C) when he represented both his wife, who was the purchaser, and the sellers in a real estate transaction without disclosing to sellers in detail the nature of the conflict of interest); *In re Boyer*, 295 Or 624, 669 P2d 326 (1983) (lawyer who violated DR 5-101(A) and DR 5-105(E) when he arranged a loan from one client to another client and accepted a finder's fee from the borrower was suspended for seven months).

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of DR 5-101(A) and DR 5-104(A), the sanction to be effective immediately.

20.

The Accused shall also pay to the Bar its reasonable and necessary costs in the amount of $856.45, incurred for deposition and transcript costs. Should the Accused fail to pay $856.45 in full by the 60th day after approval of the 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.

21.

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

EXECUTED this 7th day of February 2007.

/s/ A.E. Bud Bailey
A.E. Bud Bailey
OSB No. 87157

EXECUTED this 12th day of February 2007.

OREGON STATE BAR

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

Cite as 342 Or 393 (2007)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
WILLIAM REDDEN,	)
	)
Accused.	)

(OSB 05-75; SC S53578)

En Banc

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

Argued and submitted January 4, 2007. Decided on February 23, 2007.

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

Jeffrey D. Sapiro, 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 60 days, commencing 60 days from the date of this decision.

SUMMARY OF THE SUPREME COURT OPINION

The Accused took money from a client related to a child support case. The client and his ex-wife agreed to stipulate to a lower amount of arrearages. The Accused drafted a stipulation, but failed to have the ex-wife sign it or submit it to the trial court. The Accused was found to have violated former Oregon Code of Professional Responsibility DR 6-101(B), and a suspension of 120 days was ordered. The Accused appealed from the sanction imposed. In entering a 60-day suspension, the supreme court determined that there were several factors used in determining an appropriate sanction. In order to show a violation of DR 6-101(B), the Bar was required to show a course of negligent conduct. However, this was different than showing a pattern of misconduct for sanction purposes. The Accused only represented the client in one matter, he had no prior disciplinary matters, and there was no evidence of similar misconduct in the past. Further, the fact that the Accused failed to attend the trial panel hearing was not an aggravating factor. Next, there were several mitigating factors that applied to the case. Finally, the supreme court noted

that it had imposed 60-day suspensions in cases similar to the Accused's. The Accused was suspended from the practice of law for 60 days, commencing 60 days from the date of the decision.

Cite as 342 Or 403 (2007)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
EDWARD N. FADELEY,	)
	)
Accused.	)

(OSB 05-21; SC S53368)

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

Argued and submitted January 3, 2007. Decided on February 23, 2007.

Edward N. Fadeley, Creswell, argued the cause and filed the briefs for himself.

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

Before De Muniz, Chief Justice, and Gillette, Balmer, Kistler, and Linder, Justices. (Durham and Walters, JJ., did not participate in the consideration or decision of this case.)

PER CURIAM

The Accused is suspended from the practice of law for 30 days, commencing 60 days from the date of this decision.

SUMMARY OF THE SUPREME COURT OPINION

The attorney was contacted by a client who sought to divorce her husband. Later, the client complained to the Bar about the Accused's failure to refund a fee that the client believed she was owed. After the client filed the complaint, the lawyer twice attempted to tender money to the Bar, which the Bar declined to accept. The lawyer's initial argument concerned the composition of the trial panel. The attorney argued that an active emeritus attorney was not an attorney for the purposes of Or. Bar R.P. 2.4(a). Nevertheless, the attorney did not look to the proper definition of attorney, pursuant to Or. Bar R.P. 1.1(c). Turning to the merits of the charges, even if the attorney and the client orally agreed that the $10,000 minimum fee would be earned on receipt and not refundable, an oral agreement did not provide a sufficient basis for a lawyer to treat a client's funds as if they were his or her own. The Accused violated DR 9-101(A) when he deposited the $10,000 fee into his personal

checking account instead of a lawyer trust account. The attorney's misconduct all stemmed from one act, which was the failure to recognize that he needed to reduce the fee agreement to writing. The supreme court affirmed the trial panel's position. The attorney was suspended from the practice of law for 30 days.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 07-11 and 07-12
	)	
BENJAMIN M. KARLIN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	February 26, 2007

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 RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

DATED this 26th day of February 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On January 20, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter); and RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) 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.

Jeffrey Larson Matter

Case No. 07-11

Facts

5.

In mid-November 2005, the Accused was retained by Jeffrey Larson (hereinafter "Larson") to obtain a divorce. The Accused prepared and filed a petition for dissolution of marriage in mid-December. However, the Accused did not arrange for service of the petition on Larson's wife within a reasonable time thereafter, although Larson made repeated requests that he do so. The Accused sent the petition for service on January 24, 2006.

6.

After service was completed, the Accused took no substantive action in the case prior to being terminated by Larson in late April 2006, despite repeated attempts by opposing counsel to communicate with the Accused, without response.

Violations

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he neglected a legal matter entrusted to him in violation of RPC 1.3.

Fred Reck Matter

Case No. 07-12

Facts

8.

In January 2005, Fred Reck (hereinafter "Reck") hired the Accused to seek to have the court eliminate his more than 20-year spousal support obligation to his former wife. Reck provided the Accused with a $1,000 retainer, which the Accused properly placed in his lawyer trust account.

9.

The Accused obtained the court file and conducted research. He then prepared a motion and affidavit for a modification of spousal support. However, these documents were never filed with the court.

10.

In early March 2005, the Accused withdrew the $1,000 from trust and paid himself for the work he performed up to that time. The Accused did not inform Reck that he had utilized all of the funds that had been provided to him or request any additional funds.

11.

From March through August 2005, the Accused took no action on the case based, in part, on his inability to locate an address for service on Reck's ex-wife. However, the Accused took no affirmative steps to locate Reck's former wife. Through his own efforts, Reck located his former wife's address and provided it to the Accused in mid-August 2005.

12.

The Accused did not act on the address information provided by Reck or take any subsequent action on the modification, even after Reck sent multiple e-mails inquiring as to the status of the matter. The Accused responded to some of these

e-mail communications, but did not provide substantive information on the case. The Accused never explained to Reck that he had other more pressing matters or that there was any reason that the modification could not go forward.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 8 through 12, he neglected a legal matter entrusted to him in violation of RPC 1.3; failed to maintain adequate communication with Reck in violation of RPC 1.4(a); and failed to inform Reck of information necessary for him to make informed decisions regarding the representation in violation of RPC 1.4(b).

Sanction

14.

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

A. *Duty Violated.* The Accused violated his duty of diligence to his clients. *Standards*, § 4.4. The *Standards* assume that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5.

B. *Mental State.* The Accused acted negligently. 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. In the Larson matter, the Accused was negligent in tracking the dissolution of marriage and in allowing other matters to divert his attention from it. Similarly in the Reck matter, the Accused negligently failed to take action on the spousal support modification or communicate with Reck after being held up by the lack of a current address on Reck's former wife.

C. *Injury.* Injury can be actual or potential. Larson was caused actual injury in the form of anxiety and frustration at the delay of his divorce proceeding. Reck was caused similar anxiety and frustration both by the delay of his legal matter and the lack of communication from the Accused. In addition, Reck was caused substantial potential injury by his continuing financial obligation to his former wife that may have been reduced or eliminated at some reasonable point prior to now, if the Accused had timely attended to his legal matter.

D. *Aggravating Factors.* Aggravating factors include:

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

2. Substantial experience in the practice of law. The Accused was admitted in Oregon in 1982. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. Full and free disclosure and cooperative attitude toward these disciplinary proceedings. *Standards,* § 9.32(e); and

4. Remorse. The Accused has expressed his apologies to both Larson and Reck for his conduct and their resulting frustrations in these matters. *Standards,* § 9.32(*l*).

15.

Before considering aggravation or mitigation, the *Standards* presume that a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client (including in communicating with a client), and causes injury or potential injury to a client. *Standards,* § 4.43. Although there are multiple matters, the applicable mitigating factors appear to cancel those in aggravation, making a reprimand still the appropriate sanction.

16.

Oregon cases have also held that a reprimand is appropriate under similar circumstances. See, e.g., *In re Cohen,* 330 Or 489, 8 P3d 953 (2000) (lawyer reprimanded under former neglect rule for inaction, including a failure to notify client of dismissal); *In re Lebenbaum,* 19 DB Rptr 154 (2005) (lawyer reprimanded for neglect, including failing to communicate with his client); *In re Mullen,* 17 DB Rptr 22 (2003) (lawyer reprimanded for neglect, including failure to respond to client inquiries).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of RPC 1.3, RPC 1.4(a), and RPC 1.4(b), the sanction to be effective on approval by the Disciplinary Board.

18.

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

EXECUTED this 13th day of February 2007.

/s/ Benjamin M. Karlin
Benjamin M. Karlin
OSB No. 82296

EXECUTED this 14th day of February 2007.

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. 06-54
	)	
NEIL J. DRISCOLL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 3.3(d), RPC 3.5(b), RPC 8.4(a)(3), and RPC 8.4(a)(4). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	March 1, 2007

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 on the third day following the signing of this order for violation of RPC 3.3(d), RPC 3.5(b), RPC 8.4(a)(3), and RPC 8.4(a)(4).

DATED this 26th day of February 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multmomah 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 7, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of ORPC 3.3(d), ORPC 3.5(b), ORPC 8.4(a)(3), and ORPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Before March 15, 2005, the Accused undertook to represent Lauralie Gervais in a personal injury matter, and on March 15, 2005, filed a lawsuit for damages against James Canton (hereinafter "Canton").

6.

Canton retained a lawyer, J.P. Harris (hereinafter "Harris"), to represent him in the above-described lawsuit, and on March 31, 2005, Harris notified the Accused that he represented Canton and requested that the Accused give him ten days' notice of his intent to take a default against Canton.

7.

On or about June 20, 2005, the Accused filed and served upon Harris a notice of his intent to move for an order of default. Thereafter, and up until September 7, 2005, the Accused and Harris actively litigated the Gervais lawsuit, including engaging in settlement negotiations, exchanging discovery requests, deposing the parties, and conferring upon Harris's proposed ORCP Rule 21 motions. Harris served the Accused with ORCP Rule 21 motions, and on the basis of Harris's representation that the motions had been filed with the court, the Accused responded to the motions.

8.

On or about August 26, 2005, the court dismissed the Gervais lawsuit for want of prosecution because Harris's motions had never been received by the court. On or about September 2, 2005, with notice to Harris, the Accused filed a motion and appeared in court to reinstate the lawsuit. Harris did not appear or oppose the Accused's motion, and the court reinstated the lawsuit. Thereafter, the Accused failed to notify Harris of the court's action.

9.

On or about September 7, 2005, the Accused appeared in court and presented a motion for order of default and entry of a default judgment. In support of this motion, the Accused made the following oral representation to the court: "There's supposedly a defense lawyer on this case, but he hasn't appeared." This representation was misleading, and the Accused knew it was misleading when he made it. It was material to the court or reasonably necessary for the court to make an informed decision on the Accused's motion that the defendant was represented by counsel who had been actively participating in the litigation. The Accused knew this information was material to the court or reasonably necessary for the court to make an informed decision on his motion when he made the above-described representation.

10.

In the affidavit the Accused executed to support his motion for an order and judgment of default, the Accused knowingly failed to disclose to the court Harris's ongoing participation in the litigation after the Accused had served the June 20, 2005, notice of intent to take a default described in paragraph 7 above. The Accused knew that this information was material to the court or reasonably necessary for the court to make an informed decision when he failed to disclose it.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated ORPC 3.3(d), ORPC 3.5(b), ORPC 8.4(a)(3), and ORPC 8.4(a)(4).

Sanction

12.

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

A. *Duty Violated.* The Accused violated his duty to the public to maintain his personal integrity. *Standards,* § 5.0. The Accused also violated his duty of candor to the legal system. *Standards,* § 6.0.

B. *Mental State.* The Accused acted knowingly, i.e., he acted 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. *Standards,* at 7.

C. *Injury.* Canton and the legal system were actually injured in that the court entered a default judgment against Canton based on the Accused's representations, and Harris was required to set a hearing date and make a court appearance in an attempt to set aside the default judgment. The Professional Liability Fund was also required to obtain and pay for counsel to represent Harris in setting aside the judgment.

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 record. *Standards,* § 9.32(a)

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

3. The Accused was disabled by an advanced stage illness that affected his cognitive abilities, memory, and concentration. This illness contributed to the Accused's conduct. *Standards,* § 9.32(h).

4. The Accused has a good reputation.

Another relevant factor, although not specified in the *Standards* as mitigating, is that the Accused has closed his law office and does not intend to resume the practice of law.

13.

Standards, § 5.13 suggests that a public reprimand is generally appropriate when a lawyer knowingly engages in conduct that involves misrepresentation and that adversely reflects on the lawyer's fitness to practice law. *Standards*, § 6.12 suggests that suspension is generally appropriate when a lawyer knows that material information is being improperly withheld, takes no remedial action, and causes injury or potential injury to a party to the proceeding.

14.

Oregon case law suggests that a suspension would be appropriate for the Accused's conduct. *See In re Dugger*, 334 Or 602, 54 P3d 595 (2002), where the lawyer was suspended for 60 days for violation of DR 1-102(A)(3) (conduct involving misrepresentation), DR 1-102(A)(4) (conduct prejudicial to the administration of justice), and DR 7-110(B)(2) (ex parte communication with the court). The lawyer in *Dugger* made false statements to the court and failed to notify opposing counsel that he intended to make an ex parte appearance before the court.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 60 days for violation of ORPC 3.3(d), ORPC 3.5(b), ORPC 8.4(a)(3), and ORPC 8.4(a)(4), the sanction to be effective beginning on the third day following the approval of this stipulation by the Disciplinary Board.

In addition, the Accused shall direct the Professional Liability Fund to notify Disciplinary Counsel's Office should he apply for professional liability insurance in the future.

16.

The sanction provided for herein was approved by the State Professional Responsibility Board on December 15, 2006. This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 10th day of February 2007.

/s/ Neil J. Driscoll
Neil J. Driscoll
OSB No. 78187

EXECUTED this 14th day of February 2007.

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. 05-166 and 06-08
	)	
CLAYTON J. LANCE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Conrad E. Yunker; Martha M. Hicks
Counsel for the Accused:	Larry R. Roloff
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(A), DR 6-101(B), RPC 1.15-1(d), and RPC 8.1(a)(2). Stipulation for Discipline. 6-month suspension.
Effective Date of Order:	April 1, 2007

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 April 1, 2007, for violation of DR 6-101(A), DR 6-101(B), RPC 1.15-1(d), and RPC 8.1(a)(2).

DATED this 2nd day of March 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1985, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane and Multnomah Counties, Oregon.

3.

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

4.

On March 2, 2006, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 6-101(A) and (B), and ORPC 1.15-1(d), ORPC 8.1(a)(1) and (2), and ORPC 8.4(a)(3). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

The McPartlin Matter (Case No. 05-166)

5.

On or about March 26, 2004, the Accused was appointed by the court to represent John Joseph McPartlin (hereinafter "McPartlin") in criminal proceedings, *State v. John Joseph McPartlin*, Multnomah County Case No. 0402-31025, in which McPartlin was charged with 81 sexual crimes against minors or young men. At the time of the Accused's appointment, McPartlin had also been indicted in federal court on three counts of coercion and enticement and interstate travel with the intent to engage in sex with a minor.

6.

Because McPartlin had been indicted on federal charges, federal sentencing guidelines required that any sentence imposed by the federal court would run consecutively to any sentence imposed by the state court if McPartlin were first convicted by the state court. McPartlin thus faced a possible sentence of 20 to 30 years if he was not sentenced in his federal case prior to or simultaneously with the resolution of his state case. The evidence against McPartlin was overwhelming, but as of the time the Accused was appointed to represent him, McPartlin was asserting his innocence and demanding a trial in state court. Because conviction after a trial was highly likely, McPartlin's best interest was to negotiate an agreement with the District Attorney's Office that would reduce the length of his incarceration.

7.

From March 26, 2004, until on or about June 2, 2004, the Accused failed to communicate with McPartlin or respond to McPartlin's attempts to communicate with him and failed to apply to Indigent Defense Services for funds for an investigator.

8.

McPartlin lost confidence in the Accused in the period between March 26, 2004, and June 2, 2004, did not accept responsibility for the crimes with which he was charged, and did not recognize that his best interest was in attempting to reduce the length of his likely incarceration. The Accused retained an investigator in June 2004, but between June 2004 and September 13, 2004, when the court terminated his representation of McPartlin, the Accused failed to take any steps to regain McPartlin's confidence. The Accused did not sufficiently explore or discuss with McPartlin his options and the consequences thereof, to the extent that McPartlin did not have sufficient information to help him decide whether a trial was in his best interest.

Between March 26, 2004, and September 13, 2004, the Accused failed adequately to communicate with McPartlin. The Accused also failed to do the following to assist McPartlin to make an informed decision about the merits of the case against him and his legal options: adequately investigate McPartlin's claims of defense; interview or cause anyone else to interview the witnesses whose names McPartlin provided; interview any victims; arrange for polygraph examinations of McPartlin; retain or consult with computer or medical expert witnesses; and communicate adequately with McPartlin's federal defense counsel or coordinate the investigations of the state and federal cases.

9.

The Accused also failed adequately to prepare for trial in that he failed to prepare McPartlin to testify and failed to subpoena lay and expert witnesses.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9 of this stipulation, he failed to achieve the level of thoroughness or preparation reasonably necessary to represent McPartlin, and neglected a legal matter entrusted to him in violation of DR 6-101(A) and DR 6-101(B).

Facts

The Pankey Matter (Case No. 06-08)

11.

The Accused represented Robert Pankey (hereinafter "Pankey") in a criminal matter. Upon the conclusion of the criminal matter, Pankey retained new counsel to represent him in seeking postconviction relief. In May 2005, both Pankey and his new counsel requested the Accused to return Pankey's client file to him or his new counsel. The Accused failed to return Pankey's file promptly, despite several subsequent requests by Pankey or his new counsel that the Accused do so.

12.

The Oregon State Bar Disciplinary Counsel's Office received a complaint from Pankey concerning the Accused's conduct on August 10, 2005. On August 23, 2005, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by September 13, 2005. The Accused made no response. On October 19, 2005, Disciplinary Counsel's Office again requested the Accused's response to the complaint by October 26, 2005. The Accused did not timely respond.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 11 and 12 of this stipulation, he failed to promptly deliver to a client the property that the client was entitled to receive and failed to respond to a lawful demand for information from a disciplinary authority in violation of ORPC 1.15-1(d) and ORPC 8.1(a)(2).

Upon further factual inquiry, the parties agree that the charges of alleged violation of ORCP 8.1(a)(1) and ORPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

Sanction

14.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's

conduct be analyzed by considering the following factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances.

A. *Duty.* The Accused violated the duties of diligence and competence he owed to McPartlin. *Standards,* §§ 4.4 and 4.5. The Accused violated his duty to Pankey to properly deal with Pankey's property. *Standards,* § 4.1. The Accused also violated the duty he owed as a professional to respond promptly to the Bar. *Standards,* § 7.0.

B. *Mental State.* The Accused acted knowingly in both the McPartlin matter and the Pankey matter.

C. *Injury.* The Accused's conduct in the McPartlin matter caused actual injury to McPartlin, who suffered great anxiety as a result of the Accused's lack of communication and inattention to his legal matter. (See *In re Cohen,* 330 Or 489, 496, 8 P3d 953 (2000), where the court found that a client's frustration and anxiety can constitute actual injury.)

The Accused's conduct in the Pankey matter also engendered frustration in Pankey and his postconviction counsel. Pankey's postconviction counsel was delayed in his pursuit of the matter.

The Accused's untimely response to the Bar caused actual injury in that the Bar's investigation of Pankey's complaint was delayed.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary offense similar to one of the rules violated in the Pankey matter. On January 12, 2005, the Accused was admonished for violation of DR 9-101(C)(4) (the predecessor to ORPC 1.15(d)). (See *In re Cohen, supra,* 330 at 500, where the court found that a letter of admonition may be considered an aggravating factor if the conduct was of the same or similar type as the misconduct at issue.) *Standards,* § 9.22(a).

2. The Accused engaged in a pattern of misconduct that involved multiple offenses. *Standards,* § 9.22(c) and (d).

3. McPartlin and Pankey were vulnerable victims, because they were incarcerated during the time of the Accused's conduct. *Standards,* § 9.22(h). (*See In re Obert,* 336 Or 640, 653–654, 89 P3d 1173 (2004).)

4. The Accused had substantial experience in the practice of law, having been admitted to the Bar in 1985. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. During his representation of McPartlin, the Accused was suffering from an undiagnosed blocked artery and high blood pressure, which caused him to experience fatigue, nausea, dizziness, and severe headaches. *Standards,* § 9.32(h).

Preliminary Sanction

15.

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 or 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.

Oregon Case Law

16.

Oregon precedent suggests that the appropriate sanction in this case is a suspension.

In cases involving single violations of DR 6-101(B), the Supreme Court has generally imposed 60-day suspensions. *In re Knappenberger*, 337 Or 15, 33, 90 P3d 614 (2004). The court has also generally imposed a 60-day suspension for each violation of DR 1-103(C). *See In re Miles*, 324 Or 218, 923 P2d 1219 (1996).

However, the court has imposed longer suspensions in neglect cases where the aggravating factors outweigh the mitigating factors. For example, in *In re Knappenberger*, *supra*, the court imposed a 90-day suspension where an experienced lawyer, who was charged with violation of DR 6-101(B) and DR 5-101(A) (lawyer's self-interest conflict) in two client matters, had a prior admonition for violation of DR 5-101(A).

In *In re Meyer*, 328 Or 220, 970 P2d 647 (1999), the court suspended the lawyer for one year for a single violation of DR 6-101(B). The court noted that there were no mitigating factors. It gave significant weight in aggravation to the presence of three prior disciplinary rule violations and considered as additional aggravating factors the lawyer's substantial experience in the practice of law and refusal to acknowledge the wrongful nature of his conduct.

A suspension of less duration than that imposed in *Meyer* is appropriate because, unlike the lawyer in *Meyer*, the Accused does not have an extensive or serious prior disciplinary history, nor does he refuse to acknowledge the wrongful nature of his conduct. Moreover, the Accused's undiagnosed medical condition may have had some affect on his representation of McPartlin.

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of six months, beginning on April 1, 2007, for violation of DR 6-101(A), DR 6-101(B), ORPC 1.15-1(d), and ORPC 8.1(a)(2).

In addition, the Accused consents to the entry of a judgment against him for the Oregon State Bar's reasonable and necessary costs in the amount of $1,255, incurred for deposition transcripts and transcripts of the McPartlin state court proceedings. The Bar agrees that it will not execute upon this judgment prior to August 1, 2007.

18.

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

EXECUTED this 28th day of February 2007.

/s/ Clayton J. Lance
Clayton J. Lance
OSB No. 85264

EXECUTED this 23rd day of February 2007.

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. 05-133, 06-53,
	)	06-106, and 06-107
MICHAEL L. DOSS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 1.3, RPC 1.4, RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 8.1(a)(2). Stipulation for Discipline. 6-month suspension.
Effective Date of Order:	April 2, 2007

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. The Accused is suspended for six (6) months, effective April 2, 2007, for violations of RPC 1.3, RPC 1.4, RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 8.1(a)(2).

DATED this 5th day of March 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on June 7, 1993, 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.

At the direction of the State Professional Responsibility Board (hereinafter "SPRB") the Accused is charged with violations of RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.3, RPC 1.4, RPC 8.1(a)(2), RPC 8.4(a)(2), and RPC 8.4(a)(3). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

FACTS AND VIOLATIONS

Case No. 05-133

Trust Account Matters

5.

During 2005, the Accused maintained a lawyer trust account at Key Bank National Association (hereinafter "Key Bank"). On or about June 30, 2005, the Accused deposited a check for $7,720 from an insurance company for settlement of a client's claim into his Key Bank lawyer trust account. The same day, before Key Bank had collected the funds for the settlement check, the Accused prepared and delivered two (2) checks drawn on the account, one to his client and the other to himself, which were paid by Key Bank with other clients' funds on deposit. Thereafter, the payor bank refused to pay the settlement check because the check had

not been properly endorsed. As a result, Key Bank reversed the credit in the Accused's trust account, thus creating a negative balance.

6.

On July 5, 2005, Key Bank dishonored two (2) checks the Accused drew and presented for payment on the Accused's trust account. The checks were dishonored for insufficient funds in the Accused's account.

7.

On or about July 13, 2005, Key Bank sent notices of overdrafts on the Accused's lawyer trust account to the Bar. On July 25, 2005, Disciplinary Counsel forwarded a copy of the notices to the Accused and requested his explanation and the production of his trust account bank statements. The Accused did not respond to Disciplinary Counsel's requests. On September 7, 2005, Disciplinary Counsel referred the matter to the Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. Between September 20, 2005 and January 2006, the Accused failed to respond or respond timely to some of the LPRC's requests.

8.

The Accused admits that the aforesaid conduct constituted failure to maintain client funds in a lawyer trust account, and failure to comply with lawful demands for information from the disciplinary authorities in violation of RPC 1.15-1(a) and RPC 8.1(a)(2) of the Rules of Professional Conduct.

9.

Before, during, and after 2005, the Accused failed to prepare and maintain complete and accurate records concerning some clients' funds, including records clearly and expressly reflecting the dates, amounts, sources and explanations for all receipts, withdrawals, deliveries, and disbursements.

10.

During and after 2005, the Accused failed to maintain several clients' funds in trust; collected an excessive fee when he prematurely withdrew funds from trust; and withdrew funds in excess of the amount on deposit for several clients.

11.

The Accused admits that the aforesaid conduct violated RPC 1.15-1(a), RPC 1.15-1(c), and RPC 1.5(a) of the Rules of Professional Conduct.

12.

On or about May 9, 2005, Zach Sargent paid a $5,000 retainer to the Accused for legal services to be performed concerning the formation of a limited liability company. After some legal services were performed, Sargent terminated the

representation and requested an accounting and refund of the unearned portion of the retainer. On or about October 25, 2005, the Accused refunded $2,142, but failed to account for or to refund the balance of the unearned retainer, $491.75, to Sargent. Sargent lodged a complaint with the Accused and other persons associated with him. The Accused did not respond or return the balance of the unearned retainer until December 5, 2005.

13.

The Accused admits that the aforesaid conduct constituted failure to promptly deliver funds the client was entitled to receive, in violation of RPC 1.15-1(d) of the Rules of Professional Conduct.

14.

Upon further factual inquiry, the parties agree that the alleged violations of RPC 8.4(a)(2) and RPC 8.4(a)(3) as set forth in Case No. 05-133 of the Bar's Formal Complaint, upon the approval of this stipulation, are dismissed.

Case No. 06-53

Hudson Matter

15.

On or about July 11, 2005, Roseanne Hudson (hereinafter "Hudson") retained the Accused to represent her interests concerning a dissolution of marriage matter. Hudson paid the Accused a $2,000 retainer for the legal services to be performed. The Accused prepared a draft of a petition for dissolution and other related documents for Hudson. On or about July 19, 2005, the Accused met with and reviewed the petition with Hudson. The Accused represented that he would finalize and file the petition for dissolution and other related documents with the court.

16.

After July 19, 2005, the Accused failed to file Hudson's petition for dissolution with the court. Hudson left messages for the Accused asking him to call concerning her case. The Accused did not respond. In or about August 2005, Hudson sent written notices to the Accused terminating his representation and asking the Accused to refund the unearned portion of the retainer and to deliver her file. The Accused did not promptly respond or communicate with his client. Thereafter, the Accused refunded $913.50 to Hudson, but failed to provide her with a copy of the file.

17.

The Accused admits that the aforesaid conduct constituted failure to communicate with a client, neglect of a legal matter, and failure to promptly deliver client property, in violation of RPC 1.3, RPC 1.4, and RPC 1.15-1(d) of the Rules of Professional Conduct.

Case No. 06-107

Costa Matter

18.

On April 11, 2006, Richard Costa (hereinafter "Costa") filed a complaint with the Bar concerning the Accused's conduct. On April 27, 2006, Disciplinary Counsel forwarded a copy of the complaint to the Accused and requested his explanation by May 18, 2006. On May 18, 2006, the Accused provided an initial response to the complaint.

19.

Between June 20, 2006, and August 2006, Disciplinary Counsel requested additional information from the Accused. The Accused failed to respond or respond timely to Disciplinary Counsel's requests.

20.

The Accused admits that the aforesaid conduct constituted failure to respond to lawful demands for information from the disciplinary authority in violation of RPC 8.1(a)(2) of the Rules of Professional Conduct.

Case No. 06-106

Cooper Matter

21.

On or about January 2005, Steve Cooper (hereinafter "Cooper") and his partner Roberta Gilge (hereinafter "Gilge") retained the Accused to handle an uncontested adoption of a child that was to be born to Amy DeRego (hereinafter "DeRego").

22.

On or about May 26, 2005, DeRego gave birth and consented to Cooper's and Gilge's adoption of the child. Thereafter, between about June and September 2005, the Accused failed to timely communicate with representatives of the Office of the Department of Human Services and the Office of the Interstate Compact for the Interstate Placement of Children; failed to keep Cooper and Gilge reasonably informed about the status of the adoption; and failed to take timely action required to complete the adoption. Because of the Accused's conduct, the adoption was delayed and not completed until November 2005.

23.

On August 25, 2005, Cooper and Gilge filed a complaint with the Bar concerning the Accused's conduct. The Accused provided an initial response to the Bar. Thereafter, Disciplinary Counsel requested that the Accused provide additional

information and documents concerning the complaint. The Accused failed to respond or respond timely to Disciplinary Counsel's requests.

24.

The Accused admits that the aforesaid conduct constituted failure to communicate with a client, neglect of a legal matter, and failure to respond to lawful demands for information from the disciplinary authority, in violation of RPC 1.3, RPC 1.4, and RPC 8.1(a)(2) of the Rules of Professional Conduct.

SANCTION

25.

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

A. *Duty Violated.* The Accused violated duties to his clients, the legal system, and the profession. *Standards*, §§ 4.1, 4.4, 6.1, and 7.0.

B. *Mental State.* The Accused's conduct demonstrates that he acted negligently and knowingly. 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. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. The Accused was negligent in his record-keeping practices and attention to clients' requests. He did not regularly review and reconcile his trust account records and failed to recognize that they were not accurate or adequate. He did not knowingly withdraw clients' funds before they were earned. The Accused acted knowingly when he failed to respond and failed to provide complete and timely responses to the requests of Disciplinary Counsel and the LPRC.

C. *Injury.* In determining the appropriate sanction, consideration is given to both actual and potential injury. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused actual and potential injury to his clients. Clients' matters were delayed and the clients were frustrated by the Accused's failure to communicate and take action concerning their legal matters. The Accused did not promptly return funds and other property that clients were entitled to receive. The Accused also withdrew funds from trust that exceeded the funds on deposit for certain clients and thereby used other clients' funds. The Bar does not, however, contend that any client lost money as a result of the Accused's conduct. The investigations concerning the Accused's conduct were delayed and substantial additional time was devoted to

the cases because the Accused failed to respond or timely respond to requests for information.

D. *Aggravating Factors.* "Aggravating factors" are considerations that may increase the degree of discipline to be imposed. S*tandards*, § 9.22. The Accused was admonished in 1998 for violations of DR 9-101(A). *Standards*, § 9.22(a). There is a pattern of misconduct and multiple offenses. *Standards*, § 9.22(c), (d). The Accused has substantial experience in the practice of law having been admitted to practice in 1993. *Standards*, § 9.22(i).

E. *Mitigating Factors.* "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. S*tandards*, § 9.32. There is an absence of dishonest motive. *Standards*, § 9.32(b). During some of the time relevant to this matter, the Accused experienced certain personal problems associated with a divorce. *Standards*, § 9.32(c). He has taken steps to correct deficiencies in his record-keeping practices. *Standards*, § 9.32(d). The Accused cooperated with the Bar in resolving this proceeding, and is also remorseful. *Standards*, § 9.32(e), (*l*).

26.

Under all the circumstances present, the *Standards* suggest that a period of suspension is the appropriate sanction. *Standards*, §§ 4.12, 4.42, 6.12, 7.2. Oregon case law is in accord. *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension for violations of DR 9-101(A) and DR 9-101(C)(3)); *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 violations of DR 6-101(B) and DR 1-103(C)).

27.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of six (6) months. The suspension shall be effective April 2, 2007.

28.

In addition, the Accused shall pay to the Bar its reasonable and necessary costs in the amount of $978.30 incurred for the Accused's deposition. 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 Bar. The Bar may, without further notice to the Accused, apply for and is entitled to entry of judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate from the date of the Stipulation for Discipline is approved, until paid in full.

29.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title BR 8 of the Bar Rules of Procedure. The Accused also acknowledges that

he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

30.

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

DATED this 22nd day of February 2007.

/s/ Michael L. Doss
Michael L. Doss
OSB No. 93165

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. 06-82
	)	
TONYA M. VAN WALLEGHEM,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(3). Stipulation for discipline. Public reprimand.
Effective Date of Order:	March 5, 2007

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 RPC 8.4(a)(3).

DATED this 5th day of March 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on October 2, 1998, and has been a member of the Oregon State Bar continuously since that time, having 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 August 30, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 8.4(a)(3). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In January 2005, the Accused completed and signed an application to be a member of the Multnomah Athletic Club (hereinafter "MAC") in Portland, Oregon. The application was for a family membership, which granted MAC benefits to all members of a family. The initiation fee for a family membership was $9,000.00.

6.

In her application, the Accused represented that she was married, and listed her spouse's name. As required by the application, the Accused attached a copy of a 1991 Canadian marriage certificate.

7.

At the time the Accused made the representation about being married she knew that it was false as she had obtained a dissolution of her marriage in Oregon in 2002.

8.

Because of the dissolution of marriage, the Accused's former spouse was not considered a member of the Accused's family, under MAC regulations. And an individual membership for the Accused's former spouse would have required the payment of an additional $4,500.00 initiation fee.

Violation

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, she violated RPC 8.4(a)(3).

Sanction

10.

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

A. *Duty Violated.* The Accused violated her duty to the public to maintain her personal integrity. *Standards,* § 5.1.

B. *Mental State.* The Accused acted knowingly. At the time the Accused made the misrepresentation concerning her marriage, she knew that she had obtained a divorce in Oregon and knew that her former husband would not be considered a family member under MAC regulations.

C. *Injury.* The Accused's conduct did not cause any actual injury. However, there was potential for injury had the MAC not discovered the misrepresentation in its subsequent investigation of the Accused's application. In the absence of a valid marriage, the Accused's former spouse would have had to apply for and obtain a separate membership, including the payment of an additional $4,500.00 initiation fee.

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

1. Dishonest or selfish motive. Although they were divorced, the Accused and her former husband were in the process of reconciling and were making joint financial decisions. If the Accused's former spouse was not included in the Accused's family, he would have had to apply for and obtain an individual membership, and paid a separate $4,500.00 initiation fee. *Standards,* § 9.22(b).

2. Substantial experience in the practice of law. At the time the Accused made the false representation, she had been a lawyer in Oregon since 1998. *Standards,* § 9.22(i).

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

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

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

3. Remorse. *Standards,* § 9.32(m).

11.

Reprimand is generally appropriate when a lawyer knowingly engages in conduct involving dishonesty, fraud, deceit, or misrepresentation, which is not otherwise criminal, and that adversely reflects on the lawyer's fitness to practice law.

12.

Where a lawyer's misconduct under similar circumstances does not seriously adversely reflect on the lawyer's fitness to practice law, the court has imposed a reprimand. *In re Carpenter*, 337 Or 226, 95 P2d 203 (2004) (reprimand imposed on lawyer who created an Internet bulletin board account in the name of a local high school teacher and posted a message purportedly written by the teacher suggesting that he had engaged in sexual relations with students); *In re Kumley*, 335 Or 639, 75 P3d 432 (2003) (reprimand imposed on lawyer who made multiple misrepresentations about his status as a lawyer in legislative candidacy forms); *In re Flannery*, 334 Or 224, 47 P3d 891 (2002) (reprimand imposed on lawyer who submitted a false DMV application).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 8.4(a)(3), the sanction to be effective immediately upon approval of the Stipulation for Disciplinary by the Disciplinary Board.

14.

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

EXECUTED this 20th day of February 2007.

/s/ Tonya M. Van Walleghem
Tonya M. Van Walleghem
OSB No. 98363

EXECUTED this 26th day of February 2007.

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. 05-141, 05-142, 05-143,
	)	05-144, 05-183, 05-184, 05-185,
WILLIAM S. LABAHN,	)	05-186, and 06-46
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	William S. LaBahn
Disciplinary Board:	Susan G. Bischoff, Chair; C. Lane Borg; Harry L. Turtledove, Public Member
Disposition:	Violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), DR 7-110(B), RPC 1.3, RPC 1.15-1(a), RPC 1.15-1(c), RPC 5.5(a), RPC 8.1(a), and RPC 8.4(a)(3). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	March 12, 2007

OPINION OF THE TRIAL PANEL

INTRODUCTION AND PROCEDURAL POSTURE

The captioned matter is a consolidated proceeding involving nine (9) separate matters of misconduct. By formal complaint (Second Amended Complaint dated April 19, 2006), the Oregon State Bar charged the William S. LaBahn (Accused) with violations of multiple disciplinary rules, including:

- *The Gordon Matter—Case 05-141:* DR 1-102(A)(3) (engaging in conduct involving misrepresentation); DR 1-102(A)(4) (conduct prejudicial to the administration of justice); DR 7-110(B) (communicating as to the merits of the cause with a judge before whom a proceeding was pending); and RPC 8.1(a) (knowing failure to respond to the lawful demand for information from a disciplinary authority).

- *The Phillips Matter—Case No. 06-46:* DR 6-101(B) and RPC 1.3 (neglect of a legal matter)[1]; and RPC 8.1(a) (knowing failure to respond to the lawful demand for information from a disciplinary authority).
- *The Hodges and Rasmussen Matters—Case Nos. 05-183 and 05-184:* RPC 5.5(a) (unlawful practice of law); and RPC 8.1(a) (knowing failure to respond to the lawful demand for information from a disciplinary authority).
- *OSB Misrepresentation Under Oath Matter—Case No. 05-185:* RPC 8.4(a)(3) (engaging in conduct involving misrepresentation); and 8.1(a) (knowing failure to respond to the lawful demand for information from a disciplinary authority).
- *OSB Lawyer Trust Account Overdraft Matters—Case Nos. 05-142, 05-143, 05-144 and 05-186:* RPC 1.15-1(a) (failure to maintain client funds in trust); RPC 1.15-1(c) (failure to deposit client funds in trust); and RPC 8.1(a) (knowing failure to respond to the lawful demand for information from a disciplinary authority).

The record indicates that throughout the investigation and disciplinary process, the Bar repeatedly communicated with the Accused and sought to engage him in the process. Notwithstanding this, the Accused failed to answer the allegations against him. He was served with a Notice of Intent to Take Default pursuant to the Bar Rules of Procedure; an order of default was entered on June 9, 2006. Pursuant to BR 5.8, the trial panel chair elected to proceed to final opinion and asked the parties to brief the question of sanctions. The Accused participated in determining the briefing schedule. The Bar filed its brief as agreed upon; the Accused did not file a brief.[2] The trial panel met on October 30, 2006, to consider the question of sanctions.

SUMMARY OF FACTS

The Gordon Matter

Case No. 05-141

In October 2004, the Accused was retained by Christine Ann Stine to pursue custody of Stine's daughter, which had previously been awarded to the child's father. At the time the Accused undertook the representation of Stine, the child's father was represented by counsel, Daniel Gordon. During the course of the Accused's representation of Stine, and without notice to Daniel Gordon, the Accused presented an ex parte motion and order to show cause to the Lane County Circuit Court that

[1] Because the conduct of the Accused occurred both before and after the January 1, 2005, when Oregon Rules of Professional Conduct (RPC) replaced the Code of Professional Responsibility (DR references), the Bar charged the Accused with violating both the old and new rule.

[2] Note that the trial panel found it disturbing that after agreeing to a briefing schedule that accommodated his workload, the Accused elected to not file a sanctions brief for the panel to consider.

awarded Stine temporary custody of the child. In connection with the appearance on the ex parte motion, Accused represented to the court that he had given proper notice to Gordon. This representation was false.

The Phillips Matter

Case No. 06-46

In December 2004, Susan Phillips retained the Accused to represent her in a dissolution of marriage proceeding. Thereafter, he failed to file or otherwise pursue a motion for temporary spousal support on behalf of Phillips. The case went to trial in July 2005. The primary issue at trial was the income and value of a business that was owned by Phillips and her husband. Although Phillips gave the Accused trial documents relevant to the valuation issue, the Accused failed to introduce any of those documents into evidence. Additionally, the Accused agreed to represent Phillips in connection with a stalking order that Phillips's stepdaughter had obtained against her. The Accused failed to appear at the stalking order hearing.

The Hodges and Rasmussen Matters

Case Nos. 05-183 and 05-184

Between July 5, 2005, and July 22, 2005, the Accused was suspended from the practice of law for failing to pay his Oregon State Bar membership dues and fees. He was given notice that the failure to pay his dues would result in the suspension of his right to practice law. During the period of his suspension, the Accused continued to practice law in violation of ORS 9.160.

The OSB Misrepresentation Under Oath Matter

Case No. 05-185

As noted above, the Accused was suspended from the practice of law between July 5 and July 22, 2005, for failure to pay his annual Bar dues. On July 14, 2005, the Accused submitted a reinstatement application under the provisions of BR 4.8. In this application, the Accused represented under oath that during the time of his suspension, he had not engaged in the practice of law except where authorized to do so. At the time the Accused made this sworn statement he knew the statement was false.

The OSB Lawyer Trust Account Overdraft Matters
Case Nos. 05-142, 05-143, 05-144, and 05-186.

In the summer of 2005, the Accused issued a variety of checks from his lawyer trust account at a time when he knew or should have known that the account had insufficient funds available to cover the checks. There were four checks at issue, totaling $15,970.50.

FINDINGS OF FACT

When an Order of Default is entered, the allegations of the Formal Complaint are deemed to be true. BR 5.8(a). Thus, the panel finds that all facts alleged by the Bar in its Second Amended Formal Complaint are true. A copy of this Complaint is attached to this opinion as Exhibit 1and incorporated into these findings of fact.

CONCLUSIONS OF LAW

The Bar must establish by clear and convincing evidence that the Accused's misconduct violated the standards of professional responsibility governing the conduct of lawyers. Since the Accused failed to answer the allegations or otherwise respond to the allegations against him, the violations alleged are deemed admitted. Therefore, the trial panel finds by clear and convincing evidence that the Disciplinary Rules and Rules of Conduct cited above and set forth in the Second Amended Formal Complaint have been violated by the Accused.

