DISCIPLINARY BOARD REPORTER

VOLUME 22

January 1, 2008, to December 31, 2008

Report of Lawyer Discipline Cases
Decided by the Disciplinary Board
and by the
Oregon Supreme Court
for 2008

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PREFACE

This Disciplinary Board Reporter (DB Reporter) contains final decisions of the Oregon Disciplinary Board, stipulations for discipline between accused lawyers and the OSB, summaries of 2008 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 22 DB Rptr ___ (2008).

In 2008, 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, 2009, are also available at the Oregon State Bar Web site, www.osbar.org. Please note that the statutes, disciplinary rules, and rules of procedure cited in the opinions are those in existence when the opinions were issued. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

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

JEFFREY D. SAPIRO
Disciplinary Counsel
Oregon State Bar

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

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IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-73
	)	
MICHAEL JAMES PETERSEN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Richard K. Weill, Jane E. Angus
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violation of RPC 1.1 and RPC 1.16(a)(1). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	January 8, 2008

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 publicly reprimanded for violation of RPC 1.1 and RPC 1.16(a)(1) of the Rules of Professional Conduct.

DATED this 8th day of January 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Michael James Petersen, 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 15, 1982, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On May 19, 2007, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violation of RPC 1.16(a)(1) (representing client when representation will result in violation of disciplinary rule); RPC 3.1 (knowingly asserting unmeritorious claims); RPC 4.1(a) and (b) (knowingly making false statement to third person); and RPC 8.4(a)(3) (dishonesty, fraud, deceit, or misrepresentation). On November 17, 2007, the State Professional Responsibility Board directed that the Accused also be charged with violation of RPC 1.1 (failure to provide competent representation). 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 3, 2005, Lindsay K. Construction, Inc.'s principals (hereinafter "Lindsay") retained the Accused to pursue claims against SJP LLC and Harish Patel (hereinafter "SJP/Patel") for payment of certain construction work. Lindsay and the Accused calculated the amount owed to exceed $300,000. On March 3, 2005, the Accused, on behalf of Lindsay and its principals, demanded payment from SJP/Patel, who denied Lindsay's claims.

6.

The parties engaged in settlement discussions concerning Lindsay's claims. Terms of settlement were proposed that included SJP/Patel's payment of $52,052.08 to Lindsay and a mutual release of all claims concerning and related to the construction work.

7.

Prior to March 16, 2005, Lindsay's principals consulted the Accused and discussed options available to them. Among other options, the Accused told Lindsay's principals that they might be able to accept a settlement amount, sign a release, and then continue to pursue the claims against SJP/Patel.

8.

Lindsay's principals told the Accused that they wished to accept SJP/Patel's settlement proposal. The Accused reviewed a proposed Release and Settlement Agreement, which included a mutual release of any and all claims, known and unknown, past, present, or future, whether in contract, tort, or otherwise, that arose out of or related in any way to the work described. The Accused represented to SJP/Patel's attorney that Lindsay was willing to resolve the matter on the terms proposed. Based on the Accused's representation, SJP/Patel's attorney recommended that SJP/Patel sign the Release and Settlement Agreement and pay $52,052.08 to Lindsay to resolve the matter. Lindsay and SJP/Patel signed the Release and Settlement Agreement, effective March 16, 2005. SJP/Patel paid the settlement amount to Lindsay as provided by the terms of the agreement.

9.

After Lindsay and SJP/Patel had resolved the matter, Lindsay's principals returned to the Accused and told him that they wished to pursue SJP/Patel for the same claims that had been settled. Thereafter, the Accused accepted and continued employment and failed to withdraw as Lindsay's attorney concerning Lindsay's claims against SJP/Patel when his representation would result in violation of the Rules of Professional Conduct.

10.

About June 17, 2005, the Accused on behalf of Lindsay filed a civil complaint against SJP/Patel for the same and related claims that were the subject of the Release and Settlement Agreement, *Lindsay K. Construction, Inc. v. SJP, LLC and Harish Patel*, Multnomah County Circuit Court Case No. 0506-06550 (hereinafter "Court Action").

About August 15, 2005, SJP/Patel filed a motion for summary judgment concerning Lindsay's claims. The Accused filed an untimely and inadequate response opposing the motion. About October 4, 2005, the court granted summary judgment in SJP/Patel's favor, and on October 18, 2005, filed an Order Granting Summary

Judgment Against Plaintiff. Thereafter, counsel for SJP/Patel filed a Statement of Costs and Disbursements, Statement of Attorney Fees, and an Affidavit in Support of Enhanced Prevailing Party Fee, with copies served on the Accused. The Accused did not file an objection or other response.

11.

About December 1, 2005, the Accused filed a notice of appeal of the trial court's decision in the Court Action. The Accused failed to comply with court rules concerning the filing of an appeal of the trial court's decision, failed to pay the required filing fee, and failed to comply with the notices and directives of the Court of Appeals regarding the deficiencies in the filing.

12.

On December 8, 2005, the trial court signed, and on December 12, 2005, filed, a General Judgment, pursuant to which judgment was entered against Lindsay and in SJP/Patel's favor dismissing Lindsay's claims with prejudice, and awarding SJP/Patel judgment against Lindsay for SJP/Patel's attorney fees, and costs and disbursements, including an enhanced prevailing party fee.

13.

On January 13, 2006, the Accused filed a second notice of appeal of the trial court's decision in the Court Action. The Accused failed to comply with court rules concerning the filing of an appeal of the trial court's decision, failed to timely file the notice of appeal, failed to pay the required filing fee, and failed to comply with the notices and directives of the Court of Appeals regarding the deficiencies in the filing.

14.

Throughout the representation of Lindsay, the Accused failed to adequately investigate the situation; failed to know, understand, and comply with relevant legal doctrines and procedures; and failed to adequately address factual and legal issues. The Accused lacked experience and failed to associate with counsel experienced in matters and procedures presented in the Court Action and appeal.

15.

The Accused admits that the aforesaid conduct constituted violations of RPC 1.1 (failure to provide competent representation) and RPC 1.16(a)(1) (accepting employment, failure to withdraw, when employment will result in violation of the Rules of Professional Conduct). Upon further factual inquiry, the parties agree that the alleged violations of RPC 3.4(a), RPC 4.1, and RPC 8.4(a)(3) of the Rules of Professional Conduct as set forth in the Bar's Amended Formal Complaint, upon the approval of this stipulation, are dismissed.

SANCTION

16.

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. *Duties violated*. In violating RPC 1.1 and RPC 1.16(a)(1), the Accused violated his duties to his client, the legal system, and the profession. *Standards,* §§ 4.5, 6.2, and 7.0.

b. *Mental state.* "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7. The Accused was negligent in failing to adequately investigate the client's factual claims; failing to adequately investigate legal issues; failing to understand and comply with legal doctrines, court rules, and procedures; and failing to understand that he was not competent to be handling or providing legal advice and services concerning the Lindsay/SJP Patel matter.

c. *Injury*. The Accused caused actual injury to SJP/Patel, who incurred substantial attorney fees to defend unwarranted claims. The court was injured because it was required to devote substantial time to a case that should never have been filed. Also, the Accused caused potential injury to the profession, which 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. The Accused was admitted to practice in 1982 and has substantial experience in the practice of law. *Standards,* § 9.22(i). There is also a pattern of misconduct and multiple offenses. *Standards,* § 9.22(c), (d).

e. *Mitigating factors.* "Mitigating factors" are considerations that may decrease the degree of discipline to be imposed. *Standards,* § 9.32. The Accused has no prior record of formal discipline. *Standards,* § 9.32(a). He has acknowledged his misconduct and cooperated in the investigation and resolution of this disciplinary case. *Standards,* § 9.22(e). Also, the Accused is remorseful. *Standards,* § 9.32(*l*).

17.

The *Standards* provide that reprimand is generally appropriate when a lawyer demonstrates a failure to understand relevant doctrines or procedures, or is negligent in determining whether he is competent to handle a legal matter, and causes injury or potential injury to a client. *Standards*, § 4.43. Reprimand is also appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.23.

18.

Oregon case law is in accord. *See*, *e.g.*, *In re Nawalany*, 20 DB Rptr 315 (2006) (reprimand for violation of former DR 6-101(A)); *In re Boland*, 12 DB Rptr 45 (1998) (reprimand for violation of DR 6-101(A) and DR 6-101(B)); *In re Magar*, 296 Or 799, 681 P2d 93 (1984) (reprimand for violation of former DR 6-101(A)); *In re Greene*, 276 Or 1117, 557 P2d 644 (1976), *reh'g denied*, 277 Or 89 (1977) (reprimand for failing to provide competent representation).

19.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of RPC 1.1 and RPC 1.16(a)(1) of the Rules of Professional Conduct.

20.

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

DATED this 27th day of December 2007.

/s/ Michael James Petersen
Michael James Petersen
OSB No. 824988

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. 07-157
	)	
ROBERT G. DOLTON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	Robert L. Wolf
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3 and RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	January 15, 2008

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 1.3 and RPC 8.4(a)(4).