SANCTIONS

The ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*") identifies three primary factors used to determine the appropriate disciplinary sanction. They are: (1) the duty violated, (2) the Accused's mental state, and (3) the actual or potential injury caused by the misconduct. Aggravating and mitigating factors are also considered as part of the sanction analysis. *Standards*, section 3.0. *In re Biggs*, 318 Or 281, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 842 P2d 831 (1993). The primary purpose of the disciplinary process is protection of the public. *In re Houchin*, 290 Or 433 (1981).

The Duty Violated. The panel finds that the Accused violated duties owed to his clients, the public, the legal system, and the profession. The most important duty owed is that of a lawyer to his clients. *Standards*, section 5. In the Phillips Matter, the Accused failed to act with reasonable diligence and promptness. *Standards*, section 4.4. His failure to properly maintain his lawyer trust account on multiple occasions also breached the duty owed to his clients. *Standards*, section 4.1.

The duties to the public and the legal system were violated by the Accused's failure to maintain his personal integrity by making false representations under oath in his application for reinstatement (OSB Oath Matter), and his failure to be candid with the court and avoid improper ex parte communications in the Gordon Matter.

The Accused violated the duty owed to the legal profession by knowingly engaging in the practice of law after having been suspended from the practice for failure to pay the required Bar membership dues, for his repeated failure to respond to inquiries from the Office of the Disciplinary Counsel, or otherwise participate in the disciplinary process. It should be noted that the panel finds that the conduct of the Accused in connection with the present cases demonstrates that the Accused has failed to recognize the severity of the allegations against him and the seriousness of

his apparent disinterest in the process. As discussed below, the panel views the Accused's conduct in this regard as an aggravating factor.

The Mental State. The most culpable mental state when engaging in improper conduct is doing so intentionally. Intent in this context refers to having the conscious objective or purpose to accomplish a particular result. *Standards*, section 7. Because the Accused failed to answer the formal complaint and/or otherwise offer any evidence of his mental state relating to the allegations against him, the panel finds that he acted intentionally in all respects except the Phillips Matter, in which the panel finds that the Accused acted knowingly. Knowingly in this context means that Accused had a conscious awareness of the nature of the attendant circumstances of the conduct, but acted without the conscious objective or purpose to accomplish the particular result. *Id.*

As noted by the Bar in its Sanctions Memorandum, where, as here, the panel has found the facts as alleged in the Second Amended Complaint to be true, it is entitled to rely on the facts as alleged in the complaint to establish the mental state applicable to each cause of the complaint. *In re Kluge*, 332 Or 251, 27 P3d 102 (2001).

The Injury Caused. As set forth in the *Standards* at section 7, injury refers to the harm to a client, the public, the legal system, or the profession that results from the lawyer misconduct at issue. Injury can be either actual or potential under the *Standards* and Oregon case law.

In both the Phillips and Gordon matters, the panel finds that the victims of the wrongful conduct suffered actual injury. In Phillips, Ms. Phillips ended up without financial support for a number of months because of the Accused's failure to pursue temporary support. Although we are unable to determine what the result of the underlying case would have been had the Accused entered the financial documents at issue into the record, his conduct denied Ms. Phillips the opportunity to have the evidence considered. Because of the Accused's failure to appear at the stalking order hearing, Phillips was forced to represent herself contrary to her expectation and the purpose for which she had retained the Accused's services. Phillips was further injured, and a number of other clients potentially injured, when the Accused proceeded to represent them during a time in which he was suspended from the practice of law. The panel also finds that the neglect of the legal matters at issue in the Phillips matter and the Accused's unlawful practice of law in the Phillips matter and others has resulted in injury to the legal system and the profession.

In the Gordon matter, the Accused's client, Mrs. Stine, was not immediately damaged by the Accused's conduct, but the father of the child (Mr. Stine) who lost custody of the youngster after having previously secured custody was negatively impacted by the Accused's actions to secure a change in child custody under false pretenses. Such conduct, which included ex parte communications with the court before whom the matter at issue was pending, is prejudicial to the administration of justice and constitutes actual injury to the legal system and the legal profession.

The trial panel is unable to determine from the pleadings whether there was actual injury to any of the Accused's clients in connection with the Lawyer Trust Account Overdraft matters. The Accused's conduct in failing to establish and follow proper accounting procedures clearly had the potential to injure many clients by depriving them of funds they were entitled to receive.

Aggravating and Mitigating Circumstances. The panel is unable to find that any factors or circumstances exist to mitigate or offset the severity of the Accused's conduct.

On the side of aggravating factors, the Accused has a prior 60-day suspension for neglecting a legal matter. *See In re LaBahn,* 335 Or 357, 67 P3d 381 (2003). In 1998, the Accused was also admonished for neglecting a legal matter. Although admonishments are not generally considered a prior disciplinary offense, such action may be considered by the panel here because the Accused's conduct in the Phillips matter also involves neglect. *In re Cohen,* 330 Or 489, 500–501, 8 P3d 953 (2000). Because the misconduct in the prior disciplinary cases is similar to what is at issue in the present case, the panel believes it should be given significant weight.

The panel also finds that the Accused's failure to cooperate with the Bar throughout this process is an aggravating factor. It is particularly disturbing that while the Accused chose not to answer the Bar's complaint, he did seek (and was granted) an extended briefing schedule on the sanctions question so he had adequate time to file a brief, and then failed to file a brief. This, as well as some of the other conduct at issue here, smacks of a selfish motive.

The final aggravating factors relate to the fact that there are multiple offenses at issue in the case, *Standards,* section 9.22(d), and that the Accused has substantial experience in the practice of law, having been admitted in 1990. *Standards*, section 9.22(i).

As noted above, the disciplinary process is intended to protect the public and the integrity of the profession, not intended to penalize the accused lawyer. In fashioning a sanction, the panel believes that disbarment or a lengthy suspension is the appropriate sanction in cases similar to the case at bar. On the facts of this case, and because the Accused chose to forego participation or offer a defense of mitigation of any kind, the trial panel believes disbarment is the appropriate sanction.[3]

DISPOSITION

It is the decision of the Trial Panel that the Accused be disbarred for violation of the Disciplinary Rules and Rules of Professional Conduct alleged in the Second Amended Formal Complaint and as found by this panel.

[3] Although the panel unanimously found that the Accused should be disbarred the result might have been different had the Accused participated in the process. Thus, little precedential value should be ascribed to our sanctions determination.

DATED this 9th day of January 2007.

/s/ Susan G. Bischoff
Susan G. Bischoff
OSB No. 85-404
Trial Panel Chair

CONCURRING PANEL MEMBERS:

/s/ Harry L. Turtledove
Harry L. Turtledove, Public Member

/s/ C. Lane Borg
C. Lane Borg
OSB No. 85-029

Cite as 342 Or 462 (2007)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
IAIN LEVIE,	)
	)
Accused.	)

(OSB 04-97; SC S53311)

En banc

Argued and submitted January 10, 2007. Decided March 8, 2007.

Iain Levie, Portland, 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 one year, effective 60 days from the date of this decision.

SUMMARY OF THE SUPREME COURT OPINION

The issue was whether the attorney, in the course of representing a client, violated various provisions of the former Code of Professional Responsibility, including Or. Code Prof. Resp. DR 1-102(A)(3), 7-102(A)(5), 7-106(A), 1-102(A)(4), and 5-101(A)(1). The trial panel found the attorney guilty of those violations, as well as with one other, Or. Code Prof. Resp. DR 9-101(A), which the attorney did not contest. The attorney was suspended for one year, and the attorney challenged the findings of guilt. The supreme court found the attorney guilty of the contested charges and suspended him from the practice of law for one year. The supreme court did not credit the attorney's testimony that he was unaware of a perfected security interest when he signed off on the settlement agreement indicating that no one had priority interests in any of the bronze sculptures. The supreme court found that the attorney he had knowledge of the law firm's security interest in the bronzes. Additionally, a former business partner of the attorney had promised to send all of

the bronzes to a gallery and there was no evidence that the firm's three bronzes would have been exempt from that promise. The supreme court suspended the attorney from the practice of law for one year, effective 60 days from the date of the decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 05-135
	)	
KATHRYN E. JACKSON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Louis L. Kurtz; Jane E. Angus
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(4) and DR 6-101(A). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	June 9, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Kathryn E. 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 sixty (60) days for violation of DR 1-102(A)(4) and DR 6-101(A) of the Code of Professional Responsibility, effective June 9, 2007.

DATED this 8th day of May 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Kathryn E. 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 attorneys.

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 17, 1987, and has been a member of the Oregon State Bar continuously since that time, 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.

At the direction of the State Professional Responsibility Board (hereinafter "SPRB"), the Bar filed a Formal Complaint against the Accused alleging violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 6-101(B), and DR 7-102(A)(5). On January 20, 2007, the SPRB also directed that the Accused be charged with violation of 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 AND VIOLATION

5.

Prior to August 2003, Ken Price and Kelly Price (hereinafter collectively "Prices") retained the Accused to pursue claims for personal injuries against Noble Lumber, Inc. (hereinafter "Noble") and Dale Roger Krause (hereinafter "Krause"). On or about August 27, 2003, the Accused filed a complaint for personal injuries against Noble and Krause in the Circuit Court of the State of Oregon for the County of Clackamas, Case No. CV 3080794 (hereinafter "Court Action").

6.

Shawn O'Neil and his law firm (hereinafter "O'Neil") represented Noble's interests in the Court Action. James Tait and his law firm (hereinafter "Tait") represented Krause's interests in the Court Action.

7.

On November 4, 2003, O'Neil served the Accused with a copy of Noble's First Request for Production of Documents. The Accused received Noble's request. The Accused's response to Noble's request was due by December 7, 2003. The Accused did not respond to Noble's First Request for Production of Documents by December 7, 2003. The Accused did not obtain or seek an extension of time to respond to the request.

8.

On February 10, 2004, O'Neil served the Accused with a copy of Noble's Request for Admissions. The Accused received Noble's request. Pursuant to ORCP 45, the Accused's answer or objection was due by March 14, 2004. The Accused did not respond to Noble's Request for Admissions within the time allowed by ORCP 45, or at any other time, and did not obtain or seek an extension of time to respond to the request.

9.

On March 24, 2004, O'Neil served the Accused with a copy of Noble's Motion for Summary Judgment. The Accused received Noble's motion. Pursuant to ORCP 47, the Accused was required to file a response to the motion with the court and serve O'Neil and Tait with a copy thereof by April 16, 2004. The Accused did not file with the court or serve a response to Noble's Motion for Summary Judgment and did not obtain or seek an extension of time to do so within the time allowed by ORCP 47.

10.

On April 23, 2004, O'Neil delivered to the court an Order Granting Noble's Motion for Summary Judgment and a proposed Limited Judgment of Dismissal with Prejudice in favor of Noble, and mailed a copy to the Accused. On April 27, 2004, the court signed the Order Granting Noble's Motion for Summary Judgment. On April 28, 2004, the court signed the Limited Judgment of Dismissal in Noble's favor.

11.

On April 27, 2004, O'Neil received a letter dated April 23, 2004, from the Accused in which she acknowledged receipt of documents O'Neil had provided to the Accused in March 2004. The Accused's letter was not accurately dated. The envelope containing the letter was postmarked April 26, 2004. The Accused stated in the letter that it was sent to O'Neil via facsimile and by regular mail. O'Neil did not receive

a copy of the letter via facsimile. The Accused does not have a facsimile confirmation that the letter was sent to O'Neil via facsimile.

12.

On April 28, 2004, the Accused caused a copy of a Response to Noble's First Request for Production of Documents to be hand-delivered to O'Neil. The response was dated April 16, 2004, but also contained the Accused's signature by which she represented that the response was mailed to O'Neil and to Tait on April 25, 2004.

13.

On April 28, 2004, the Accused caused a copy of a letter to be sent to Tait via facsimile. With the letter the Accused provided Tait with a copy of a transcription of a taped statement made by Krause. The letter was dated April 24, 2004. O'Neil had requested copies of all statements concerning the action or its subject matter made by Noble or Noble's employees. The Accused did not provide Krause's statement to O'Neil.

14.

On April 28, 2004, the Accused caused a copy of Plaintiff's Response to Noble's Motion for Summary Judgment to be hand-delivered and faxed to O'Neil. The response was dated April 26, 2004, but also contained a certificate of mailing in which the Accused represented that the response was served on O'Neil and Tait via facsimile and by mail on April 28, 2004. O'Neil did not receive and the Accused did not send a copy of the Accused's Response to Noble's Motion for Summary Judgment by mail.

15.

In the Accused's Response to Noble's Motion for Summary Judgment, the Accused made statements and attached documents that did not accurately reflect dates and communications with Tait, O'Neil, and representatives of their respective offices, including letters to O'Neil on which the Accused used an incorrect facsimile number; letters that were never sent; and letters and other documents that did not accurately reflect the dates, methods of delivery or service, and substance of communications.

16.

The Accused intended that the court rely on the representations contained in her Response to Noble's Motion for Summary Judgment and the exhibits submitted therewith and expressed or implied that they were genuine, true, and accurate. The Accused failed to adequately review the response and the exhibits and other records to assure their accuracy before filing and service of the response.

17.

In and between November 2003 and April 28, 2004, the Accused also failed to timely communicate with O'Neil concerning the Court Action; failed to monitor or calendar the time for response to Noble's Request for Admissions; failed to accurately monitor or calendar the time for response to Noble's Motion for Summary Judgment; failed to address the substantive issues of Noble's Motion for Summary Judgment in her late Response to Noble's Motion for Summary Judgment; and failed to support by affidavit and properly authenticate representations and exhibits attached to the Accused's late Response Noble's Motion for Summary Judgment.

18.

The Accused admits that the aforesaid conduct constitutes violation of DR 1-102(A)(4), conduct prejudicial to the administration of justice, and DR 6-101(A), failure to provide competent representation. Upon further factual inquiry, the parties agree that the alleged violations of DR 1-102(A)(3), DR 6-101(B), and DR 7-102(A)(5) as set forth in the Bar's Amended Formal Complaint, upon the approval of this stipulation, are dismissed.

SANCTION

19.

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

A. *Duty Violated*. The Accused violated her duties to her clients and the legal system. *Standards*, §§ 4.5, 6.2.

B. *Mental State*. The Accused did not act with an intentional mental state. Rather, she acted negligently, defined as the failure to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. At times relevant to the events that are the subject of this proceeding, the Accused was distracted by the illnesses and deaths of family members and a close friend. The Accused failed to attend to details and took on more work than she reasonably could handle given her professional and personal circumstances. Also, the Accused failed to supervise delegated tasks.

C. *Injury*. For the purposes of determining sanction, consideration is given to both actual and potential injury. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this case, there was actual and potential injury to the opposing parties and their counsel, and the court. Additional time was devoted to respond to the Accused's late response to the motion for summary judgment, motion for reconsideration and other

submissions, which contained statements and other information that were not accurate. The consequence to the opposing parties was additional attorney fees for their lawyers' services to challenge the Accused's submissions. The Accused eventually withdrew her motion for reconsideration and the Professional Liability Fund (PLF) paid Noble's attorney fees. There also was potential injury to her clients.

D. *Aggravating Factors.* "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards,* § 9.22. The Accused has a prior record of discipline. She was reprimanded for violation of DR 1-102(A)(4) in 2002. *In re Jackson,* 16 DB Rptr 206 (2002). *Standards,* § 9.22(a). There is a pattern of conduct throughout this case and in relation to the conduct in the prior case insofar as the Accused did not attend to details or confirm information before acting. *Standards,* § 9.22(c). There are multiple offenses. *Standards,* § 9.22(d). The Accused has substantial experience in the practice of law, having been admitted to practice in 1987. *Standards,* § 9.22(i).

E. *Mitigating Factors.* "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. *Standards,* § 9.32. There is some evidence that the Accused was distracted by the illnesses and deaths of family members and a close friend at times relevant to the events that are the subject of this proceeding. *Standards,* § 9.32(c). The Accused cooperated with the disciplinary authority during the investigation and the formal proceeding. *Standards,* § 9.32(e). The Accused is remorseful. *Standards,* § 9.32(*l*).

20.

Under all the circumstances present, the Standards suggest that a period of suspension is an appropriate sanction. *Standards,* § 4.52; § 6.22. Oregon case law is in accord. *In re Roberts,* 335 Or 476, 71 P3d 71 (2003) (60 days' suspension for violations of DR 1-102(A)(4) and DR 6-101(A)); *In re Gresham,* 318 Or 162, 864 P2d 360 (1993) (91 days' suspension for violations of DR 1-102(A)(4) and DR 6-101(A)); *In re Bettis,* 342 Or 232, 149 P3d 1194 (2006) (30 days' suspension for violation of DR 6-101(A)); *In re Johnson,* 18 DB Rptr 181 (2004) (30 days' suspension for violation of DR 1-102(A)(4)).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of 60 days for violations of DR 1-102(A)(4) and DR 6-101(A). This suspension shall be effective June 9, 2007, or 3 days after this stipulation is approved by the Disciplinary Board, whichever is later.

22.

In addition, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $1,018.75 incurred for the Accused's deposition. 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 Bar. If the amount is

not paid in full within the period of the Accused's 60 days' suspension, the Bar may, without further notice to the Accused, apply for and is entitled to entry of judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate from the date of the Stipulation for Discipline is approved, until paid in full.

23.

The Accused acknowledges that reinstatement is not automatic on expiration of the 60 days' imposed suspension. The Accused is required to submit a compliance affidavit and applicable reinstatement fees, and to comply with the provisions of BR 8.3 and this stipulation. The Accused also acknowledges that she cannot provide legal services or advice to others until she is notified that her license has been reinstated.

24.

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

DATED this 30th day of April 2007.

/s/ Kathryn E. Jackson
Kathryn E. Jackson
OSB No. 87053

OREGON STATE BAR

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

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-55
	)	
C. DAVID HALL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3) and RPC 8.4(a)(3). Stipulation for discipline. Public reprimand.
Effective Date of Order:	May 17, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded, for violation of DR 1-102(A)(3) and RPC 8.4(a)(3).

DATED this 17th day of May 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On April 13, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 1-102(A)(3) of the Code of Professional Responsibility and RPC 8.4(a)(3) of the 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.

Gregory Krochmal (hereinafter "Krochmal") purchased a houseboat with a loan secured by a mortgage on the property. When a balloon provision in the mortgage loan took effect, Krochmal borrowed money from Walter Shalduha (hereinafter "Shalduha") to pay the mortgage. After a dispute arose regarding whether Krochmal had repaid Shalduha, the Accused undertook to represent Krochmal in the dispute. Shalduha was also represented by counsel.

6.

In March 2004, the parties entered into a settlement contract drafted by Shalduha's lawyer and the Accused. The contract called for Krochmal and Shalduha to each deposit into the lawyer trust accounts of their respective attorneys funds to

be used to retain an accountant who would review the financial information and render a determination of the amount Krochmal owed Shalduha, if any. The contract also required Krochmal to execute and put into trust with the Accused various documents, including a quitclaim deed that would effectuate a transfer of the houseboat to Shalduha in the event that Krochmal defaulted on the agreement or failed to pay any amount determined by the accountant to be owed to Shalduha. The contract required Krochmal to deliver the funds and documents to the Accused prior to the parties retaining the accountant and moving forward with the settlement contract.

7.

Krochmal did not deliver the funds or documents to the Accused. The Accused permitted Krochmal to move forward under the settlement contract and the Accused undertook to engage an accountant on behalf of Krochmal although the Accused knew that he did not hold the funds or documents in trust as required. The accountant relied upon the belief that the Accused held the required funds in trust. The opposing party and opposing counsel relied upon the belief that the Accused held the required funds and documents in trust. The Accused was aware that the accountant, the opposing party, and opposing counsel were relying upon the belief that the Accused held funds and documents in trust and the Accused knew that the belief was material to them. However, the Accused failed to inform the accountant, the opposing party, and opposing counsel that he was not holding in trust the required funds and documents until required to do so in April 2006, at a hearing on Shalduha's motion to enforce the settlement contract. Krochmal was ordered to execute the quitclaim deed and other documents shortly thereafter and did so, but Krochmal never paid his share of the fees owed to the accountant hired under the settlement contract.

8.

The Accused repeatedly urged his client to deposit the funds and documents into trust. The Accused failed to correct the false beliefs of the accountant, the opposing party, and opposing counsel, because the Accused hoped and expected that his client would comply with the requirements of the contract and deliver the required funds and documents to the Accused.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(3) and RPC 8.4(a)(3).

Sanction

10.

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

Lawyer Sanctions (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances.

A. *Duty Violated.* The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. By permitting the accountant, opposing party, and opposing counsel to be misled about whether the required items were in trust, the Accused violated that duty. *Standards*, § 5.0.

B. *Mental State.* The Accused acted knowingly in that he knew his client had not deposited the necessary documents or funds in trust prior to proceeding under the settlement contract. The Accused was aware that the opposing party and the expert hired under the contract relied upon the Accused having the documents and funds in trust. The Accused knew that the matter should not have proceeded without the funds and documents in trust. The Accused also knew that the other parties relied on the Accused holding the funds and documents in trust.

C. *Injury.* The Accused's conduct caused actual harm to the accountant who undertook a substantial amount of work and never received Krochmal's share of the fees. The Accused's conduct caused potential harm to Shalduha since it potentially affected Shalduha's rights under the contract. The enforcement of the contract and Shalduha's receipt of the documents were also jeopardized.

D. *Aggravating Factors.* Aggravating factors include:

1. Prior disciplinary offense. *Standards*, § 9.22(a). The Accused received a public reprimand on March 18, 1996, for a lack of the necessary competence and diligence in the handling of a client's qualified domestic relations order. *In re Hall*, 10 DR Rptr 19 (1996). The court considers the following factors to analyze the effect of prior misconduct: (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 recency of the prior offense, and (5) whether the accused lawyer had been sanctioned for the prior offense before engaging in the offense in the case at bar. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). Since the prior misconduct is somewhat remote, concerns a different sort of misconduct, and involved a less serious sanction, the aggravation effect of the prior misconduct is limited.

2. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused was admitted to the practice of law in Oregon in 1974.

E. *Mitigating Factors.* Mitigating factors include:

1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b). The Accused did not intend to deceive the accountant, the opposing party or opposing counsel. The Accused believed that he could prevail upon his client to supply the required documents and funds.

2. Cooperative attitude toward disciplinary proceedings. *Standards*, § 9.32(e). The Accused has shown a cooperative attitude toward disciplinary proceedings.

3. Remorse. *Standards*, § 9.32(*l*). The Accused has expressed remorse.

4. Remoteness of prior offense. *Standards*, 9.32(m). The prior offense is somewhat remote as noted above.

11.

The *Standards* provide that reprimand is generally appropriate when a lawyer knowingly engages in noncriminal conduct involving dishonesty, fraud, deceit, or misrepresentation that adversely reflects on the lawyer's fitness to practice law. *Standards*, § 5.13. In contrast to the general recommendations of the *Standards*, Oregon ethics law includes several cases in which lawyers found to have engaged in a single act of misrepresentation received suspensions ranging from 30 days to four months, especially where other violations were present or the lawyer had a prior disciplinary history. *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension where lawyer omitted to inform client of material fact that appeal was dismissed); *In re Williams*, 314 Or 530, 536, 840 P2d 1280 (1992) (63-day suspension where lawyer omitted to inform opposing party that lawyer did not have client's rent money in trust as represented); *In re Hiller*, 298 Or 526, 694 P2d 540 (1985) (lawyers suspended four months where they knowingly omitted material information from a motion for summary judgment).

12.

Oregon precedent offers another line of cases in which lawyers have received reprimands for acts of misrepresentation or dishonesty. Lawyers who received reprimands did not have prior discipline. *In re Carpenter*, 337 Or 226, 95 P3d 203 (2004) (reprimand imposed on lawyer who dishonestly disseminated a message purporting to be authored by another person); *In re Kumley*, 335 Or 639, 75 P3d 432 (2003) (reprimand imposed on lawyer who inaccurately represented that he was an active attorney when he was inactive); *In re Gatti*, 330 Or 517, 527–528, 8 P3d 966 (2000) (reprimand imposed on lawyer who misrepresented his identity to another in order to obtain information about a case).

13.

While the misconduct of the Accused is most similar to the misconduct in *Williams, supra,* the lawyer in *Williams* was found to have engaged in a pattern of misconduct that involved additional violations (contact with a represented party and failure to respond fully and truthfully in disciplinary investigation) and he refused to acknowledge the wrongfulness of his conduct. Those substantial aggravating factors are not present in the matter involving the Accused.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(3) and RPC 8.4(a)(3).

15.

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

EXECUTED this 8th day of May 2007.

/s/ C. David Hall
C. David Hall
OSB No. 74122

EXECUTED this 14th day of May 2007.

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 Nos. 05-90 and 05-151
	)	
TODD W. WETSEL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Sonia Montalbano; Martha M. Hicks
Counsel for the Accused:	None
Disciplinary Board:	Sandra Hansberger, Chair; John Langslet; Harry L. Turtledove, Public Member
Disposition:	Violation of DR 6-101(A), DR 6-101(B), DR 9-101(A), RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.7(a)(2), RPC 8.1(a)(2), and RPC 8.4(a)(3). Trial Panel Opinion. 18-month suspension.
Effective Date of Opinion:	June 9, 2007

OPINION OF THE TRIAL PANEL

I. INTRODUCTION

A. *The Hearing.*

The above entitled matter came before the Trial panel for hearing on February 1, 2007. The Bar appeared by Sonia Montalbano and Martha Hicks. Because the Accused did not appear at 9:00 a.m., the time scheduled for the hearing, a default order was entered. When the Accused did appear more than 35 minutes late, the trial panel lifted the default and allowed the Accused to present evidence.

The Bar called the following individuals as witnesses: Craig Capistran, Peter Bunch, Todd Worthley, Andrew Burns, Tracey Lambert, and Vivian Raits Solomon. The Bar also called Mr. Wetsel, who stipulated to many of the allegations in the complaint. (*See* Tr. 326–333.) Mr. Wetsel testified on his own behalf. Exhibits 1 through 84 were received into evidence without objection.

B. *Background Information*

The Accused graduated from Willamette Law School in 1990 and was admitted to the bars in both Oregon and Washington. From the time of his bar admission, he

practiced with the same law firm until the firm dissolved in 1998 and 1999. His work with the law firm was primarily in the area of construction law, but he also practiced family law. In 1999, he opened an office in Vancouver, Washington, and his practice became increasingly focused on family law in both Oregon and Washington. He continues to have an Oregon office address as well as a Washington address.

Mr. Wetsel as admonished in Washington in 2003 for violating RPC 1.3 for neglect of a legal matter in 2002, for failing to process a mortgage foreclosure action for a credit union (Ex. 77; Tr. 401). Finally, the Accused was on a "diversion contract" or a "plan of assistance" with the state of Washington "for another matter," although it was unclear whether this was connected to a recent charge of trespass or whether this part of discipline imposed by the Washington Bar Association relating to another matter. (Tr. 452–453.)

II. FACTS

The Bar alleges discipline violations involving the handling of the Capistran matter, a domestic relations client, and in handing a number of different cases for Tri-County Drywall ("TCD"). More specifically, the Bar alleges that in handling the Capistran matter the Accused violated the following: DR 6-101(A) and ORPC 1.1; DR 9-101(A); ORPC 1.15(d); ORPC 8.1(a)(2). In handling matters for TCD, the Bar alleges the following rule violations: Pacific Rim/Hurliman (DR 6-101(B), ORPC 1.15-1(d), ORPC 8.4(a)(3)); TB Properties (ORPC 1.3, ORPC 1.4(a), ORPC 1.7(a)(2), ORPC 1.15-1(d), ORPC 8.4(a)(3)); Omega Custom Homes (ORPC 1.3, ORPC 1.4(a)); Golden Crest Homes (ORPC 1.3, ORPC 1.4(a)); and Saum Creek (ORPC 1.3, ORPC 1.4(a)). Finally, the Bar alleges that the Accused violated ORPC 8.1(a)(2) in failing to cooperate with the investigation of these matters.

A. *The Capistran Matter*

Mr. Capistran resided in the state of Washington, and his child, [redacted], and the child's mother, Barbara Larabee, had lived in the state of Oregon. Ms. Larabee, with Mr. Capistran's permission, took [redacted] to Hawaii for what was to be a stay of several months' duration. However, when they did not return to the Pacific Northwest as promised, Mr. Capistran sought advice from the Accused about how to go about having either Washington or Oregon have jurisdiction to consider the custody matter. The Accused told Mr. Capistran that the Oregon courts would have jurisdiction to determine custody as long as they filed in Oregon before the child and mother had been in Hawaii for six months. The Accused accepted a retainer from Capistran in the amount of $2,500 and he did not deposit the funds into a lawyer's trust account.

The Accused did not ask Mr. Capistran the details of where the child and the parties had lived in the six months prior to filing a Petition for Custody in Oregon, or in the previous five years. The Petition for Custody was filed in Multnomah County on October 15, 2004, and did not set forth the statutory requirements under

ORS 109.741, the UCCJEA.[1] (Ex. 26, #125.) The Petition for Custody also included a Temporary Motion for Custody and an Order to Show Cause was scheduled for November 30, 2004.[2]

On or about October 15, Capistran was served with papers from the state of Hawaii seeking child support from Mr. Capistran. (Ex. 1, #10.) Capistran brought these papers to the Accused's office on his way out of town and the Accused told him not to worry, that the Hawaii matter would not progress.

On November 3, 2004, Ms. Larabee received court documents pertaining to the Petition for Custody in Oregon. (Tr. 104.) She hired Mr. Peter Bunch, an Oregon attorney, to dismiss the Oregon custody petition. Mr. Bunch tried to confer with the Accused by telephone and letter to advise him that his Oregon complaint was deficient. Despite clear written direction to the Accused about the inadequacies of the complaint and the intent to pursue attorney fees, the Accused neither told his client of the motion to dismiss, nor did he respond to the motion to dismiss. Mr. Bunch, after providing notice to the Accused, appeared in court ex parte and requested a continuance of the Petition for Custody pending a hearing on the Motion to Dismiss. (The Accused did respond to Mr. Bunch to tell him that he would not oppose the motion for continuance on the temporary custody motion. Ex. 11.) The Court postponed the hearing on the temporary custody petition, but set Bunch's Motion to Dismiss for November 30, the same date and time when the hearing on the Motion for Temporary Custody was originally set. Mr. Bunch sent the order to appear and show cause regarding the Motion to Dismiss to the Accused. By letter, Mr. Bunch also reminded the Accused that the mother and child had not lived in the state of Oregon for more than six months and "there is no conceivable circumstance under

---

[1] ORS 109.741 requires that any initial custody pleading must contain, under oath, the following information:

> "the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the person with whom the child has lived during the last five years and names and present addresses of the persons with whom the child has lived during that period."

[2] The Accused argued that the information contained in Mr. Capistran's affidavit that was filed with the Motion for Temporary Custody was sufficient to meet the requirements of ORS 109.741. That document did not set forth the information required. Opposing counsel and experienced family law practitioner Peter Bunch testified that meeting the statutory requirements of "home state jurisdiction," i.e., where the child had been living for six months prior to filing the petition, would require that an attorney ask detailed questions about where the child and parties resided for at least the six months before filing. In the instant case, even if the Accused was not aware that the child had actually lived with Capistran in Vancouver, Washington, for a month before leaving for Hawaii, the statute requires a statement of where the child had been living. The Petition for Custody lists Oregon as the mother's residence and does not set forth any of the other statutorily required information.

those facts under which the court would exercise jurisdiction. Again, if we go to trial on the 30th, I will be seeking . . . attorneys fees and costs" (Ex. 12).

The Accused did not appear at the November 30 hearing on the Motion to Dismiss and the judge dismissed Capistran's Petition for Custody, and subsequently ordered attorney fees against Capistran. The Accused never told Mr. Capistran that the Oregon matter had been dismissed, that an attorney fee petition had been filed, and that a judgment for attorney fees had been entered against him. In addition to failing to appear for the Motion to Dismiss, the Accused did not respond to Mr. Bunch's request for attorney fee. The Accused stated at the discipline hearing that he did not tell Capistran about the Oregon case because he just could not deliver bad news.

In the meantime, Ms. Larabee had hired a private attorney who intervened in the Hawaii proceeding to get an order of paternity and custody. The Accused initially dealt with the Hawaii attorney, agreed to accept service on behalf of Mr. Capistran, and negotiated a visitation schedule for the holidays. In early December, the Accused continued to tell Mr. Capistran that everything would be okay. After December 18, 2004, the Accused stopped communicating with Capistran and stopped communicating with the Hawaii attorney. Capistran contacted the Accused about 13 times (including once by certified mail) between January 4, 2005, and February 17, 2005 (Ex. 27). He reached the Accused only once and was told by the Accused that he was very busy and would call back that evening. He never did.

During this time, Capistran had heard from Ms. Larabee that her Hawaii attorney intended to take a default in Hawaii by February 20 if Capistran did not respond. Capistran hired a new attorney, Mr. Worthley, to help figure out what was going on in the Hawaii and Oregon cases. On February 17, Mr. Worthley contacted Mr. Wetsel, saying that it was crucial that he receive a copy of Capistran's file. It took one to two months for the Accused to return Capistran's file and even at that point Mr. Worthley was not certain that all documents had been returned.

The Accused ultimately, and after about two months, returned Capistran's entire retainer, paid the judgment against him and also paid money for Mr. Worthley. Mr. Worthley testified that at the time he took over the case for Capistran, there was little that could be done except to negotiate parenting time because custody was now out of the question. Capistran's chances of succeeding in custody were damaged because of the passage time and lack of cooperation by the Accused.

Mr. Capistran filed a complaint with the Oregon State Bar on April 19, 2005. (Ex. 27.) The Accused told the Bar he would respond on June 13, 2005. Although he provided a written response, he did not provide the documents that were requested. On June 27 the Accused sent a letter with some of the requested documents. The matter was turned over to the Local Professional Responsibility Committee ("LPRC") on July 1, 2005, and assigned to Andrew Burns. Mr. Burns spoke with the Accused and others, and requested documents from the Accused. Mr. Burns sent the Accused written requests for documents, including trust account records and general account

ledgers, on September 22 and October 18. (Ex. 33.) Each time the Accused failed to comply with these requests. On October 27, Mr. Burns served a subpoena on the Accused. The Accused did not comply with the subpoena. (*Id*.)

B. *Tri-County Drywall (TCD) Matters*

Tracey and Odus Lambert contacted Mr. Wetsel to represent them and their business, TCD, in a number of collection matters. The Lamberts were new to business and relied on Mr. Wetsel for advice. They understood that Mr. Wetsel had experience handling construction matters. When Tracey Lambert, who usually handled the books and administrative issues for the business, wanted to refer a matter to Mr. Wetsel she generally prepared a fax and sent him the underlying documents that pertained to the case. She understood that Mr. Wetsel would handle these matters for her. She would periodically talk with Mr. Wetsel and ask him how things were going and he would usually respond by saying that things were under control.

Mr. Wetsel represented TCD on about eleven different collection matters and the following five are of concern here: Pacific Rim/Hurliman, TB Properties, Omega Custom Homes, Golden Crest Homes, and Saum Creek.

Ms. Lambert had difficulties reaching Wetsel. Between January 4, 2005, and March 9, 2005, Ms. Lambert left up to 13 voice mail messages for Wetsel, called his home, and was given a new cell phone number for him. (Ex. 68.) He never returned her calls. On March 9, 2005, Ms. Lambert filed a complaint with the Oregon State Bar complaining that Mr. Wetsel would not communicate with her. (Ex. 68.) At the same time, Ms. Lambert sent a letter to Mr. Wetsel demanding that he return all documents relating to the following matters: TB Properties, Pacific Rim Recovery, Omega Custom Homes, and Golden Crest Homes. (Ex. 44.) On March 10, Mr. Wetsel responded to the Lamberts saying that Odus Lambert could pick up documents at his office on the following week. (Ex. 44.) Apparently when the Lamberts went to pick up their files, they agreed instead to give Wetsel another chance. Although Wetsel settled one matter for them after that point in time, by May 2005, he had again failed to return phone calls or provide status updates on their cases despite repeated requests by the Lamberts. (Tr. 71.)

By July 2005, the Lamberts received copies of documents from the Defendants in the TB Properties matter and trying to collect a judgment in the amount of about $17,000. The effort to collect the judgment was the first time the Lamberts were on notice that the TB Properties matter had been decided. By July 18, 2005, the Lamberts retained another attorney to try to recover their files and take over where Wetsel had left off. Although Wetsel delivered some files, he failed for many months to turn over some that were most critical.

This matter was ultimately turned over to the Oregon State Bar for investigation on July 28, 2005. The Bar sent a letter to the Accused on August 16, 2005, requesting a response by September 6. The Accused did not respond. On September 6, the Bar sent the Accused a certified letter requesting a response by

September 13 or referring the matter to the LPRC. (Ex. 71.) On September 13 and 14 the Accused responded, but did not provide copies of all of the requested documents and the Bar again contacted him on September 15 and requested the documents no later than September 22. The Accused did not respond and the Bar sent him another letter by certified mail on September 27 again requesting the documents by October 4. The Accused did not respond; the matter was referred to the LPRC and ultimately assigned to Vivian Raits Solomon. Again, although Mr. Wetsel met with Ms. Solomon, he did not provide follow-up documents. Ms. Solomon eventually issued a subpoena for the documents, but Mr. Wetsel did not comply.

In preparation for the hearing in this matter, the Bar also served a request for production of documents on the Accused, as well as a notice of deposition. (Ex. 79.) Wetsel did not appear for one deposition and arrived three hours late for another. (Ex. 79; Tr. 8.)

Pacific Rim/Hurliman

TCD did work for Pacific Rim, a general contractor, on property owned by Hurliman. TCD filed a construction lien on the property, and on February 11, 2004, turned the matter over to Wetsel. On March 31, 2004, Wetsel filed a complaint in Washington County on behalf of TCD that alleged Lien Foreclosure, Breach of Contract, and Quantum Meruit in the amount of $4,100, plus attorneys fees. The Defendants were Hurliman, Pacific Rim Recovery, and Chris and Jenny Reynolds and David Foster individually doing business as Pacific Rim Recovery.[3] As the matter progressed, Wetsel understood from Hurliman that Pacific Rim Recovery was essentially out of business and they were getting ready to "skip town." At the discipline hearing Wetsel stated that he believed that the only chance of recovery would be from Hurliman although he never discussed this with TCD. After filing the complaint and serving the Defendants, Wetsel took no action to pursue the case and, without consulting with the Lamberts, the case was dismissed on September 7, 2004. (Ex. 35.)

At the time of the discipline hearing, the Accused claimed that TCD did not have proof that it had sent the required notice of right to lien to the Defendants, a statutory prerequisite to a lien foreclosure. (Tr. 375.) However, the court file contains evidence that Mr. Lambert sent the required notice and the Accused included this allegation in the complaint. The trial panel finds that the Accused's testimony that he allowed the case to be dismissed because the Lamberts could not provide proof of service of the lien is not credible. The evidence supports that Mr. Lambert had the required notice of service of the right to lien. The general judgment of dismissal recited that notice of dismissal had been given on July 21, 2004, and that the matter

[3] US Bank was also listed as a defendant, but it turned out that there was no action against the bank.

would be dismissed for lack of prosecution within 28 days. (Ex. 1.)[4] The Accused never talked with the Lamberts about allowing the matter to be dismissed, and even if the Accused believed the only claim was against Hurliman, he would have continued with the lawsuit against Hurliman on the other claims. The credible evidence is that the accused neglected this matter.

Furthermore, the Accused admits that *after* the case was dismissed he represented to Tracey Lambert that the case was progressing and the lien would be paid in full. (Tr. 331.) This was obviously untrue.

TB Properties

TCD provided drywall work for TB Properties in the amount of $4,600. A lien was filed against the property in Multnomah County on May 28, 2003. By the time the Accused received the case from TCD, the lien had expired. The Accused claims that he discovered a bond in Washington that he thought they could collect on, so he filed an action in the state of Washington. TB Properties' attorney, Roger Leo, asked the Accused to dismiss the Washington complaint because Washington did not have jurisdiction over the case. The Accused did dismiss the case and he wrote to the Lamberts indicating that he made a mistake in filing the case there and that he would not charge them for any costs or fees that were incurred as a result of his mistake. (Ex. 42.)

A few days later, Mr. Leo notified the Accused that TB Properties would incur about $4,700 to complete work that he alleged should have been done by TCD according to their estimate. Within days, the Accused filed a complaint in Multnomah County. The Defendants counterclaimed for about $5,000 plus attorneys' fees. The case was scheduled for arbitration on August 27, 2004. However, instead of proceeding with arbitration, Mr. Leo decided he wanted to take depositions of four different witnesses and the arbitration was rescheduled. Depositions were set for November 30, 2004. Tracey and Odus Lambert had about six days' advance notice of the depositions from the Accused and the Accused did little to help them prepare or understand the purpose of the deposition. As a result, they both felt frustrated during the deposition and were surprised by Mr. Leo's aggressive style. The Accused states that he spent about 15 minutes with the deposition and arbitration witnesses and that he felt that the dollar amount at stake in the case did not warrant more time.

The case was ultimately scheduled for arbitration on January 4, 2005. The Lamberts were given essentially no notice of the arbitration; two TCD witnesses were not able to attend the arbitration because of the short notice. In addition, because the Lamberts did not have adequate notice of the arbitration they were unable to arrange

[4] ORS 87.057 requires that the lienholder give ten days' notice of intent to foreclose the lien. ORS 87.057(3) provides that a plaintiff seeking to foreclose a lien must plead and prove compliance with this notice provision. Otherwise, no costs, disbursements, or attorney fees shall be allowed to the party failing to provide that notice. *Id*. The complaint filed by Mr. Wetsel does not allege compliance with ORS 87.057.

alternate child care for their three-year-old daughter and they had to split the time they could attend the arbitration.[5] The arbitration took the day on January 4 and was very contentious. The arbitrator stated that he would set closing argument for another day. Closing argument was ultimately scheduled for April 7, 2004, and the Accused did not appear. At the time of the discipline hearing, the Accused stated that he had been on vacation, did not get the closing date on his calendar and did not notify the Lamberts. The arbitrator signed an Opinion and Award which was served on both attorneys for the parties on April 18, 2005. On May 3, 2005, the arbitrator signed and served an Amended Opinion and Award. At the discipline hearing, the Accused stipulated that in addition to not appearing for closing argument, he did not respond to the attorney fee request, did not notify TCD of arbitration award or their right to appeal the award, or the fact that judgment was entered against them. (Tr. 332.) The judgment against TCD was entered on June 24, 2005, after the expiration of the right to request a de novo review of the arbitrator's award. By July, the judgment was for almost $17,000.