DATED this 15th day of January 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1981, and has been a member of the Oregon State Bar continuously since that time, having 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 October 19, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.3 and RPC 8.4(a)(4) 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.

The Accused undertook to represent a minor client on a personal injury claim arising from an automobile accident in August 2002. The Accused obtained a settlement proposal that was acceptable to the minor and the minor's parents. Settlement of the claim required the establishment of a conservatorship for the minor to receive the settlement proceeds and court approval of the settlement.

6.

The Accused successfully undertook to assist the minor's grandmother to become appointed conservator in an action filed in Clackamas County. On December 3, 2003, the court approved the settlement on the condition that the settlement funds be deposited into a restricted account to be withdrawn only on order of the court. The court ordered that an acknowledgment by the depository of the restrictions on the

funds had to be filed within 30 days. UTCR 9.050 required the Accused to see that the depository's acknowledgment of restrictions was filed within 30 days. The Accused did not cause an acknowledgment of restrictions to be filed within 30 days or thereafter.

7.

On July 13, 2005, the probate coordinator for the court mailed a courtesy notice to the Accused. The notice informed the Accused that a citation would issue in 30 days unless an acknowledgment of restrictions was filed or a written explanation of the reason for delay was submitted. The Accused took no action in response to the notice.

8.

On September 16, 2005, the court issued a citation requiring the Accused to appear with the conservator on October 3, 2005, and show cause why the conservator should not be removed and sanctions imposed for possible breach of fiduciary duty by the conservator. The Accused appeared with the conservator on October 3, 2005. The court directed the Accused to see that an acknowledgment of restrictions was filed within 30 days. The Accused did not cause an acknowledgment of restrictions to be filed.

9.

On February 27, 2007, the probate coordinator mailed another courtesy notice to the Accused. The notice informed the Accused that a citation would issue in 30 days unless an acknowledgment of restrictions and an annual accounting were filed or a written explanation of the reason for delay was submitted. The Accused did not file an acknowledgment of restrictions or submit an explanation.

10.

On April 18, 2007, the court issued a citation that required the Accused to appear with the conservator on May 16, 2007, and show cause why the conservator should not be removed and sanctions imposed for possible breach of fiduciary duty. The Accused decided that the conservator could appear at the show cause hearing without being accompanied by the Accused. The Accused did not obtain court permission to avoid the show cause hearing, nor did the Accused take any action to see that an acknowledgment of restrictions was filed. On May 16, 2007, the Accused failed to appear at the show cause hearing and his client was unprepared to answer the court's inquiries about the failure to file an acknowledgment of restrictions.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.3 and RPC 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. *Duties violated.* The Accused violated his duty to act diligently on behalf of his client. *Standards,* § 4.4. The Accused also violated his duties to the legal system to expedite litigation and to obey obligations under the rules of the tribunal. *Standards,* § 6.2.

b. *Mental state.* A lawyer acts negligently when the lawyer fails to heed a substantial risk that circumstances exist or that a result will follow, which failure is a substantial deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7. The Accused was unfamiliar with probate matters and he did not fully understand his ongoing duties in the conservatorship. As a result he negligently failed to recognize and fulfill his obligations to the conservator and the court.

c. *Injury.* There was minimal actual injury. The court was repeatedly required to expend its resources to prevail upon the Accused to perform his obligations and the conservator was repeatedly required to appear in court as a result of the Accused's failure to perform his obligations. There was potential injury to the conservator since the conservator was exposed to the risk of removal and sanctions. There was no injury to the minor since the assets were in the form of an annuity that was not payable until shortly before the minor turned eighteen and the funds could not be withdrawn by the conservator.

d. *Aggravating factors.* Aggravating factors include:

    1. Although the Accused had limited experience in probate matters, the Accused has substantial experience in the practice of law. *Standards,* § 9.22(i).

e. *Mitigating factors.* Mitigating factors include:

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

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

3. The Accused has expressed remorse for mishandling the matter. *Standards*, § 9.32(*l*).

13.

The *Standards* generally recommend reprimand, prior to the consideration of aggravating or mitigating factors, where a lawyer negligently fails to act with reasonable diligence in representing a client or negligently fails to comply with a court order or rule and causes injury or potential injury to a client, a party, or a court proceeding. *Standards*, §§ 4.43 and 6.23.

14.