Mr. Leo began collection actions against TCD in late June, 2005. The Lamberts first learned about the outcome of the case when they received the collection notice in the mail when they returned from vacation in July. The Lamberts had not understood that there was a risk of incurring fees in an amount this high because the Accused never presented this information. When the Lamberts received notice of the judgment, they wrote a letter to Wetsel terminating his services and demanding the files. While some of the other files were delivered, this file was not delivered until sometime in 2006.

Omega Custom Homes

TCD did work for Omega Custom Homes and subsequently filed a lien on July 12, 2004, in the state of Washington. (Ex. 49.) This collections case was turned over to the Accused on or about September 20, 2004. There is an eight-month statute of limitations period for foreclosing on a lien in Washington. Omega Custom Homes responded to a demand letter that they were dissatisfied with TCD's work and would fight collection efforts. In the meantime, Wetsel was communicating with the title insurance company and believed he could receive payment that way. As of March 17, 2005, nothing had been paid and the Accused asked his staff to try to get Omega to agree to some kind of arbitration or mediation. The time period for filing a lien foreclosure expired in this matter. The Accused failed to inform the clients that the

[5] The Accused testified that the Lamberts had adequate notice of the arbitration because he believed his legal assistant spent a lot of time coordinating things. The Accused lacks credibility on this point. There is clear and convincing evidence that the Accused frequently failed to communicate on even the most important of matters. Although Ms. Lambert's memory of events had faded by the time of the hearing on this matter, her letter to the Bar, written within three months of the arbitration, was specific about the lack of communication and preparation for depositions and arbitration. (*See* Ex. 68.)

time for filing was going to expire or had expired. The Professional Liability Fund ended up paying damages on this case.

Wetsel testified at the discipline hearing that he had talked with the Lamberts about the risk of having to pay attorneys' fees and told them not to file on the lien. (Tr. 389–390.) Ms. Lambert denies this and the Accused has produced no credible evidence that any such conversation took place. Furthermore, given his complete lack of responsiveness to Ms. Lambert's thirteen phone calls between January 4 and March 9, the trial panel finds that there is clear and convincing evidence that the Accused simply failed to act in a timely manner to protect the client's interests and that his failure was not agreed to by the clients.[6]

Golden Crest Homes

TCD retained the Accused to pursue a collection action against Golden Crest Homes in early 2004 for $3,600. The Accused filed a lawsuit to foreclose the construction lien, but failed to serve the Defendant in a timely manner. In the meantime, Golden Crest Homes filed a Chapter 13 bankruptcy proceeding. Because the Defendant was not served in a timely manner, TCD was not fully secured and would be treated as an unsecured creditor. The Accused did nothing to protect TCD's interests in the bankruptcy and did not communicate with the Lamberts about what needed to be done in the case.

Saum Creek

This collections matter was transmitted to the Accused on May 13, 2005. From e-mail communication it appears that the Lamberts and Saum Creek had a meeting on the matter on or about May 23 and according to the Saum Creek attorney, "it didn't go very well." (Ex. 66.) An e-mail in the file indicates that the debtor offered to pay $1,850 and the Accused responded that he would "pass it on to my people." As of July 18, 2005, when the Accused was terminated, he had not conveyed the settlement offer to TCD. The Accused did deliver the file.

The Accused testified at the discipline hearing that he communicated the offer to the Lamberts, that they rejected the offer, and that in June he tried to set up a meeting with the Saum Creek attorney. (Tr. 395.) Again, given the Accused's lack of communication with the Lamberts in the winter and spring of 2005, the trial panel rejects the Accused's testimony as lacking in credibility. TCD's subsequent attorney was later able to accept the settlement offer.

---

[6] It should be noted that during this same period of time the Accused had failed to respond to a similar number of telephone calls and requests for assistance from Mr. Capistran.

III. ANALYSIS

The Bar must prove, by clear and convincing evidence, that the truth of the facts asserted is highly probable. *In re Taylor*, 319 Or 595, 600, 878 P2d 1103 (1994). As noted by the Bar, the Accused's conduct in many of these matters began in 2004 and extended into 2005. Therefore, both the Code of Professional Liability and the Oregon Rules of Professional Liability apply to some of these matters.

A. *Capistran Matter*

There is clear and convincing evidence that the Accused violated DR 6-101(A) and its counterpart in the ORPC 1.1. DR 6-101(A) provides:

> (A) A Lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

ORPC 1.1 is essentially identical to DR 6-101(A). The Accused failed to ascertain information about where the child and parties had lived in at least the six months prior to filing the complaint. This information was critical in making an assessment regarding which state would have jurisdiction of the custody matter. Had the Accused adequately prepared, he would have determined that Oregon would not have had jurisdiction. This case is similar to *In re Magar*, 296 Or 799, 681 P2d 93(1984), where a lawyer failed to determine which debts were dischargeable in bankruptcy prior to filing bankruptcy.

Similarly, the Capistran matter violated DR 6-101(A) and ORPC 1.1 as follows: by failing to respond to Mr. Bunch's attempts to confer with him about a proposal to dismiss the Oregon petition; by failing to confirm an agreement with Mr. Bunch that neither the petition nor the motion to dismiss would be argued on November 30, 2004; by failing to determine that Mr. Bunch's motion to dismiss was scheduled for argument on November 30, 2004; by failing to prepare a response to Bunch's motion to dismiss; by failing to appear at the argument on the Motion to Dismiss; by failing to respond to Bunch's motion for attorney fees; and by failing to advise Capistran that the Oregon petition had been dismissed.

The Accused admits that he violated DR 9-101(A) by failing to promptly deposit the $2,500 retainer Capistran paid into a lawyer trust account. DR 9-101(A) provides in pertinent part:

> (a) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses . . . shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated.

Because the Accused had not earned the money at the time he received it from Capistran, the money belonged to the client and the lawyer had a duty to

safeguard it in a trust account.[7] *See In re Biggs*, 318 Or 281, 293, 864 P2d 1310 (1994).

By failing to promptly return the money and the files, the Accused violated ORPC 1.15-1(d), which provides, in pertinent part:

> "Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive."

Capistran terminated the Accused on February 17, 2005, and despite repeated requests the Accused failed to deliver Capistran's file until April 25, 2005. (Tr. 154.) The remainder of the trust funds and other money was all returned by April 25. There was a potential of default in the Hawaii proceeding and having the file would have assisted Worthley in representing Capistran. (Tr. 161.) The Accused had a responsibility to promptly deliver the remaining trust account funds and the file to Capistran and he failed to do so.

B. *TCD*

There are multiple instances of the Accused violating DR 6-101(B) and ORCP 1.3, or neglect of a legal matter. ORCP 1.3 simply states: "A lawyer shall not neglect a legal matter entrusted to the lawyer." In the Pacific Rim/Hurliman matter, the Accused failed to prosecute the matter and, despite advance notice from the court regarding dismissal, failed to take action resulting in the case being dismissed and TCD losing its right to pursue the lien. The Accused failed to adequately notify the Lamberts of the impending arbitration in the TB Properties matter and they were therefore unable to give the matter their full attention and witnesses were unavailable. Also in TB Properties, the Accused violated the rule when he failed to appear for closing arguments, and failed to respond to the request for attorneys' fees. He also failed to take proper action to notify the Lamberts about the judgment so that it could be paid and not continue to accrue interest.

Similarly, in Omega Custom Homes the Accused neglected a legal matter by allowing the lien to expire. In Golden Crest Homes, the Accused failed to timely serve the Defendants, again causing TCD to lose the right to be treated as a secured creditor. The Accused also failed to take any action to further protect TCD's rights in the bankruptcy action. In Saum Creek, the Accused failed to convey a settlement offer to the clients for almost two months, risking that the offer would be rescinded.

---

[7] The Bar has not alleged failure of the Accused to maintain proper records of his trust account, nor has the Bar alleged any other improper conduct relating to the trust account. The trial panel notes, however, that because the Accused did not respond to subpoenas issued by the LPRC, the Bar was never able to obtain records showing that the Capistran money was ever deposited into the account, even though funds were withdrawn from the account to repay Capistran.

The Bar also alleges violations of ORPC of 1.4 which states:

> (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Bar has proven by clear and convincing evidence that the Accused violated ORPC 1.4 in the TB Properties case by failing to alert the clients ahead of time about their arbitration, failing to inform them that the arbitrator had issued an Opinion and Award and allowing them to make a decision regarding a de novo trial, and failing to inform them of the attorney fee award. In both Golden Crest Homes and Omega Custom Homes, the Accused failed to inform the Lamberts about the status of the cases and the options that were facing them about pursuing the case. In Saum Creek, the Accused failed to convey a settlement offer to the clients for several months.

The Accused also violated ORPC 1.15 in failing to promptly return files to the Lamberts in Pacific Rim/Hurliman and TB Properties. There is clear and convincing evidence that the Pacific Rim/Hurliman file was not delivered for many months after its demand and the TB Properties file was not returned until sometime in 2006, or a year after its return was demanded.

In relation to the TB Properties case, the Bar also alleges that the Accused's conduct in not disclosing the arbitrator's award and the Defendant's petition for attorneys fees and the ultimate judgment against the client violated ORPC 1.7 because of an impermissible conflict between the client's interest and the lawyer's self-interest. ORPC 1.7(a) states, in pertinent part:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if: . . .
>
> > (2) there is a significant risk that the presentation of one or more clients will be materially limited by the lawyer's responsibilities to . . . a personal interest of the lawyer . . .

Paragraph (b) of the rule permits representation if the lawyer believes that he or she "will be able to provide competent and diligent representation to each affected client" and each affected client gives informed consent in writing.

The Oregon Supreme Court has not interpreted ORPC 1.7, but it is similar to DR 5-101(A), where the court has concluded that the lawyers' desire to avoid or minimize potential liability for an error made in the course of representing a client may constitute self interest under the rule. *In re Knappenberger*, 337 Or 15, 29–30, 90 P3d 614 (2004). In order for a possible malpractice claim to rise to the level of an impermissible conflict, the following elements must be present: (1) it must be

evident to the accused lawyer that he or she made an error, (2) it must be evident to a reasonable lawyer that the client would have a viable malpractice claim involving more than minimal harm to the client, and (3) there must be evidence that the accused lawyer could reasonably have anticipated performing further work for the client. *Id.; In re Obert*, 336 Or 640, 348, 89 P3d 1173 (2004).

Wetsel was clearly aware that not participating in closing argument was his error, and that he should have sent the arbitrator's award, attorney fee petition, and judgment to the clients. Wetsel seems to argue that his failure to appear at closing argument, his failure to respond to the attorney fee request, and his failure to provide the judgment to the client, were not causes for malpractice because failing to participate at these stages would not have caused any damage to the clients because participation on these points would not have made a difference. It is true that the arbitrator reported to the LPRC investigator that Wetsel's appearance at closing argument and the hearing would likely not have made a difference. In the arbitrator's opinion, Wetsel's actionable errors occurred much earlier in the case in not preparing his case or his clients. (Ex. 74.) However, failure to notify the clients about the ultimate award actually did cause damage to the Lamberts. They could not assess whether to appeal the award. Although Wetsel argues that it was not practical for TCD to appeal, it was not his decision to make. They were entitled to a trial de novo. In any event, regardless of the Accused's rationale for not informing his clients of his neglect and the award, the trial panel concludes that a reasonable attorney would consider that the client would have at least a viable malpractice claim against the lawyer in this circumstance. Finally, not only did Wetsel anticipate doing additional work for the clients, he had been assigned many other matters for the clients and knew, as of their meeting sometime in March 2005, that the clients were giving him one more chance.

The Accused therefore violated ORPC 1.7 because there was a significant risk that the representation of the Lamberts would be materially limited by the lawyer's own self interest in avoiding a malpractice claim and termination from other client matters.

The Bar has also shown by clear and convincing evidence that the Accused violated ORPC 8.4(a)(3). This rule provides that:

> (a) It is professional misconduct for a lawyer to: . . .
>
> (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

This rule is similar to DR 1-102(A)(3) which provides that "it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." ORPC 8.4(a)(3) adds the additional requirement that the conduct must reflect adversely on the lawyer's fitness to practice law.

Dishonesty, fraud, deceit, and misrepresentation are not merely words of art but are separate terms with different meanings. As an example, misrepresentation

requires a two-part inquiry: (1) whether the lawyer knew that the statement was a misrepresentation, and (2) whether the lawyer knew the representation was material. *In re Benett,* 331 Or 270, 277, 14 P3d 66 (2000). A lawyer need not have an intent to deceive or commit fraud in order to engage in conduct involving misrepresentation. *In re Hiller,* 298 Or 526, 532, 694 P2d 540 (1985).

In regard to the Pacific Rim/Hurliman matter, Bar counsel asked Ms. Lambert from TCD whether Wetsel had said anything about how the case was progressing after it was dismissed. Ms. Lambert said she could not recall. Ms. Lambert then testified at page 225 that Mr. Wetsel told her that the case was progressing. Mr. Wetsel conceded that he told her this. (Tr. 330.)

Ms. Lambert could not recall if Mr. Wetsel said the lien was still valid. She could not recall if he said that the bill would be paid in full. When asked if he said that he was taking care of the matter, Ms. Lambert responded that she assumed that. (Tr. 226.)

On page 326 of the transcript, *et seq.*, Wetsel stipulated to many of the Bar's allegations. On page 330, Ms. Montalbano quoted to Wetsel an allegation from paragraph 22, line 12, of the Bar's amended formal complaint which read:

> The Accused represented to the Lamberts that the litigation against Pacific Rim/Hurliman was progressing, that TCD's construction lien was still valid, and that the lien would be paid in full.

Wetsel was asked if he stipulated to that, and he answered yes. (Tr. 331.) However, Wetsel then said that he was not going to stipulate to part of that allegation. Then Ms. Montalbano said that Wetsel was not stipulating to the phrase " . . . that TCD's construction lien was still valid . . . ," and Mr. Wetsel agreed. Therefore,Wetsel stipulated that "the Accused represented to the Lamberts that the litigation against Pacific Rim/Hurliman was progressing . . . and that the lien would be paid in full." Ms. Montalbano then said that Wetsel stipulated and agreed that the representations were made after the case had been dismissed and Wetsel agreed. (Tr. 332.)

Therefore, Wetsel agreed that the court dismissed the Pacific Rim/Hurliman litigation on or about September 8, 2004. (Tr. 330.) Wetsel also agreed that he later represented to the Lamberts that the litigation was progressing. This is clear and convincing evidence of a misrepresentation.

Mr. Wetsel also represented that the lien would be paid in full. (Tr. 330–331.) The complaint alleges that this occurred in or about March 2005. Again, Mr. Wetsel agreed the lien foreclosure case was dismissed on or about September 8, 2004. (Tr. 330.) Mr. Wetsel agreed that his representations to Ms. Lambert were made after the lawsuit was dismissed. (Tr. 332.) This is, in the opinion of the trial panel, clear and convincing evidence of a misrepresentation because he said the lien would be paid in full months after the lien foreclosure suit was dismissed.

Later, Wetsel testified that he agreed in his discussions with TCD that they would continue to try to get Hurliman to pay the debt. (Tr. 424.) This must have occurred early on because, after the lien foreclosure case was dismissed, Mr. Wetsel testified that he did "nothing." (Tr. 423.) Mr. Wetsel said that he knew they could not sue Mr. Hurliman because the lien was invalid. (Tr. 424.) Mr. Wetsel said the other people were flaky. *Id*.

The Bar argues that even if Wetsel merely failed to disclose the dismissal of the case that this failure to disclose material information nonetheless a misrepresentation. *In re Hiller*, 298 Or 526, 532, 694 P2d 540 (1985). There is certainly no question but that the dismissal of the case was material information because it "would or could significantly influence the hearer's decision-making process." *In re Eadie*, 333 Or 42, 53, 36 P3d 468 (2001).

Lastly, ORPC 8.4(a)(3) further requires that a lawyer's dishonesty or misrepresentation reflect adversely on his or her fitness to practice law. As further suggested by the Bar, the Oregon Supreme court has interpreted whether an act reflects adversely on fitness to practice law in interpreting DR 1-102(A)(2) in the context of criminal conduct. In those circumstances, the Supreme Court, in *In re Davenport*, 334 Or 298, 318, 49 P3d 91 (2002), considers the following in deciding whether there is a connection to fitness to practice: 1) the lawyer's mental state; (2) the extent to which the act demonstrates disrespect for the law or law enforcement; (3) the presence or absence of a victim; (4) the extent of actual or potential injury to a victim; and (5) the presence or absence of a pattern of criminal conduct. In making his statements to Ms. Lambert that the Pacific Rim/Hurliman case was progressing and that they would recover the full amount of the lien, he acted knowingly or intentionally,[8] TCD was a victim of his misrepresentation, there was potential injury because TCD was deprived of making decisions about how to proceed with the matter and whether to continue to be represented by Wetsel, and there is certainly a pattern of this type of conduct in his handling of other client matters—for example, the TB Properties case as set forth below.[9]

---

[8] ORPC 1.0(h) states that *knowing* "denotes actual knowledge of the fact in question." *See also* ABA *Standards* at 7. *Intentional* essentially means with the "conscious objective or purpose to conceal information." Wetsel knew that the case had been dismissed and was trying to conceal this fact from Ms. Lambert. Wetsel admitted that he had a difficult time giving clients bad news, so it seems he avoided giving bad news, and on some occasions such as this one, actively tried to conceal the adverse outcome of the case.

[9] The Bar has not charged Wetsel with violations of ORPC 8.4(a)(3) in his failure to disclose to Mr. Capistran that his case had been dismissed. Although there is no credible evidence that Wetsel made affirmative representations to Capistran that his Oregon case was continuing, as with the TB Properties case, his failure to disclose this fact was very likely a misrepresentation and violates OPRC 8.4(a)(3).

The Accused also violated ORPC 8.4 in the TB Properties matter because his failure to communicate with the Lamberts was a "misrepresentation." Unlike the Pacific Rim/Hurliman matter, there is no admission by Wetsel that he specifically told TCD that the case was progressing because he essentially stopped communicating with them for a period of time from the date of the arbitration through March. As previously discussed, in March Wetsel met the Lamberts and they agreed to give him one last chance. Wetsel later became aware of the arbitrator's award in early May 2005, and became aware of the judgment in June, and he took no action to notify the Lamberts of this. His failure to disclose the material fact of the arbitrator's decision was a misrepresentation, and the panel finds that all of the elements of misrepresentation under ORPC 8.4(a)(3), including the relationship to fitness to practice law have been met by clear and convincing evidence.

Failure to Cooperate with Disciplinary Process in Capistran and TCD Matters

The Bar has demonstrated by clear and convincing evidence that in multiple instances, the Accused violated OPRC 8.1(a)(2), which provides as follows:

> (a) an application for admission to the bar, or a lawyer in connection with . . . a disciplinary matter, shall not: . . .
>
> (2) . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority . . .

As pointed out by the Bar, *knowingly* here means "actual knowledge of the fact in question." ORPC 1.0(h). A person's knowledge may be inferred from circumstances. *Id.* ORPC 8.1 is similar to DR 1-103(C) which provided:

> "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."

Andrew Burns, the LPRC member assigned to investigate the Capistran matter, repeatedly requested that the Accused produce documents. The Accused failed to respond. On October 27, 2005, Mr. Burns served a subpoena on the Accused for these documents. The Accused admitted that he knowingly failed to respond to these lawful demands from the disciplinary authority. In the TCD matters, the Accused failed to respond to the requests for documents from LPRC investigator Vivian Raits Solomon, and again failed to respond to her lawfully issued subpoena. The Accused's violations were knowing and he failed to offer any explanation for his failure. The Accused also failed to respond fully to Disciplinary Counsel in both cases.

SANCTION

As noted by the Oregon Supreme court, the primary purpose of the sanction is to protect the integrity of the legal profession and to protect public, not to penalize the accused. *In re Glass*, 308 Or 297, 304, 779 P2d 612 (1989). The trial panel has considered *ABA Standards for Imposing Lawyer Sanctions* and has reviewed Oregon case law and notes that four factors should be considered: (1) the duty violated, (2) the lawyer's mental state, (3) the potential or actual injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating factors. *ABA Standards*.

A. *The Duty Violated*

The Accused violated multiple disciplinary rules that focus on the fundamental duties owed clients: competence and diligence, the duty to confer with clients, the duty to exercise independent judgment on behalf of client, the duty to safeguard a client's property, and to return the client's files and other property. The Accused also violated the lawyer's basic rule of integrity when he misrepresented the status of the Pacific Rim/Hurliman matter to the client. He also violated his duty to the profession in failing to cooperate.

B. *Mental State*

The sanction imposed should be greater if the Accused acted with intent to deceive than if he acted with mere knowledge that his representation was false. The sanction should be less severe if he was merely negligent. The panel finds that a large number of the Accused's misdeeds, including his neglect and incompetence, were the result of mere negligence. However, the panel finds that the Accused's misrepresentation in the Hurliman matter was done with the specific intent to deceive the Lamberts, and done with the conscious objective or purpose to accomplish the result of deflecting any further questions about the case and avoiding the potential result that the Lamberts would discharge him from handling other cases.

C. *Actual and Potential Injury*

Potential or actual injury is another factor to be considered. It should be noted that even potential injury, the harm that was reasonably foreseeable at the time of the lawyer's misconduct but that ultimately did not occur, is actionable. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). In this case, there were multiple potential and actual injuries to the clients of the Accused. The Accused's failure to deposit Capistran's retainer in the lawyer's trust account caused at least potential injury. It was reasonably foreseeable that if the money was not deposited promptly into the

lawyer's trust account that the unused portion would not be available to be returned to the client upon demand. As the facts unfolded, Mr. Capistran's retainer was ultimately returned to him, but several months after its return was demanded.[10]

Because the Accused did not attend to the Hawaii custody matter as promised, Mr. Capistran risked losing by default in that action. Indeed, according to both Capistran and Mr. Worthley, Capistran certainly could have been defaulted in the Hawaii proceedings thereby losing his rights to contest custody, support, or parenting time. By the time Mr. Worthley was able to pick up the pieces of the case, Capistran was not in a position to settle for anything more than parenting time. There was at least potential injury to Capistran as a result of the Accused's incompetence and neglect in the filing of the Oregon custody petition and its subsequent dismissal and the resulting judgment for attorney fees. (The fact that the Accused paid the judgment changed the actual injury of the attorney fee into a potential injury.)

The Lamberts were likewise injured because of the Accused's neglect and lack of diligence in the matters handled for TCD.[11] The fact that the PLF had to pay on those cases is evidence of the injury. In addition, the Lamberts incurred attorneys' fees by having to hire another attorney to make sense of these matters. Furthermore the fact that the Accused failed to return many of these files for many months—and in some cases a year—caused injury and potential injury to his clients who were unable to promptly pick up these matters.

The Bar was injured as a result of the Accused's failure to cooperate in the discipline proceedings. The Accused's lack of adequate response to Bar Counsel in addition to the two LPRC investigators, his ultimate refusal to respond to subpoenas issued by the LPRC investigator, and his failure to appear (on two occasions) for his deposition, lengthened the entire process while adding expense and difficulty to the Bar's efforts to adequately determine the facts.

---

[10] One of the checks that was issued as a return of the retainer was issued on the lawyer's trust account. However, the fact that the accused failed to comply with the LPRC's investigation by Andrew Burns, we will never know if and when Capistran's funds were ever deposited into the trust account. In other words, absent credible evidence that the money that was refunded to Capistran was actually deposited into the trust account, the money that the Accused used to repay the retainer may have been the funds belonging to another of the Accused's clients.

[11] At the hearing, the Accused attempted to argue that the Lamberts were not injured by his failure to advise them of the arbitrator's decision and the right to a de novo trial because he claimed to have known what the Lamberts would have wanted to do. While it may not have made economic sense for the Lamberts to have appealed the matter, the Lamberts were still entitled to make a decision on that matter. Similarly, the Accused seemed argued that the Lamberts were not injured by his actions and inactions because their underlying cases were not strong. Again, the Accused deprived the clients of their rights to make a decision as to how to proceed, and Defendant's conduct in not protecting the Lamberts' rights was at a minimum, a potential injury.

E. *Preliminary Sanction and Oregon Case Law*

Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client; or when a lawyer knowingly deceives a client and causes injury or potential injury to the client; or when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury to the client, the public or the legal system. ABA *Standards,* 4.42, 4.62, and 7.2. In addition, Oregon case law supports a substantial suspension from the practice of law in similar cases. In *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996), the court imposed a two-year suspension for failure to take action on a real estate matter, failure to communicate with the client and promptly return documents, and failure to respond to three requests for information from disciplinary counsel, but ultimately cooperated with the LPRC. In *In re Recker*, 309 Or 633, 789 P2d 663 (1990), the supreme court imposed a two-year suspension where the lawyer neglected two separate client matters, ignored the clients' requests for information, and falsely presented information to the Court. Recker failed to respond to either the Disciplinary Counsel's or the LPRC's inquiries and did not comply with a subpoena.

D. *Aggravating / Mitigating Factors*

Aggravating factors include the Accused's substantial experience in the practice of law. In addition, the Accused demonstrated a selfish motive in misleading the Lamberts to think that all was well with the Pacific Rim/Hurliman matter. The Accused has not expressed genuine remorse for his poor conduct. Although the Accused, at times, seemed to acknowledge that he should have done things differently, he also tried to rationalize or justify his behavior at almost every turn. For example, in the Capistran matter, in cross-examining Mr. Capistran, the Accused tried to cast doubt on Mr. Capistran's motives in bringing the child custody action. In regard to the Lamberts, the Accused tried to claim that the Pacific Rim/Hurliman matter was dismissed because the Lamberts could not provide proof of service of the notice of lien on the Defendant, which was simply not true. The Accused was less than candid with the trial panel in recounting events.

Another aggravating factor according to the ABA *Standards* is the Accused's pattern of misconduct and multiple offenses. The neglectful conduct by the Accused is similar to the conduct that occurred as early as 2002 and resulted in a reprimand from the Washington State Bar in 2003. The Accused's neglect here spanned from the fall of 2004 through the investigation and hearing in this matter, including his failure to cooperate with discipline counsel, the LPRC, his failure to respond to subpoenas and the notice of deposition, and his late arrival at the hearing in this matter.

As a mitigating factor, the Accused did ultimately return Capistran's retainer and paid the attorney fee judgment against Capistran, although it appears this was done at the insistence of Mr. Worthley.

On the issue of the Accused's mental impairment, we agree with the Bar that the Accused has not established a mental disability under the ABA *Standards*, 9.32(i). The standard states:

> (i) mental disability or chemical dependency including alcoholism or drug abuse [may be considered in mitigation] when:
>
> (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;
>
> (2) the chemical dependency or mental disability caused the misconduct;
>
> (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
>
> (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

The Accused failed to provide evidence of *any* of these mitigating factors. Furthermore, if the Accused was participating in an attorney assistance program through the Washington State Bar, the rules prevent the panel from considering his testimony because he failed to comply with BR 5.9.

On the issue of personal problems as a mitigating factor, the Accused testified that his wife of over ten years and the mother of their three children was diagnosed with cervical cancer in 2003. He stated that his wife's recovery from surgery was long and difficult and by June 2004 both he and his wife were depressed and he was having a hard time following through with things. He saw a doctor friend, Dr. Bessas, who started him on medication and over the next several months they experimented with a variety of drugs, including those for attention deficit disorder. (Tr. 342–343.) In November 2004 he and his wife separated and the divorce was final in February 2005. He stated that during this period he was "taking on more work than I could do and experiencing the stress of family problems." (Tr. 244.) He also stated that his ex-wife's cancer was not a factor in October and November 2004. He was also aware that his practice was not under control. However, in the fall of 2004 he was seeing Dr. Bessas and experimenting with different kinds of medication, but not seeking any kind of counseling or other type of assistance in his law practice. (Tr. 361–362.)

In March 2005, the Accused's longtime assistant left to go on an indefinite maternity leave and the Accused had not made plans for her departure. (Tr. 349.) Then, at some point in March or later he met Veronica, who became his second wife in November 2005. The two blended their families—her four children and his three children. (Tr. 350.)

He claims that in the summer of 2006 a marriage counselor with his new wife suggested that he have a psychological evaluation and that another doctor who did not give him a full psychological evaluation told him that he was suffering from "acute stress disorder" or a "nervous breakdown." (Tr. 352.) He was not, however, in counseling of any kind, but simply continued to see his general practitioner. Veronica moved out in September 2006 and she filed for divorce in January 2007, two weeks before the hearing in this matter.

The Accused was aware of the opportunity to seek assistance through the Oregon Attorney Assistance Program, but stated because he was on a plan of assistance or diversion with Washington pertaining to "other matters" did not feel the need to contact the OAAP. He provided no documentation in response to the Bar's request for documents pertaining to mitigating factors (Ex. 79), and the trial panel finds that the Accused was in possession of documents that he refused to turn over to the Oregon Bar.[12]

Although the panel will not consider evidence of a mental impairment as an aggravating factor, it is certainly likely that the Accused's personal problems interfered with his law practice. Nonetheless, the Accused seems to lack any appreciation for how these problems negatively impacted his clients and others. As noted, evidence of his pattern of neglecting clients began in 2002 which resulted in the Washington bar complaint. He claims that the 2002 Washington matter, although it appears to involve similar conduct to Oregon complaints (not returning client phone calls, not returning the file) discussed at this hearing, was "not related to issues of depression and life changing events." (Tr. 401.)

In summary, after much consideration, the trial panel gives some weight to the personal problems of the Accused as a mitigating factor. His personal life has been in disarray and he has encountered many unfortunate obstacles. However, and unfortunately, he does not appear to have reached a point of stability nor does he appear to have regained the ability to focus on important matters. After observing the Accused's erratic demeanor during a day and half of trial, the panel concludes that his best interesting will be served by obtaining, as soon as possible, professional evaluation and counseling that is more intensive than that which he purports to be receiving presently.

Given all the facts and circumstances, and weighing the factors cited above, the panel hereby imposes an 18-month suspension from the practice of law. The panel is primarily concerned with the protection of the public and the Accused's seeming inability to attend to client matters and other important matters such as his own disciplinary hearing. In addition to the suspension, the panel refers this matter to the State Lawyers Assistance Committee. Based on the observations of the trial panel,

[12] The Oregon Bar did not request that the trial panel chair become involved in discovery issues in this case, and did not seek to enforce the requests for documents or the subpoenas that were previously issued by the LPRC.

the Accused should be required to provide credible evidence that he is competent and fit to practice law before he is reinstated.

DATED this 6th day of April 2007.

/s/ Sandra Hansberger
Sandra Hansberger
Panel Chair

/s/ John Langslet
John Langslet
Panel Member

/s/ Harry L. Turtledove
Harry L. Turtledove
Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-50
	)	
RUSSELL D. BEVANS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stephen Blixseth; Martha M. Hicks
Counsel for the Accused:	Christopher Hardman
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	June 15, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for a period of 60 days, effective beginning on the 15th day of June 2007 for violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

DATED this 14th day of June 2007.

/s/ Jill A. Tanner
Jill A. Tanner, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On July 31, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

Ronald and Judy Wimber (hereinafter "the Wimbers") allege that in October 2002 they undertook to care for Ronald's father, William F. Wimber, pursuant to a compensation agreement purportedly signed by William. William Wimber died on August 23, 2003, without having paid the Wimbers for their services. Thereafter, the Wimbers attempted to file a claim against William Wimber's estate, but learned that no probate proceeding had been filed.

6.

On or about February 18, 2005, the Accused undertook to represent the Wimbers and agreed to file a proceeding to probate William Wimber's estate. Thereafter, despite reminders from the Wimbers of their desire that he do so, the Accused failed to file a petition to probate William Wimber's estate.

7.

On or about June 21, 2005, Ronald Wimber's brother filed a proceeding to probate William Wimber's estate. The lawyer for the estate, Thomas Wurtz (hereinafter "Wurtz"), advised the Accused that if the Wimbers had claims against the estate, the claims should be filed with Wurtz. On or about July 7, 2005, the Wimbers provided Wurtz a copy of a letter they had previously written to the probate court, which described the nature of their claim, but did not include the amount they claimed was owed them by the estate.

8.

By letter dated July 19, 2005, Wurtz inquired of the Accused whether the Wimbers' letter described in paragraph 7 above was intended to be a claim against the estate. The Accused failed to respond to Wurtz's inquiry, failed to advise the Wimbers of the inquiry, and, although he forwarded a copy of the July 19, 2005, letter to the Wimbers, the Accused did not include any further explanation of what was necessary to be done, and failed to take any other steps to preserve the Wimbers' claim.

9.

On or about August 4, 2005, Wurtz again inquired of the Accused whether the Wimbers' letter was intended to be a claim against the estate, and the Accused advised Wurtz that he would amend the claim by filing additional documents. The Accused failed to file further documents with Wurtz, failed to advise the Wimbers of the need to amend their claim, failed to take any other steps to preserve the Wimbers' claim, and failed to keep the Wimbers informed as to the status of their claim.

10.

On or about September 2, 2005, Wurtz disallowed the Wimbers' claim against the estate and notified the Accused that the claim would be barred unless he filed a request for summary determination within 30 days. The Accused failed to timely file a request for summary determination, failed to notify the Wimbers of the need to file a request for summary determination, failed to inform the Wimbers about the status of their claim, and failed to take any other steps to preserve the claim.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

Sanction

12.

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

A. *Duty Violated.* The Accused violated his duties to his clients to represent them diligently and to communicate with them adequately. *Standards,* § 4.0.

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 to accomplish a particular result. *Standards,* at 7.

C. *Injury.* The Wimbers were actually injured in that they experienced anxiety and frustration about the status of their claim against the William Wimber estate and lost the right to adjudicate their claim.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a record of a prior disciplinary offense, having been suspended from membership in the bar in 1982. *In re Bevans*, 294 Or 248, 655 P2d 573 (1982). *Standards,* § 9.22(a).

2. The Accused's conduct involved multiple disciplinary offenses. *Standards,* § 9.22(d).

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

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused has made full and free disclosure to the bar. *Standards*, § 9.32(e).

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

13.

Standards, § 4.42(a) suggests 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. Oregon case law is in accord. See *In re Redden*, 342 Or 393, 153 P3d 113 (2007), where the lawyer was suspended for 60 days for violation of DR 6-101(B) (neglect of a legal matter). See also *In re Knappenberger,* 340 Or 573 (2006), where the lawyer was suspended for 60 days for violation of DR

6-101(B). The lawyer had a prior disciplinary record, committed multiple offenses, and had substantial experience in the practice of law. Finally, see *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003), where the lawyer was suspended for 60 days for a single violation of DR 6-101(B). The court found the aggravating and mitigating factors in *LaBahn* in equipoise where the lawyer had a prior disciplinary record, acted with a selfish motive, had suffered the imposition of other penalties (a malpractice settlement), and displayed remorse.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violation of RPC 1.3, RPC 1.4(a), and RPC 1.4(b), the sanction to be effective beginning on June 15, 2007.

15.

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

EXECUTED this 5th day of June 2007.

/s/ Russell D. Bevans
Russell D. Bevans
OSB No. 73028

EXECUTED this 8th day of June 2007.

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. 07-25
	)	
MARK CARTON,	)	SC S054743
	)	
Accused.	)	

ORDER IMPOSING RECIPROCAL DISCIPLINE

Upon consideration by the court.

The Oregon State Bar has notified this court that the Accused has been disciplined in another jurisdiction. We conclude that the Accused should be disciplined for violating former DR 1-102(A)(2) (misconduct to "[c]ommit a criminal act that reflects adversely on the lawyer's . . . fitness to practice law"). We accept the recommendation of the State Professional Responsibility Board that the accused should be suspended for 30 days; we reject the Board's additional recommendations of a stayed suspension and probation. The 30-day suspension shall commence 60 days from the date of this order.

DATED this 19th day of June 2007.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

SUMMARY

On June 19, 2007, the Supreme Court issued an order imposing reciprocal discipline on Mark Carton, who resides in California, following his suspension in a California disciplinary proceeding. The Oregon Supreme Court suspended Carton for 30 days for violating former DR 1-102(A)(2) (committing a criminal act that reflects adversely on fitness to practice law).

In 2005, Carton pleaded no contest to misdemeanor criminal violations arising from an incident in which Carton went to a client's place of business, demanded payment for legal services, and damaged or destroyed personal property owned by the client. The client also was injured in the confrontation. Carton was under the influence of alcohol and medications at the time of the incident. In May 2006, the California Supreme Court suspended Carton from practice in that state for one year,

stayed that suspension, and placed Carton on probation for two years with a condition that he actually be suspended for 30 days.

In response to the notice of the California discipline filed by the bar under Oregon's reciprocal discipline rule, BR 3.5, the Oregon Supreme Court suspended Carton for 30 days, effective 60 days from the date of the court's order.

Cite as 343 Or 86 (2007)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
JAMES A. FITZHENRY,	)
	)
Accused.	)

(OSB No. 03-85; SC S53443)

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

Argued and submitted March 2, 2007. Decided June 28, 2007.

Peter R. Jarvis, Hinshaw & Culbertson LLP, Portland, argued the cause for the Accused. With him on the brief were David J. Elkanich, and Barnes H. Ellis, Stoel Rives LLP, Portland.

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

Before, De Muniz, Chief Justice, and Gillette, Durham, Kistler, Walters, and Linder, Justices. (Balmer, J., did not participate in the consideration or decision of this case.)

PER CURIAM

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

SUMMARY OF THE SUPREME COURT OPINION

The misconduct charged related to representations that were made to auditors concerning the sale of goods by the Accused's employer. Or. Code Prof. Resp. DR 1-102(A)(3) prohibited dishonesty, fraud, deceit, and misrepresentation. What was disputed was the Accused's mental state at the time of certain events—whether the Accused, when he signed a management representation letter, did so knowing that there was no fixed commitment for a sale. The employer's management hoped to structure the transaction so that it would qualify for accounting purposes as revenue on its 1998 financial statements. As it turned out, the employer lacked firm purchase commitments for many bill and hold transactions. Evidence before the trial panel included the Accused's testimony before the Securities and Exchange Commission.

Contrary to the Accused's argument, the testimony showed the Accused did have actual knowledge. The supreme court was not persuaded by the Accused's statements. Further, the supreme court was satisfied that the Accused, who testified that he knew the audit could not be concluded favorably unless he signed the management representation letter, knew the materiality of the misstatements. The Accused was suspended from the practice of law for 120 days, commencing 60 days from the effective date of the decision.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-04
	)	
GREGORY L. GUDGER,	)	
	)	
Accused.	)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	Peter R. Jarvis
Disciplinary Board:	None
Disposition:	Violations of RPC 1.5(a) and DR 9-101(A). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	July 3, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Gregory L. Gudger (hereinafter "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 RPC 1.5(a) and DR 9-101(A).

DATED this 3rd day of July 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 17, 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 freely and voluntarily enters into this Stipulation for Discipline subject to the restrictions of Bar Rule of Procedure 3.6(h).

4.

On January 20, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.5(a) of the Oregon Rules of Professional Conduct and DR 9-101(A) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In May 2004, Wayne Allen hired the Accused to represent him in a dissolution proceeding which Mr. Allen had already filed in Multnomah County Circuit Court. Mr. Allen and the Accused signed a retainer agreement providing that the Accused would charge attorney's fees of $150.00 per hour. Mr. Allen gave the Accused a $1,500.00 retainer, which the Accused deposited into trust.

6.

Between May 2004 and August 2004, the Accused spent 7.95 hours working on Mr. Allen's case. He therefore earned, on an hourly basis, $1,192.50. Nevertheless, during this period, the Accused withdrew $1,305.00 from trust, which was $112.50 more than he had earned.

7.

In April 2006, the Accused sent Mr. Allen an invoice that charged him for several additional hours of time at the rate of $200.00 per hour, rather than the $150.00 per hour specified by the fee agreement. The Accused did not notify Mr. Allen of the increased hourly rate, and Mr. Allen never agreed to pay it.

8.

The Accused admits that by withdrawing $112.50 more than he had earned between May and August 2004, he removed client funds from trust when he had not earned them, in violation of DR 9-101(A) of the Code of Professional Responsibility. The removal of the $112.50 in unearned funds was, however, inadvertent. Further, the Accused ultimately spent enough time on the case so as to justify his taking the funds as a fee.

9.

The Accused admits that when he sent Mr. Allen an invoice (in April 2006)—without first notifying Mr. Allen of the increase in rate and obtaining his consent—the Accused thereby charged Mr. Allen a clearly excessive fee in violation of RPC 1.5(a) of the Oregon Rules of Professional Conduct. The excessive charge was inadvertent and the result of a computer error. Specifically, the Accused used computer software to note an increase in his general rate, and due to an oversight, his rate was increased to $200.00 per hour for all entries after the stated increase date, including Mr. Allen's account. The Accused did not, however, actually collect an excessive fee, as Mr. Allen never paid him the balance reflected on the April 2006 invoice.

Sanction

10.

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

A. *Duty Violated.* In violating DR 9-101(A) and RPC 1.5(a), the Accused violated duties to his client to preserve his property and to the profession to refrain from charging a clearly excessive fee. *Standards*, §§ 4.0 and 7.0.

B. *Mental State.* The Accused's mental state in committing these violations was negligent. 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 *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's violations posed a threat of potential injury to his client. By withdrawing an extra $112.50 from trust before earning it, the Accused mishandled client funds and created the possibility that Mr. Allen would be overcharged. Also, by sending Mr. Allen an invoice that charged him more than the agreed-upon fee, the Accused created the possibility that Mr. Allen would rely on the invoice and pay more than he actually owed.

D. *Aggravating Factors. Aggravating factors* are considerations that increase the degree of discipline to be imposed. *Standards,* § 9.22. There are three aggravating factors in this case.

1. The Accused has substantial experience in the practice of law, having been admitted in 1987. *Standards,* § 9.22(i).

2. The Accused has a disciplinary history. *Standards,* § 9.22(a). On August 30, 1996, he stipulated to a 180-day suspension, 90 days of which were stayed pending his completion of 2 years' probation. *In re Gudger,* SC S43561 (1996).

3. The Accused was disciplined again on November 25, 1997. *In re Gudger,* SC S43561 (1996). He was suspended from the practice of law for 7 months for violating DR 1-102(A)(2).

E. *Mitigating Factors. Mitigating factors* are considerations that may justify a reduction in the degree of discipline to be imposed. *Standards,* § 9.31. There are four mitigating factors in this case.

1. Absence of a dishonest or selfish motive. The Accused did not intentionally act for the purpose of benefiting himself. In both instances, the excessive fee was inadvertently charged. Further, the unilateral increase in the Accused's fees to $200.00 per hour was wholly the result of a computer error. *Standards,* § 9.32(b).

2. Timely good faith effort to make restitution or to rectify consequences of misconduct. The Accused took steps to mitigate the potential injury to his client, including completing his client's dissolution matter and spending enough time on the case so as to justify his taking the funds as a fee. *Standards,* § 9.32(d).

3. Cooperative attitude toward the proceedings. The Accused was forthcoming and responsive to the Bar's questions in this proceeding. *Standards,* § 9.32(e).

4. Remorse. Although the Accused maintains his conduct was unintentional, he has acknowledged the potential injury it may have had on his client. *Standards,* § 9.32(m).

11.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13. The *Standards* also provide that a reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

12.

Case law is in accord with the *Standards*. *See In re Mannis*, 295 Or 594, 668 P2d 1224 (1983) (attorney reprimanded for his staff's failure to deposit client funds in trust, even though the attorney did not know of the commingling and had no intent to enrich himself); *In re Schroeder*, 15 DR Rptr 212 (2001) (attorney reprimanded for charging an excessive fee by charging client more than the legal rate of interest on a past due fee without client's affirmative agreement to pay the higher rate of interest); *In re Skinner*, 14 DB Rptr 38 (2000) (attorney reprimanded for unilaterally raising the interest rate on unpaid client account balances without the consent of the client).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of RPC 1.5(a) and DR 9-101(A).

14.

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

EXECUTED this 16th day of June 2007.

/s/ Gregory L. Gudger
Gregory L. Gudger
OSB No. 87048

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. 06-124
	)	
DEAN M. SHYSHLAK,	)	
	)	
Accused.	)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B), DR 9-101(A), RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(3). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	August 1, 2007

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 August 1, 2007, for violation of DR 6-101(B), DR 9-101(A), RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(3).

DATED this 10th day of July 2007.

/s/ Jill A. Tanner
Honorable Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1991, 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 January 22, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 6-101(B), DR 9-101(A), RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(3). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 1998, the Accused represented Ron Lee (hereinafter "Lee") to collect a debt. On April 9, 1998, the Accused obtained a judgment in Lee's favor. On or about February 10, 2004, Lee retained the Accused to conduct a judgment debtor examination and paid the Accused a retainer of $240. The Accused failed to deposit or maintain Lee's retainer in his lawyer trust account.

6.

Between February 2004 and June 2006, the Accused:

A. Failed to complete or file the documents necessary to set a judgment debtor appearance;

B. Failed to serve the judgment debtor with an order requiring his appearance;

C. Failed to advise Lee of the status of his case;

D. Failed to respond to Lee's numerous attempts to contact him;

E. Failed to take any steps to protect Lee's interest in the judgment debtor's assets; and

F. Failed to take any other steps to collect the judgment debt or to advance Lee's interests significantly.

7.

On August 26, 2005, the Accused represented to Lee that the Accused's process server had been unable to serve the judgment debtor with the documents that would require his appearance, despite repeated attempts to do so. This representation was false and material, and the Accused knew it was false and material when he made it.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 6-101(B), DR 9-101(A), RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(3).

Sanction

9.

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

A. *Duty Violated.* The Accused violated his duties to his client to preserve the client's property, to represent him diligently, and to be candid. *Standards,* §§ 4.1, 4.4, and 4.6.

B. *Mental State.* The Accused acted knowingly in neglecting Lee's matter and in misrepresenting his efforts to serve the debtor, but acted negligently in failing to deposit Lee's retainer into trust.

C. *Injury.* Lee experienced frustration as a result of the Accused's neglect and failure to communicate with him more regularly. Because the debtor was judgment proof as he had been some years before, Lee only suffered potential financial harm from the Accused's neglect. *Standards,* at 6.

D. *Aggravating Factors.* Aggravating factors include:

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

2. Shyshlak 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:

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 suffering from personal or emotional problems stemming from his father's illness, subsequent death, and the need to sort out his father's affairs in Canada. *Standards*, § 9.32(c).

4. The Accused made a timely good faith effort to rectify the consequences of having deposited Lee's retainer into the wrong account. *Standards*, § 9.32(d).

5. The Accused made full and free disclosure in the course of the Bar's investigation and displayed a cooperative attitude toward the proceedings. *Standards*, § 9.32(e).

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

10.

The presumptive sanction for the Accused's conduct is a period of suspension. *Standards*, §§ 4.42 and 4.62. Oregon case law is in accord. See *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension for violation of DR 1-102(A)(3) (misrepresentation), DR 6-101(B) (two counts) (neglect), DR 5-105(E) (current client conflict), and DR 9-101(C)(4) (failure to promptly return client property)); *In re Hedges*, 313 Or 618, 836 P3d 119 (1992) (63-day suspension for violation of DR 1-102(A)(3) (misrepresentation), DR 1-103(C) (failure to cooperate with the Bar), DR 6-101(B), DR 9-101(B)(3) and (4) (failure to render appropriate accounts and promptly pay client funds as requested)); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for a period of 60 days for violation of DR 6-101(B), DR 9-101(A), RPC 1.3, RPC 1.4(a), and RPC 8.4(a)(3), the sanction to be effective beginning August 1, 2007.

12.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the State Professional Responsibility Board

(SPRB). If approved by the SPRB, the parties agree the stipulation is to be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 28th day of June 2007.

/s/ Dean M. Shyshlak
Dean M. Shyshlak
OSB No. 91427

EXECUTED this 15th day of June 2007.

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. 06-07
	)	
ARTHUR P. KLOSTERMAN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Susan D. Isaacs
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), and RPC 8.1(a)(2). Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	August 9, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 120 days, effective 30 days after the date of this order, for violation of RPC 1.3, RPC 1.4(a), and RPC 8.1(a)(2).

DATED this 10th day of July 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Esq., Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 25, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On August 24, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed or comply with reasonable requests for information); and RPC 8.1(a)(2) (knowing failure to respond to lawful demands for information in a disciplinary matter). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On December 16, 2003, Jose Cordero-Cabello ("Cordero-Cabello") was injured when he was struck in a pedestrian crosswalk by an automobile driven by Bethany Johnson ("Johnson"). Later that same month, Cordero-Cabello hired the Accused to represent him in his claim against Johnson. Between December 2003 and approximately December 2004, the Accused regularly met with Cordero-Cabello regarding the status of the matter. During this same period, the Accused also regularly communicated with Johnson's insurer regarding medical payments, lost wages, and Cordero-Cabello's need for significant medical care.

6.

In September 2004, Cordero-Cabello was arrested for drug-related crimes. In April 2005, Cordero-Cabello was found guilty of the charges and sentenced to 20 months in prison.

7.

Beginning in May 2005, Cordero-Cabello made repeated efforts to communicate with the Accused. Although the Accused had at least two conversations with Cordero-Cabello regarding the possibility of settling Cordero-Cabello's claim, the Accused took no additional action to settle the matter, nor did the Accused take any other substantive action on Cordero-Cabello's claim.

8.

In October 2005, Cordero-Cabello wrote to the Bar's Client Assistance Office ("CAO"), complaining that the Accused had failed to maintain contact with him or settle his personal injury claim, and sought CAO's assistance in determining whether the Accused was still representing him in the matter. When the Accused did not respond to CAO, Cordero-Cabello's complaint was sent to Disciplinary Counsel's Office ("DCO") for further inquiry. DCO sent the Accused a letter on December 5, 2005, requesting his response to Cordero-Cabello's concern. The Accused did not respond.

9.

On December 16, 2005 (the last day of the statute of limitations), the Accused filed a complaint in Marion County Circuit Court on behalf of Cordero-Cabello against Johnson. The Accused then hired a process server to serve Johnson with a Summons and the Complaint, however, the process server was not able to effectuate personal service on Johnson until after the time allowed for service by ORS 12.110 or 12.010(2) (60 days).

10.

During and after the period when he filed and attempted to serve the complaint for Cordero-Cabello, the Accused continued to fail to communicate or cooperate with the Bar in any fashion, despite at least two interim requests that he do so. Accordingly, in the early part of February 2006, the matter was referred by DCO to the Marion County Local Professional Responsibility Committee ("LPRC") for additional investigation.

11.

On February 15, 2006, LPRC member, John Beckfield ("Beckfield") met with the Accused at the Accused's office. The Accused declined to produce his file or to discuss Cordero-Cabello's complaint, stating he wished to consult with an attorney.

12.

On February 28, 2006, Beckfield again requested the Accused to advise whether he was represented by counsel or whether he would cooperate with the LPRC investigation. The Accused did not respond.

13.

In March 2006, attorney Steven Lippold ("Lippold"), on behalf of Johnson filed an Amended Answer to Cordero-Cabello's Complaint in Marion County, asserting the statute of limitations as a defense. Lippold thereafter filed a Motion for Summary Judgment based on the Accused's failure to bring Cordero-Cabello's claim within the statute of limitations. In response, the Accused formally withdrew from Cordero-Cabello's representation. In November 2006, Lippold's motion was granted and Cordero-Cabello's case was dismissed.

14.

In late April 2006, Beckfield served the Accused with a subpoena for Cordero-Cabello's file and noticed the Accused of a scheduled interview. The Accused then complied with the subpoena and appeared as scheduled for the interview with Beckfield.

Violations

15.

The Accused admits that his periods of inaction (from December 2004 through December 2005 and from December 2005 through July 2006, when he withdrew from the representation) constituted neglect of a legal matter in violation of RPC 1.3.

The Accused also acknowledges that his failures to respond to Cordero-Cabello's requests for information and otherwise keep him notified of events concerning the matter (e.g., service issues) constituted a failure to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in violation of RPC 1.4(a).

The Accused further acknowledges that his failure to respond to lawful demands for information during the course of this disciplinary proceeding—first from DCO and then from the LPRC—violated RPC 8.1(a)(2).

Sanction

16.

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

A. *Duty Violated.* The Accused violated his duty to act with reasonable diligence and promptness in representing his clients. *Standards,* § 4.4. The most important ethical duties are those obligations that a lawyer owes to clients. *Standards,* at 5. The Accused also violated his duty to the profession to respond to inquiries regarding professional misconduct. *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 knowingly failed to communicate with or keep his client reasonably informed about the status of his matter. The Accused also knowingly failed to perform services for Cordero-Cabello.

The Accused knowingly failed to respond fully to Bar inquiries. The letters sent by DCO were duly directed and mailed. The certified mailings were signed by an agent of the Accused. The Accused therefore acted with knowledge when he failed to respond to DCO. Similarly, the Accused's failure to respond to the LPRC after Beckfield made personal contact with him demonstrates that he acted with knowledge in that instance as well.

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992). The Accused filed a civil complaint on behalf of Cordero-Cabello claiming more than $23,500 in economic damages and $50,000 in noneconomic damages. The Accused's failure to take action on Cordero-Cabello's matter caused actual injury to him, because the case was dismissed and Cordero-Cabello was thereby precluded from having his case heard by the court. Cordero-Cabello was also prevented from potentially obtaining money for additional medical care or compensation for his injuries.

The Accused's failure to communicate with Cordero-Cabello also caused him actual injury. From April 2005 through December 2005, Cordero-Cabello made numerous inquiries to the Accused about the status of the matter, but the Accused never responded to those inquiries. Client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the *Standards*. *In re Cohen,* 330 Or 489, 496, 8 P3d 953 (2000).

The Accused's failure to cooperate with the Bar's investigation of his conduct caused actual injury to both the legal profession and to the public because multiple requests were necessitated by his failures to respond to the Bar, thereby delaying the Bar's investigation and, consequently, the resolution of the complaint against him.

D. *Aggravating Factors.* Aggravating factors include:

1. A prior record of discipline. *Standards,* § 9.22(a). In 2002, the Accused stipulated to a public reprimand for violations of DR 5-101(A) (conflict of interest/lawyer self-interest) and DR 6-101(B) (current RPC 1.3) (neglect of a legal matter). *In re Klosterman,* 16 DB Rptr 384 (2002). The misconduct was similar in type to that in this proceeding.

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

3. Cordero-Cabello was a vulnerable victim. *Standards,* § 9.22(h). He had difficulty speaking English and therefore required interpreters to communicate with the Accused. This problem was heightened and exacerbated when Cordero-Cabello was incarcerated and became even more dependent on the Accused to timely attend to his legal matter.

4. Substantial experience in the practice of law. *Standards,* § 9.22(i). The Accused was admitted to the Oregon State Bar in 1986.

E. *Mitigating Factors.* Mitigating factors include:

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

2. Personal or emotional problems. *Standards,* § 9.32(c). The Accused was diagnosed as suffering from anxiety in or around the time that some of the latter misconduct occurred.

3. Remorse. *Standards,* § 9.32(*l*).

17.

The *Standards* indicate that a period of suspension is appropriate for the Accused's misconduct. *Standards,* §§ 4.42, 7.2, 8.2. On balance, those factors in mitigation do not outweigh those in aggravation. The result is that a period of suspension is warranted.

18.

Oregon cases reach the same result. The court has routinely imposed suspensions for prolonged neglects or failures to communicate. *See, e.g., In re Redden,* 342 Or 393, 153 P3d 113 (2007) (60-day suspension for failing to attend to one child support matter); *In re Worth,* 337 Or 167, 92 P3d 721 (2004) (120-day suspension for failing to move client's case forward despite court warnings, resulting in dismissal); *In re Knappenberger,* 337 Or 15, 90 P3d 614 (2004) (90-day suspension where lawyer failed to keep the client informed of the status of appeal, did not respond to the client's inquiries and essentially abandoned clients following oral argument); *In re Worth,* 336 Or 256, 82 P3d 605 (2003) (90-day suspension where lawyer failed to communicate with clients or court related to criminal post-conviction matters); *In re LaBahn,* 335 Or 357, 67 P3d 381 (2003) (60-day suspension for failing to timely serve lawsuit or notify client of dismissal for more than a year).

The court has also imposed suspensions for failing to respond or cooperate with the Bar. *See, e.g., In re Miles,* 324 Or 218 (1996) (120-day suspension); *In re Hereford,* 306 Or 69, 756 P2d 30 (1988) (126-day suspension).

In *In re Schaffner,* 323 Or 472, 480, 918 P2d 803 (1996), the court imposed a 120-day suspension, 60 days each for knowing neglect and failing to respond to disciplinary inquiries. Although the neglect in *Schaffner* was more egregious than that of the Accused, the lawyer in *Schaffner* had no prior discipline.

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 120 days for violations of RPC 1.3, RPC 1.4(a), and RPC 8.1(a)(2), the sanction to be effective 30 days after approval by the Disciplinary Board.

20.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

21.

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

EXECUTED this 23rd day of June 2007.

/s/ Arthur P. Klosterman
Arthur P. Klosterman
OSB No. 86058

EXECUTED this 29th day of June 2007.

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. 06-63
	)	
JASON T. FEHLMAN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Kathryn M. Pratt; Amber Bevacqua-Lynott
Counsel for the Accused:	Clayton Morrison, Sr.
Disciplinary Board:	William G. Blair, Chair; Pamela E. Yee; Loni J. Bramson, Public Member
Disposition:	Violation of RPC 8.4(a)(2) and ORS 9.527(2). Trial Panel Opinion. One-year suspension.
Effective Date of Opinion:	July 18, 2007

OPINION OF THE TRIAL PANEL

NATURE OF THE CASE

The Accused attorney, admitted to the practice of law in Oregon since 2004, is charged with misconduct arising out of convictions in May and December of 2005 for Public Indecency. The offense resulting in the December conviction occurred while he was on probation for the May conviction, resulting in a probation violation as well.

The May conviction arose out of a February 22, 2005, incident in Tigard where the Accused was seen by an adjacent driver, a woman, to be masturbating while driving his car on Hwy 99W in Tigard. Charged with Public Indecency in violation of ORS 163.465, he entered a plea of "No Contest" and was sentenced to 18 months formal probation to include evaluation and treatment as a sex offender. That sentence was handed down May 16, 2005, and entered May 24, 2005.

The December conviction arose out of a June 19, 2005, incident in Tualatin where the Accused was seen by two women pedestrians as he pulled his car beside them, slowed, turned on the dome light, and began to fondle his erect and exposed penis. Again charged with violation of ORS 163.465 he entered a plea of "Guilty" and was sentenced to six months in jail, suspended on condition of five years formal probation and 200 hours of community service. He was also charged with a probation

violation and sanctioned by extension of his original 18 months probation to five years, and service of 90 days in jail.

The Accused is a sole practitioner, primarily handling family law, debtor/creditor law, and some criminal defense work.

ISSUES OF FACT

As a result of these two convictions, including the probation violation resulting from the second conviction, the Bar alleges that there are grounds for discipline under the following statutes and Rules of Professional Conduct.

ORS 9.527 provides:

> **9.527 Grounds for disbarment, suspension or reprimand.** The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that: . . .
>
> (2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence.

RPC 8.4(a)(2) provides:

> (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 as a lawyer in other respects;

RPC 3.4(c) provides:

> A lawyer shall not: . . .
>
> (c) Knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

Specifically, the Bar alleges that each conviction of the misdemeanor of Public Indecency in violation of ORS 163.465 is a conviction for a misdemeanor involving moral turpitude; that the June incident amounts to commission of a criminal act that reflects adversely on his fitness to practice law; and that the second conviction also amounts to knowing disobedience of an obligation under the rules of a tribunal.

In his Answer, the Accused admits all of the Bar's purely factual allegations, but denies the conclusory allegations that these two convictions were for misdemeanors involving moral turpitude in violation of ORS 9.527(2), that the second conviction amounted to a criminal act adversely reflecting on his fitness to practice law, and that in its ruling on the probation violation resulting from the December 2005 conviction the court specifically found that he failed to obey all laws by committing the new crime.

BURDEN OF PROOF AND RULES OF EVIDENCE

The Bar has the burden of establishing misconduct warranting discipline by clear and convincing evidence. BR 5.2. The Oregon Evidence Code does not apply to Bar disciplinary proceedings; rather the standard for admissibility of evidence is found in BR 5.1(a):

> Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitions evidence should be excluded at any hearing conducted pursuant to these rules.

The allegations put in issue by the Accused's Answer are essentially issues of law and not based on a dispute as to the objective facts on which they depend. The material facts are both admitted and well-documented in the 36 Bar exhibits received without objection.

FINDINGS AS TO GUILT

We first address the matters put in issue under the pleadings.

"Public Indecency" is a crime involving "moral turpitude"

We are guided by the Supreme Court's explanation of "crime involving moral turpitude" as given in *In re Nuss*, 335 Or 368, 376 (2003):

> When a lawyer is charged under ORS 9.527(2) with committing a misdemeanor involving moral turpitude, this court will apply the following test, remembering that the Bar bears the burden of proof. First, this court will consider whether the crime was intentional or knowing . . . Second, this court will consider whether the accused lawyer's crime involved any of the following: fraud; deceit; dishonesty; illegal activity for personal gain; or "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." . . . If the Bar sustains its burden of proof as to both parts of the test, either because the crime itself "announces" those facts or because those facts actually and necessarily were resolved in the conviction, then the accused lawyer committed a misdemeanor involving moral turpitude.

In the instant case, the Accused's conduct was both intentional and knowing. That portion of the test is undisputed, and necessarily resolved by the convictions themselves.

The Bar argues that the Accused's conduct was "for personal gain," apparently equating that phrase with personal gratification. As authority for this proposition, the Bar cites only *In re Flannery*, 334 Or 224, 233 (2002). The Bar's reliance on this case for the proposition that the perverse and ephemeral gratification derived from publicly exposing oneself constitutes "personal gain" within the meaning of *Nuss* is misplaced. Looking at the context of the language in *Nuss* ("fraud, deceit, dishonesty

or other illegal activity for personal gain") suggests that while the "personal gain" may be other than financial, it applies in the context of obtaining something to which the actor is not entitled through fraudulent or criminal means. *Flannery,* for example, is an instance where the Accused, a Washington resident, misrepresented his address to obtain an Oregon driver license.

Although this alternative prong of the *Nuss* test must be resolved in favor of the Accused, the second alternative is clearly established. Publicly exposing his genitals to masturbate in front of female strangers on public streets is certainly "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man." The crime itself as defined by the Legislature announces this fact.

ORS 9.257(2) applies to both the May and December convictions and the Bar has sustained its burden as to these as grounds for discipline.

The June 2005 offense reflects adversely on the Accused's fitness to practice law

The Bar must establish not only that the Accused engaged in criminal conduct, but also a nexus between that conduct and his practice as an attorney. *In re White*, 311 Or 573 (1991). To establish that nexus the Bar may show factors such as the mental state of the Accused, the extent to which the criminal act demonstrates disrespect for the law or law enforcement, the presence of a victim, the extent of actual or potential injury to a victim, and the presence of a pattern of criminal conduct. *Id.,* at 589.

By way of context and precedent, the Bar directs us to such cases as *In re Hassenstab,* 325 Or 166 (1997), *In re Wolf,* 312 Or 655 (1992), and *In re Nash,* 299 Or 310 (1985). The first two cases involved sexual misconduct by a lawyer with his clients. *Nash* involved conviction of the lawyer for a felonious sexual assault on the six-year-old daughter of a former client. In *Nash* the Oregon Supreme Court ordered disbarment and based that decision solely on ORS 9.257(2), not on any provision of DR 1-102, the then-current disciplinary rule similar to RPC 8.4(a)(2).

The question of whether criminal acts of a sexual nature involving non-clients reflect adversely on the fitness of the Accused to practice law remains unresolved by clear precedent in Oregon. We thus turn to the factors enunciated in *White* to resolve that issue under the facts of the instant case.

Mental state of the Accused

The Accused admits that he acted knowingly and for self-gratification. He admits that notwithstanding his knowledge that this conduct was socially repugnant as well as criminal, and that it could bring ruin on his career and family, he chose to engage in it on multiple occasions. He admits that he was ready to lie to law enforcement to avoid arrest on at least one occasion after which there were others.

He admits that notwithstanding his conviction of Public Indecency in May of 2005 he intentionally re-offended the following month.

By way of explanation of this conduct, the Accused asserts that he suffers from Obsessive Compulsive Disorder (OCD) brought about by stressful situations, the precipitating factor in 2004 being his wife's delivery of a stillborn child. The Accused testifies that he was diagnosed with OCD by his primary care physician and a psychologist he saw on six occasions between late August and early November of 2005, and that he is currently undergoing group therapy with the Center for Behavioral Intervention (CBI) as a condition of his probation. CBI has not attempted to diagnose his condition. CBI is a sex-offender treatment provider approved by the Accused's probation officer.

The Bar has offered testimony from Eric M. Johnson, Ph.D., a forensic psychologist, and L. Ricks Warren, Ph.D., a clinical psychologist who specializes in OCD. Neither of these doctors examined or tested the Accused, but both reviewed the medical and psychological assessment and treatment records provided by the Accused in the course of discovery, both reviewed the police reports of three incidents involving indecent exposure by the Accused, and both reviewed the Accused's deposition taken in this proceeding. Both psychologists testified that in their opinions the public exposure and sexual conduct engaged in by the Accused would not be the product of OCD. Neither was able to diagnose the Accused, but both testified that his behavior as described in the material they reviewed would rule out OCD as an explanation for that behavior.

Both psychologists referred to the standard text for description and diagnosis of mental disorders—the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Ed. (DSM-IV), published by the American Psychiatric Association. The portion of DSM-IV describing and identifying diagnostic criteria for OCD contains a section called "Differential Diagnosis," which is to say an inventory of other mental disorders that are *not* OCD and would, by definition, rule out a diagnosis of OCD. Among these is a group of sexual disorders known as "paraphilias" which are characterized by derivation of pleasure from and motivating the particular aberrant behavior, and thus cannot be considered compulsions within the definition of OCD. The portion of DSM-IV dealing with paraphilias defines exhibitionism as a paraphilia.

The Trial Panel finds that the testimony of Drs. Johnson and Warren provides clear and convincing evidence that the Accused has been misdiagnosed as suffering from OCD, at least to the extent that such a diagnosis could explain his exhibitionism and public sexual conduct. As did these doctors, we do not presume to make any affirmative diagnosis. While it is clear that the Accused's pattern of conduct is voluntary, it is subject to urges that are powerful enough to cause him to disregard both his societal and legal obligations as well as the consequences of that disregard. Relying on the expert testimony, we find that OCD does not explain the Accused's conduct or state of mind. We also find that because he is self-described as suffering

from OCD and pursuing therapy intended to manage that condition, his impaired insight into his condition increases the risk that he will re-offend.

Disrespect for law or law enforcement

For most individuals the desirability of conforming one's behavior to legal requirements, as well as avoiding the civil and criminal consequences of transgressions, translates to respect for law. Disrespect results from voluntary conduct knowing that it is against the law. Disrespect for law enforcement results from affirmative acts intended to evade or avoid the civil or criminal consequences of violating legal requirements.

In the instant case, the Accused on one occasion lied to a police officer to avoid the consequences of his criminal behavior. On another occasion he re-offended within a month of being placed on probation after conviction of an offense. The Accused has clearly demonstrated a willingness to disregard both law and law enforcement in pursuit of his own impulses.

Presence of a victim

Clear and convincing evidence compels the conclusion that the sexual activity of the Accused demands a victim in the form of a woman who is an involuntary spectator and who becomes the object of his fantasies while he publicly masturbates in her presence. It is inevitable that his gratification is achieved at the expense of causing psychic trauma to another person.

Extent of actual or potential injury

The victims of the sort of conduct engaged in by the Accused suffer emotional trauma—fear, disgust, shock, and even a sense of violation at a very deep emotional level. It is not enough to surmise that no one would suffer physical harm, or to speculate that the psychic trauma is of a minor nature. To do so marginalizes both the victims and the conduct. There is a reason why the Legislature made a second offense under ORS 163.465(f) punishable as a felony, and that reason is the potential harm to victims from such criminal behavior.

Pattern of conduct

The Accused acknowledges three instances of publicly exposing himself and masturbating in front of non-consenting women. He acknowledges that these are not the only three times he has engaged in such conduct. He ascribes this behavior to a mental disorder that impels such conduct in times of stress. Clearly there is a pattern here.

The Accused argues that none of the victims has been his client. So far that is the case. When asked what would happen when he faces another life crisis that causes significant stress, the Accused responded: "[I]t would be very easy for me to sit here and tell you that it won't happen again. I—I—I can't tell you that."

The Trial Panel finds by clear and convincing evidence that the June offense resulting in the December 2005 conviction and probation violation represents criminal conduct that adversely affects the Accused's fitness to practice law, and is thus grounds for discipline under RPC 8.4(a)(2).

SANCTIONS

In determining the appropriate sanction, we are mindful of the Oregon Supreme Court's instruction that generally, grounds for discipline under both the Bar Act and the Bar's rules of discipline do not enhance the sanction for the same misconduct. We adhere to that guidance in the instant case.

The methodology and standards for imposition of sanctions are well-established in Oregon. *See In re McDonough*, 336 Or 36, 43 (2003); *In re Kimmell*, 332 Or 480, 487 (2001). Referring to the ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*"), we first assess the gravity of the particular offense in light of the duty violated, the mental state of the Accused, and the injury resulting from the misconduct. With that assessment we arrive at a baseline sanction and then consider whether there are aggravating and mitigating factors warranting adjustment of the baseline sanction.

Nature of the duty violated

The breaches of a lawyer's duty of which the Accused is guilty fall into the category of violations of duties owed to the public. *Standards*, 5.0; *In re Strickland*, 339 Or 595 (2005) (improper use of 9-1-1 system, initiating a false report, etc.); *In re McDonough, supra* (multiple alcohol-related convictions, including DUII); *In re Kumley*, 335 Or 639 (2003) (false swearing in political campaign materials).

Mental state

We have already discussed the Accused's mental state in connection with finding grounds for discipline. Suffice to say here that the Accused acted both knowingly and intentionally—knowingly in the sense of both knowing that his conduct was criminal and beyond the pale of societal tolerance, and in the sense of knowing that his behavior would provoke in his victims a reaction desirable to him and repugnant to them. This conduct was intentional and not inadvertent or accidental.

Injury

We have likewise addressed the fact that the Accused's conduct victimized, potentially seriously, women unknown to him and used by him for purposes of his own gratification.

Baseline sanction

Standards, 5.12 advises that "[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements

listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." The elements of Standard 5.11 (elements that generally warrant disbarment) include "intentional interference with the administration of justice." When the Accused lied to a Portland police officer in December of 2004, that conduct, if used as grounds for discipline, would seem to fall within this element; however, he is not charged with any misconduct arising out of that incident and we decline to consider it as conduct warranting disbarment in setting the baseline sanction. It is an aggravating factor, as will be discussed later.

Although Standard 2.3 counsels that "[g]enerally, suspension should be for a period of time equal to or greater than six months," we note that the Oregon Supreme Court has often been less severe in imposing or approving suspension for lesser periods of time. Nevertheless, at this point of the analysis we are satisfied that suspension from practice for a period of six months is an appropriate baseline sanction, and proceed to consideration of aggravating and mitigating factors.

Aggravation

"Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed." *Standards*, 9.21.

Under 9.22, aggravating factors include selfish motive, multiple offenses, a pattern of misconduct, and illegal conduct. The Trial Panel finds that each of these aggravating factors is present in the instant case.

Selfish motive—Standard 9.22(b)

We need not repeat the nature of the Accused's acts to support a conclusion that the Accused acted with unadulterated selfishness in committing the crimes of which he was convicted.

Pattern of misconduct—Standard 9.22(c)

These are not the only two incidents involving similar behavior by the Accused. The Bar introduced, without objection, a report filed by a Portland Police Bureau officer in October 2004. According to this report, substantiated by the Accused's hearing testimony in the instant proceeding, he was in his car masturbating on a downtown Portland street in view of a female passerby who called police on her cellular phone. When confronted by a Portland police officer, he denied the incident. As a condition of his plea agreement on the May 2005 charge, the Washington County District Attorney agreed not to refer a request for prosecution to the Multnomah County District Attorney.

As a condition of his probation, the Accused was required to provide a complete history of his sexual activity under what is known as a "full disclosure" polygraph examination. Without detailing the list of sexual activity disclosed by the testimony on this point, we conclude that the record clearly establishes a pattern of

assertive if not aggressive sexual conduct by the Accused without apparent concern for the effect on those he comes in contact with.

The Accused testified that when he experiences extreme stress in his life his impulses to sexual self-gratification overwhelm him. There is a well-established pattern of conduct here.

Multiple offenses—Standard 9.22(d)

Two convictions form the basis for discipline; clear and convincing evidence establishes an earlier criminal offense that did not result in prosecution. While the 2004 Portland offense is not itself asserted as grounds for discipline, we consider it to be an aggravating factor, both because of the nature of the offense and because the Accused admits to having lied to the police to avoid arrest.

Illegal conduct—Standard 9.22(k)

The very sad and troubling fact is that within two months of being placed on probation after conviction of a first offense of Public Indecency, the Accused chose to re-offend. He admits to three offenses in the course of six months, in connection with at least one of which he lied to a police officer. We consider this aggravating factor particularly compelling in this case.

Mitigation

Mitigating factors include absence of a prior disciplinary record, personal or emotional problems, full and free disclosure to the disciplinary board or cooperative attitude toward proceedings, interim rehabilitation, imposition of other penalties or sanctions, and remorse. *Standards,* 9.32. Also given as a mitigating factor under 9.32 is:

> (i) mental disability . . . when:
>
> (1) there is medical evidence that the respondent is affected by a . . . mental disability;
>
> (2) the mental disability caused the misconduct;
>
> (3) the [Accused's] recovery from the . . . mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
>
> (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

Absence of prior discipline—Standard 9.32(a)

The Accused has no prior discipline as an attorney in this state, and we are mindful of that fact in deciding on appropriate discipline.

Full and free disclosure and cooperative attitude—Standard 9.32(e)

The Accused attempts candor in discussing and acknowledging his misconduct, and he has been generally although unenthusiastically cooperative with the Bar in this disciplinary process. While we believe that his insight into the nature and cause of his behavior is significantly impaired, we believe that he is not consciously deceitful about it, and that he has not intentionally attempted to impede the disciplinary process. We find little warrant for consideration of mitigation on this basis.

Mental disability and interim rehabilitation—Standards 9.32(i) and (j)

The Accused claims to have been diagnosed as suffering from obsessive compulsive disorder (OCD) which he believes to be the cause of his impulses to public indecency. As we have already found, the clear and convincing evidence is that his behavior is not the product of OCD.

His current participation in a sex-offender treatment program has yielded unremarkable results. His probation officer testified that reports from the treatment provider indicate that as of their most recent written report the Accused is rated below average overall in his progress. Reading from that report, his probation officer quoted, "He appears not to prioritize treatment. Will be at risk for suspension due to lack of productivity in the near future. Overall needs improvement in several treatment areas."

The Accused contradicts this documented report from CBI by his testimony that since their last report he has turned over a new leaf and is now regarded by his probation officer and therapist as doing well. No therapist testified to corroborate that view, and his probation officer's testimony certainly did not reflect anything like the same optimistic assessment.

Drs. Warren and Johnson both testified, without contradiction, that the sort of behavior evidenced by the Accused as a pattern is manageable but not curable, and that establishing effective management can take a period of many months if not years. Kevin Doohan, the Accused's probation officer, testified that "CBI typically lasts between 18 months and several years depending on the client's progress in achieving the goals of treatment." Doohan also testified that CBI reported treatment progress of the Accused as being somewhere between 25% and 50% toward completion.

The Accused is currently on a five-year probation and has not successfully completed sex-offender treatment as a condition of that probation. Should he re-offend since his most recent conviction, the Accused has a certain 18-month jail term facing him in addition to any sentence imposed on a new conviction (almost certainly a felony under ORS 163.465(2)). Although the Accused has not apparently re-offended since his most recent conviction, we do not find that this period represents "a meaningful and sustained period of successful rehabilitation." Standard 9.32(i)(3). We cannot find that "recurrence of that misconduct is unlikely" (Standard 9.32(i)(4)), and thus interim rehabilitation does not warrant consideration as a mitigating factor.

This is not to say that the Accused cannot or will not sort out his underlying psychological problems. Because of the several aggravating factors and the fact that treatment is likely to take months to complete, we cannot justify a sanction less than a one-year suspension from practice. We recognize that after a suspension for longer than six months an attorney must apply for reinstatement and show that he or she is then qualified and fit to resume the practice of law. BR 8.1(a)(v). We do not believe that six months is sufficient in these circumstances for the Accused to do the hard work facing him before he should be permitted to seek reinstatement.

Consideration of similar cases

The Accused, in his closing statement, points us to the recent case of *In re Steinke-Healy*, 17 DB Rptr 59 (2003), as the only reported sexual misconduct case resulting in lawyer discipline in Oregon where discipline was imposed for public exhibitionism not involving a client as victim. In that case stipulation to a 60-day suspension was approved where the lawyer was convicted in a two-count criminal complaint charging one misdemeanor count of public indecency and one of private indecency. In that case, both offenses occurred within a month of each other, there is no suggestion of a pattern of misconduct beyond these two charges, there was no claim of psychological impairment, and no indication of either falsehood in dealing with the police or disobedience of the terms of court-imposed probation. The Supreme Court did not review that stipulation. It has limited precedential value and is clearly distinguishable from the facts of the instant case.

CONCLUSION AND ORDER

Considering the baseline sanction appropriate under the *Standards*, as well as the aggravating and mitigating factors present here, the Trial Panel concludes that the Accused be suspended from the practice of law for a period of one year.

IT IS SO ORDERED.

DATED this 7th day of May 2007.

/s/ William G. Blair
William G. Blair
OSB No. 69021
Trial Panel Chair

/s/ Loni J. Bramson
Loni J. Bramson, Ph.D.
Public member

/s/ Pamela E. Yee
Pamela E. Yee
OSB No. 87372
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-80
	)	
STUART A. SUGARMAN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violation of RPC 8.1(a)(2). Stipulation for Discipline. Reprimand.
Effective Date of Order:	July 19, 2007

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 RPC 8.1(a)(2).

DATED this 19th day of July 2007.

/s/ Jill A. Tanner
Honorable Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On January 20, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of Rule 8.1(a)(2) 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.

On December 16, 2005, Oregon State Bar Disciplinary Counsel's Office requested the Accused's response to a complaint by Edmund L. Jordan concerning his conduct. The Accused failed to respond to Disciplinary Counsel's inquiry, and Disciplinary Counsel's Office again requested the Accused's response on February 2, 2006. Although the Accused e-mailed a brief response on February 23, 2006, it did not substantively address the concerns raised in Disciplinary Counsel's inquiries. On February 27, 2006, Disciplinary Counsel's Office requested the Accused to make a substantive response to the complaint. The Accused failed to respond.

6.

The Accused substantively responded to Disciplinary Counsel's Office on April 7, 2006. Thereafter, Disciplinary Counsel's Office requested further information

from the Accused on April 20, 2006, and May 18, 2006. The Accused failed to respond to these requests, and on July 7, 2006, the matter was referred to the Multnomah County Local Professional Responsibility Committee for investigation.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 8.1(a)(2).

Sanction

8.

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

A. *Duty Violated.* The Accused violated his duty as a professional to respond to the Bar's lawful requests for information about his conduct. *Standards*, § 7.0.

B. *Mental State.* The Accused acted knowingly in failing to provide the information that was repeatedly being asked of him. A lawyer acts knowingly when he or she acts with the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards,* at 7.

C. *Injury*. The Bar was actually injured in that its investigation of the Jordan complaint was delayed, and it was necessary to refer the matter to the LPRC. *In re Gallagher*, 332 Or 173, 187, 26 P3d 131 (2001).

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused had substantial experience in the practice of law, having been admitted in 1992. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

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

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

4. The Accused cooperated fully with the Local Professional Responsibility Committee. *In re Jaffee*, 331 Or 398, 15 P2d 533 (2000).

9.

Prior decisions of the Disciplinary Board suggest that, after taking into account that the mitigating factors outweigh the aggravating factors in this case, a public reprimand is an appropriate sanction for the Accused's conduct. *See In re Edelson,* 13 DB Rptr 72 (1999); and *In re Hunt,* 21 DB Rptr 29 (2007).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 8.1(a)(2), the sanction to be effective upon approval of this stipulation by the Disciplinary Board.

11.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar. The sanction provided for herein was approved by the State Professional Responsibility Board (SPRB) on June 15, 2007. If approved by the SPRB, the parties agree the stipulation is to be submitted to the State for consideration pursuant to the terms of BR 3.6.

EXECUTED this 10th day of July 2007.

/s/ Stuart A. Sugarman
Stuart A. Sugarman
OSB No. 92137

EXECUTED this 11th day of July 2007.

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. 07-62
	)	
ROBERT S. SHATZEN,	)	SC S054883
	)	
Accused.	)	

ORDER IMPOSING NO FURTHER DISCIPLINE

Upon consideration by the court.

The Oregon State Bar filed a Notice of Discipline in Another Jurisdiction with a recommendation that the Accused not be disciplined further by the Oregon Supreme Court as a matter of reciprocal discipline in Oregon. The recommendation is accepted and no further discipline is imposed.

DATED this 24th day of July 2007.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-67
	)	
MICHAEL BANKS,	)	
	)	
Accused.	)	

Counsel for the Bar:	William E. Brickey; Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	Michael R. Levine, Chair; Lee Wyatt; Charles H. Martin, Public Member
Disposition:	Violation of DR 6-101(B), RPC 1.2(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.1(a)(2). Trial Panel Opinion. Seven-month suspension.
Effective Date of Opinion:	August 14, 2007

OPINION OF THE TRIAL PANEL

Background

About September 19, 2006, the Bar filed a formal complaint against the Accused alleging two causes of complaint (Exhibit 2).[1] The first alleges in essence as follows: In July 2003, Janice Benson retained the Accused to represent her in a medical malpractice case. In January 2004, the Accused filed a lawsuit on Benson's behalf. Trial in the matter was set for May 2005. In March 2005, the Accused told Benson that he would have an in-house medical reviewer look at her case and he would then contact her to discuss it. The Accused failed to have this done, and further failed to discuss the case with Benson.

On April 20, 2005, the Accused, acting unilaterally, voluntarily dismissed Benson's lawsuit without prejudice. Thereafter, and for a number of months, the Accused failed to respond to Benson's inquiries about the status of her case. He also failed to inform Benson that he had dismissed her lawsuit without her knowledge or consent. After August 2005, the Accused completely failed to

[1] The Exhibits are attached to the Bar's Sanction Memorandum and are incorporated by reference.

maintain communications with Benson. Consequently, it was March of 2006 before Benson discovered that her lawsuit had been dismissed by the Accused.

The Bar alleges that the foregoing conduct of the Accused constitutes a failure to consult with a client as to the means by which he should pursue the client's legal matter; neglect of a legal matter entrusted to him; failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The Bar alleges as its first count that this conduct violated DR 6-101(B) of the Code of Professional Responsibility, and RPC 1.2(a), RPC 1.3, RPC 1.4(a), and RPC 1.4(b) of the Oregon Rules of Professional Conduct.

The second count alleges in essence as follows: In March 2006, Benson filed a complaint with the Bar regarding the conduct of the Accused. On April 24, 2006, Disciplinary Counsel's Office asked the Accused to submit his account of the matter on or before May 5, 2006. The Accused knowingly failed to respond. On May 22, 2006, Disciplinary Counsel's Office again asked the Accused to respond to its April 24, 2006, letter and submit his account of the matter on or before May 18, 2006. The Accused again knowingly failed to respond. The Bar alleges that the above misconduct constitutes a knowing failure to respond to a lawful demand for information from a disciplinary authority in violation of RPC 8.2(a)(2) of the Oregon Rules of Professional Conduct.

The Bar filed its Formal Complaint against the Accused on or about September 19, 2006, listing as its basis Count One and Count Two. On February 5, 2007, Susan G. Bischoff, Region 5 Chairperson of the Disciplinary Board, entered an order of default against the Accused (Exhibit 1). The Order recited that it appeared that the Accused had accepted service of the Formal Complaint and Notice to Answer on November 15, 2006, but had failed to appear within the time provided by the Bar Rules of Procedure.

On March 9, 2007, the current trial panel was appointed. On April 6, 2007, the chair of the panel ordered the parties by e-mail to submit simultaneous briefs regarding the appropriate sanction within 21 days. Although no further notice to the Accused was required under Rule 5.8 of the Rules of Procedure, the trial panel chair nevertheless directed the Bar to serve a copy of the e-mail order by certified mail on the Accused. The Bar timely filed its memorandum with various exhibits attached. Again, the Accused did not respond.

On May 16, 2007, the trial panel conferred on the matter with respect to sanctions. The trial panel has considered the Formal Complaint and the Bar's sanctions memorandum with its attached exhibits.

DISCUSSION

As a result of the default of the Accused, the allegations in the Formal Complaint are deemed true. Bar Rules of Procedure 5.8; *In re Schaffner*, 325 Or 421, 423, 939 P2d 39 (1997). The trial panel need only decide the sanction to be imposed. Rule 5.8.

In determining a sanction, the trial panel considers the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. *In re Biggs*, 318 Or 281, 294, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 541, 852 P2d 831 (1993). The *Standards* require an analysis of four factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

ABA *Standards*.