Oregon case law is in accord. A lawyer was reprimanded for similar misconduct under similar circumstances in *In re Bisaccio*, 21 DB Rptr 35 (2007) (involving the failure to file an acknowledgment of restrictions in a tort-related conservatorship). Other dispositions also suggest that a reprimand is sufficient. *See, e.g.*, *In re Putman*, 20 DB Rptr 162 (2006) (stipulated 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 probate matters). The Supreme Court has also found reprimand, on occasion, to be a sufficient sanction for neglect of a probate matter accompanied by a related violation. *See, e.g., In re Odman*, 297 Or 744, 687 P2d 153(1984) (public reprimand for violation of DR 6-101(A) and (B) and DR 5-105(E) in a single probate matter).

15.

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

16.

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

EXECUTED this 10th day of December 2007.

/s/ Robert G. Dolton
Robert G. Dolton
OSB No. 812116

EXECUTED this 2nd day of January 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. 07-123
	)	
C. MICHAEL ARNOLD,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	Wayne Mackeson
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(2). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	January 17, 2008

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)(2).

DATED this 17th day of January 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

C. Michael Arnold, 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 October 4, 2001, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On September 20, 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)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On January 23, 2007, Melanie Oakley (hereinafter "Oakley") appeared at a court hearing on a charge of driving under the influence of intoxicants. The Accused, representing the City of Florence, was present at the hearing and learned that Oakley was 18 years old. Oakley pled guilty to the charge and entered into a diversion agreement.

6.

Thereafter, the Accused contacted Oakley, ostensibly for the purpose of checking up on her, and suggested that they meet. On February 6, 2007, the Accused drove Oakley to a restaurant and purchased two glasses of wine for her.

7.

ORS 471.410(2) prohibits anyone, other than a parent or guardian, from selling, giving, or otherwise making available any alcoholic liquor to a person under the age of 21. On May 25, 2007, the Accused pled guilty to violating ORS 471.410(2) as described in paragraph 6 herein.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated RPC 8.4(a)(2).

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. *Duties violated.* The Accused violated a duty he owed to the public not to engage in criminal conduct. *Standards,* § 5.0.

b. *Mental state.* "Intent" is the conscious objective or purpose to accomplish a particular result. *Standards,* p. 7. The Accused acted intentionally.

c. *Injury.* Underage drinking statutes are intended to protect minors from the consequences of alcohol consumption. Oakley sustained actual injury as a result of the Accused's conduct. The prosecutor's office also sustained actual injury in that the Accused's criminal conduct reflected poorly on the office.

d. *Aggravating circumstances.* The following aggravating circumstances exist:

    1. Vulnerability of victim. *Standards,* § 9.22(h).

    2. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 2001. *Standards,* § 9.22(i).

    3. Illegal conduct. *Standards,* § 9.22(k).

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 letters from lawyers attesting to his good character and reputation. *Standards*, § 9.32(g).

4. Imposition of other penalties or sanctions. The Accused pled guilty to engaging in criminal conduct and paid a fine. *Standards,* § 9.32(*l*).

5. Remorse. The Accused has expressed remorse for his conduct. *Standards*, § 9.32(m).

10.

Suspension is generally appropriate when a lawyer knowingly engages in certain criminal conduct that seriously adversely reflects on the lawyer's fitness to practice. *Standards,* § 5.12.

11.

The Accused was not acting as a lawyer when he engaged in the criminal conduct at issue here. Reprimands have been imposed on lawyers who have engaged in misconduct in their personal lives, even when the misconduct also constitutes a crime. *In re Carpenter*, 337 Or 226, 95 P3d 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 which suggested that the teacher had engaged in sexual relations with students); *In re Kumley*, 335 Or 639, 75 P3d 432 (2003) (inactive lawyer who identified himself as an attorney in forms he filled out as a legislative candidate was reprimanded for committing crimes of knowingly making a false statement under election laws and false swearing); *In re Flannery,* 334 Or 224, 47 P3d 891 (2002) (reprimand imposed on deputy district attorney who committed a misdemeanor when he submitted a false application for a driver license).

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)(2).

13.

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

EXECUTED this 4th day of January 2008.

/s/ C. Michael Arnold
C. Michael Arnold
OSB No. 011873

EXECUTED this 9th day of January 2008.

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. 07-05 and 07-48
	)	
BRIAN J. DOBIE,	)	SC S055642
	)	
Accused.	)	

Counsel for the Bar:	Conrad E. Yunker, Linn D. Davis
Counsel for the Accused:	Brian J. Dobie
Disciplinary Board:	None
Disposition:	Violation of ORS 9.160(1), DR 1-102(A)(2), DR 1-102(A)(3), RPC 5.5(a), RPC 8.1(a), and RPC 8.4(a)(3). Stipulation for Discipline. Two-year suspension.
Effective Date of Order:	February 22, 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 two years, effective February 22, 2008.