1. *Duties Violated.* The most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5. In this matter, the Accused violated duties he owed to Benson to communicate with her and to act with reasonable diligence and promptness in representing her. *Standards*, § 4.4. The Accused also violated his duty to cooperate in Bar investigations. *Standards*, § 7.0.

2. *Mental State.* "Intent" is 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. *Id.*

The panel may rely upon the facts alleged in the complaint to establish the mental state of an accused lawyer. *In re Kluge*, 332 Or 251, 262, 27 P3d 102 (2001). Because the panel deems facts of the Formal Complaint as true, the panel finds that the Accused acted with the mental state as alleged in the complaint.

Based upon the facts alleged in the complaint, the panel finds that the Accused knowingly violated DR 6-101(B) and RPC 1.3 (neglect of a legal matter), RPC 1.2(a) (failure to consult with a client as to the means by which the lawyer should pursue the client's legal matter), RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), and RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation). The Accused had to have known that he made the decision to dismiss Benson's lawsuit without consulting her. For long periods of time the Accused failed to respond to Benson's repeated inquiries by phone and e-mail about the status of her case. In light of those numerous inquiries, the Accused knew or should have known that he was not responding to Benson's inquiries.

The trial panel also finds that Accused intentionally failed to respond to Bar's inquiries. See Exhibit 11 (second letter by the Bar dated May 11, 2006, sent

by certified mail, showing signed return receipt by person in the office of the Accused acknowledging receipt of the letter).

3. *Injury.* "Injury" is the harm to a client, the public, legal system, or the profession which results from a lawyer's misconduct. *Standards,* at 7. Injury can be either actual or potential under the Standards. *In re Williams,* 314 Or 530, 547 840 P2d 1280 (1992).

Benson sustained actual injury as a result of the Accused's conduct. She experienced anxiety and frustration stemming from the Accused's failure to act and failure to communicate. (Exhibit 3.) *See In re Schaffner,* 325 Or at 426–427, 939 P2d 39 (1997). Moreover, Benson's ability to pursue the lawsuit was seriously impaired. Benson contacted another lawyer after she discovered what the Accused had done. However, that lawyer informed her that because the time in which to assert a number of claims had already expired, her chances of prevailing were slim to none. For that reason, Benson decided not to pursue her claims. (Exhibit 3.) Regardless of the merits of her legal matter, Benson also lost the opportunity to pursue her claims as a result of the Accused's conduct.

The case of *In re Schaffner,* 323 Or 472, 928 P2d 803 (1996) is illustrative. In that case the attorney, with no prior disciplinary history, was suspended from the practice of law for 120 days, 60 of which resulted from knowingly neglecting one legal matter and 60 of which resulted from his failure to cooperate in the Bar's investigation into his conduct. In that case the Bar did not allege that the client suffered any injury apart from emotional distress and anxiety. The instant case is more egregious because the conduct of the Accused actually impaired Benson's ability to pursue her lawsuit. The degree of harm here is more analogous to that in *In re Bourcier,* 322 Or 561, 909 P2d 1234 (1996). In *Bourcier,* the attorney was appointed to handle the defendant's appeal from a robbery conviction. The attorney, however, without informing the client, moved to dismiss the appeal because he thought it had no merit. He failed to advise the client that a pro se brief could be filed and failed to advise the client that the appeal was dismissed. The court upheld the attorney's three-year suspension.

In this case the Bar also sustained actual injury as a result of the Accused's failure to cooperate. Additional time and resources were spent pursuing the investigations. The Accused's failure to cooperate delayed completion of the investigations. (Exhibit 10.)

4. *Preliminary Sanction Analysis*

Without evaluating aggravating and mitigating circumstances, the following *Standards* are applicable.

> *Standards,* § 4.42(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, . . .

> *Standards*, § 7.2 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.

5. *Aggravating Circumstances.* The following aggravating circumstances are present:

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

b. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1993. (Exhibit 10.) *Standards,* § 9.22(i).

6. *Mitigating Circumstances.* The following mitigating circumstance is present:

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

The panel finds that the aggravating circumstances outweigh the mitigating circumstances. In such cases, the *Standards* suggest that suspension is the appropriate sanction.

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). The panel considers a lawyer's failure to cooperate in a Bar investigation serious misconduct because public protection is undermined when a lawyer fails to participate in the investigatory process. "Repeated failures to respond to disciplinary inquiries is a strong aggravating factor." *In re Schaffner*, 323 Or at 480 n. 7; *In re Miles*, 324 Or 218, 222–223, 923 P2d 1219 (1996). In *Miles*, the Supreme Court of Oregon stated that it

> emphasize[s] the seriousness with which [the court] views the failure of a lawyer to cooperate with a disciplinary investigation. The public protection provided by DR 1-103(C) is undermined when a lawyer accused of violating another provision of the Code of Professional Responsibility fails to participate in the investigatory process. Indeed, the disciplinary system likely would break down if the mandatory cooperation rule set forth in DR 1-103(C) were not in place, given the lack of incentive for a lawyer to cooperate with a Bar investigation if that lawyer had the option of not cooperating.

In re Miles, 324 Or at 222–223, 923 P2d at 1221.

Suspension is necessary to protect the public and the integrity of the profession.

CONCLUSION

The Bar has asked the panel to suspend the Accused for 120 days. We consider this sanction insufficient. By virtue of his default, the Accused has been found to have violated five disciplinary rules. His misconduct caused actual injury

to Benson and to the Bar. With respect to the first cause of complaint, the dismissal of a lawsuit without conferring with the client is inexplicable and unjustifiable. Such action brings the profession into disrepute. Furthermore, the injury here is more severe than in *Schaffner I* because Benson's ability to pursue her lawsuit was impaired by the Accused's conduct. With respect to the second cause of complaint, as noted by the Supreme Court in *Miles*, the public protection provided by the disciplinary system is seriously undermined when a lawyer fails to participate in the disciplinary process.

Lawyer discipline is intended to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession. *Standards*, at p. 17. The panel suspends the Accused from the practice of law for seven months, effective 10 days from the filing of this order.

DATED this 6th day of June 2007.

/s/ Michael R. Levine
Michael R. Levine
Trial Panel Chair

DATED this 13th day of June 2007.

/s/ Lee Wyatt
Lee Wyatt
Trial Panel, Attorney Member

DATED this 6th day of June 2007.

/s/ Charles H. Martin
Charles H. Martin
Trial Panel, Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-125
	)	
MICHAEL A. KESNER,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.1 and RPC 8.4(a)(4). Stipulation for discipline. 60-day suspension.
Effective Date of Order:	August 28, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 60 days for violation of RPC 1.1 and RPC 8.4(a)(4), effective the day after this order is approved.

DATED this 27th day of August 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1977, 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 December 7, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 1.1 and RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In 2005, Congress passed a Bankruptcy Reform Act. The new law was to take effect on October 15, 2005. As a result of the new law, a significant number of people sought to file for bankruptcy protection on or before October 14, 2005. During the months before the new law was to take effect, the Accused undertook to represent more clients than he was capable of handling.

6.

Between October 7, 2005, and October 14, 2005, the Accused filed Chapter 7 bankruptcy petitions on behalf of over 90 clients. With regard to those petitions, the Accused did not act with the thoroughness and preparation reasonably necessary for the representation in that many of the documents he filed were incomplete, inaccurate, inconsistent, or did not comply with applicable law.

7.

The court subsequently issued orders directing that deficiencies in the original petitions be corrected. With regard to those orders, the Accused did not act with the thoroughness and preparation reasonably necessary for the representation in that he did not timely respond to, or did not adequately or completely comply with, the orders.

8.

In early 2006, another lawyer undertook to represent the Accused's clients and by the end of that year all of the matters were adequately concluded.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated RPC 1.1 and RPC 8.4(a)(4).

Sanction

10.

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

A. *Duties Violated.* The Accused violated his duty to provide clients with competent representation and his duty not to engage in conduct prejudicial to the administration of justice. *Standards,* §§ 4.5 and 6.0.

B. *Mental State.* The Accused acted negligently. At the time he filed the petitions, the Accused believed he could handle the additional cases, but failed to appreciate the time and effort he would have to expend to do so.

C. *Injury.* The bankruptcy court and U.S. Trustees Office sustained injury as a result of the Accused's conduct. Both spent considerable time reviewing the Accused's filings and issuing orders requiring additional filings and information. The potential for injury to the Accused's clients was substantial. Had another lawyer not stepped in, some of the petitions would have been dismissed and petitions that had already been dismissed would not have been reinstated. Those clients would not have been in a position to take advantage of the benefits available to them under the old law.

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

1. *Selfish motive.* The Accused sought to increase his income by taking on a substantial caseload in a short period of time. *Standards,* § 9.22(b).

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

3**.** *Substantial experience in the practice of law.* The Accused has been a lawyer in Oregon since 1977, although he did not actually engage in the practice of law until 2002. *Standards,* § 9.22(i).

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

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

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

3. A good faith effort to rectify the consequences of his misconduct. The Accused cooperated with his clients' new lawyer. *Standards,* § 9.32(d).

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

5. Imposition of other penalties or sanctions. In March 2006, the Accused signed a stipulated judgment in the United States Bankruptcy Court for the District of Oregon case *United States Trustee v. Kesner,* No. 06-3146-HD, in which he agreed that he would no long practice bankruptcy law in Oregon. *Standards,* § 9.32(*l*).

6. Remorse. *Standards,* § 9.32(m).

11.

Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. *Standards,* § 4.52. Suspension is also generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards,* § 6.12.

12.

Lawyers who have engaged in somewhat similar conduct in Oregon have been suspended for varying periods of time. *In re Bettis,* 342 Or 232, 149 P3d 1194 (2006) (30-day suspension imposed on lawyer who failed to devote minimal amount of effort necessary to adequately advise his client to waive the fundamental constitutional right to trial by jury); *In re Roberts,* 335 Or 476, 71 P3d 71 (2003) (60-day suspension imposed on lawyer who violated DR 1-102(A)(4) and DR 6-101(A) in the course of representing a conservator); *In re*

Gresham, 318 Or 162, 864 P2d 360 (1993) (91-day suspension imposed on lawyer for violating DR 1-102(A)(4), DR 6-101(A), and DR 6-101(B) when he failed to comply with the legal requirements in a probate matter, failed to pursue that matter for long periods of time, notwithstanding repeated assurances to the court that he would do so, and neglected another matter for five months); *In re Rudie*, 294 Or 740, 662 P2d 321 (1983) (seven-month suspension imposed on lawyer who, in one matter, failed to provide competent representation, engaged in neglect, and failed to carry out a contract of employment where lawyer had previously been reprimanded for neglect).

Generally, lengthy suspensions have been imposed when the accused lawyer also engaged in other serious misconduct. Here, the Accused did not engage in other serious misconduct. Moreover, in this case, the Accused, who practiced bankruptcy law exclusively, has agreed that he will no longer do so in Oregon.

13.

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 RPC 1.1 and RPC 8.4(a)(4), the suspension to be effective on the day after this Stipulation for Discipline is approved by the Disciplinary Board.

14.

In addition, on or before the end of the 60-day suspension, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $536.30, incurred for the taking of his deposition and the cost of transcript. Should the Accused fail to pay $536.30 in full on or before the end of the 60-day 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.

15.

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

EXECUTED this 21st day of August 2007.

/s/ Michael A. Kesner
Michael A. Kesner
OSB No. 770411

EXECUTED this 22nd day of August 2007.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 06-16 and 07-93
	)	
WILLIAM C. ABENDROTH,	)	
	)	
Accused.	)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	Brooks F. Cooper
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 8.1(a)(2), and RPC 8.4(a)(3). Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	August 27, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 120 days, effective on the date of this order, for violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 8.1(a)(2), and RPC 8.4(a)(3).

IT IS FURTHER ORDERED that the Accused shall be required to seek formal reinstatement pursuant to BR 8.1, at such time as he is eligible to seek reinstatement.

DATED this 27th day of August 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 21, 1990, and has been a member of the Oregon State Bar continuously since that time, until his transfer to inactive membership in the Bar on March 1, 2007. While an active member of the Bar, the Accused's office and place of business was 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, 2006, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 1.3, RPC 1.4(a), RPC 1.16(a)(2), and RPC 8.1(a)(2). On June 15, 2007, the State Professional Responsibility Board authorized additional formal disciplinary proceedings against the Accused for alleged violations of RPC 1.3, RPC 1.15-1(d), RPC 1.16(a)(2), and RPC 8.4(a)(3) of the Rules of Professional Conduct. 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 proceedings now pending against the Accused.

Facts

Case No. 06-16

The Cauduro Matter

5.

In or about September 2004, the Accused undertook to represent Edward Cauduro (hereinafter "Cauduro") to pursue litigation on a claim for professional negligence and breach of contract. The Accused failed to file the litigation, and after about January 11, 2005, failed to take any significant action on Cauduro's claim until Cauduro terminated his services in September 2005. Between January

and September 2005, the Accused failed to communicate with Cauduro, despite Cauduro's repeated attempts to contact the Accused.

6.

At all relevant times herein, the Accused suffered from depression, which he knew impaired his ability to represent Cauduro.

7.

The Disciplinary Counsel's Office of the Oregon State Bar received a complaint from Cauduro concerning the Accused's conduct on or about January 25, 2006. On January 25, 2006, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response to it by February 8, 2006. The Accused knowingly made no response. On February 8, 2006, Disciplinary Counsel's Office again requested the Accused's response to the complaint by February 15, 2006. The Accused knowingly made no response, and the matter was referred to the Multnomah County Local Professional Responsibility (hereinafter "LPRC") for investigation.

8.

In the course of its investigation of the Accused's conduct, the LPRC requested that the Accused provide releases of his medical records. The Accused knowingly failed to provide the releases and knowingly failed to respond to the LPRC's repeated attempts to contact him.

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.3, RPC 1.4(a), RPC 1.16(a)(2), and RPC 8.1(a)(2).

Case No. 07-93

The Yoong Matter

10.

The Accused undertook to represent Tunguyen Yoong in a defamation suit, and filed a complaint in Multnomah County Circuit Court on Yoong's behalf. The case was assigned to arbitration in May 2005. Thereafter, the Accused failed to take any significant steps to bring the case to arbitration, communicate with Yoong, or advance the litigation. As a result, the court dismissed Yoong's case in September 2005 for lack of prosecution.

11.

After Yoong's case was dismissed by the court, the Accused knowingly failed to advise Yoong that her case had been dismissed. Yoong ultimately

discovered that her case had been dismissed and, in late December 2005, requested the Accused to return her file. The Accused did not do so.

12.

On February 25, 2006, Yoong employed James C. Loy to represent her in the defamation ltitgation. Loy contacted the Accused several times and requested the Accused to return Yoong's file. The Accused did not promptly return Yoong's file.

13.

At all relevant times herein, the Accused suffered from depression, which he knew impaired his ability to represent Yoong.

Violations

14.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.3, RPC 1.15-1(d), RPC 1.16(a)(2), and RPC 8.4(a)(3).

Sanction

15.

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

A. *Duty Violated.* The Accused violated his duties to his clients to be candid and diligent in his representation. *Standards,* §§ 4.6 and 4.4. He also violated his duty as a professional to cooperate in an investigation of his conduct. *Standards,* § 7.0.

B. *Mental State.* The Accused knowingly failed to respond to Disciplinary Counsel's Office and the LPRC in Case No. 06-16 and knowingly failed to advise Yoong that her case had been dismissed. A lawyer acts with "knowledge" when he or she acts with the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *Standards,* at 7.

The Accused acted negligently in failing to pursue his clients' matters or communicate adequately with them; in failing to promptly return Yoong's file; and in failing to withdraw from representing his clients when it became clear that his mental health materially impaired his ability to represent them. A lawyer acts negligently when he or she fails 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.* Cauduro suffered frustration[1] as a result of the Accused's inaction and lack of communication. Yoong suffered not only frustration and anxiety as a result of the Accused's conduct, but was also foreclosed by the expiration of the statute of limitations from litigating her damage claims. The Bar's investigation of the Cauduro matter was delayed by the Accused's failure to respond.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused's conduct involved multiple offenses in a pattern of misconduct. *Standards*, §§ 9.22(c) and (d).

2. The Accused had substantial experience in the practice of law, having been admitted to the Bar in 1990. *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 was suffering severe depression at the time of the conduct. *Standards*, § 9.32(c). This factor has been given great weight in determining the appropriate sanction in this case. The medical evidence establishes that the Accused was suffering from severe depression and that his depression caused the misconduct described herein. The Accused is receiving treatment for his condition.

4. The Accused voluntarily transferred to inactive membership in the Bar on March 1, 2007.

Standards, § 4.42 suggests that suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.62 also suggests that suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury to the client.

Oregon case law is in accord. *See In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension for violation of DR 6-101(B) (neglect), DR 5-105(E) (current client conflict), DR 1-102(A)(3) (conduct involving misrepresentation), and DR 9-101(C)(4) (failure to promptly return client property)); *In re Hedges*, 313 Or 618, 836 P2d 119 (1992) (63-day suspension for violation of DR 6-101(B), DR 1-102(A)(3), DR 1-103(C) (failure to cooperate with the Bar), and DR 9-101(A) (trust account violations)); and *In re Dugger*, 299 Or 21, 697 P2d 973

[1] Anxiety and frustration are considered actual injury. See *In re Cohen*, 330 Or 489, 496, 8 P3d 953 (2000), citing *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997).

(1985) (63-day suspension for violation of former DR 1-102(A)(4) (misrepresentation) and former DR 6-101(A) (neglect)).

16.

Consistent with the *Standards* and Oregon case law, and because the Accused engaged in misconduct in two client matters, the parties agree that the Accused shall be suspended from the practice of law for a period of 120 days for violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(a)(2), RPC 8.1(a)(2), and RPC 8.4(a)(3), the sanction to be effective upon approval of this stipulation by the Disciplinary Board. In addition, should the Accused seek reinstatement to active membership in the Bar at any time in the future, he is required to make a formal application for reinstatement pursuant to BR 8.1.

17.

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

EXECUTED this 7th day of August 2007.

/s/ William C. Abendroth
Wiliam C. Abendroth
OSB No. 90190

EXECUTED this 15th day of June 2007.

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. 06-40
	)	
WILLARD MERKEL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Hollis K. McMilan; Jane E. Angus
Counsel for the Accused:	Peter Jarvis; Roy Pulvers
Disciplinary Board:	Michael R. Levine, Chair; William B. Crow; Howard I. Freedman, Public Member
Disposition:	Violations of RPC 4.1(a) and RPC 8.4(a)(3). Trial Panel Opinion. Public Reprimand.
Effective Date of Opinion:	September 8, 2007

OPINION OF THE TRIAL PANEL

Background

In a Formal Complaint filed about April 18, 2006, the Bar alleges that while representing a client, Nakeva Johnson, in a personal injury claim against Steven Carver arising from an automobile accident, the Accused made a false statement of law or fact to Carver's insurance carrier, Unitrin Specialty Insurance ("Unitrin"). The Bar alleges that Unitrin advised the Accused that his client Johnson had no insurance coverage on the date of the loss and that pursuant to ORS 18.592, Unitrin was not liable to pay general or noneconomic damages. Thereafter, according to the Complaint, the Accused sent a letter to Unitrin in which he stated:

"There is no such statute as ORS 18.592. The former statute was found unconstitutional (in violation of Oregon Constitution) by the court in *Lawson v. Hoke*, 190 Or App 91 (2003)."

The Bar alleges that this statement was knowingly false in violation of two Rules of Professional conduct: RPC 4.1(a) (knowingly false statement of material facto or law), and RPC 8.4(a)(3) (conducted involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on fitness to practice law). The Bar requests the trial panel to suspend the Accused for a "short" period of time. Bar Trial Memorandum at 16.

The Accused denies the allegation. He readily admits to writing the statement in question, but asserts that given the context of the statement, and his well-known position on the subject, the statement is not false. In any event, he argues, the statement is certainly not knowingly false. Finally, he argues the statement is not material.

Trial took place on May 7, 2007.

Findings of Fact

Sometime before May 4, 2005, Nakeva Johnson retained the Accused to pursue a personal injury claim against Steven Carver, which claim arose out of an automobile accident that occurred on January 23, 2005. On Johnson's behalf, the Accused asserted a clam against Carver for economic and noneconomic or general damages. Carver was insured by Unitrin Specialty Insurance ("Unitrin"). On or about April 26, 2005, Unitrin notified the Accused that it had been advised that Johnson had no insurance coverage on the date of the accident. Unitrin advised the Accused that pursuant to ORS 18.592 Unitrin did not owe noneconomic damages to Johnson. On or about May 4, 2005, the Accused sent a letter to Unitrin in which he stated as follows:

"There is no such statute as ORS 18.592. The former statute was found unconstitutional (in violation of the Oregon constitution) by the court in *Lawson v. Hoke*, 190 Or App 91 (2003)." *See* Bar's Exhibit 9.

The Accused was the attorney who litigated *Lawson* before the Oregon Court of Appeals. He was also the attorney who appealed that decision to the Oregon Supreme Court in *Lawson v. Hoke*, 339 Or 253 (2005) (en banc).

Analysis

With respect to the first part of the statement, the Accused asserts that that he correctly stated that there is no such statute as ORS 18.592 because that statute had been renumbered to ORS 31.715 in 2003. He argues that the statement at issue correctly refers to ORS 18.592 as "the former statute" which is the precise term used by the Oregon Revised Statutes. We find that at the time the Accused made the statement, he knew or should have known that ORS 18.592 had been renumbered to ORS 31.715 and that the text of the statute was not changed.

As to the second part of the statement, the Accused testified that in writing his statement to Unitrin, he was merely expressing his honest opinion or position as to the holding of *Lawson*. He noted that he had taken the very same position successfully in more than one arbitration case before he wrote the statement at issue here, and that his opinion of the holding in *Lawson* was well known.

We first look to the holding of *Lawson*. At issue in that case was the application of ORS 18.592(1) (currently ORS 31.715(1)). That statute bars recovery of noneconomic damages by a motorist involved in an accident who does not have liability insurance at the time of the accident.[2] Plaintiff was injured when defendant drove through a stop sign at an intersection and collided with plaintiff's car. Represented by the Accused, plaintiff brought an action against the defendant for negligence, seeking economic and noneconomic damages. In his answer to plaintiff's complaint, and again in a motion for summary judgment, the defendant asserted that because plaintiff did not have liability insurance at the time of the accident, ORS 18.592(1) barred her from recovering noneconomic damages. The trial court ruled that the statute violates plaintiff's right to a remedy under Article I, section 10, of the Oregon Constitution and interferes with her right to a jury trial under Article I, section 17. The parties then waived a jury trial, and the trial court found defendant negligent and awarded plaintiff noneconomic damages. The defendant appealed. On appeal plaintiff, continuing to be represented by the Accused, argued that the judgment of the trial court was correct for the same reasons given by the trial court.

In *Lawson*, the court reversed the decision of the trial court. The court ultimately rejected the arguments of the Accused that the statute was unconstitutional, at least as applied to the facts in *Lawson*. With respect to the argument under Article I, section 10 the court concluded its analysis as follows:

> To recapitulate, Article I, section 10 applies to plaintiff's claim against defendant for negligent operation of a motor vehicle. ORS 18.592(1) does not abolish plaintiff's claim, because the portion of her remedy that remains unaffected by that statute is substantial. Therefore, ORS 18.592(1) does not violate the remedy clause.

Lawson, 190 Or App at 108.

The court of appeals also rejected the Accused's argument under Article I, section 17:

> In sum, ORS 18.592(1) prescribes an additional factual issue for the trier of fact to decide in motor vehicle accident cases, namely, whether the plaintiff had liability insurance at the time of the accident. If the trier of fact finds that the plaintiff did not have such coverage, it may not reach the issue of noneconomic damages. Because ORS 18.592(1) does not

---

[2] ORS 18.592 (current ORS 31.715(1)) provides in relevant part as follows: " . . . a plaintiff may not recover noneconomic damages, as defined in ORS 18.560 in any action for injury or death arising out of the operation of a motor vehicle if the plaintiff was in violation of ORS 806.010 [prohibiting driving while uninsured] or ORS 813.010 [prohibiting driving while intoxicated] at the time the act or omission causing the death or injury occurred. A claim for noneconomic damages shall not be considered by the jury if the jury determines that the limitation on liability established by this section applies to the claim for noneconomic damages."

> prevent a jury from deciding each factual element of a claim for personal injuries arising from the negligent operation of a motor vehicle, it does not violate Article I, section 17. The trial court erred in so concluding. Judgment awarding noneconomic damages reversed.

Lawson, 190 Or App. at 110.

It is clear, therefore, that *Lawson* did not hold the statute at issue unconstitutional as applied to the facts in *Lawson*. If it had, the Accused would hardly have sought to overturn the result in the Supreme Court of Oregon. The most that could be said is that the court's reasoning implies that in a future case, where it could be shown that the portion of the remedy that remains unaffected by the statute was insubstantial, the statute might be found unconstitutional.[3]

The Accused argues that he firmly believed what he wrote to Unitrin because he took the same position with the Oregon Supreme Court as he did in his letter to Unitrin. This is not the case. While the Accused did argue in the Supreme Court that *Lawson* was wrongly decided, he did not represent to the Court, as he did to Unitrin, that *Lawson* held the statute at issue was unconstitutional. On the contrary, in his Petition for Review, the Accused expressly acknowledged that *Lawson* "concluded that [the statute at issue] did not violate Article 1, Section 10. . . ." Accused's Exhibit 103 at ¶2; *see also id.*, at ¶3 ("The Court of Appeals [in *Lawson*] determined . . . that Article I, Section 10 is not abridged. . . .").

We find that the Accused knew or should have known that the statement to Unitrin was false. After all, he was the attorney who argued *Lawson* before the Court of Appeals and in the Supreme Court of Oregon. Even his firm belief in the truth of his position is immaterial. As stated by the Oregon Supreme Court, "the fact that the accused believed that his representations stated the legally correct position is immaterial" as to whether an attorney made knowing misrepresentation in violation of Disciplinary Rules. *In re Conduct of Boardman*, 312 Or 452, 456 (1991). We find further that the Accused's misrepresentations were material because they "were capable of influencing the decision-making process" even if, as the Bar concedes, they did not actually do so. *See In re Davenport*, 334 Or 298, 317 (2002).

The Sanction

In fashioning a sanction, the trial panel considers the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. *In re Davenport*, 334 Or at 318. The *Standards* require an analysis of four factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards*, § 3.0.

---

[3] This argument was rejected by the Oregon Supreme Court in *Lawson v. Hoke*, 339 Or 253, 119 P3d 210 (2005).

ABA *Standards*

1. *Duties Violated*. In this matter, the Accused violated RPC 4.1(a) and RPC 8.4(a)(3) of the Rules of Professional Conduct. *Standards*, §§ 5.1, 7.0.

2. *Mental State*. "Intent" is 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. *Id.* "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7.

For the reasons set forth above, we find that the that the Accused knowingly violated RPC 4.1(a) and RPC 8.4(a)(3) of the Rules of Professional Conduct.

3. *Injury*. "Injury" is the harm to a client, the public, legal system, or the profession which results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7. The Bar does not have to establish actual injury to support the imposition of a sanction. Potential injury is sufficient. *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992).

The Bar concedes, and we find, that Unitrin did not suffer actual injury because it did not rely on the Accused's misrepresentations. Bar's Trial Memorandum at 10; *see also* Bar's Exhibit 30 (James Wickshire's testimony in his deposition that he "was not misled" by the statement of the Accused).

4. *Aggravating and Mitigating Circumstances*

Aggravating Circumstances. We find that the following aggravating circumstance is present:

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

Mitigating Circumstances. We find that the following mitigating circumstances are present:

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

b. Cooperation with the Bar. *Standards*, § 9.32(a).

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). We recognize that "[g]enerally, a misrepresentation . . . ought to result in suspension." *In re Melmon*, 322 Or 380, 386 (1995). However, such is by no means always the case. *See, e.g.*, *In re Conduct of Boardman*, 312 Or 452 (1991).

In *Boardman,* the lawyer incorrectly represented to a third party that his client was the personal representative of the decedent's estate, before the client had actually been appointed by the court. At the time, another person had been appointed to serve as the personal representative. The lawyer did not disclose that there was an ongoing dispute as to who the personal representative would be. In finding a violation of the disciplinary rules, the court acknowledged that the Accused "was merely telling [another person] the facts as he himself believed that they *should* exist." Nevertheless, the court found that the Accused made a knowing misrepresentation. The Court concluded that "the fact that the accused believed that his representations stated the legally correct position is immaterial." *Boardman,* 312 Or at 456–457. As a sanction, the court observed that "ABA Standard 5.13 suggests that reprimand is appropriate in this type of situation," and that "prior decisions of this court are consistent with that standard." *Id*. The Bar also concedes that the ABA *Standards for Discipline* in this case, before considering aggravating and mitigating factors, provide authority for suspension "or reprimand." Bar's Trial Memorandum at 10.

We find this case analogous in many respects to *Boardman* although no aggravating factors were found in that case. We find that suspension is not necessary to protect the public and the integrity of the profession and that a public reprimand is sufficient.

Accordingly, we publicly reprimand the Accused.

DATED this 3rd day of July 2007.

/s/ Michael R. Levine
Michael R. Levine
Trial Panel Chair

DATED this 3rd day of July 2007.

/s/ William B. Crow
William B. Crow
Trial Panel, Attorney member

DATED this 7th day of July 2007.

/s/ Howard I. Freedman
Howard I. Freedman
Trial Panel, Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-124
	)	
STEVEN D. MARSH,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of DR 9-101(C)(3) and RPC 1.15-1(a). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	September 13, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Steven D. Marsh (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 9-101(C)(3) of the Code of Professional Responsibility and RPC 1.15-1(a) of the Rules of Professional Conduct.

DATED this 13th day of September 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Gilbert B. Feibleman
Gilbert B. Feibleman, Region 6
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on March 20, 2001, and has been a member of the Oregon State Bar continuously since that time. At relevant times, the Accused maintained his office and place of business in Clackamas County, Oregon.

3.

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

4.

On August 17, 2007, the State Professional Responsibility Board directed that the Accused be charged with violating DR 9-101(C)(3) of the Code of Professional Responsibility and RPC 1.15-1(a) of the 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 AND VIOLATION

5.

In about August 2004, World Images, Inc., and Jens Jensen (hereinafter "clients") retained the Accused and paid him a $3,000 retainer to represent their interests in a civil matter in the United States District Court for the District of Oregon. The Accused deposited the retainer in his lawyer trust account, performed legal services for the clients, and withdrew funds from the trust account as he determined they were earned.

6.

In January 2005, the Accused withdrew from the representation because he was ill. The clients requested an accounting for the funds paid to the Accused. The Accused failed to account for the $3,000 retainer. The Accused also failed to prepare and maintain complete records concerning his receipt, deposit, withdrawal, and disbursement of the clients' funds.

7.

The Accused admits that the aforesaid conduct constituted violation of DR 9-101(C)(3) of the Code of Professional Responsibility and RPC 1.15-1(a) of the Rules of Professional Conduct of the Rules of Professional Conduct.

SANCTION

8.

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

A. *Duty Violated.* The Accused violated his duties to his clients and the profession. *Standards*, §§ 4.1, 7.0.

B. *Mental State.* The Accused's conduct demonstrates negligence and knowledge. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused was negligent in his record preparation and record-keeping practices. He should have known that he was not preparing and maintaining adequate and complete records concerning his clients' funds. Also, he knew that he had not accounted to the clients for the funds paid to him for legal services.

The Accused had a form of cancer during the time 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 attend to record keeping and other aspects of his law practice.

C. *Injury.* The clients did not receive an accounting of the funds paid for the Accused's services. They were exposed to potential injury by the Accused's failure to keep proper records concerning their property.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior record of formal discipline. *In re Marsh*, SC S52762 (2005). However, the disposition of that case did not occur until after the conduct that is alleged in this proceeding and it is therefore given little weight. *Standards*, § 9.22(a). *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

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

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused cooperated with disciplinary authority in the investigation of the complaint 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. The Accused had a serious physical medical condition, as described above, which required ongoing medical treatment and resulted in the Accused's absence from the office for periods of time. *Standards*, § 9.32(h).

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

9.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property or negligently engages in conduct that is a violation of a duty to the profession, and causes injury or potential injury to a client. *Standards*, §§ 4.13, 7.3.

10.

Case law is in accord with the *Standards*. *In re Kneeland*, 281 Or 317, 574 P2d 324 (1978). *See also In re Britt*, 20 DB Rptr 18 (2006); *In re Dobie*, 19 DB Rptr 6 (2005); *In re Moore*, 14 DB Rptr 129 (2000).

11.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of DR 9-101(C)(3) of the Code of Professional Responsibility and RPC 1.15-1(a) of the Rules of Professional Conduct.

12.

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 pursuant to the terms of BR 3.6.

DATED this 31st day of August 2007.

/s/ Steven D. Marsh
Steven D. Marsh
OSB No. 010749

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. 06-111
	)	
SHANE A. REED,	)	
	)	
Accused.	)	

Counsel for the Bar:	James A. Wallan; Jane E. Angus
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violations of RPC 8.4(a)(3) and RPC 7.5(c)(1). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	September 19, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Shane A. Reed (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 RPC 8.4(a)(3) and RPC 7.5(c)(1).

DATED this 19th day of September 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 3, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

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

4.

On October 20, 2006, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 8.4(a)(3), RPC 7.1(a)(1), and RPC 7.5(c)(1). 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 August 3, 2003, Adam Angel (hereinafter "Angel") was involved in a motor vehicle accident with an uninsured motorist. On or about August 13, 2003, Angel retained the Accused to pursue claims for alleged personal and other injuries sustained and related to the accident.

6.

On or about November 4, 2004, the Accused filed a civil complaint against Unitrin Insurance Company, *Adam Angel v. Unitrin Insurance Company*, Jackson County Circuit Court Case No. 043932L1 (hereinafter "Court Action"). In or about December 2005, the parties agreed to settle the Court Action. Pursuant to the terms of settlement, the Accused's client was required to sign a release of all claims.

7.

On or about December 26, 2005, pursuant to a power of attorney provided to the Accused by his client, the Accused signed his client's name to a release of all claims in favor of Unitrin Insurance Company (hereinafter "Unitrin") and other persons. The Accused delivered the signed release to representatives of Unitrin. The signature purported to be that of his client. The Accused did not disclose to Unitrin and its representatives, either on the release or otherwise, that the Accused's client did not sign the release or that the Accused had signed the client's name as the client's attorney in fact.

8.

The Accused admits that the aforesaid conduct constitutes a misrepresentation in violation of RPC 8.4(a)(3) of the Rules of Professional Conduct.

9.

Prior to and between January 2005 and November 2006, the Accused conducted his law practice with the names "Law Offices of Shane Reed & Associates," "Law Offices of Reed & Associates," and similar names. The Accused used the names on his firm letterhead and other documents, and advertised his firm name and services in writing using the names. At all material times, the Accused was the only lawyer in the Accused's law firm.

10.

The Accused admits that the aforesaid conduct constitutes practicing law under a name that was misleading as to the identity of the lawyer or lawyers practicing under such name in violation of RPC 7.5(c)(1) of the Rules of Professional Conduct. Upon further factual inquiry, the parties agree that the alleged violation of RPC 7.1(a)(1) as set forth in the Bar's Second Cause of Complaint, upon the approval of this stipulation, is dismissed.

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 attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards,* § 3.0.

A. *Duty Violated.* In violating RPC 8.4(a)(3) and RPC 7.5(c)(1), the Accused violated a duty to the 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 to

accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7. The Accused knowingly signed the release with the client's name and did not disclose to opposing counsel that the signature was not that of the client. The Accused was negligent in failing to understand that he could not use the phrase "& Associates" when no other lawyers were part of his law firm.

C. *Injury*. The *Standards* define "injury" as harm to the client, the public, the legal system, or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards,* p. 7.

The Accused caused potential injury to opposing counsel and his client, and the profession. Opposing counsel relied on the representation that the signature appearing on the release was that of the Accused's client and was denied any opportunity to determine whether the Accused's signing for the client was sufficient or valid. There was also potential injury to the profession in that the public could have been misled by the Accused's advertised law firm name.

D. *Aggravating Factors.* "Aggravating factors" are considerations that increase the degree of discipline to be imposed. S*tandards,* § 9.22. There are multiple offenses. *Standards,* § 9.22(d). The Accused has substantial experience in the practice of law. He was admitted to practice in 1996. *Standards,* § 9.22(i).

E. *Mitigating Factors.* "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. S*tandards,* § 9.32. The Accused has no prior record of discipline. *Standards,* § 9.32(a). There is an absence of dishonest motives. The Accused held a power of attorney signed by the client upon which he relied as the authority to sign his client's name. *Standards,* § 9.32(b). The Accused has acknowledged his misconduct and cooperated in the investigation and the resolution of this case. *Standards,* § 9.22(e). He regrets the misconduct. *Standards,* § 9.32(m). The Accused has also changed his practices in signing documents for clients and disclosing the authority by which he does so. He has also changed the name of his firm to comply with the rules of professional conduct. *Standards,* § 9.32(j).

12.

The *Standards* provide 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. *Standard*s, § 7.2. Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional

and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

13.

Oregon case law suggests that a reprimand is an appropriate sanction in this case. *See, e.g.*, *In re Sims*, 284 Or 37, 584 P2d 765 (1978) (reprimand for violation of former DR 1-102(A)(3) (current RPC 8.4(a)(3)), when lawyer signed client's name to document and then notarized the signature); *In re Shilling*, 9 DB Rptr 53 (1995) (reprimand for violation of former DR 1-102(A)(3) (current RPC 8.4(a)(3)), when lawyer procured notarization of signature on affidavit that was not signed in notary's presence). *See also In re Sussman*, 241 Or 246, 405 P2d 355 (1965) (public censure where lawyers identified themselves as partners when they only shared office space).

14.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violations of RPC 8.4(a)(3) and RPC 7.5(c)(1) of the Rules of Professional Conduct.

15.

In addition, the Accused shall pay $740.20 to the Bar for the costs associated with the Accused's deposition. The amount shall be immediately due and payable. The Bar shall be entitled to entry of a judgment against the Accused for these costs, plus interest thereon at the legal rate, from the date of judgment until paid.

16.

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

DATED this 29th day of August 2007.

/s/ Shane A. Reed
Shane A. Reed
OSB No. 96159

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. 07-64
	)	
LINCOLN NEHRING,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of ORS 9.527(2), RPC 8.4(a)(2), and RPC 8.4(a)(3). Stipulation for discipline. 30-day suspension.
Effective Date of Order:	September 22, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 30 days, effective three days after the date of this order for violations of ORS 9.527(2), RPC 8.4(a)(2), and RPC 8.4(a)(3).

DATED this 19th day of September 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 20, 2005, and has been a member of the Oregon State Bar continuously since that time. The Accused transferred to an inactive status on October 24, 2006, and remains inactive.

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 5, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of ORS 9.527(2), and RPC 8.4(a)(2) and RPC 8.4(a)(3) of the Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

The Accused was permitted access to the apartment of an ex-girlfriend while she was away on vacation. On or between February 22, 2006, and March 4, 2006, the Accused entered the apartment to utilize her Internet connection. While inside the apartment, the Accused found correspondence that suggested to the Accused that the ex-girlfriend was unfaithful to him at a time when they were romantically involved, and that she had lured the Accused to engage in sexual relations to be secretly watched by a romantic rival. The Accused, emotionally distraught and angry, gathered items that belonged to his ex-girlfriend (a letter and a photo album) and to the rival (a bicycle) and tossed them into a nearby Dumpster. The items were never recovered.

6.

In March 2006, after the ex-girlfriend returned home, she noticed the missing items and she asked the Accused whether he had any knowledge of what had happened to the items. The Accused falsely represented that he had no knowledge of the whereabouts of the items. In May 2006, the Accused admitted to the ex-girlfriend that he had discarded the items as described above.

7.

On February 20, 2007, the Accused was convicted of Theft in the Second Degree in the Circuit Court for Lane County. The Accused's conviction pertained to his disposal of the bicycle, photo album, and correspondence described above.

Violations

8.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated ORS 9.527(2), RPC 8.4(a)(2), and RPC 8.4(a)(3).

Sanction

9.

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

A. *Duty Violated.* By committing acts that constitute theft and lying in an effort to conceal that theft, the Accused violated his duty to maintain personal integrity. *Standards,* § 5.1.

B. *Mental State.* The Accused acted knowingly. He was aware of the nature and attendant circumstances of his conduct, but acted without the conscious objective or purpose of committing an act of theft.

C. *Injury.* The Accused's misconduct caused two others to lose property that was valuable to them and to suffer anxiety regarding the whereabouts of the property.

D. *Aggravating Factors.* There are no aggravating factors. *Standards,* § 9.22.

E. *Mitigating Factors.* Mitigating factors include:

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

2. Personal or emotional problems. The Accused acted while under the influence of an acute emotional turmoil. *Standards,* § 9.32(c). *See In re Carstens,*

297 Or 155, 683 P2d 992 (1984) (where lawyer's actions were "rash and impulsive" and would not have occurred but for the "turmoil" of the dissolution of his marriage).

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

4. The imposition of other penalties or sanctions. *Standards*, § 9.32(k). The Accused was convicted of the crime of Theft in the Second Degree and sentenced to pay restitution and a fine and to serve a period of probation.

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

10.

Under the ABA *Standards*, the Accused's criminal conduct and misrepresentations demonstrate a failure to maintain personal integrity. *Standards*, 5.1. The *Standards* generally recommend disbarment where a lawyer has engaged in "serious criminal conduct," a necessary element of which includes theft (or other acts enumerated in the subsection) or where a lawyer engages in intentional conduct involving dishonesty or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice. *Standards*, 5.11(a), (b). Where a lawyer knowingly engages in criminal conduct that does not contain an element listed in subsection 5.11(a) but which seriously adversely reflects on the lawyer's fitness to practice, suspension is generally recommended. *Standards*, 5.12. When a lawyer knowingly engages in any other conduct that involves dishonesty or misrepresentation that adversely reflects on the lawyer's fitness to practice, reprimand is generally appropriate. *Standards*, 5.13.

11.

For the purpose of determining sanction, the court has distinguished between a theft involving a fiduciary relationship and a theft where no such relationship existed. The presumptive sanction for theft from a client or another to whom the lawyer owes a fiduciary duty is disbarment. *In re Kimmell*, 332 Or 480, 490–491, 31 P3d 414 (2001). However, where a theft did not involve the practice of law or a fiduciary relationship, the sanctions imposed by the court have ranged from a reprimand (*In re Carstens*, 297 Or 155, 683 P2d 992 (1984)) to a six-month suspension (*In re Kimmell, supra*). In a case involving theft outside the practice of law, the court imposed a 90-day suspension on a young lawyer of otherwise good reputation who impulsively shoplifted a plug socket from a department store. *In re Mahr*, 276 Or 939, 556 P2d 1359 (1976). The court considered the lack of premeditation a significant factor in the sanction. The court subsequently reprimanded a more experienced lawyer for a theft conviction that involved some premeditation where the misconduct was a "rash and impulsive act" that would not have occurred but for the "turmoil" of the dissolution of the lawyer's marriage. *In re Carstens, supra*, 297 Or at 166–167.

12.

The Accused's circumstances are quite different from the previous matters considered by the court. The primary difference is that although the underlying conduct is denominated "theft," the Accused was not motivated by greed and he did not acquire the property. While the Accused's misconduct was calculated to harm the owners of the property, it was not calculated to enrich the Accused at their expense. Furthermore, the Accused's conduct was an impulsive act carried out under the immediate effects of an acute emotional turmoil arising from a highly particularized set of circumstances.

13.

The Accused also made a misrepresentation. Dishonest conduct regularly warrants suspension where it involves the practice of law or criminal conduct. *See, e.g., In re Hopp*, 291 Or 697, 634 P2d 238 (1981) (lawyer suspended for 60 days for taking action for purpose of harassing another lawyer, violating DR 7-102(A)(1), and for misrepresenting that he had done so on behalf of his "client," violating former DR 1-102(A)(4)); *In re Spencer*, 335 Or 71, 58 P3d 228 (2002) (lawyer suspended for 60 days for assisting to register California resident's motor home in Oregon, violating DR 1-102(A)(3), and for allowing documents to be destroyed that a prospective client had entrusted to him for purpose of determining whether to represent her, violating DR 9-101(C)(4)). However, where the dishonesty or misrepresentation was not committed in the practice of law, even where it involved criminal conduct, the court has imposed reprimands. *See, e.g., In re Kumley*, 355 Or 639, 75 P3d 432 (2003) (inactive lawyer filed form in connection with his candidacy for an elected office falsely representing that his current occupation was attorney); *In re Flannery*, 334 Or 224, 47 P3d 891 (2002) (lawyer, a resident of Washington, used a friend's Oregon address to renew his Oregon driver license). The Accused's pattern of noncriminal dissimulation to his ex-girlfriend is less serious than the criminal misrepresentations to the state government in *Kumley* and *Flannery*.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 30 days for violations of ORS 9.527(2), RPC 8.4(a)(2), and RPC 8.4(a)(3), the sanction to be effective three days after this stipulation is approved.

15.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or

provide legal services or advice until he is notified that his license to practice has been reinstated.

16.

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

EXECUTED this 6th day of September 2007.

/s/ Lincoln Nehring
Lincoln Nehring
OSB No. 055455

EXECUTED this 11th day of September 2007.

OREGON STATE BAR

By: /s/ Linn D. Davis
Linn D. Davis
OSB No. 032221
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-60
	)	
THOMAS J. GREIF,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(E). Stipulation for discipline. Public reprimand.
Effective Date of Order:	September 20, 2007

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 20th day of September 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 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 June 27, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of DR 5-105(E) and DR 7-101(A)(1). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On the morning of May 16, 2001, Kurt Roseler telephoned the Accused, disclosed that he was divorcing his wife, Connie Roseler, and asked the Accused to meet with both of them later in the day for the purpose of preparing a property settlement agreement. The Accused advised Kurt Roseler that he did not want to get involved in the matter and recalls that he further advised Kurt Roseler that he could not represent both Kurt Roseler and Connie Roseler because of a conflict of interest. Kurt Roseler persisted in his request, and later that day, the Accused met with Kurt and Connie Roseler regarding the dissolution of their marriage.

6.

At the time of the meeting on May 16, 2001, the Accused was representing Kurt Roseler in another matter, and had previously represented Kurt Roseler in

other matters. Based upon the current and prior attorney-client relationship and his perception of the situation, Kurt Roseler had a reasonable expectation that the Accused was representing him at the meeting. Based upon the Accused's prior statement that he did not want to get involved in the matter and his perception of the situation, including some ethical concerns he had, the Accused believed he was acting as a mediator or scrivener and did not believe Kurt Roseler was his client at the meeting. However, the Accused, in part because of urgency on the part of Kurt Roseler, failed to ensure that Kurt Roseler understood the Accused's role at the meeting on May 16, 2001.

7.

Either during the telephone call described in paragraph 5 herein or at the meeting on May 16, 2001, the Accused came to understand that Kurt Roseler and Connie Roseler had already negotiated a proposed settlement regarding the dissolution of their marriage. Either prior to or at the meeting on May 16, 2001, Kurt Roseler asked the Accused to reduce the settlement to writing.

8.

During the meeting on May 16, 2001, the Accused, based upon information provided by Kurt and Connie Roseler, initially met separately with Connie Roseler and provided her with legal advice regarding, among other things, the rights, duties, and obligations of both parties in a dissolution of marriage proceeding. The Accused, on Connie Roseler's behalf and at her request, made an initial settlement proposal to Kurt Roseler in which Connie Roseler would receive more than she would have received under the proposed settlement she and Kurt Roseler had purportedly come to before they met with the Accused.

9.

Based upon the Accused's advice and the settlement proposal referenced in paragraph 8, Connie Roseler had a reasonable expectation that the Accused was representing her at the meeting on May 16, 2001. The Accused believed he was acting as a mediator or scrivener and did not believe Connie Roseler was his client at the meeting. However, the Accused, in part because of urgency on the part of Kurt Roseler, failed to ensure that Connie Roseler understood his role at the meeting.

10.

Kurt Roseler made a counterproposal to the proposal referenced in paragraph 8 herein. The Accused relayed that counterproposal to Connie Roseler and discussed it with her. By the end of the meeting on May 16, 2001, Kurt and Connie Roseler had come to an agreement under which Connie Roseler would receive more than she would have received under the proposed settlement she and Kurt Roseler had purportedly come to before they met with the Accused.

11.

Within a few days, the Accused prepared a marital settlement agreement and forwarded it to Kurt and Connie Roseler. In addition to setting out the terms of the settlement, the agreement prepared by the Accused also recited the following:

> Both parties have requested that this Marital Settlement Agreement in this dissolution of marriage proceeding be prepared by Thomas J. Greif of the Portland, Oregon law office of Thomas J. Greif, P.C. Mr. Greif has been a casual friend of Husband for an excess of ten years, and first met Wife approximately three months ago. Attorney Greif has fully disclosed to the parties the inherent conflict of interest in representing both Husband and Wife in a dissolution of marriage proceeding, and he explained that he would only assist Husband and Wife in this matter if they independently reached agreement on all issues without receiving separate legal advice or consultation from him. Husband and Wife were advised of Oregon's dissolution of marriage statutes and also the general parameters for the determination of spousal support and division of marital assets by Mr. Greif; and they independently determined and decided these issues. Following such agreement, attorney Greif prepared this Agreement at the joint request of both Husband and Wife. Both parties acknowledge that they have had ample opportunity to consult with their respective independent legal counsel before signing this Agreement, and that they have been encouraged to do so by attorney Greif. Husband and Wife hereby acknowledge and confirm that their respective legal interests in this dissolution of marriage have been fully and adequately represented and protected in this Agreement.

12.

Kurt and Connie Roseler signed the agreement prepared by the Accused on May 28, 2001. Thereafter, another attorney filed a petition for dissolution of marriage on behalf of Kurt Roseler. Connie Roseler represented herself in that matter.

13.

With regard to the dissolution of marriage, there was an actual conflict of interest between Kurt and Connie Roseler.

Violations

14.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 13, he violated DR 5-105(E). Because the Accused failed to clearly inform Kurt and Connie Roseler about the Accused's limited role in bringing about a settlement on May 16, 2001, he was not serving as a mediator under DR 5-106(A)(2). Upon further factual inquiry, the parties agree that the

charge of alleged violation of DR 7-101(A)(1) should be and, upon the approval of this stipulation, is dismissed.

Sanction

15.

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

A. *Duty Violated.* The Accused violated duties he owed to Kurt and Connie Roseler to avoid improper conflicts of interest *Standards,* § 4.3.

B. *Mental State.* The Accused acted negligently. The Accused recognized that there was a conflict of interest between Kurt and Connie Roseler. However, under the circumstances, he was negligent in failing to adequately explain and document that he was not intending to represent either of them and instead was intending to act as a mediator or scrivener.

C. *Injury.* There was the potential for injury to Kurt and Connie Roseler in that they reasonably believed the Accused was looking out for their individual best interests.

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

1. *Vulnerable victim.* Connie Roseler was upset about the dissolution of her marriage and was vulnerable in that it was difficult for her to comprehend that the Accused did not intend to represent her interests. *Standards,* § 9.22(h).

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

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

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

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

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

16.

Reprimand is generally appropriate when an attorney is negligent in determining whether representation of a client will adversely affect another, and causes injury or potential injury to a client. *Standards,* § 4.33. 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.

17.

In a number of cases, experienced lawyers have been suspended for engaging in, among other things, patent improper conflicts of interest. *In re Knappenberger,* 337 Or 15, 33, 90 P3d 614 (2004); *In re Wyllie,* 331 Or 606, 19 P3d 338 (2001); *In re Hockett,* 303 Or 150, 734 P2d 877 (1987); *In re Robertson*, 290 Or 639, 624 P2d 603 (1981). Here, in contrast to those cases, the Accused recognized that there was a conflict of interest, and believed that he had adequately explained his limited role to Kurt and Connie Roseler.

Reprimands have been imposed on lawyers under similar circumstances. See *In re Barrett*, 269 Or 264, 524 P2d 1208 (1974) (experienced attorney was a scrivener of real estate contracts for both buyer and seller); *In re Bryant*, 12 DB Rptr 69 (1998) (experienced attorney who acted as scrivener for divorcing couple had an actual conflict where minor children and substantial assets were involved, despite recommending that the parties consult separate counsel); *In re Taub,* 7 DB Rptr 77 (1993) (experienced attorney who acted as scrivener represented both spouses in divorce after wife expressed doubt about a settlement).

18.

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).

19.

In addition, on or before the 30th day after this Stipulation for Discipline has been approved, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $838.20, incurred for the taking of his deposition and the cost of transcript. Should the Accused fail to pay $838.20 in full by the 30th day after this Stipulation for Discipline is approved, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

20.

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

EXECUTED this 13th day of September 2007.

/s/ Thomas J. Greif
Thomas J. Greif
OSB No. 700559

EXECUTED this 14th day of September 2007.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-85
	)	
GARY D. BABCOCK,	)	
	)	
Accused.	)	

Counsel for the Bar:	Michael P. Opton, Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	Gilbert B. Feibleman, Chair; Mary Kim Wood; Joan J. LeBarron, Public Member
Disposition:	Violation of RPC 1.15-1(a), RPC 8.1(a)(2), DR 9-101(A)(2), and DR 9-101(C)(3). Trial Panel Opinion. 60-day suspension with reinstatement conditioned on a demonstration to the Bar of a clear understanding of the rules and ethical obligations regarding the handling of client funds and the billing of clients.
Effective Date of Opinion:	September 26, 2007

OPINION OF TRIAL PANEL

This matter came regularly before a Trial Panel of the Disciplinary Board consisting of Gilbert B. Feibleman, Esq., Chair; Mary Kim Wood, Panel Member; and Joan L. LeBarron, Public Member, on May 15, 2007. The Oregon State Bar was represented by Stacy J. Hankin, Assistant Disciplinary Counsel, and Michael P. Opton, Esq. The Accused acted pro se. The Trial Panel has considered the stipulations, pleadings, exhibits, testimony, trial memoranda, and arguments of counsel.

CAUSE OF WRONGFUL CONDUCT

The Bar has charged the Accused with violating DR 9-101(A) and RPC 1.15-1(a) (failing to deposit client funds into trust), DR 9-101(C)(3) (failing to render appropriate account to a client), and RPC 8.1(a)(2) (knowingly failing to cooperate in a Bar investigation).

INTRODUCTION

On June 3, 2004, Joanne Gotchall (hereinafter "Gotchall") retained Gary Babcock (hereinafter "Accused") to represent her in a dissolution of marriage proceeding. Gotchall provided the Accused with a $3,000.00 retainer. The Accused failed to deposit those funds into a lawyer trust account and failed to render timely accounts to Gotchall regarding the $3,000.00 retainer.

On June 3, 2005, the Accused received a $90,000.00 check made payable to himself and Gotchall, representing a portion of a settlement in the dissolution of marriage matter. Most of the $90,000.00 belonged to Gotchall. Gotchall endorsed the check but the Accused thereafter failed to deposit the funds into a lawyer trust account.

Gotchall made a complaint to the Bar regarding the Accused's conduct. During the Bar's investigation into the Accused's conduct, he knowingly failed to provide certain financial records.

In light of the violations at issue, the Accused's mental state, and number of aggravating circumstances, the Accused should be suspended from the practice of law for 60 days and the reinstatement be conditioned on satisfying the Bar of his understanding of the requirements regarding the handling of client funds and attorney fees.

SUMMARY OF FACTS

In June 2004, Gotchall retained the Accused to represent her in a pending dissolution of marriage proceeding. Pursuant to an oral agreement, Gotchall paid a $3,000.00 retainer to the Accused. The Accused failed to deposit those funds into his lawyer trust account.

Thereafter, the Accused performed legal work on Gotchall's behalf. However, he failed to provide Gotchall with an accounting of the $3,000.00 she had paid to him, even after she began asking for an accounting in June 2005. The Accused did not provide an accounting to Gotchall until January 2006, and only after Gotchall filed a complaint with the Bar.

In late May 2005, the parties resolved the dissolution of marriage proceeding. As part of that settlement, Gotchall was to receive $90,000.00 from a jointly owned Smith Barney brokerage account.

Some time prior to June 3, 2005, Ms. Gotchall contacted the Accused and offered an additional $20,000.00 in full settlement of any outstanding attorney fees. The Accused accepted. On June 3, 2005, Gotchall and the Accused picked up a $90,000.00 Smith Barney check made payable to both of them. Gotchall endorsed the check. The Accused failed to deposit the $90,000.00 into his lawyer trust account. Instead, the Accused gave Gotchall a check for $70,000.00 written on his general business account and he later deposited the $90,000.00 check into

that account. At the time the Accused provided Gotchall with the $70,000.00 check, the balance of the Accused's business account was less than $70,000.00.

In June 2005, Gotchall made a complaint to the Bar regarding the Accused's conduct. The matter was referred to Disciplinary Counsel's Office in November 2005. During the course of investigating Gotchall's complaint, Disciplinary Counsel's Office sent a number of letters to the Accused asking him to provide certain financial records that should have been available to the Accused regarding his handling of the $3,000.00 retainer and the $90,000.00 check. The Accused did not provide them in a timely manner waiting until a few months prior to hearing to provide them.

BURDEN OF PROOF / EVIDENTIARY STANDARD

The Bar has the burden of establishing the Accused's misconduct in this proceeding by clear and convincing evidence. BR 5.2. Clear and convincing evidence means that the truth of the facts asserted is highly probable. *In re Taylor*, 319 Or 595, 600, 878 P2d 1103 (1994).

The Oregon Evidence Code ("OEC") does not apply to disciplinary proceedings. *In re Barber*, 322 Or 194, 904 P2d 620 (1995). Evidence that may not be admissible under the OEC (hearsay, for example) may be admitted in this case if it has probative value. *In re Taylor, supra,* 319 Or at 603, n. 6. The evidentiary standard is set forth in BR 5.1(a):

> Rule 5.1 Evidence And Procedure.
>
> (a) Rules of Evidence. Trial panels may admit and give effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

CONCLUSION

A. The Accused failed to deposit the $3,000.00 retainer he received from Gotchall into his lawyer trust account, in violation of DR 9-101(A).

In the absence of a clear written agreement that fees paid in advance are a nonrefundable retainer earned upon receipt, the funds are client property which must be deposited into a lawyer's trust account. *In re Balocca,* 342 Or 279, 151 P3d 154 (2007); *In re Biggs,* 318 Or 281, 293, 864 P2d 1310 (1994); *In re Hedges,* 313 Or 618, 836 P2d 119 (1992).

The Accused and Gotchall both testified that there was no written agreement providing that the $3,000.00 Gotchall paid to the Accused on May 3, 2004, was a nonrefundable retainer earned upon receipt. There was no agreement even as to a specific hourly rate. As such, the $3,000.00 was a retainer and the Accused was to earn those funds over time as he performed work in her legal matter. Under those circumstances, the $3,000.00 retainer still belonged to

Gotchall and the Accused was required to deposit those funds into his lawyer trust account. It is undisputed by the Accused that he did not do so. The panel does not find Ms. Gotchall a credible witness in regards to the financial discussions she had with the Accused. On the other hand, absent a written fee agreement providing for a nonrefundable retainer, the Accused had no choice as to his handling of the fee.

There is clear and convincing evidence that the Accused violated DR 9-101(A).

B. The Accused failed to provide an appropriate accounting of the $3,000.00 he received from Gotchall, in violation of DR 9-101(C)(3).

In relevant part, DR 9-101(C)(3) requires a lawyer to render appropriate accounts to the lawyer's client regarding funds the lawyer receives from the client. The lawyer's duty to provide an accounting exists regardless of whether the client requests an accounting.[1]

In this case the $3,000.00 retainer paid by Gotchall to the Accused on May 3, 2004, were client funds. As such, the Accused had a duty to provide Gotchall with an accounting and his failure to do so constitutes a violation of DR 9-101(C)(3). *In re Hedges, supra*. The Accused failed to provide an accounting when Gotchall requested one on June 20, 2005.

C. The Accused failed to deposit the $90,000.00 check into his lawyer trust account, in violation of RPC 1.15-1(a).

In relevant part, RPC 1.15-1(a) requires a lawyer to deposit and maintain funds belonging to a client in a lawyer trust account. All funds received by a lawyer that are to be paid to the client in settlement of a case must be placed in a lawyer trust account. *The Ethical Oregon Lawyer*, §11.7 (2003) (interpreting DR 9-101(A)).

Here, on June 3, 2005, the Accused received a $90,000.00 check made payable to himself and Gotchall. Most of these funds were to be paid to Gotchall in settlement of the dissolution of marriage proceeding. As such, the Accused had a duty to deposit the check into his lawyer trust account. Even though there had been an agreement that he was to receive $20,000 of that sum, the check constituted client funds at the time of deposit. He failed to deposit the check into his lawyer trust account and at the time he wrote his check for $70,000 there were insufficient funds to cover the check.

There is clear and convincing evidence that the Accused violated RPC 1.15-1(a).

---

[1] Compare with DR 9-101(C)(4), which requires a lawyer to act only after a client's request.

D. The Accused knowingly failed to provide financial records during the Bar's investigation into his conduct, in violation of RPC 8.1(a)(2).

In relevant part, RPC 8.1(a) provides that in connection with a disciplinary matter, a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

In other jurisdictions this same rule has been interpreted to impose upon lawyers an obligation to respond truthfully and fully to requests for information. *Attorney Grievance Comm'n Action against Samborski*, 644 NW2d 402 (MN 2002) (lawyer has duty to cooperate with disciplinary authorities in investigation of client complaints). Letters from disciplinary counsel seeking information constitute lawful demands. *In re Dunn*, 717 So2d 639 (LA 1998) (lawyer's noncooperation with disciplinary counsel consisted of failing to provide responses until subpoenas were issued).

On numerous occasions, the court has interpreted DR 1-103(C), the predecessor to RPC 8.1(a).[2] On prior occasions, the court has found that under DR 1-103(C) a lawyer must provide complete responses to reasonable requests for information from the Bar. *In re Worth*, 336 Or 256, 273, 82 P3d 605 (2003). Partial cooperation with a disciplinary investigation does not absolve a lawyer from a DR 1-103(C) violation. *In re Schaffner*, 325 Or 421, 425, 939 P2d 39 (1997); *In re Vaile*, 300 Or 91, 707 P2d 52 (1985). A lawyer's duty under DR 1-103(C) includes a duty to respond to reasonable deadlines set by the Bar. *Id.*

The court's interpretation of DR 1-103(C) is substantially similar to other courts' interpretation of RPC 8.1(a). The trial panel should conclude that there is no substantive difference between a lawyer's obligations under the new rule RPC 8.1(a) as compared to the old rule, DR 1-103(C).

The Bar presented credible evidence that, despite numerous requests, the Accused knowingly failed to timely provide financial records to the Bar during its investigation into his conduct.

Some of the Accused's letters were nonresponsive. *In re Williams*, 314 Or 530, 546, 840 P2d 1280 (1992) (lawyer's evasive and nonresponsive answers in a deposition taken in a disciplinary proceeding constitute a violation of DR 1-103(C)).

There is clear convincing evidence that the Accused knowingly failed to respond to lawful demands for information in the Gotchall matter, in violation of RPC 8.1(a)(2).

---

[2] DR 1-103(C) requires a lawyer who is the subject of a disciplinary investigation to respond fully 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.

SANCTION

In fashioning a sanction in this case, the trial panel should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. *In re Biggs, supra*; *In re Spies*, 316 Or 530, 541 852 P2d 831 (1993). The *Standards* require an analysis of four factors: (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards* § 3.0.

A. ABA Standards:

1. *Duties Violated.* The most important ethical duties are those obligations that a lawyer owes to a client. *Standards*, p. 6. The Accused violated his duty to properly handle and account for Gotchall's funds. *Standards*, § 4.1.

The Accused also violated his duty to cooperate in Bar investigations. *Standards*, §7.0.

2. *Mental State.* "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, p. 7. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

The Accused acted knowingly when he failed to deposit the $3,000.00 and the $90,000.00 into his lawyer trust account. The Accused is an experienced lawyer and should have known that he had not yet earned the $3,000.00 and that $70,000.00 of the $90,000.00 belonged to Gotchall.

Initially, the Accused acted negligently in failing to provide Gotchall with an accounting. In June 2005, Gotchall specifically requested an accounting. After then, the Accused acted knowingly when he failed to timely provide Gotchall with an accounting.

The Accused acted knowingly when he failed to provide financial records to the Bar during its investigation. The Bar asked for the records a number of times. On April 6, 2006, the Accused was informed about RPC 8.1(a)(2) and his duty to cooperate. The Accused never explained why he either would not or could not provide the records. Instead, he merely ignored the request and failed to timely provide them.

3. *Injury.* Injury can be either actual or potential under the ABA *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Gotchall sustained actual injury in that: (1) the $3,000.00 she paid to the Accused was not appropriately protected in the Accused's lawyer trust account until the time the Accused earned those funds, (2) she was entitled to an accounting of the $3,000.00 and the Accused failed to provide her with that accounting, and (3) the $70,000.00 in settlement funds was not appropriately protected in the Accused's

lawyer trust account.[3] This is particularly true in that the check he wrote for $70,000.00 was NSF at the moment it was written.

The Bar sustained actual injury as a result of the Accused's failure to cooperate. Disciplinary Counsel's Office had to expend additional time and resources pursuing the financial records. Completion of the investigation was delayed because of the Accused's failure to cooperate.

4. *Preliminary Sanction.* In the absence of aggravating and mitigating circumstances, the following *Standards* apply:

> 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
>
> 7.2 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.

5. *Aggravating Circumstances.*

The following aggravating circumstances are present:

a. Prior disciplinary offenses. In November 1996, the Accused was suspended for 30 days for violating DR 6-101(A), DR 6-101(B), and DR 7-101(A)(2). *In re Babcock*, 10 DB Rptr 145 (1996). *Standards*, § 9.22(a).

Generally, the court imposes a greater sanction than is ordinarily warranted by the facts of a particular matter when a lawyer has a prior disciplinary record, particularly when the prior record includes misconduct similar to the misconduct at issue in the present proceeding. *In re Cohen*, 330 Or 489, 506, 8 P3d 953 (2000). In determining what weight to ascribe to the prior disciplinary offenses, a trial panel should examine the timing of the current offense in relation to the prior offenses, the relative seriousness of the prior offenses and sanction, the similarity of the prior offenses to the offense at bar, the number of prior offenses, and the relative recency. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

The conduct at issue in this proceeding occurred years after the Accused was suspended in 1996. The prior conduct was serious enough to warrant a suspension from the practice of law. The rules at issue in this proceeding are different than the violations involved in the 1996 suspension. In 1996, the Accused was found to have violated three rules. Those violations occurred over ten years ago. The prior discipline is given some but not significant weight in determining the appropriate sanction in this matter.

---

[3] All funds to be paid to the client in settlement of a case should remain in the lawyer trust account until the draft or check has cleared the bank and the lawyer has prepared a disbursal statement. *The Ethical Oregon Lawyer*, *supra*.

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

c. Substantial experience in the practice of law, as the Accused has been a lawyer in Oregon since 1961. *Standards*, § 9.22(i).

d. The Accused still appears to remain unaware of what he has done wrong. During cross-examination of a Bar witness the Accused essentially asked what was he supposed to do if the client will not discuss an hourly rate nor sign a fee agreement? When told one option was to choose to decline representation his response was essentially that the client needed an attorney.

6. *Mitigating Circumstances.*

The following mitigating circumstance may exist:

a. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b). The Accused honestly believed he had acted appropriately under the unique circumstances of their financial arrangement.

The aggravating circumstances, particularly the continuing unawareness of his obligations regarding the handling of client funds, outweigh the mitigating circumstances.

B. Oregon case law.[4]

Sanctions in disciplinary matters are not intended to penalize the accused lawyer, but instead are intended to protect the public and the integrity of the profession. *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). In order to protect the public and the integrity of the profession, the court has found it necessary to suspend lawyers who have engaged in similar misconduct.

In some respects, the trust account violations in this case are similar to those in *In re Eakin*, 334 Or 238, 48 P3d 147 (2002). There the court imposed a 60-day suspension on a lawyer who should have known that she was dealing improperly with client funds when she mistakenly removed client funds from her trust account, failed to maintain adequate records, and failed to return to the client the unearned portion of a retainer. *See also In re Wyllie*, 331 Or 606, 19 P3d 338 (2001). In that case an accused lawyer was found to have violated DR 2-106(A), DR 9-101(A), and DR 5-105(E) in a matter by collecting an excessive fee, failing to deposit client funds into trust, and undertaking to render a second opinion to three codefendants in a criminal matter. In imposing a four-month suspension the court found that collecting an excessive fee and failing to deposit client funds into trust were serious ethical violations.[5]

---

[4] Stipulations resolving disciplinary matters have no precedential value. *In re Murdock*, 328 Or 18, 24 n 1, 968 P2d 1270 (1998).

[5] Although the lawyer in *Wyllie, supra*, had an extensive prior disciplinary history, the court gave little weight to that prior history.

The trial panel also considered *In re Balocca, supra*. There a lawyer engaged in similar trust account violations in one matter, engaged in an improper conflict of interest in another matter, and provided false responses during the Bar's investigation into his conduct. The court, citing to *In re Eakin, supra,* noted that the accused lawyer in that matter had cooperated in the Bar's investigation and had fewer aggravating factors. For that reason, the court concluded that a 60-day suspension, as was imposed in *In re Eakin, supra,* was insufficient. Instead, because the accused lawyer in the current proceeding was experienced, had violated numerous rules concerning the proper handling of client funds, and had committed additional violations, a 90 day suspension was appropriate.

The court has adopted a no tolerance approach in cases where a lawyer fails to cooperate in Bar investigations. The court considers a lawyer's failure to cooperate in a Bar investigation serious misconduct because the public protection provided by DR 1-103(C) is undermined when a lawyer fails to participate in the investigatory process. *In re Miles,* 324 Or 218, 222–223, 932 P2d 1219 (1996). As such, the court has consistently imposed a 60-day suspension for a single violation of DR 1-103(C). *In re Schaffner,* 323 Or 472, 918 P2d 803 (1996); *In re Miles, supra* (120-day suspension for two violations of DR 1-103(C)).

CONCLUSION

Lawyer discipline is intended to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to discharge their professional duties to clients, to the public, to the legal system, and the legal profession. *Standards,* § 1.1; *In re Huffman, supra*.

In this case, the Accused was an experienced lawyer and should have known that he needed to deposit funds he received from Gotchall and funds he received made payable to her into a lawyer trust account. He also should have known to provide Gotchall with an accounting either during the course of the representation or when she requested one after the representation had been completed. A client should not have to make a complaint with the Bar before obtaining an accounting.

Then, for some unknown reason, the Accused refused to timely provide financial records during the course of the Bar's investigation into his conduct. The Accused was put on notice that his handling of funds in the Gotchall matter was at issue. The Accused, despite numerous requests, refused to provide that information until a few months ago.

Disposition

When the violations committed by the Accused are taken as a whole, and in light of prior case law, the Accused should be suspended from the practice of law for 60 days and the reinstatement be conditioned on a demonstration to the Bar of

a clear understanding of the rules and ethical obligations regarding the handling of client funds and the billing of clients.

IT IS SO ORDERED.

DATED this 24th day of July 2007.

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

/s/ Joan L. LeBarron
Joan L. LeBarron
Trial Panel Member

/s/ Mary Kim Wood
Mary Kim Wood
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 06-77 and 06-78
	)	
ANDREW P. COLVIN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jeffrey D. Sapiro
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(c), and RPC 1.15-2(*l*). Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	October 1, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for a period of 120 days, effective on the date of this order for violation of RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(c), and RPC 1.15-2(*l*).

DATED this 1st day of October 2007.

/s/ Jill A. Tanner
Honorable Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 2001, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon, until the Accused closed his practice and moved out of state in 2006.

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, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 1.15-1(a), 1.15-1(b), 1.15-1(c), 1.15-2(*l*), and 8.1(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

At all times material to this proceeding, the Accused maintained a lawyer trust account at KeyBank National Association (hereinafter "KeyBank").

6.

Between January 2005 and July 2006, the Accused failed to keep complete records of client funds that came into his possession in the following particulars:

(a) The Accused did not maintain adequate records to know the amount individual clients had on deposit with the Accused in his lawyer trust account, often relying on his memory of what clients had paid;

(b) The Accused did not maintain adequate records of amounts withdrawn from trust on behalf of individual clients for legal services rendered and costs expended, often relying on his memory of what had been disbursed;

(c) The Accused did not maintain adequate billing records of his time expended, services rendered, and costs incurred on behalf of clients, such that he could not accurately determine the amount of earned funds to be withdrawn from his trust account;

(d) The Accused did not reconcile the trust account records he did maintain with the monthly account statements he received from KeyBank, such that he did not discover depositing, disbursement, and other errors made on the account;

(e) The Accused did not record or have a method of recording bank charges made against his lawyer trust account for returned items, NSF checks or money orders, such that he did not know how much was debited against the account for these charges.

7.

As a result of the deficiencies in his lawyer trust account records as described in paragraph 6 above, and due to depositing errors in which client funds were incorrectly deposited into the Accused's business account rather than his trust account, the Accused periodically disbursed between May 2005 and May 2006 more from the account for clients than those clients had on deposit with the Accused. When this occurred, the Accused drew on the funds of other clients who had, or should have had, funds on deposit in the Accused's lawyer trust account.

8.

At other times between May 2005 and May 2006, when the Accused was in doubt whether all client funds that should have been on deposit in the trust account were in fact there, the Accused kept earned fees in the account in an attempt to ensure that any shortfall in client money from inaccurate or excessive trust disbursements was offset by those earned fees remaining in trust.

9.

It was the Accused's practice to enter into written fee agreements with clients at the commencement of the representation. Many of those written fee agreements provided that any retainer paid was nonrefundable and earned by the Accused on receipt. Under those agreements, the Accused was entitled to, and often did, deposit paid retainers directly into his business bank account and not into his lawyer trust account.

10.

From time to time between January 2005 and May 2006, the Accused did not enter into a written agreement with a client, or cannot now locate any such agreement that provided for retainers to be nonrefundable and earned on receipt. In those cases, the Accused should have deposited all legal fees and expenses paid in advance by those clients for legal services and costs into his trust account, but he failed to do so.

11.

In or about February and March 2006, at a time when his personal and business bank accounts were either overdrawn or closed, the Accused deposited his own funds into his lawyer trust account and thereafter used the account to pay personal expenses.

12.

In August and September 2005, the Accused issued four checks on his lawyer trust account that were dishonored by KeyBank seven times because the account held insufficient funds. KeyBank notified the Accused that these checks were presented against insufficient funds, but did not notify the Bar. In February and March 2006, the Accused attempted to make two disbursements from his lawyer trust account, but the account held insufficient funds. KeyBank notified the Accused that these items were returned because they were presented against insufficient funds, but did not promptly notify the Bar. The Accused failed to notify Disciplinary Counsel of the overdrafts described in this paragraph, or provide a full explanation of the cause of the overdrafts until asked to do so.

Violations

13.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.15-1(a), 1.15-1(b), 1.15-1(c), and 1.15-2(*l*).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.1(a)(2) should be and, upon the approval of this stipulation, is dismissed.

Sanction

14.

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

A. *Duty Violated.* The Accused violated his duty to protect and preserve client property. *Standards*, § 4.0. The Accused also violated his duty to the profession to report to the Bar the overdrafts on his trust account. *Standards*, § 7.0.

B. *Mental State.* The Accused did not act with intent; he did not intentionally disburse client funds that he knew should have remained in his lawyer trust account. However, the Accused knew that he was not maintaining accurate or adequate trust accounting and billing records, and he became increasingly uncertain over time whether all client funds that should have been on deposit in his trust account were in fact there. The Accused also knew that overdrawing one client's balance in the trust account likely would result in an adverse impact on another client's funds. Nevertheless, the Accused continued to take in and disburse client funds without first taking corrective action on his trust account. The Accused intended to correct the deficiencies in his records and in his accounting, but he never did. Instead, from time to time the Accused kept earned fees in the trust account in an attempt to ensure that any shortfall in client money from inaccurate and excessive trust disbursements was offset by those earned fees remaining in trust.

The Accused also knew that he should not have used his trust account to pay personal expenses and that he was required to notify the Bar of overdrafts on his lawyer trust account.

C. *Injury.* For the purposes of determining a disciplinary sanction, injury can be either actual or potential. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). In this case, the Accused's clients were exposed to potential injury because there were inadequate safeguards in place to ensure that all their money that should have been on deposit in the Accused's trust account was there and available for their benefit. The Bar does not contend that any client was actually injured; the Accused eventually made up any shortfall in the account. At the time the Accused closed his practice in 2006, funds of two clients remained in the trust account. The Accused since has either returned those funds or made efforts to locate the clients who are entitled to receive the funds.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused engaged in a pattern of misconduct and committed multiple offenses. *Standards*, § 9.22(c) and (d).

2. The Accused delayed going through his banking and accounting records to determine which of his clients may be due a refund until well into this disciplinary proceeding. *Standards*, § 9.22(j).

E. *Mitigating Factors.* Mitigating factors include:

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

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

3. The Accused fully cooperated in the proceedings. *Standards*, § 9.32(e).

4. The Accused was inexperienced in the practice of law at the time of his misconduct. *Standards*, § 9.32(f).

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

15.

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

16.

Oregon case law confirms that a suspension is appropriate when a lawyer knows or should know that he is improperly dealing with client funds. *See In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension when lawyer erroneously collected from a client for a cost that had not been incurred and then disbursed the money to herself as a reimbursement). Multiple trust account violations or trust account violations coupled with other rule violations result in longer suspensions. *See In re Balocca*, 342 Or 279, 151 P3d 154 (2007) (90-day suspension for failure to deposit client funds in trust, failing to account, and charging an excessive fee); *In re Skagen*, 342 Or 183, 149 P3d 1171 (2006) (one-year suspension for trust account violations, aggravated by noncooperation with the bar); *In re Andersen*, 19 DB Rptr 227 (2005) (six-month suspension for repeatedly running personal funds through a trust account and failure to maintain adequate account records; sanction aggravated because of prior discipline involving trust account).

17.

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 120 days for violation of RPC 1.15-1(a), 1.15-1(b), 1.15-1(c), and 1.15-2(*l*), the sanction to be effective on the day this stipulation is approved by the Disciplinary Board.

18.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

19.

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

EXECUTED this 13th day of September 2007.

/s/ Andrew P. Colvin
Andrew P. Colvin
OSB No. 01178

EXECUTED this 19th day of September 2007.

OREGON STATE BAR

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

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 05-167, 05-168, 05-169,
	)	05-170, 06-86, and 06-87
BRIAN J. SUNDERLAND,	)	
	)	SC S055212
Accused.	)	

Counsel for the Bar:	Steven W. Seymour; Timothy J. Resch; Jane E. Angus
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(7), DR 7-106(A), DR 7-110(B), RPC 8.4(a)(4), RPC 5.1(a), RPC 5.1(b), DR 9-101(A), DR 9-101(C)(3), RPC 1.15-1(c), and RPC 1.15-1(a). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	October 7, 2007

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. Brian J. Sunderland, Oregon State Bar No. 924780, is suspended from the practice of law in the State of Oregon for a period of one year, effective October 7, 2007.

DATED this 4th day of October 2007.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

The Accused enters into this Stipulation for Discipline freely, 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.

At the direction of the State Professional Responsibility Board (hereinafter "SPRB"), the Accused is charged with the following violations: Case Nos. 05-167, 05-168—DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(7), DR 7-106(A), and DR 7-110(B); Case No. 05-169—RPC 8.l(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4); Case No. 05-170—RPC 5.1(a) and (b), RPC 1.2(c), RPC 8.4(a)(3), and RPC 8.4(a)(4); and Case Nos. 06-86 and 06-87—DR 9-101(A), DR 9-101(C)(3), RPC 1.15-1(c), and RPC 1.15-1(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 AND VIOLATION

Williams Matter

Case Nos. 05-167, 05-168

5.

About April 2, 2003, James Williams and Brenda Williams (collectively, "Williamses") delivered $54,000 to Debbie Hashman and William Hashman, Brenda Williams's sister and brother-in-law (hereinafter, collectively, "Hashmans"), the funds to be used as a down payment for the purchase of a house in which the

Hashmans would reside. About the same time, Hashmans returned $10,000—$5,000 each—to the Williamses.

6.

On April 3, 2003, James Williams and Brenda Williams entered into a Shared Housing Agreement with the Hashmans. Pursuant to the agreement, the Hashmans agreed to return $44,000 to the Williamses—$22,000 each—on sale of the house purchased with the Williamses' funds, or earlier.

7.

On April 3, 2003, James Williams and Brenda Williams, through other counsel, filed a voluntary Chapter 7 bankruptcy petition for relief in the United States Bankruptcy Court for the District of Oregon (hereinafter "Bankruptcy Case"). The Williamses signed the petition, schedules, and statement of financial affairs under penalty of perjury. The Williamses did not disclose to the bankruptcy court all assets and other property in which they claimed any legal or equitable interest, wherever located and by whomever held, and all gifts and transfers of property made within one year immediately preceding the commencement of the Bankruptcy Case, including the $54,000 they delivered to the Hashmans or the shared housing agreement with the Hashmans.

8.

On May 12, 2003, pursuant to 11 USC §341(a), the Williamses appeared for a first meeting of creditors in the Bankruptcy Case and answered questions under penalty of perjury. The Williamses made false statements and did not disclose in their bankruptcy petition and schedules or during the 341(a) meeting of creditors all assets and other property in which they claimed any legal or equitable interest, including the $54,000 or any part thereof delivered to the Hashmans, the Shared Housing Agreement, and the interest in the house purchased by the Hashmans with the Williamses' funds, some or all of which property was property of the bankruptcy estate. Through this time, the Accused did not represent the Williamses in the Bankruptcy Case.

9.

On June 17, 2003, Brenda Williams retained the Accused to file a petition for unlimited separation from James Williams. On June 30, 2003, the Accused filed a petition for unlimited separation, the division of the parties' personal and real property, and other relief, *Brenda Williams and James Williams,* Clackamas County Circuit Court Case No. DR0306905 (hereinafter "Separation Case").

10.

Prior to and after April 2003, the Accused knew that concealment, failure to disclose, and misappropriation of bankruptcy estate property was, at a minimum,

conversion of assets, and more seriously a crime. Prior to and after April 2003, the Accused knew that knowingly making false statements in bankruptcy petitions, schedules, and other documents filed with the bankruptcy court or during a 341(a) meeting of creditors was a crime. The Accused also knew that bankruptcy debtors could be denied discharge of all debts if they knowingly made false statements in bankruptcy petitions, schedules, and other documents filed with the bankruptcy court or during 341(a) meetings of creditors, or concealed, failed to disclose, or misappropriated property belonging to a bankruptcy estate.

11.

About July 11, 2003, Brenda Williams notified the Accused that attorney Richard Hattenhauer (hereinafter "Hattenhauer") held about $15,000 in the name of a corporation in which she and James Williams claimed an interest. The funds held by Hattenhauer was property that the bankruptcy trustee could claim as property of the bankruptcy estate.

12.

On July 17, 2003, the bankruptcy court filed an order of discharge in the Bankruptcy Case, effective August 6, 2003. The case was closed as a "no-asset" case. As of the date of discharge, the Williamses had concealed and not disclosed to the bankruptcy court or bankruptcy trustee the existence of the funds held by Hattenhauer.

13.

About July 22, 2003, the Accused filed an amended petition in the Separation Case in which Brenda Williams sought the dissolution of her marriage and other relief from James Williams, *Brenda Williams and James Williams*, Clackamas County Circuit Court Case No. DR0306905 (hereinafter "Dissolution Case"). Counsel for James Williams sent letters to the Accused in which she cautioned against actions in the Dissolution Case that would violate the automatic stay in effect from the Bankruptcy Case.

14.

About August 14, 2003, the Accused filed a motion in the Dissolution Case for an order restraining the parties from selling, conveying, transferring, or otherwise disposing of assets of the parties without order of the court. In support of the motion, the Accused prepared and filed an affidavit signed by Brenda Williams in which she represented that James Williams had hoarded a large sum of cash, over $100,000, and that Hattenhauer held about $20,000 in his lawyer trust account, funds in which Brenda Williams and James Williams claimed an interest.

15.

About August 15, 2003, James Williams, through his attorney, filed a response to the Dissolution Petition and about August 30, 2003, filed a motion for compulsory joinder of the Hashmans to protect James Williams's interest in the real property purchased with the funds James and Brenda Williams delivered to the Hashmans. James Williams's attorney served a copy of the motion and supporting affidavit on the Accused.

16.

About September 15, 2003, Brenda Williams notified the bankruptcy trustee that she and James Williams had not disclosed property that should have been disclosed in the Bankruptcy Case. Brenda Williams also provided the Accused, who by then had agreed to represent Brenda Williams in the Bankruptcy Case, with a copy of the letter.

17.

On September 29, 2003, the bankruptcy trustee requested information from the Accused concerning assets that had not been disclosed in the Bankruptcy Case. About October 3, 2003, the Accused provided information to the bankruptcy trustee concerning the Shared Housing Agreement.

18.

Between September 15, 2003, and February 12, 2004, the Accused did not provide information to the U.S. Trustee, the bankruptcy trustee, or the bankruptcy court concerning other property or interests in property claimed by Brenda Williams and James Williams, which had not been disclosed in the Bankruptcy Case.

19.

About October 6, 2003, the bankruptcy trustee filed a motion to reopen the Bankruptcy Case on the ground that there may be additional assets for distribution. The Accused received a copy of the motion. On November 19, 2003, the bankruptcy court held a hearing and granted the trustee's motion to reopen the Bankruptcy Case to investigate and recover assets that were not disclosed by Brenda Williams and James Williams and for further administration of the case. The court filed an order reopening the Bankruptcy Case on December 31, 2003, and further ordered that acts and proceedings against Brenda Williams and James Williams and property belonging to the bankruptcy estate were stayed pursuant to 11 USC §362. Although the Accused did not contemporaneously receive a copy of the order because he was apparently not on the mailing matrix, he did not inquire about the outcome of the November 19, 2003, hearing.

20.

On January 29, 2004, the U.S. Trustee filed an adversary proceeding to revoke Brenda Williams's and James Williams's discharge in the Bankruptcy Case pursuant to 11 USC §727, Adversary Proceeding No. 04-03037 (hereinafter "Adversary Proceeding"). On February 6, 2004, the U.S. Trustee served the Accused, as counsel for Brenda Williams, with a copy of the summons and complaint in the Adversary Proceeding.

21.

On February 12, 2004, without obtaining an order granting relief from the stay from the bankruptcy court, and without notice to the bankruptcy court, the U.S. Trustee, the bankruptcy trustee, or James Williams, the Accused filed a trial memorandum and appeared for trial in the Dissolution Case. The Accused presented a prima facie case through the testimony of Brenda Williams and asserted that funds held by Hattenhauer should be awarded and distributed to Brenda Williams. The Accused did not serve James Williams with a copy of the trial memorandum. James Williams did not appear for the trial in the Dissolution Case because he claims he understood that proceedings were stayed by the automatic stay imposed by the bankruptcy court. The Accused disclosed to the court that a bankruptcy case was filed the previous year, that it was ongoing, and that Hattenhauer held business funds in his trust account that his client would like awarded to her to apply to IRS debt. The Accused did not disclose, however, that the funds held by Hattenhauer had not been disclosed to the bankruptcy trustee or the bankruptcy court, or that the funds were potentially property of the bankruptcy estate or that the bankruptcy court had reopened the Bankruptcy Case based on allegations that the Williamses had hidden and not disclosed assets.

22.

The Accused prepared a form of general judgment in the Dissolution Case, which he submitted to the state court without providing a copy of or notice to James Williams, the U.S. Trustee, the bankruptcy trustee, or the bankruptcy court. Again, the Accused did not disclose to the state court that the funds held by Hattenhauer had not been disclosed to the U.S. Trustee, the bankruptcy trustee, or the bankruptcy court; or that the funds were potentially property of the bankruptcy estate; or that the bankruptcy court had reopened the Bankruptcy Case based on allegations that the Williamses had hidden and not disclosed assets. About February 26, 2004, the court signed and filed the general judgment, which provided for the dissolution of the marriage of Brenda Williams and James Williams and awarded Brenda Williams, among other property, all funds held in Hattenhauer's lawyer trust account and be distributed to Brenda Williams.

23.

About March 15, 2004, the Accused delivered a copy of the general judgment in the Dissolution Case to Hattenhauer. Thereafter, the Accused demanded, without notice to the bankruptcy court, the U.S. Trustee, the bankruptcy trustee, or James Williams, that Hattenhauer deliver funds held in Hattenhauer's trust account to Brenda Williams. The Accused did not disclose to Hattenhauer that the bankruptcy court had reopened the Bankruptcy Case or that the U.S. Trustee had filed an Adversary Proceeding against Brenda Williams and James Williams to deny discharge pursuant to 11 USC §727 for failure to disclose property belonging to the bankruptcy estate and other conduct.

24.

On March 19, 2004, Hattenhauer declined to deliver the funds held in his lawyer trust account to Brenda Williams or the Accused because it appeared that the judgment in the Dissolution Case had been obtained against James Williams by default, without notice to James Williams. On March 19, 2004, Hattenhauer sent a letter to the judge who had presided at the trial and signed the judgment in the Dissolution Case and delivered to the state court his trust account check for $18,846.94. Hattenhauer also sent a copy of his letter to the Accused.

25.

On March 19, 2004, James Williams's former counsel in the Dissolution Case sent a letter to the judge who presided at the trial in the Dissolution Case reporting, among other things, that the funds Hattenhauer delivered to the court were property that belonged to or claimed to belong to the bankruptcy estate, and asked that they be held and not distributed to Brenda Williams. The lawyer also sent a copy of the letter to the Accused. At that time, the court took no action.

26.

Between about March 19 and September 24, 2004, without disclosing to the U.S. Trustee and the bankruptcy court that funds which may belong to the bankruptcy estate had been delivered to the court in the Dissolution Case, that he had obtained a judgment awarding those funds to Brenda Williams, or that he had demanded that Hattenhauer deliver the funds to Brenda Williams, the Accused contacted members of the judge's staff in the Dissolution Case to obtain release of the funds Hattenhauer delivered to the court to the Accused or Brenda Williams. The court did not release the funds as requested by the Accused.

27.

About April 1, 2004, new counsel for James Williams in the Dissolution Case sent a letter to the Accused in which he notified that James Williams understood that the proceedings in the Dissolution Case had been stayed as a result of the automatic stay, that James Williams was surprised that the divorce

was final, and asked the Accused to provide him with a copy of the general judgment in the Dissolution Case. The Accused did not respond.

28.

On April 14, 2004, James Williams's new counsel sent the Accused a second letter concerning the automatic stay, again asked for a copy of the general judgment, and asked why the Accused obtained a default against James Williams in the Dissolution Case. The Accused did not respond. On May 6, 2004, James Williams's new counsel sent the Accused a third letter in which he asked the Accused to stipulate to set aside the general judgment in the Dissolution Case because it had been obtained in violation of the automatic stay imposed by the bankruptcy court. The Accused declined James Williams's counsel's request.

29.

On June 16, 2004, the bankruptcy trustee sent the Accused a letter in which he stated that he was unclear why the Dissolution Case was continued in light of the automatic stay. The trustee asked the Accused to explain the status of the funds delivered by Hattenhauer to the court in the Dissolution Case. The trustee also notified the Accused that those funds appeared to belong to the bankruptcy estate.

30.

About July 19, 2004, the bankruptcy trustee sent a letter to the judge in the Dissolution Case in which he advised of the bankruptcy trustee's claim to and interest in the funds Hattenhauer delivered to the court. The bankruptcy trustee also sent a copy of the letter to the Accused.

31.

About September 24, 2004, the Accused filed a motion for order to allow him to withdraw as Brenda Williams's attorney in the Dissolution Case. The Accused did not serve Brenda Williams, James Williams, or James Williams's new attorney with a copy of the motion. On September 29, 2004, the court refused to grant the motion on the ground that the Accused failed to serve Brenda Williams, James Williams, or his attorney with a copy of the motion.

32.

The Accused admits that the aforesaid conduct constitutes conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; assisting a client in conduct the lawyer knows to be fraudulent; disregarding a standing rule or a tribunal or order of the court and ex parte communication with the court in violation of DR 1-102(A)(3), DR 1-l02(A)(4), DR 7-l02(A)(7), DR 7-106(A), and DR 7-110(B) of the Code of Professional Responsibility.

Floyd Matter

Case No. 05-169

33.

On October 18, 2004, the court filed a Judgment and Decree of Dissolution of Marriage (hereinafter "Decree") in the matter of *Roger L. Floyd and Jeanette R. Floyd,* Clackamas County Circuit Court Case No. 94-01-025 (hereinafter "Court Action"). Pursuant to the terms of the Decree, Jeanette Floyd (hereinafter "mother") was awarded custody of the parties' minor child, with reasonable and seasonable visitation awarded to Roger Floyd (hereinafter "father").

34.

On November 22, 2004, mother, NKA Jeanette Davis, filed a Motion for Order to Show Cause why the Decree should not be modified to amend the parenting time schedule between the parties and other relief.

35.

The court held a hearing concerning the motion for modification of the Decree on January 28, 2005. The Accused, the attorney for the father, and the father attended the hearing. During the hearing, the court took the testimony of the parties' minor child outside the presence of the parties. The court directed that the child's testimony be subject to a protective order that limited the parties' access to and possession of copies of recordings containing the child's testimony. The court told the attorneys for the parties that they would be allowed a copy of the CD, that the attorneys were to maintain possession of the CD, and that their clients could listen to the CD of the child's testimony in the attorneys' offices, but the attorneys could not provide or deliver the CD or a copy thereof to the parties. The court also directed that the parties were not permitted to request or obtain a copy of the CD.

36.

After the hearing, the Accused instructed his associate to obtain a copy of the CD containing the minor child's testimony from the court and to arrange for father to listen to the testimony. The Accused's associate obtained a copy of the CD as requested and on February 21, 2005, at the request of father, released a copy of the CD containing the minor child's testimony to father contrary to the court's directive. The Accused contends that he advised his associate of the protective order, but the associate does not recall that he did so.

37.

The Accused failed to adequately communicate and take reasonable steps to insure that his associate and other members of his office were informed that the

court had directed that the father not be given a copy of the recording containing the child's testimony.

38.

The Accused admits that the aforesaid conduct constitutes conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4) of the Rules of Professional Conduct.

Shiffer Matter

Case No. 05-170

39.

Prior to October 8, 2004, Jerry Shiffer and Terra Shiffer (hereinafter, collectively, "Shiffers") retained the Accused to assist them in seeking relief under the United States Bankruptcy Code.

40.

At the Accused's direction, the Accused's staff prepared drafts of the bankruptcy petition and schedules for the Shiffers. On January 19, 2005, the Shiffers met with the Accused's associate to review the petition and schedules for accuracy. The Accused's associate asked if anyone owed them money and whether they expected any tax refund. The Shiffers denied having any such assets or claims.

41.

On January 19, 2005, the Shiffers signed the Chapter 7 bankruptcy petition, schedules, statement of financial affairs, and other documents under penalty of perjury. The Shiffers represented in the bankruptcy petition and other documents filed with the court that they had no liquidated debts, including tax refunds, owing to them.

42.

On February 2, 2005, the Accused filed the Shiffers' bankruptcy petition and other documents in the United States Bankruptcy Court for the District of Oregon, *Jerry Shiffer and Terra Shiffer, Debtors,* Case No. 0S-60708fra7 (hereinafter "Bankruptcy Case"). On February 3, 2005, the court scheduled a 341(a) meeting of creditors concerning the Bankruptcy Case. The Shiffers and the Accused were required to appear at the 341(a) meeting.

43.

On February 10, 2005, the Shiffers filed their 2004 state income tax return seeking a refund of about $380.00. The Shiffers also filed their 2004 federal income tax return seeking a refund of $4,001.00. The tax authorities issued the

refunds to the Shiffers. Pursuant to 11 USC §541, the claim for the Shiffers' tax refunds and the tax refunds were property of the bankruptcy estate.

44.

About February 16, 2005, Terra Shiffer telephoned the Accused's associate. Terra Shiffer disclosed that the Shiffers anticipated receiving tax refunds for 2004, and asked if the bankruptcy trustee could take the tax refunds and what could be done to keep them. The Accused's associate did not previously know that the Shiffers claimed or anticipated receiving tax refunds for 2004. The Accused's associate told Terra Shiffer that she would have to ask the Accused.

45.

The Accused told his associate to tell the Shiffers if they did not appear for the 341(a) meeting of creditors, the Bankruptcy Case would be dismissed and they could use the refunds to make their mortgage payments. The Accused also told his associate to tell the Shiffers they could re-file the bankruptcy petition after they received and disbursed the tax refunds. The Accused did not advise the Shiffers or tell his associate to advise the Shiffers to disclose and deliver the tax refunds to the bankruptcy trustee or the court or to hold and not to disburse the tax refunds.

46.

The Shiffers and the Accused did not appear at the 341(a) meeting of creditors. The Accused and the Shiffers did not notify the bankruptcy trustee or the court that they did not intend to appear. Thereafter, the bankruptcy trustee inquired with tax authorities to determine if the Shiffers had filed federal and state tax returns and received refunds for the 2004 tax year. The tax authorities notified the bankruptcy trustee that tax returns had been filed, and of the dates and amounts of refunds issued to the Shiffers.

47.

On March 16, 2005, the bankruptcy trustee notified the Accused that he had learned from the tax authorities that the Shiffers had been issued substantial tax refunds. The trustee also demanded that those refunds be immediately turned over. On March 17, 2005, the bankruptcy court ordered the Shiffers to turn over the tax refunds. The Shiffers' Bankruptcy Case was not dismissed.

48.

The Accused admits that the aforesaid conduct constituted vicarious responsibility for another lawyer's conduct and conduct prejudicial to the administration of justice in violation of RPC 5.1(a) and (b) and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct.

Trust Account

Case Nos. 06-86, 06-87

49.

Between 2003 and 2005, the Accused maintained a lawyer trust account. The Accused was responsible for and was the sole signator on the trust account.

50.

In or about October 2003, Colleen Kornelis (hereinafter "Kornelis") retained the Accused's law firm to represent her interests in a dissolution of marriage matter. As part of the resolution of the case, the parties' home was sold. The proceeds of the sale were deposited in the Accused's lawyer trust account with the understanding that funds would be disbursed to pay the parties' creditors and attorney fees.

51.

The Accused signed and delivered checks drawn on his lawyer trust account for disbursement of Kornelis's funds to Kornelis's creditors, Kornelis, and the Accused. The Accused failed to prepare and maintain complete and accurate records of his receipt, deposit, and disbursement of Kornelis's funds. The Accused disbursed funds in excess of the balance of Kornelis's funds from his lawyer trust account and thereby withdrew funds belonging to or held for the benefit of other clients.

52.

In or about 2004, Christy Yullie, NKA Brown (hereinafter "Brown"), retained the Accused's law firm to represent her interests in a dissolution of marriage matter. On November 22, 2004, the Accused held $15,700 in his lawyer trust account for the benefit of Brown.

53.

On or about November 30, 2004, and December 23, 2004, the Accused signed checks and disbursed Brown's funds from his lawyer trust account, $10,000 to the Accused and, by agreement of the parties, $5,000 to opposing counsel, leaving a $700 balance of Brown's funds on deposit in the account.

54.

The Accused failed to prepare and maintain complete and accurate records of his deposit and disbursement of Brown's funds from his lawyer trust account. On or about March 10, 2005, the Accused signed a check and disbursed $6,700 from his lawyer trust account to himself for payment of attorney fees concerning the Brown matter. The Accused disbursed approximately $6,000 in excess of the

balance of the amount on deposit for Brown from his lawyer trust account, and thereby withdrew funds belonging to or held for the benefit of other clients.

55.

The Accused admits that the aforesaid conduct constituted failure to maintain client funds in trust, and failure to prepare and maintain complete and accurate records of his receipt, deposit, and disbursement of client funds, in violation of DR 9-101(A) and DR 9-101(C)(3) of the Code of Professional Responsibility, and RPC 1.15-1(c) and RPC 1.15-1(a) of the Rules of Professional Conduct.

OTHER ALLEGATIONS

56.

On further factual inquiry, the parties agree that the alleged violations of RPC 8.4(a)(3) and RPC 8.1(a)(1) in Case No. 05-169 and RPC 1.2(c) and RPC 8.4(a)(3) in Case No. 05-170 shall, upon approval of this stipulation, be dismissed.

SANCTION

57.

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

A. *Duty Violated.* The Accused violated duties to his clients, the legal system, and the profession. *Standards,* §§ 4.1, 6.1, 6.2, 6.3, and 7.0.

B. *Mental State.* The Accused's conduct demonstrates that he acted knowingly and negligently. 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. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7.

The Accused acted knowingly when he failed to disclose material information to the state court in the Dissolution Case, and to the bankruptcy court and bankruptcy trustee. The Accused was negligent in his record-keeping practices concerning his receipt, deposit, withdrawal, and disbursement of clients' funds. He failed to recognize that his records were not accurate or adequate.

He was also negligent in failing to clearly communicate the court's restriction concerning the delivery of a copy of the recording of the child's

testimony in the Floyd matter, and instructions to an associate when she sought his advice concerning the Shiffers' bankruptcy matter.

C. *Injury.* In determining the appropriate sanction, consideration is given to both actual and potential injury. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992). The Accused caused actual and potential injury to his clients, the court, and the public. The Accused withdrew funds from trust that exceeded the funds on deposit for certain clients and thereby used other clients' funds. The Bar does not, however, contend that clients lost money as a result of the Accused's conduct. The Accused reimbursed the funds on notice of the improper withdrawal. The Accused caused actual injury to the courts and the bankruptcy trustee. The bankruptcy trustee and the state and bankruptcy courts devoted substantial additional time to the Williams, Shiffer, and Floyd cases because of the Accused's and his clients' conduct, much of which may have been avoided if complete and accurate information had been communicated in the first instance.

D. *Aggravating Factors.* "Aggravating factors" are considerations that may increase the degree of discipline to be imposed. *Standards,* § 9.22. The Accused was admonished in 1997 for violations of DR 9-101(A). He was also reprimanded in 2002 for violation of DR 6-101(B). *Standards,* § 9.22(a). There is a pattern of misconduct and multiple offenses. *Standards,* § 9.22(c), (d). The Accused has substantial experience in the practice of law, having been admitted to practice in 1992. *Standards,* § 9.22(i). There is also some evidence of dishonest motives. *Standards,* § 9.22(b).

E. *Mitigating Factors.* "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. *Standards,* § 9.32. The Accused cooperated with the Bar in resolving this proceeding and expresses that he is remorseful. *Standards,* § 9.32(e), (*l*). Also, he was sanctioned by the bankruptcy court concerning his conduct in the Shiffer matter, Case No. 05-170. *Standards,* § 9.22(k).

58.

Under all the circumstances present, the *Standards* suggest that a period of suspension is the appropriate sanction. *Standards,* §§ 4.12. 6.12, 6.22, 6.32, 7.2, and 8.3(b).

Oregon case law is in accord. *In re Eakin,* 334 Or 238, 48 P3d 147 (2002) (60-day suspension for violations of DR 9-101(A) and DR 9-101(C)(3)); *In re Hiller,* 298 Or 526, 694 P2d 540 (1985) (120-day suspension for violation of DR 1-102(A)(3) and related statute); *In re Melmon,* 322 Or 380, 908 P2d 822 (1995) (90-day suspension for violation of DR 1-102(A)(3) and DR 5-105(E)); *In re Benson,* 417 Or 164, 854 P2d 466 (1993) (6-month suspension for violation of DR 1-102(A)(3), DR 7-l02(A)(5), DR 7-102(A)(7), and DR 1-103(C)); and *In re Claussen,* 322 Or 466, 909 P2d 862 (1996) (1-year suspension for violation of DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(3)). *See also In re MacMurray,* 12

DB Rptr 115 (1998) (6-month suspension for violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 7-102(A)(7), and ORS 9.527(4)).

59.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of one (1) year. The suspension shall be effective 3 days after the date this stipulation is approved.

60.

In addition, the Accused shall pay to the Bar its reasonable and necessary costs in the amount of $1,684.55 incurred for the Accused's deposition. 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 Bar. The Bar may, without further notice to the Accused, apply for and is entitled to entry of judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate from the date the Stipulation for Discipline is approved, until paid in full.

61.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as a member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

62.

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

DATED this 2nd day of August 2007.

/s/ Brian J. Sunderland
Brian J. Sunderland
OSB No. 92478

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. 06-135, 06-136,
	)	07-40, and 07-41
LAWRENCE P. CULLEN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber L. Bevacqua-Lynott
Counsel for the Accused:	Susan D. Isaccs
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(B), RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d). Stipulation for Discipline. Six-month suspension.
Effective Date of Order:	November 1, 2007

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 November 1, 2007, for violations of DR 6-101(B) and RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d).

DATED this 9th day of October 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, 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 April 20, 2007, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of DR 6-101(B) and RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter or promptly comply with reasonable requests for information); RPC 1.15-1(d) (failure to promptly deliver to a client property the client is entitled to receive); and RPC 1.16(d) (failure upon termination of representation to take steps to the extent reasonably practicable to protect a client's interests). 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.

DOLLY McFADDEN MATTER

Case No. 06-135

Facts

5.

In September 2004, Dolly McFadden (hereinafter "McFadden") employed the Accused to pursue claims for personal injuries arising from two accidents that occurred in June and August 2004.

6.

From March 2005 through December 2005, the Accused did not adequately respond to McFadden's repeated attempts to contact him or provide her with copies of the reports of the two independent medical examinations she had undergone in March 2005, as McFadden requested. The Accused only briefly responded to two e-mails from McFadden in March 2005 and forwarded other documents on two occasions in August 2005. He did not follow through with a telephone appointment in December 2005. One independent medical examination report was mailed directly to McFadden by the insurance company but the other one was never received and the Accused did not follow up to determine whether McFadden ever received it.

7.

In January 2006, McFadden terminated the Accused's services and demanded that he return her files to her within three days. The Accused did not respond, or communicate to her that he believed she already had all of the file materials. The Accused did not return her requested materials to her until September 2006.

Violations

8.

The Accused admits that, by failing to adequately communicate with McFadden or respond to her requests for her file materials, the Accused violated RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter or promptly comply with reasonable requests for information) and RPC 1.15-1(d) (failure to promptly deliver to a client property the client is entitled to receive).

9.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 1.16(d) in the McFadden matter should be and, upon the approval of this stipulation, is dismissed.

CHANG YANG MATTER

Case No. 06-136

Facts

10.

In July 2002, Chang Sun Yang (hereinafter "Yang") was involved in a motor vehicle accident. In early August 2002, Yang employed the Accused to pursue a claim for personal injuries arising out of the accident.

11.

In July 2004, the Accused filed a lawsuit on Yang's behalf. Beginning in September 2004, the Accused took no significant action on the matter and failed to respond to any of Yang's attempts to communicate with him. The Accused also failed to communicate with the arbitrator assigned to the case, and the case was dismissed in August 2005 for failure to schedule a hearing within a prescribed period following the appointment of an arbitrator. The court notified the Accused of this action, but he has no record of receiving the court's dismissal. The Accused failed to notify Yang of the dismissal.

12.

In May 2006, Yang consulted with another attorney, who wrote to the Accused, expressed concern about his lack of communication, and demanded a written explanation of the status of the case within five days. The Accused did not respond.

Violations

13.

The Accused admits that his failure to take action on Yang's matter violated DR 6-101(B) and RPC 1.3 (neglect of a legal matter). In addition, the Accused's failure to notify Yang of significant events in his case, including its dismissal, and his failure to respond to Yang's attempts to communicate with him violated RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter or promptly comply with reasonable requests for information).

JENNIE CLARK MATTER

Case No. 07-40

Facts

14.

In July 2004, Jennie Clark (hereinafter "Clark") employed the Accused to pursue multiple claims for injuries she had received in three separate automobile accidents.

15.

In July 2004, the Accused filed a lawsuit on Clark's behalf. Beginning in February 2005, the Accused took no significant action on the matter and failed to respond to Clark's attempts to communicate with him. The Accused also failed to communicate with opposing counsel or the court, which eventually dismissed Clark's case for failure to comply with the rules governing arbitration on April 22, 2005. The Accused has no record of receiving the arbitration referral notice from the court; however, the Accused timely received the court's notice of the

dismissal. Thereafter, the Accused failed to get Clark's lawsuit reinstated before he ceased his representation in December 2005.

Violations

16.

The Accused admits that his failure to take action on Clark's matter violated DR 6-101(B) and RPC 1.3 (neglect of a legal matter). In addition, the Accused's failure to notify Clark of significant events in her cases, and his failure to respond to Clark's attempts to communicate with him, violated RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter or promptly comply with reasonable requests for information).

TAM THI PHAM MATTER

Case No. 07-41

Facts

17.

In November 2002, Tam Thi Pham (hereinafter "Pham") was involved in a motor vehicle accident. Later that same month, Pham employed the Accused to pursue a claim for personal injuries arising out of the accident.

18.

In March 2004, the Accused filed a lawsuit on Pham's behalf. Between June 2004 and July 2005, the Accused took no significant action on the matter and failed to respond to Pham's (and her agent's) attempts to communicate with him. The Accused also failed to communicate with the court. Pham's case was dismissed by the court in October 2004 for failure to select an arbitrator and schedule the arbitration. The Accused was notified by the court of this action, but has no record of receiving the court's dismissal. The Accused failed to notify Pham of it.

19.

In July 2005, the Accused participated in depositions related to the case, but thereafter took no other significant action on the matter and failed to respond to Pham's (and her agent's) attempts to communicate with him until the Accused was contacted by another lawyer on Pham's behalf in August 2006. At that time, the Accused was prompted to review the court file and learned that the case had been dismissed.

Violations

20.

The Accused admits that his failure to take action on Pham's matter violated DR 6-101(B) and RPC 1.3 (neglect of a legal matter). In addition, the Accused's failure to notify Pham of significant events in her case, including its dismissal, and his failure to respond to Pham's attempts to communicate with him, violated RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter or promptly comply with reasonable requests for information).

SANCTION

21.

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

A. *Duty Violated.* The Accused violated his duty of diligence to his clients. *Standards,* § 4.4. The *Standards* provide that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards,* p. 5.

B. *Mental State.* The Accused knowingly failed to attend to his clients' cases and knowingly failed to respond to their inquiries, including those requesting the return of client materials. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* p. 9.

C. *Injury.* Injury is harm to a client, the public, the legal system, or the profession, which results from a lawyer's misconduct. *Standards,* p. 9. Injury can be actual or potential. *Standards,* p. 27. There was significant actual injury as a result of the Accused's neglect, as three of the four clients had some or all of their claims dismissed when he failed to act. There was the potential for the fourth to be adversely affected in a similar fashion. In addition, all of the Accused's clients experienced actual injury in the form of enormous frustration at the Accused's repeated lack of response over significant periods of time. *See In re Cohen,* 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner,* 325 Or 421, 426–427, 939 P2d 39 (1997).

D. *Aggravating Factors.* Aggravating factors include:

1. A prior record of discipline. *Standards,* §9.22(a) The Accused has a prior reprimand for violations of DR 9-101(A) (failure to deposit or maintain client funds in trust) and DR 9-101(C)(3) (failure to account for client property). *In re Cullen,* 15 DB Rptr 160 (2001).

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

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

4. At least one of the Accused's clients was a vulnerable victim in that she was unable to speak English, and had to rely on a translator to interpret for her. *Standards,* § 9.22(h).

5. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 1992 and Texas in 1984. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused was suffering from personal or emotional problems during a portion of the relevant time period due to the loss of his mother in October 2004. *Standards,* § 9.32(c).

3. The Accused made a good faith effort to rectify the consequences of some of his misconduct by notifying Clark of a potential surviving claim, notifying McFadden's new lawyer of the applicable statute of limitations, and notifying PLF of possible claims by all four clients. The Accused has also taken steps to improve his office practices to avoid similar circumstances in the future. *Standards,* § 9.32(d).

4. The Accused was cooperative in the disciplinary proceedings. *Standards,* § 9.32(e).

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

22.

The *Standards* provide for a period of suspension where a lawyer engages in a knowing neglect of a client matter, including a knowing failure to communicate with his clients. *Standards,* § 4.42. Oregon cases reach a similar conclusion. *See, e.g., In re Redden,* 342 Or 393, 153 P3d 113 (2007) (60-day suspension where lawyer advised the trial court that a matter was resolved and that it could take the case off the hearing docket, but then failed to have the opposing party sign the stipulation he drafted or submit it to the court for nearly 2 years); *In re LaBahn,* 335 Or 357, 67 P3d 381 (2003) (60-day suspension where lawyer failed to timely serve lawsuit or notify client of dismissal for more than a year); *In re Schaffner,* 325 Or 421, 939 P2d 39 (1997) (2-year suspension for knowing neglect of a single client matter; failing to promptly return client materials and failure to cooperate with the Bar); *In re Parker,* 330 Or 541, 9 P3d 107 (2000) (4-year suspension for neglecting practice for days and weeks at a time resulting in neglect of four client matters and for failing to cooperate with the bar); *In re*

Schaffner, 323 Or 472, 918 P2d 803 (1996) (120-day suspension—60 days for attorney's knowing neglect of single client matter and 60 days for failing to respond to the Bar). The Accused's conduct is not as egregious as *Schaffner* (1997) or *Parker* because the Accused has cooperated with the Bar. However, in light of his knowing neglect and failure to communicate in multiple matters, a sanction greater than *Redden*, *LaBahn*, or *Schaffner* (1996) is appropriate for the Accused's misconduct.

23.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 6 months for violations of DR 6-101(B) and RPC 1.3, RPC 1.4(a), and RPC 1.15-1(d), the sanction to be effective November 1, 2007.

24.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

25.

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

EXECUTED this 2nd day of October 2007.

/s/ Lawrence P. Cullen
Lawrence P. Cullen
OSB No. 920468

EXECUTED this 3rd day of October 2007.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-120
	)	
THOMAS JOHN HASTERT,	)	SC S055215
	)	
Accused.	)	

ORDER IMPOSING PUBLIC REPRIMAND

Upon consideration by the court.

The Oregon State Bar has notified this court that the Accused has been disciplined by State Bar of California. The Oregon State Bar on behalf of the State Professional Responsibility Board recommended a reprimand. The court accepts the recommendation, and the Accused is publicly reprimanded.

DATED this 18th day of October 2007.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

SUMMARY

On October 18, 2007, the supreme court filed an order of reciprocal discipline publicly reprimanding Grass Valley, California, lawyer Thomas John Hastert for violation of Rule 1-300(A) of the California Rules of Professional Conduct when he failed to supervise the conduct of a non-lawyer legal assistant concerning certain collections work. The legal assistant's conduct constituted the practice of law. Hastert thereby aided in the unauthorized practice of law.

Hastert was admitted to practice in California in 1989 and in Oregon in 1991. He had no prior record of discipline. Hastert has been suspended in Oregon since 2002 for failure to pay Bar dues and failure to comply with MCLE requirements.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-72
	)	
KATHLEEN KELLY MOORE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Robert T. Scherzer; Stacy J. Hankin
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violation of DR 2-106(A). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	November 1, 2007

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 on November 1, 2007, or one day after this Stipulation for Discipline has been approved, whichever is later, for violation of DR 2-106(A).

DATED this 29th day of October 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 20, 1979, 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 September 22, 2006, 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). 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 January 2002, Kristin Pollock (hereinafter "Pollock") consulted with the Accused regarding a pending dissolution of marriage proceeding. The Accused billed Pollock by the hour for some of her time, and Pollock paid the Accused's bill. The Accused chose not to bill Pollock for some of the time she expended in January 2002.

6.

On May 3, 2002, Pollock retained the Accused to represent her in the pending dissolution of marriage proceeding referenced in paragraph 5 herein. In relevant part, the written fee agreement provided for Pollock to pay the Accused a $50,000.00 nonrefundable retainer. Of that retainer, $40,000.00 was to be applied to the Accused's hourly fees as incurred. The remaining $10,000.00, described as

initial compensation, was not to be applied to the Accused's hourly fees. Pollock paid the $50,000.00 retainer and the Accused collected $10,000.00 of it as initial compensation. At the time the Accused entered into, charged, and collected the $10,000.00 in initial compensation, she had not performed any legal services on Pollock's behalf for which she did not separately bill to or collect from Pollock.

7.

Beginning on April 29, 2002, and pursuant to the written fee agreement referenced in paragraph 6 herein, the Accused charged Pollock $225.00 per hour for work she performed and $50.00 per hour for work performed by her legal assistant and law clerk.

8.

At the time the Accused was retained, trial was scheduled for August 20, 2002. On June 27, 2002, the trial date was postponed. On July 17, 2002, trial was rescheduled for November 19, 2002.

9.

Between May 3, 2002, and October 10, 2002, the Accused charged Pollock $47,261.25 for her work and $9,140.00 for work performed by her legal assistant and law clerk.

10.

On October 11, 2002, the Accused charged to and collected from Pollock an additional $11,616.00 per month, assessed retroactively to May 2002. The additional charges constituted the monthly overhead costs incurred by the Accused to operate her law office. Pollock agreed, in writing, that the Accused could disburse these funds to the Accused as described herein.

11.

The dissolution of marriage proceeding went to trial in November 2002, the court ruled on all of the pending issues, and a judgment was eventually entered.

12.

On March 19, 2004, Pollock retained the Accused to represent her in postdissolution matters and defend against a motion to change custody. In relevant part, the written fee agreement provided for Pollock to pay $10,000.00, described as a preliminary fee, which was not to be applied to the Accused's hourly fees. At the time the Accused entered into the agreement for the $10,000.00 preliminary fee, she had not performed any legal services on Pollock's behalf for which she had not separately billed to or collected from Pollock. Pollock paid the $10,000.00 preliminary fee to the Accused, but contrary to the written fee agreement, the $10,000.00 was applied to the Accused's hourly fees.

Violations

13.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 12, she violated DR 2-106(A).

Sanction

14.

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

A. *Duty Violated.* The Accused violated duties she owed to Pollock and the profession not to enter into agreements for, charge, or collect clearly excessive fees. *Standards,* § 7.0.

B. *Mental State.* At the time the Accused entered into both fee agreements with Pollock, she knew that she had not performed any legal services in exchange for the initial compensation or preliminary fee. The same can be said as to the retroactive charging of overhead. The Accused knowingly charged and collected those fees, although in doing so, she did not intend to violate any disciplinary rules.

C. *Injury.* Pollock sustained actual injury as a result of the Accused's misconduct. Initially, she paid $10,000.00 in clearly excessive fees. In October 2002, she paid an additional $58,080.00 in retroactive fees.

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

1. *Multiple offenses.* The Accused committed three violations of DR 2-106(A). *Standards,* § 9.22(d).

2. *Vulnerability of victim.* At the time the Accused charged to and collected from Pollock the retroactive charges, Pollock was vulnerable as trial was only six weeks away and it would have been difficult for Pollock to find another lawyer to represent her at trial. *Standards,* § 9.22(h).

3. *Substantial experience in the practice of law.* The Accused has been a lawyer in Oregon since 1979. *Standards,* § 9.22(i).

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

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

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

3. Character or reputation. *Standards*, § 9.32(g).

4. Remorse. *Standards*, § 9.32(m).

15.

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.

16.

Lawyers who have engaged in somewhat similar conduct have been suspended for varying periods of time. *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (30-day suspension of a lawyer who, in addition to not properly depositing, maintaining, and accounting for client funds, violated DR 2-106(A) and DR 2-110(A)(3) when he failed to make a refund of unearned fees after the client terminated his representation); *In re Wyllie III*, 331 Or 606, 625, 19 P3d 338 (2001) (four-month suspension imposed on lawyer who, among other things, charged and collected an amount in excess of his hourly rate); *In re Gastineau*, 317 Or 545, 857 P2d 136 (1993) (one-year suspension imposed on lawyer who, among other things, charged a clearly excessive fee in five matters); *In re Sassor*, 299 Or 570, 704 P2d 506 (1985) (one-year suspension imposed on lawyer who, among other things, charged a fee in excess of what was allowed by statute); *In re Adams*, 293 Or 727, 652 P2d 787 (1982) (60-day suspension of a lawyer, who among other things, charged his client an amount in excess of what the applicable workers' compensation administrative rules allowed).

Generally, long suspensions have been imposed when the accused lawyer also engaged in other serious misconduct or the misconduct occurred in multiple matters. Here, the Accused violated only one rule in a single matter, although she did so on multiple occasions.

17.

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), the suspension to be effective on November 1, 2007, or one day after this Stipulation for Disciplinary has been approved by the Disciplinary Board, whichever is later. The Accused also agrees to refund $53,192.12 to Pollock. Before the Accused is reinstated to the practice of law, she will provide proof to the Bar that she and Pollock have reached a payment arrangement regarding the refund.

18.

In addition, on or before the 60th day after this Stipulation for Discipline has been approved, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $407.80, incurred for the taking of her

deposition and the cost of transcript. Should the Accused fail to pay $407.80 in full by the 60th day after this Stipulation for Discipline is approved, 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 pursuant to the terms of BR 3.6.

EXECUTED this 23rd day of October 2007.

/s/ Kathleen Kelly Moore
Kathleen Kelly Moore
OSB No. 790884

EXECUTED this 24th day of October 2007.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-43
	)	
KEITH G. JORDAN,	)	SC S055065
	)	
Accused.	)	

ORDER IMPOSING RECIPROCAL DISCIPLINE

Upon consideration by the court.

The court accepts, in part, the recommendation of the Oregon State Bar's Professional Responsibility Board that the Accused be suspended from the practice of law in Oregon. The Accused, Keith G. Jordan (Bar No. 03065), is suspended from the practice of law in Oregon for 270 days, effective as of the date of this order.

DATED this 1st day November 2007.

/s/ Robert D. Durham
Robert D. Durham
Presiding Justice

ORDER ALLOWING RELIEF FROM DEFAULT, ALLOWING PETITION FOR RECONSIDERATION AND AMENDING ORDER OF NOVEMBER 1, 2007

On November 26, 2007, the Accused filed a petition for relief from default and for reconsideration. The petition for relief from default is construed to be a motion for relief from default, and the motion is granted. The court on its own motion grants an extension of 11 days to file the petition for reconsideration on November 26, 2007.

The petition for reconsideration is allowed. The court's order of November 1, 2007, is hereby amended to show that the effective date of the Accused's suspension is January 1, 2008.

DATED this 30th day of November 2007.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

SUMMARY

On November 1, 2007, the supreme court suspended Portland lawyer Keith G. Jordan from the practice of law in Oregon for 270 days, effective January 1, 2008. This sanction was imposed on a reciprocal basis for misconduct committed by Jordan in California.

Jordan stipulated in California to disciplinary violations with respect to several complaints made against him in the conduct of his immigration practice. Jordan stipulated that in seven of the matters, he neglected his clients' cases; in one matter, he charged a clearly excessive fee; in six matters, he failed to communicate with his clients; and in one matter, he engaged in conduct prejudicial to the administration of justice.

As a result of Jordan's misconduct, several of his clients faced deportation. Per the stipulation, California imposed a 2-year suspension which was stayed subject to probationary conditions which included a 9-month actual suspension. Other probationary conditions required Jordan to take and pass the Multi-State Professional Responsibility examination and to make restitution to his former clients in an amount totaling $8,200.00 (plus interest).

Jordan was admitted to practice in Oregon in 2003. He had no prior record of discipline.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-100
	)	
MARSHA L. McDONOUGH,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.1, RPC 1.3, and RPC 1.4(a). Stipulation for discipline. Public reprimand.
Effective Date of Order:	November 5, 2007

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 RPC 1.1, RPC 1.3, and RPC 1.4(a).

DATED this 5th day of November 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On September 20, 2007, the Bar filed a Formal Complaint against the Accused for alleged violations of RPC 1.1, RPC 1.3, and RPC 1.4(a) 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.

On April 20, 2004, the Accused was appointed to represent Robert Meader (hereinafter "Meader") in a misdemeanor assault charge (hereinafter "assault matter") in which it was alleged that Meader was involved in a jailhouse altercation. The Accused continued to represent Meader in the assault matter until April 2006.

6.

During those two years, the Accused failed to pursue the defense of the assault matter and failed to possess the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation in that she did not retain the services of an investigator, made little or no effort to contact potential witnesses, and did not obtain a copy of a videotape taken of the altercation.

7.

On November 26, 2004, Meader was indicted on multiple counts of robbery and burglary (hereinafter "Measure 11 matter").

8.

In approximately January 2005, Meader left the state. In April 2005, Meader wrote the Accused, asked her to respond to a number of questions and instructed her how he wanted to proceed in the assault matter. Meader also asked a number of questions about the Measure 11 matter.

9.

On May 3, 2005, the Accused was appointed to represent Meader in the Measure 11 matter. The Accused continued to represent Meader in the Measure 11 matter until April 2006.

10.

The Accused failed to respond to Meader's April 2005 letter and, until September 2005, failed to keep Meader reasonably informed about the status of the assault and Measure 11 matters.

11.

During the eleven months when the Accused represented Meader in the Measure 11 matter, she failed to pursue Meader's defense and failed to possess the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation in that she did not retain the services of an investigator and otherwise made little or no effort to investigate the matter.

Violations

12.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 11, she violated RPC 1.1, RPC 1.3, and RPC 1.4(a).

Sanction

13.

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

A. *Duties Violated.* The Accused violated duties she owed to Meader to act with reasonable diligence and promptness, and to provide him with competent representation.

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

C. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). As a result of the Accused's neglect and failure to provide competent representation, the potential for injury to Meader was significant. Fortunately, Meader discharged the Accused and was able to retain another lawyer who handled the assault and Measure 11 matters to a satisfactory resolution.

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

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

2. *Substantial experience in the practice of law.* The Accused has been a lawyer in Oregon since 1989. *Standards*, § 9.22(i).

E. *Mitigating Circumstances.* 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 proceeding. *Standards*, § 9.32(e).

4. Remorse. *Standards*, § 9.32(m).

14.

Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, § 4.43. Reprimand is also generally appropriate when a lawyer is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client. *Standards*, § 4.53(a).

15.

Under similar circumstances, reprimands have been imposed. *In re Greene*, 276 Or 1117, 557 P2d 644 (1976), *In re Stevens*, 20 DB Rptr 53 (2006), and *In re Bolland*, 12 DB Rptr 45 (1998) (reprimand imposed on lawyers who violated DR 6-101(A) and DR 6-101(B) in a single matter).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.1, RPC 1.3, and RPC 1.4(a).

17.

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

EXECUTED this 30th day of October 2007.

/s/ Marsha L. McDonough
Marsha L. McDonough
OSB No. 890851

EXECUTED this 1st day of November 2007.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-137
	)	
JON G. SPRINGER,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	John J. Kolego
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.15-1(a), and RPC 1.15-1(c). Stipulation for discipline. Public reprimand.
Effective Date of Order:	November 13, 2007

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 RPC 1.3, RPC 1.15-1(a), and RPC 1.15-1(c).

DATED this 13th day of November 2007.

/s/ Jill A. Tanner
Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Carl W. Hopp Jr.
Carl W. Hopp Jr., Esq., Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on 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 Deschutes County, Oregon.

3.

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

4.

On February 9, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 1.3, RPC 1.15-1(a), and RPC 1.15-1(c) of the Rules of Professional Conduct. 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 November 2003, the Accused undertook to represent Sean McMurry (hereinafter "McMurry") in a criminal case. The Accused and McMurry entered into a written fee agreement that provided McMurry's initial payment in the matter was a nonrefundable fee earned on receipt. The criminal case ended after the Accused successfully negotiated a diversion agreement that resulted in the dismissal of the charges. On or about mid-August 2005, the Accused undertook to represent McMurry in a proceeding to expunge McMurry's criminal record in the prior matter for a flat fee of $350, paid in advance by McMurry. The Accused did not have a written fee agreement with McMurry that provided the flat fee in the expungment matter would be deemed earned on receipt. The Accused failed to

deposit McMurry's $350 fee into his lawyer trust account or maintain it in trust thereafter until he earned it or incurred expenses on McMurry's behalf.

6.

Between mid-August 2005 and mid-April 2006, the Accused failed to take any action on McMurry's expungment matter, failed to adequately communicate with McMurry about the status of the matter, and failed to respond to McMurry's attempts to contact him about the matter.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.3, RPC 1.15-1(a), and RPC 1.15-1(c).

Sanction

8.

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

A. *Duty Violated.* The Accused violated his duties to preserve client property and to act with diligence. *Standards,* 4.1, 4.4.

B. *Mental State.* The Accused negligently believed that the prior written agreement with McMurry in the underlying criminal matter permitted him to treat McMurry's funds in the expungment matter as if they were earned on receipt. The Accused was aware that he was neglecting McMurry's expungment matter but he did not do so intentionally.

C. *Injury.* The Accused caused actual and potential injury to his client. McMurry suffered great aggravation as a result of the delay since he perceived that the matter was important to his employment prospects and McMurry was frustrated by the Accused's failure to communicate with him about the status of the matter.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has substantial experience in the practice of law, having been admitted to practice since 1986. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused has no relevant prior disciplinary history. *Standards*, § 9.32(a); *In re Cohen*, 330 Or 489, 497–501, 8 P2d 953 (2000) (discussing what actions constitute prior discipline).

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

3. The Accused suffered personal and emotional problems during the period of neglect in that his diabetes was poorly controlled and he suffered from depression. *Standards*, § 9.32(c). The Accused has taken steps to address those problems.

4. The Accused made timely good faith efforts to rectify the consequences of his misconduct by quickly completing McMurry's legal matter upon McMurry's initial complaint to the bar. *Standards,* § 9.32(d).

5. The Accused was cooperative with the Bar investigation and made full and free disclosure of the facts. *Standards*, § 9.32(e).

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

9.

Reprimand is supported by Oregon case law and prior action of the Disciplinary Board. *In re Cohen, supra,* 330 Or at 505 (public reprimand can be an appropriate sanction for a single case of neglect); *In re Coulter*, 15 DB Rptr 220 (2001) (lawyer reprimanded for violation of DR 6-101(B) and 9-101(C)(4)); *In re Holden*, 12 DB Rptr 49 (1998) (reprimand for violation of DR 6-101(B) and DR 9-101(C)(4)).

10.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.3, RPC 1.15-1(a), and RPC 1.15-1(c), the sanction to be effective upon approval by the Disciplinary Board.

11.

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

EXECUTED this 30th day of October 2007.

/s/ Jon G. Springer
Jon G. Springer
OSB No. 860930

EXECUTED this 1st day of November 2007.

OREGON STATE BAR

By: /s/ Linn D. Davis
Linn D. Davis
OSB No. 032221
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-140
	)	
KEVIN L. CATHCART,	)	
	)	
Accused.	)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	Allison D. Rhodes
Disciplinary Board:	None
Disposition:	Violations of RPC 3.3 and RPC 8.4(a)(3). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	December 12, 2007

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 RPC 3.3 and RPC 8.4(a)(3).

DATED this 12th day of December 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 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 September 21, 2007, the State Professional Responsibility Board (hereinafter "SPRB") authorized the Bar to bring charges against the Accused for violations of RPC 3.3 (misrepresentation to a tribunal) and RPC 8.4(a)(3) (conduct involving misrepresentation) 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.

In June 2002, the Accused undertook to represent Laurie and [redacted] Hale, respectively a mother and her minor daughter, in a pharmaceutical malpractice matter. The Accused filed a lawsuit on behalf of Laurie Hale (hereinafter "Mother") on July 9, 2002. On May 21, 2004, the Accused filed a complaint on behalf of [redacted] Hale (hereinafter "Daughter"). It stated:

> "At all times material herein, plaintiff [redacted] Hale is a minor and her mother, Laurie Hale, is the duly appointed conservator for the purpose of prosecuting this action against defendant."

6.

The above statement was untrue. Although the Accused intended to petition the probate court to appoint Mother to be Daughter's conservator (and in fact, had already prepared the pleadings necessary to do so), he decided—in order to keep costs at a minimum—to delay filing the petition until such time as the case was about to be tried or settled. Nevertheless, the Accused proceeded to file Daughter's lawsuit with the representation found in paragraph 5 above.

7.

After Daughter's complaint was filed, the attorney-client relationship between the Accused and Mother deteriorated. The Accused withdrew from the representation of both Mother and Daughter on October 31, 2005.

8.

After withdrawing, the Accused delivered his file to another attorney. The cases were eventually settled in March 2006. At that time, defense counsel insisted that a conservatorship be established. Separate counsel was retained to prepare and file a petition for conservatorship; once the conservatorship was established, the case settled.

9.

ORCP 27 A permits a minor to appear in court either through a guardian (such as a parent), a guardian ad litem (appointed by the trial court), or a conservator (appointed by the probate court). By stating in Daughter's complaint that Mother was already Daughter's duly appointed conservator, the Accused knowingly misrepresented a material fact.

Violations

10.

The Accused admits that, by filing a complaint that contained an inaccurate statement of material fact, he violated RPC 3.3 and RPC 8.4(a)(3).

Sanction

11.

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

A. *Duty Violated.* The Accused violated his duty to the legal system to refrain from making false statements in documents submitted to the court. *Standards,* § 6.1.

B. *Mental State.* The Accused made a statement in the complaint that he knew was inaccurate (although he believed he could make it accurate when it became necessary to do so). The *Standards* define "knowledge" as the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious object or purpose to accomplish a particular result. *Standards,* § 7.

C. *Injury.* Injury can be actual or potential. In this case, the Accused's misrepresentation created the potential for injury in that the court would be misled as to Mother's status. Also, the Accused's failure to have a conservatorship established from the outset might have delayed resolution of the case.

D. *Aggravating Factors.* Aggravating factors include:

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

E. *Mitigating Factors.* Mitigating factors include:

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

2. Full and free disclosure to disciplinary board / cooperative attitude toward proceedings. *Standards,* § 9.32(e).

12.

Taking into account all of the above factors, the *Standards* provide that a 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 has been withheld, and causes injury or potential injury to a party to the legal proceeding or an adverse or potentially adverse effect on the legal proceeding. *Standards,* § 6.13.

13.

Oregon case law also supports the imposition of a public reprimand. In *In re Boardman,* 312 Or 452, 822 P2d 709 (1991), a lawyer misrepresented to a third party that the lawyer's client was the personal representative of an estate, before the actual appointment occurred. The lawyer's excuse was that he believed that the court was going to appoint his client personal representative, even if it had not yet done so. Boardman was reprimanded.

14.

Similarly, in this case, the Accused represented in the complaint that Mother had already been appointed conservator of Daughter, even though he knew that that had not yet been accomplished. The Accused had every reason to believe that the probate court would appoint Mother conservator when asked to do so before trial or settlement. Thus, as in *Boardman,* the Accused made a statement

that was not true when he made it, but that he reasonably anticipated would become true. In fact, Mother was eventually appointed conservator. As in *Boardman*, the Accused's inaccurate statement caused no actual damage.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of RPC 3.3 and RPC 8.4(a)(3).

16.

This Stipulation for Discipline has been reviewed by Disciplinary Counsel of the Oregon State Bar, it was approved by the SPRB on September 21, 2007, and it shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 5th day of December 2007.

/s/ Kevin L. Cathcart
Kevin L. Cathcart
OSB No. 912337

EXECUTED this 10th day of December 2007.

OREGON STATE BAR

By: /s/ Mary A. Cooper
Mary A. Cooper
OSB No. 910013
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-68
	)	
DALE G. RASMUSSEN,	)	
	)	
Accused.	)	

Counsel for the Bar:	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)(7). Stipulation for discipline. 120-day suspension.
Effective Date of Order:	December 12, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 120 days, effective the day after the date of this order, for violation of DR 1-102(A)(3) and DR 7-102(A)(7).

DATED this 11th day of December 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On July 18, 2007, 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 7-102(A)(7), 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 proceeding.

Facts

5.

In 2000, the Accused was senior counsel for one of Enron Corporation's business units located in Portland, Oregon (hereinafter "Enron"). Beginning in early 2000, the Accused worked with David Leboe (hereinafter "Leboe"), an in-house Enron accountant working in Houston, Texas, on the Coyote Springs 2 transaction (hereinafter "CS2 transaction"). In the CS2 transaction, Enron sought to sell an interest in the CS2 power plant development project to Avista Power (hereinafter "Avista").

6.

Initially, the CS2 transaction consisted of Avista's purchase of an equity interest in the CS2 power plant project, execution of a turnkey engineering

procurement and construction agreement for a power generating facility (hereinafter "EPC contract"), and purchase of a turbine generator for the plant. The EPC contractor was an Enron subsidiary.

7.

Under relevant accounting rules, Enron could recognize revenue from the EPC contract only on a percentage-of-completion basis as construction progressed. However, in order to meet certain earnings targets, Enron wanted to immediately recognize a gain on the sale of the turbine generator. In order to accomplish this goal, Enron entered into separate agreements with regard to Avista's purchase of the turbine generator (hereinafter "the turbine sale") and Avista's purchase of the CS2 power plant equity and execution of the EPC contract (hereinafter "the equity sale and EPC contract").

8.

In an effort to make the turbine sale separate from the equity sale and EPC contract, Enron imposed a two-week gap between the two transactions. Avista agreed to the plan but was unwilling to assume any risk that the equity sale and EPC contract would not close after it purchased the turbine two weeks before. In response to Avista's concern, Enron offered Avista a put option under which Avista could require Enron to repurchase the turbine generator if the equity sale and EPC contract did not close. However, Enron's in-house accountants concluded that, if Enron granted Avista a put option, then Enron could not recognize an immediate gain on the turbine sale. In order to address this problem, Enron asked LJM2, a partnership controlled by Enron's chief financial officer, to sell the put option to Avista.

9.

On July 7, 2000, Avista and LJM2 entered into a written agreement in which Avista purchased an option to put the turbine generator to LJM2 at the original sale price (hereinafter "the LJM2 put option"). The LJM2 put option expired two weeks from the date of the turbine sale, the same day Enron's equity sale and EPC contract with Avista were expected to close. At the same time, Enron and LJM2 orally agreed that if Avista actually exercised the LJM2 put option, Enron would buy the turbine generator from LJM2 (hereinafter "undocumented side agreement").

10.

On behalf of Enron, the Accused negotiated the agreements and drafted several of the key documents referenced in paragraphs 5 through 9 herein. The Accused was aware of the LJM2 put option and the undocumented side agreement. The Accused knew that if the undocumented side agreement between Enron and LJM2 was a documented, enforceable agreement, then, under relevant accounting

rules, Enron would not be allowed to immediately recognize gain from the sale of the turbine.

11.

On or about July 7, 2000, Enron, Avista, and LJM2 closed the turbine sale and the LJM2 put option. Two weeks later Enron, the EPC contractor, and Avista closed the equity sale and the EPC contract. Avista's counsel prepared and distributed transaction notebooks (hereinafter "notebooks") containing copies of all final documents related to the turbine sale and the equity sale and EPC contract to all parties involved in the CS2 transaction.

12.

On September 25, 2000, in connection with an audit of Enron's third-quarter financial statement by Arthur Anderson (hereinafter "AA"), Leboe sent an e-mail to the Accused expressing concern that documents relating to the LJM2 put option were being kept with Enron's records of the turbine sale because if AA knew about the LJM2 put option, it might not approve Enron's decision to immediately recognize a gain on the turbine sale. Leboe instructed the Accused that, if AA contacted the Accused regarding the CS2 transaction, the Accused should not discuss LJM2 and its role. Leboe further instructed the Accused that, if Portland General Electric (hereinafter "PGE"), another Enron subsidiary and party to the CS2 transaction, had copies of documents relating to the LJM2 put option, it should be instructed to keep those documents separate from the documents relating to the turbine sale.

13.

In response to Leboe's instructions, the Accused removed documentation regarding the LJM2 put option from the notebook kept in Enron's Portland office regarding the CS2 transaction and placed them in a separate volume. The Accused also asked PGE staff to return to him or destroy all of the documentation regarding the LJM2 put option from its copy of the notebook. The Accused did not take any further action with regard to PGE's records.

14.

Under applicable federal law, Enron was required to create and maintain accurate records of its transactions and disposition of its assets, and to implement internal accounting controls sufficient to permit preparation of its financial statements in conformance with generally accepted accounting principles. Applicable federal law prohibited any person from knowingly circumventing or failing to implement accounting controls, from directly or indirectly falsifying any records of account Enron was required to maintain, or knowingly causing Enron to file a materially false and misleading financial report with the Securities and Exchange Commission.

Violations

15.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 14, he violated DR 1-102(A)(3) and DR 7-102(A)(7). Upon further factual inquiry, the parties agree that the charge of alleged violation of DR 7-102(A)(8) should be and, upon the approval of this stipulation, is dismissed.

Sanction

16.

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

A. *Duty Violated.* The Accused violated duties he owed to the public not to engage in conduct involving dishonesty, and not to counsel or assist a client to engage in illegal conduct. *Standards,* § 5.0.

B. *Mental State.* The Accused acted knowingly in that he was aware of the nature or attendant circumstances of his conduct, but did not act intentionally to accomplish a particular result.

C. *Injury.* The Accused's conduct contributed to Enron reporting revenue that it was not legally allowed to report. There was the potential for injury when the Accused removed documents from Enron's records. However, Enron's records maintained in the Portland office were not inspected by AA and the Accused was never contacted by AA.

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

1. Dishonest motive. The Accused engaged in dishonest conduct for the benefit of his employer. The Accused was not personally motivated to engage in dishonesty. *Standards,* § 9.22(a).

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

3. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1988.

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

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. The Accused has submitted numerous letters from lawyers and others attesting to his good character and reputation. *Standards*, § 9.32(g).

4. Imposition of other penalties and sanctions. The Accused consented to entry of a judgment by the Securities Exchange Commission which required him to pay a $30,000.00 fine and barred him from appearing and practicing before the Commission for three years. *Standards*, § 9.32(*l*).

5. Remorse. *Standards*, § 9.32(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. *Standards*, § 5.11(b). Reprimand is generally appropriate when a lawyer knowingly engages in conduct, other than criminal conduct, that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. *Standards*, § 5.13.

18.

In the past and under similar circumstances, the court has imposed suspensions of varying length on lawyers who have engaged in dishonest or other illegal schemes on behalf of clients. *In re Davenport*, 334 Or 298, 49 P3d 91, *recon.* 335 Or 67 (2002) (two-year suspension imposed on lawyer who gave false answers in a deposition in order to conceal the true identify of his client); *In re Melmon*, 322 Or 380, 908 P2d 822 (1995) (90-day suspension of lawyer who created or helped to create an aircraft bill of sale that falsely stated lawyer was seller of aircraft and falsely identified pilot as buyer so that her client could obtain a more favorable insurance premium); *In re Benson*, 317 Or 164, 854 P2d 466 (1993) (six-month suspension imposed on lawyer who violated DR 1-102(A)(3), DR 7-102(A)(5), and DR 7-102(A)(7) when he prepared, had his client execute, and recorded two promissory notes secured by a trust deed to real property owned by the client, without consideration); *In re Dinerman*, 314 Or 308, 840 P2d 50 (1992) (63-day suspension imposed on lawyer who knowingly participated in a scheme to avoid a bank's lending limits for his client and who falsely represented in writing that he owned property offered as security for a loan); *In re Hockett*, 303 Or 150, 734 P2d 877 (1987) (63-day suspension of lawyer who, among other things, assisted and counseled his clients to make fraudulent conveyances for the purpose of avoiding lawful debts).

Most recently, the court suspended a lawyer for four months when, as both general counsel and senior vice president, he signed a management representation letter, which he knew would be used in an independent audit, confirming that the corporation had a fixed commitment for a $4.1 million sale, when in fact there

was no fixed commitment. As a result of the misrepresentations made in the letter, the corporation overstated its revenue for the year in question. *In re Fitzhenry*, 343 Or 86, 162 P3d 260 (2007).

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 120 days for violation of DR 1-102(A)(3) and DR 7-102(A)(7), the sanction to be effective the day after this Stipulation for Discipline is approved by the Disciplinary Board.

20.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated in Oregon.

21.

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

EXECUTED this 5th day of December 2007.

/s/ Dale G. Rasmussen
Dale G. Rasmussen
OSB No. 882928

EXECUTED this 7th day of December 2007.

OREGON STATE BAR

By: /s/ Stacy J. Hankin
Stacy J. Hankin
OSB No. 862028
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-114
	)	
EDWARD FITCH,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Gregory P. Lynch
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(4). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	December 13, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Edward Fitch (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 RPC 8.4(a)(4).

DATED this 13th day of December 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

/s/ Carl W. Hopp
Carl W. Hopp, Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, 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, voluntarily, and with the advice of counsel. This stipulation is made under the restrictions of Bar Rule of Procedure 3.6(h).

4.

On July 21, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 3.3(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4) of the Rules 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.

Prior to March 22, 2004, Jeremy Nixon (hereinafter "Nixon") retained an attorney to pursue a medical malpractice claim against Cascade Healthcare Community, Inc. (hereinafter "Cascade"), *Jeremy M. Nixon v. Cascade Healthcare Community, Inc.*, Deschutes County Circuit Court Case No. 04CV0149MA (hereinafter "Court Action I"). In Court Action I, Cascade was represented by an attorney other than the Accused and asserted a counterclaim against Nixon for unpaid medical services. Prior to September 8, 2006, Cascade retained the Accused to pursue a claim against Nixon for unpaid medical services. On September 8, 2006, the Accused filed a civil complaint against Nixon to collect the amount Cascade claimed due, *Cascade Healthcare Community, Inc. v. Jeremy M. Nixon*, Deschutes County Circuit Court Case No. 06CV0474AB (hereinafter "Court Action II").

6.

About November 29, 2006, Nixon's attorney notified the Accused that the same claim asserted by Cascade against Nixon in Court Action II was asserted in Court Action I, which was still pending. About December 18, 2006, Nixon's attorney filed a motion to dismiss Court Action II on the ground that another action was pending between the parties that involved the same claim asserted in Court Action II. The court scheduled a hearing on the motion for January 29, 2007. Thereafter, the Accused agreed to dismiss Court Action II. Nixon's attorney told the Accused that his client was entitled to the award of costs, including the appearance and prevailing party fees. The Accused acknowledged that Nixon was entitled to the award of his appearance fee, but disputed the entitlement to the prevailing party fee.

7.

On January 11, 2007, the Accused sent Nixon's attorney a proposed Stipulated General Judgment of Dismissal and Money Award (hereinafter "Stipulated Judgment"). The document provided for the dismissal of Cascade's claim in Court Action II, and the award to Nixon of his costs, consisting only of the appearance fee and not a prevailing party fee, and included a signature line for Nixon's attorney to indicate his stipulation. On January 15, 2007, Nixon's attorney notified the Accused that he objected to and would not sign the Accused's proposed form of Stipulated Judgment because it did not provide for the award of the prevailing party fee.

8.

About January 23, 2007, the Accused modified the form of the stipulated judgment by deleting the signature line for Nixon's attorney, but failed to delete other references in the form that represented the judgment was stipulated. On January 23, 2007, the Accused submitted the modified stipulated judgment to the Deschutes County Circuit Court clerk, with instructions that it be presented to the presiding judge for review and, if appropriate, execution.

9.

At the time the Accused submitted the modified stipulated judgment to the court, the Accused knew that Nixon's attorney did not stipulate and had expressly rejected the proposed form of judgment because it did not provide for the award of a prevailing party fee. The Accused failed to adequately review the modified form of judgment and the transmittal to the court to delete words that expressed that it was stipulated, and to notify the court that Nixon's attorney had refused to approve or sign the form of judgment on the terms reflected in that document. On January 25, 2007, relying on the representation that the parties had stipulated to the form of judgment and disposition, the court signed the judgment and the hearing on Nixon's motion to dismiss Court Action II was canceled.

10.

The Accused admits that the aforesaid conduct constitutes conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4) of the Rules of Professional Conduct.

SANCTION

11.

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

A. *Duty Violated.* By submitting a form of judgment with inaccurate statements concerning the opposing party's position and not disclosing to the court that the opposing party objected to its form and content, the Accused violated a duty to abide by the substantive and procedural rules affecting the administration of justice. *Standards*, § 6.0.

B. *Mental State.* "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 this situation. *Standards*, at p. 7. The Accused acted with negligence in failing to review the form of judgment and transmittal to ensure their accuracy before submitting them to the court. The Accused assumed that the issue of whether Nixon was entitled to a prevailing party fee would be argued at the scheduled hearing on January 28, 2007, prior to the court signing the proposed form of judgment.

C. *Injury.* In determining the appropriate sanction, consideration is given to both actual and potential injury. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). The Accused caused actual and potential injury to the opposing party and the court. The court relied on the Accused's representations and entered a form of judgment that contained inaccurate information concerning Nixon's position, and did not consider his entitlement to the award of a prevailing party fee.

D. *Aggravating Factors.* Aggravating factors are considerations that may justify an increase in the degree of discipline to be imposed. The Accused has substantial experience in the practice of law. *Standards*, §9.22(i).

E. *Mitigating Factors.* Mitigating factors may justify a reduction in the degree of discipline to be imposed. Mitigating factors in this case include absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to the disciplinary authority, and remorse. *Standards*, §9.32(a), (b), (e), (*l*).

12.

The *Standards* provide that a public 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 a legal proceeding, or causes an adverse or potentially adverse effect on the legal proceedings. *Standards*, § 6.13.

13.

Oregon case law also suggests that a public reprimand is appropriate for an isolated violation of RPC 8.4(a)(4) (former DR 1-102(A)(4)). *In re Slayton*, 18 DB Rptr 56 (2004); *In re Jackson*, 16 DB Rptr 206 (2002); *In re Gallagher*, 16 DB Rptr 109 (2002); *In re Van Loon*, 15 DB Rptr 61 (2001); and *In re McCurdy*, 13 DB Rptr 107 (1999).

14.

Consistent with the *Standards* and Oregon cases, the Accused shall be publicly reprimanded for a violation of RPC 8.4(a)(4). On further factual inquiry, the parties agree that the alleged violations of RPC 3.3(a)(1) and RPC 8.4(a)(3) shall be dismissed on approval of this stipulation by the Disciplinary Board.

15.

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

DATED this 27th day of November 2007.

/s/ Edward Fitch
Edward Fitch
OSB No. 782026

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 730148
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-165
	)	
THOMAS MacNAIR,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Robert M. Elliott
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3 and RPC 1.4(a). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	December 13, 2007

ORDER APPROVING STIPULATION FOR DISCIPLINE

This matter having been heard upon the Stipulation for Discipline entered into by Thomas MacNair (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 violations of RPC 1.3 and RPC 1.4(a) of the Rules of Professional Conduct.

DATED this 13th day of December 2007.

/s/ Hon. Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 7, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

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

4.

On November 17, 2007, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.3 and RPC 1.4(a) of the 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 AND VIOLATION

5.

In May 2006, Shawn Tow (hereinafter "Tow") was convicted of manslaughter and other crimes in the Circuit Court of the State of Oregon for the County of Washington (hereinafter "Criminal Case"). The court expressly directed that Tow be given credit for time served from August 23, 2005, until he was sentenced on May 12, 2006. The Accused represented Tow in the Criminal Case.

6.

Tow was thereafter transferred to a state correctional facility to serve his sentence in the Criminal Case. Correctional facility personnel told Tow that he would not be given credit for the time served prior to his sentencing in the Criminal Case.

7.

In July 2006, Tow sent a letter to the Accused. Tow reported that the Department of Corrections was not honoring the trial court's order to credit him for time served prior to sentencing in the Criminal Case. Tow asked the Accused to check with the District Attorney's Office and the court to see if the issue could be resolved without going through complicated procedures. Tow provided the Accused with a copy of documents containing comments from Department of Corrections personnel and asked that they be returned to him. The Accused took no action and did not communicate with Tow.

8.

In October 2006, Tow filed a pro se motion to compel compliance with the plea agreement in the Criminal Case. The matter was scheduled for hearing on January 5, 2007. On that date, the judge assigned to the matter determined that he could not proceed and sent a letter to the Accused and the deputy district attorney who handled the Criminal Case. The judge reported that he had determined that he could not at that time proceed; appointed the Accused to represent Tow concerning Tow's motion; directed the Accused to promptly advise the judge's staff if he could not handle the matter; gave leave for Tow to file an amended motion and any necessary affidavits; notified that the hearing concerning the motion had been scheduled for March 16, 2007; and directed the lawyers to make sure Tow was transported for the hearing. The Accused received the judge's letter, but did not communicate with Tow.

9.

Thereafter, unbeknownst to Tow, the deputy district attorney submitted an amended judgment of conviction to the judge. The judge signed the amended judgment on January 18, 2007. The amended judgment made clear that Tow was entitled to credit for time served prior to sentencing in the Criminal Case. The deputy district attorney provided the Accused with a copy of the amended judgment. The Accused did not send a copy of the amended judgment to or otherwise communicate with Tow.

10.

In or about April 2007, Tow requested information from the court concerning the status of his motion to compel compliance with the plea agreement. Tow learned that an amended judgment had been filed in January 2007. Tow sent another letter to the Accused. Tow told the Accused that he had not received a copy of the amended judgment and asked that the Accused send him a copy. The Accused received Tow's letter, but did not respond.

11.

The Accused admits that the aforesaid conduct constituted violation of RPC 1.3 (neglect of a legal matter entrusted to him), and RPC 1.4(a) (failure to communicate) of the Rules of Professional Conduct.

SANCTION

12.

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 attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards,* §3.0.

A. *Duty Violated.* In violating RPC 1.3 and RPC 1.4(a), the Accused violated duties to his client and the profession. *Standards,* §§4.4, and 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,* p. 7. The Accused knew that his client had asked for assistance concerning the judgment of conviction in the Criminal Case. The Accused was negligent in failing to communicate with and to take action to address his client's concerns, and in failing to return the client's documents and failing to send his client a copy of the amended judgment.

C. *Injury.* The *Standards* define "injury" as harm to the client, the public, the legal system, or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards,* p. 7.

The Accused caused actual and potential injury to his client. Resolution of the client's concern regarding the time served issue was delayed. Also, the Accused's client was frustrated by the Accused's failure to communicate with him. *In re Dugger,* 299 Or 21, 29, 697 P2d 973 (1985).

D. *Aggravating Factors.* "Aggravating factors" are considerations that increase the degree of discipline to be imposed. S*tandards,* §9.21. The Accused has a prior record of discipline. *In re MacNair,* 16 DB Rptr 98 (2002). S*tandards,* §9.22(a). There are multiple offenses. *Standards,* §9.22(d). The Accused was admitted to practice in 1996 and has substantial experience in the practice of law. *Standards,* §9.22(i).

E. *Mitigating Factors.* "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. S*tandards,* §9.32. The Accused has acknowledged his misconduct and cooperated in the resolution of this case. *Standards,* §9.22(e).

13.

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

14.

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), 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).

15.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violations of RPC 1.3 and RPC 1.4(a) of the Rules of Professional Conduct.

16.

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

DATED this 7th day of December 2007.

/s/ Thomas MacNair
Thomas MacNair
OSB No. 961620

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 730148
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-101
	)	
T. MICHAEL RYAN,	)	SC S055548
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5, RPC 1.15-1(a), RPC 1.15-1(c), RPC 8.1(a)(1), RPC 8.1(a)(2), and RPC 8.4(a)(4). Stipulation for Discipline. 18-month suspension.
Effective Date of Order:	January 1, 2008

ORDER ACCEPTING STIPULATION FOR DISCIPLINE

Upon consideration by the court.

The court accepts the Stipulation for Discipline. The Accused is suspended from the practice of law in the State of Oregon for a period of 18 months, to be effective January 1, 2008.

DATED this 12th day of December 2007.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on March 1, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Crook 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 25, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information); RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5 (charging or collecting an illegal or clearly excessive fee); RPC 1.15-1(a) (failure to hold property of a client separate from the lawyer's own property); RPC 1.15-1(c) (failure to deposit and maintain client funds in a lawyer trust account until earned); RPC 8.4(a)(4) (conduct prejudicial to the administration of justice); RPC 8.1(a)(1) (false statement of material fact in connection with a disciplinary matter); and RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary 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.

The Modification Proceeding

Facts

5.

In August 2005, Michael Nelson (hereinafter "Nelson") hired the Accused to defend a motion for modification of custody and parenting time (hereinafter "modification") brought by Nelson's former girlfriend, Brandy Soyring (hereinafter "Soyring"). Nelson and the Accused orally agreed that Nelson would pay a flat fee of $750 for the Accused's representation in the modification. At the time the Accused was retained, a hearing date for the modification was already set.

6.

Nelson paid the Accused a total of $750 in installments. At the time the Accused received each of the installments, he deposited them directly into his general office account without having performed sufficient work by that time to have fully earned any of the installments.

7.

The Accused rescheduled the modification hearing date and then did not appear for the rescheduled date. Instead, the Accused sent another attorney in his place to orally request a continuance for nonemergency reasons. Thereafter, the Accused failed to appear for at least two additional status conferences and failed to prepare the final order in the modification, despite being instructed to do so by the court at the modification hearing.

8.

Following the modification hearing, the Accused did not respond to multiple attempts by Nelson and his wife to contact him regarding the status of the final order.

Violations

9.

The Accused acknowledges that by failing to adequately attend to Nelson's modification case or respond to Nelson's attempts to communicate with him regarding the modification case or the final order, the Accused violated RPC 1.3 (neglect of a legal matter) and RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information). The Accused further admits that his deposit of Nelson's funds into his general business account, rather than into his lawyer trust account until such time as they were earned, violated RPC 1.15-1(a) (failure to hold property of a client separate from the lawyer's own property) and RPC 1.15-1(c) (failure to deposit and maintain client funds in a lawyer trust account until earned). The Accused also admits that his failure to appear for multiple hearings

amounted to conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

The Contempt Action

Facts

10.

In August 2005, the Accused undertook to represent Nelson to bring a contempt action against Soyring. Nelson and the Accused orally agreed that Nelson would pay a flat fee of $250 for the contempt action.

11.

Nelson paid the Accused $250. At the time the Accused received this payment, he deposited it directly into his general office account, even though he had not performed any work to have earned it.

12.

At the time he was retained or thereafter, the Accused did not discuss with Nelson the possible effect bringing a contempt action might have on the modification, nor did he explain the effect that resolving the modification might have on the contempt action. The Accused took no action on the contempt action and determined not to pursue it. The Accused did not advise Nelson that he had decided not to pursue the contempt action, or refund the $250 fee he received from Nelson until after Nelson initiated a Bar complaint.

Violations

13.

The Accused admits that by failing to adequately attend to Nelson's contempt action, the Accused violated RPC 1.3 (neglect of a legal matter). The Accused also admits that by failing to adequately explain the effect of the contempt on the modification proceeding to Nelson and by failing to notify Nelson of the Accused's decision not to pursue the contempt, the Accused violated RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation). The Accused further admits that his deposit of Nelson's funds into his general business account, rather than into his lawyer trust account, violated RPC 1.15-1(a) (failure to hold property of a client separate from the lawyer's own property) and RPC 1.15-1(c) (failure to deposit and maintain client funds in a lawyer trust account until earned). Furthermore, the Accused admits that his failure to timely refund Nelson's flat fee payment for services after determining not to follow through on the contempt action amounted to the charging and collecting of a clearly excessive fee in violation of RPC 1.5.

Bar Proceedings

Facts

14.

On April 17, 2006, Nelson reported the Accused's conduct to the Oregon State Bar. On April 24, 2006, Disciplinary Counsel's Office (hereinafter "DCO") requested that the Accused respond to Nelson's allegations on or before May 15, 2006, and provide Nelson's client file. The Accused did not respond. On May 18, 2006, DCO again requested that the Accused respond to Nelson's allegations and provide Nelson's client file on or before May 25, 2006. The Accused did not respond.

15.

On June 12, 2006, DCO again requested the Accused's response to Nelson's allegations and Nelson's client file. The Accused did not provide any of Nelson's file materials to DCO until August 31, 2006, despite requests that he do so on June 26, 2006, July 25, 2006, and August 16, 2006. The material the Accused ultimately provided did not include any billing statements or records of the time or dates upon which the Accused performed services for Nelson.

16.

On October 12, 2006, following a referral to the Crook County Local Professional Responsibility Committee (hereinafter "LPRC"), an LPRC investigator (hereinafter "investigator") met with the Accused. At that time, the Accused produced electronic memoranda and computer records associated with Nelson's client file. Among these materials was an accounting statement (hereinafter "billing statement") that showed services the Accused purportedly rendered on behalf of Nelson on specific dates and payments he received from Nelson. The Accused had generated the billing statement by approximating the past services he had performed on behalf of Nelson and "guessing" at the dates and duration of his services. Many of the entries and calculations were incorrect or inaccurate. The Accused intended to demonstrate with the billing statement to the investigator and DCO that he had fully earned the money he received from Nelson. However, the Accused failed to inform the investigator that the billing statement was a recent creation based upon the Accused's review of the file and recollection of past events, and was not an accurate representation of his services to Nelson or a record prepared contemporaneously with those services.

Violations

17.

The Accused acknowledges that his untimely and incomplete responses to DCO violated RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority in connection with a disciplinary matter).

The Accused also admits that his submission of the billing statement to the investigator—without any clarification or explanation—violated RPC 8.1(a)(1) (a false statement of material fact in connection with a disciplinary matter).

Sanction

18.

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

A. *Duty Violated.* The Accused violated his duty to act with reasonable diligence and promptness in representing his client. *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 cooperate in disciplinary proceedings. *Standards,* § 7.0.

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

C. *Injury.* Injury can be actual or potential. The Accused caused actual injury to Nelson and the judicial system when the modification proceeding was delayed by the Accused's failures to appear. The Accused also caused actual injury to Nelson in the form of anxiety and frustration, when the Accused was unresponsive to his inquiries. The Accused caused potential injury to Nelson when he failed to timely prepare and file the modification order for more than two months, leaving open the possibility that the opposing party would not comply with the terms of the stipulated agreement. Finally, the Accused caused actual injury to the Bar, in that his untimely, incomplete, and inaccurate responses delayed the disciplinary process.

D. *Aggravating Factors.* Aggravating factors include:

1. The Accused has a prior disciplinary history. *Standards,* § 9.22(a). In 2001, the Accused was suspended for 180 days for violations of DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-103(C) (failure to cooperate in a disciplinary matter); DR 3-101(A) (unlawful practice of law); DR 6-101(B) (neglect of a legal matter); DR 9-101(C)(1) (failure to notify client of receipt of client funds or property); and DR 9-101(C)(4) (failure to promptly return client funds or property upon request). *In re Ryan,* 15 DB Rptr 87 (2001). However, the significance of this prior discipline is diminished somewhat

due to extenuating circumstances.[1] In 2002, the Accused was suspended for 30 days violations of DR 1-103(C) (failure to cooperate in a disciplinary matter); DR 6-101(B) (neglect of a legal matter); and DR 9-101(C)(4) (failure to promptly return client funds or property upon request). *In re Ryan,* 16 DB Rptr 358 (2002).

2. The Accused submitted a manufactured document to the Bar, without explaining its origins, as part of his response to Nelson's allegations. *Standards,* § 9.22(b).

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

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

5. The Accused was admitted in Oregon in 1991 and in Arizona in 1988, and has substantial experience in the practice of law. *Standards,* § 9.22(i).

E. *Mitigating Factors.* Mitigating factors include:

1. The Accused was experiencing personal or emotional problems during some of the conduct at issue, in the form of depression. *Standards,* § 9.32(c).

2. The Accused has expressed remorse for his misconduct. *Standards,* § 9.32(*l*).

19.

The *Standards* presume that some substantial period of suspension is appropriate for both the Accused's neglect and failure to communicate, as well as his failure to fully and honestly cooperate with the disciplinary investigation. *Standards,* §§4.42, 7.2.

20.

Case law is in accord for neglect and failure to cooperate with the Bar, especially where the attorney has been previously disciplined for similar misconduct. *See In re Bourcier,* 322 Or 561, 909 P2d 1234 (1996) (3-year suspension for violations including neglect and failure to cooperate); *In re Schaffner,* 325 Or 421, 427, 939 P2d 39 (1997) (2-year suspension for neglect and

[1] This prior discipline consolidated two separate matters concerning the Accused: a case in which the Accused neglected his client's legal matter and a case stemming from the Accused's continuation of practice following a PLF suspension and subsequent denial of that practice in his reinstatement application. The Supreme Court later found PLF suspensions of the type imposed on the Accused to be void as a matter of law. *See In re Leisure,* 336 Or 244, 113 P3d 412 (2003). As a result, only the neglect portion of this prior case should be considered as aggravation in this matter. *See In re Jones,* 326 Or 195, 951 P2d 149 (1997) (evaluating relative weight of prior discipline in aggravation based upon a number of factors).

failure to cooperate violations severely aggravated by prior discipline for the same type of misconduct); *In re Meyer*, 328 Or 220, 970 P2d 647 (1999) (1-year suspension for neglect causing harm to the client aggravated significantly by attorney's prior disciplinary history).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 18 months for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5, RPC 1.15-1(a), RPC 1.15-1(c), RPC 8.1(a)(1), and RPC 8.1(a)(2), the sanction to be effective January 1, 2008.

22.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice in Oregon until he is notified that his license to practice has been reinstated.

23.

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

EXECUTED this 18th day of October 2007.

/s/ T. Michael Ryan
T. Michael Ryan
OSB No. 910117

EXECUTED this 22nd day of October 2007.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro
Jeffrey D. Sapiro
OSB No. 783627
Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-105
	)	
RANDY KANE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Martha M. Hicks
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(3). Stipulation for Discipline. Public Reprimand.
Effective Date of Order:	December 31, 2007

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 RPC 8.4(a)(3).

DATED this 31st day of December 2007.

/s/ Jill A. Tanner
Hon. Jill A. Tanner
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 21, 1995, and has been a member of the Oregon State Bar continuously since that time. At all times material to this proceeding, the Accused was employed by the Portland Police Bureau (hereinafter "PPB").

3.

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

4.

On August 22, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 8.4(a)(3). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

In or about 2005, PPB's eligibility for possible future federal preparedness grants through the United States Department of Homeland Security (hereinafter "DHS") was conditioned upon PPB supervisors completing an online course about the National Incident Management System (hereinafter "NIMS"), taking an online test concerning the NIMS course, and submitting the completed test to DHS. Test results were due to DHS on or about September 30, 2005.

6.

At all relevant times, the Accused was a Lieutenant at the Portland Police Bureau's North Precinct and was responsible for ensuring that the sergeants and detectives (hereinafter "officers") under his command were familiar with the NIMS online course material and took the online test. The Accused had not been

instructed as to the conditions under which testing was to take place and understood that his primary responsibility was to make sure that the officers under his command had read and understood the NIMS course material.

7.

There were problems with the online test, and the officers under the Accused's command could not log on to the NIMS test or were prevented by the system from completing tests they had begun. Prior to September 30, 2005, the Accused was successful in gaining access to the NIMS test and completed his own test. At that same time, because of the problems his officers had had in taking or submitting their own tests, the Accused also completed test forms for some of the officers under his command, answered the test questions on behalf of the officers, and submitted them to the DHS.

8.

The officers did not know that the Accused had answered the test questions and submitted the test forms in their names until shortly after he had done so, when the Accused so advised them. The Accused did not disclose to DHS that he had answered test questions and submitted the test forms in the names of the officers.

Violations

9.

The Accused admits that, by engaging in the conduct described in this stipulation, he made misrepresentations in violation of RPC 8.4(a)(3).

Sanction

10.

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

A. *Duty Violated.* The Accused violated his duty to maintain his integrity. *Standards,* § 5.1.

B. *Mental State.* The Accused acted knowingly, i.e., with the conscious awareness of the nature or attendant circumstances but without the conscious knowledge or purpose to accomplish a particular result. *Standards,* at 7.

C. *Injury.* No actual injury resulted from the Accused's conduct. He immediately reported his conduct to his commanding officer and to the officers under his command. He also assured himself that the officers under his command

had been trained on and understood the NIMS course material and caused the officers to later submit their own tests. There was, however, the potential for injury that was reasonably foreseeable at the time of the Accused's conduct: that if future DHS grants were available, Portland might have received government funds for which it did not qualify.

D. *Aggravating Factors.* There are no aggravating factors applicable to the Accused's conduct.

E. *Mitigating Factors.* Mitigating factors include:

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

2. The Accused did not act with a dishonest or selfish motive. He submitted tests for his officers who were reporting difficulties submitting the tests themselves. The officers later submitted their own tests after they had been trained in and understood the NIMS course materials. *Standards*, § 9.32(b).

3. The Accused made a timely good faith effort to rectify the consequences of his conduct. He reported it immediately to his commanding officer, ensured that his officers later took the test themselves, and devised and implemented a procedure for future NIMS training and testing that will prevent others from acting as he did. *Standards*, § 9.32(d).

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

5. The Accused was inexperienced in the practice of law. Although he was admitted to practice law in 1995, the Accused was a career law enforcement officer and never practiced law. The Accused is now retired from law enforcement. *Standards*, § 9.32(f).

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

11.

Standards, § 5.13 suggests that reprimand is generally appropriate when a lawyer knowingly engages in conduct that involves misrepresentation that adversely reflects on the lawyer's fitness to practice law. Oregon case law is in accord, particularly with respect to misconduct that did not occur in connection with the practice of law. See *In re Flannery*, 334 Or 224, 47 P3d 891 (2002), and *In re Kumley*, 335 Or 639, 75 P3d 432 (2003), where the Supreme Court reprimanded lawyers for misrepresentations that violated DR 1-102(A)(2) and (3) as well as provisions of ORS Chapter 9. See also *In re Walleghem*, 21 DB Rptr 102 (2007), and *In re Dye*, 17 DB Rptr 31 (2003), where the Disciplinary Board reprimanded lawyers for single misrepresentations.

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 8.4(a)(3).

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

EXECUTED this 12th day of December 2007.

/s/ Randy Kane
Randy Kane
OSB No. 950879

EXECUTED this 17th day of December 2007.

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 751674
Assistant Disciplinary Counsel

TABLE OF CASES

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

TABLE OF RULES AND STATUTES

(*References are to the page numbers of the text where the citation appears. The text of the former DRs can be accessed at <www.osbar.org/_docs/rulesregs/cpr.pdf>.*)

Oregon Rules of Professional Conduct

Former Disciplinary Rules

Oregon Revised Statutes

Bar Rules of Procedure

Oregon Rules of Civil Procedure

Oregon Constitution

United States Code

Uniform Trial Court Rules