DATED this 23rd day of January 2008.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

STIPULATION FOR DISCIPLINE

Brian J. Dobie, 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 21, 1990, and has been a member of the Oregon State Bar continuously since that time. At all relevant times herein, the Accused's office and place of business was 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 2, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of ORS 9.160, DR 1-102(A)(2) and DR 1-102(A)(3) of the Code of Professional Responsibility, and RPC 5.5(a), RPC 8.1(a)(1), 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.

Theft Matter—Case No. 07-05

5.

On September 16, 2004, the Accused entered the Fry's Electronics store in Wilsonville, Oregon. While in the store, the Accused took a Hewlett Packard PDA (hereinafter referred to as "the PDA"), valued at $499.99, from a display, removed the strapping from the box in which the PDA was packaged, and left the store without paying for the PDA.

6.

On September 16, 2004, the Accused was arrested for shoplifting. The Accused represented to the deputy sheriff who arrested him that he had left the store with the PDA because he had walked to the front of the store to buy a soft drink and had

stepped outside to open and drink it. This representation was false and material, and the Accused knew it was false and material when he made it.

7.

At all relevant times herein, ORS 164.065 provided as follows: "A person commits the crime of theft in the second degree if, by other than extortion, the person: (a) Commits theft as defined in ORS 164.015; and (b) The total value of the property in a single or aggregate transaction is $50 or more but is under $200 in case of theft by receiving and under $750 in any other case."

8.

At all relevant times herein, ORS 164.015 provided, in relevant part, as follows: "A person commits theft when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person: (1) takes, appropriates, obtains or withholds such property from an owner thereof."

9.

The Disciplinary Counsel's Office of the Bar received information concerning the Accused's conduct on or about June 12, 2006. In his July 5, 2006, response to the Bar's request for an account of his conduct, the Accused made the following representation about why he had left the store with the PDA: "Stupidly, I had stepped past security to answer a cell phone call." This representation was false and material, and the Accused knew it was false and material when he made it.

10.

In his July 5, 2006, response to the Bar's request for an account of his conduct, the Accused knowingly failed to disclose that he had removed the strapping from the box in which the PDA was packaged while he was in the store. This was a material fact the Accused had in mind when he failed to disclose it.

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 1-102(A)(2), DR 1-102(A)(3), RPC 8.1(a)(1), and RPC 8.4(a)(3).

PLF Exemption Matter—Case No. 07-48

12.

At all relevant times herein, ORS 9.080(2)(a) and Section 23.2 of the Bylaws of the Bar required all active members of the Bar in the private practice of law in Oregon to carry professional liability coverage. At all relevant times herein, the Accused engaged in the private practice of law in Oregon and did not carry professional liability coverage.

13.

At all relevant times herein, Professional Liability Fund (hereinafter "PLF") Policy 3.150(A)(1) provided that active members of the Bar in private practice whose principal offices were not in Oregon were not eligible to obtain primary coverage from the PLF and were required to request an exemption from PLF participation. At all relevant times herein, ORS 9.080(2)(c) defined a lawyer's principal office as the location where the lawyer engaged in the private practice of law more than 50 percent of the time he or she engaged in the private practice of law. At all relevant times herein, PLF Policy 3.180(H) provided that the determination of where a lawyer's principal office was located was based upon the lawyer's activities during the prior 12 months.

14.

At all relevant times herein, PLF Policy 3.180(B) defined a lawyer's office as a location which was held out to the public by a lawyer as an office where the lawyer engaged in the private practice of law. At all relevant times herein, PLF Policy 3.180(D) provided that where a lawyer had no office as defined in PLF Policy 3.180(B), his or her principal office was his or her principal residence.

15.

On April 2, 2006, the Accused requested an exemption from his PLF assessment for the year 2006. In that request, the Accused represented that his principal office was outside of Oregon. This representation was false, and the Accused knew it was false when he made it.

16.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 5.5(a) and RPC 8.4(a)(3).

Practicing While Suspended Matter—Case No. 07-48

17.

At all relevant times herein, ORS 9.160 prohibited a person who is not an active member of the Bar from practicing law or representing that he or she is qualified to practice law.

18.

At all relevant times herein, Minimum Continuing Legal Education (hereinafter "MCLE") Rule 3.2 required all active members of the Bar to meet certain minimum continuing legal education requirements. At all relevant times herein, MCLE Rules 7.6 and 8.1(c)(3) provided that a lawyer who failed to meet and report his or her minimum continuing legal education requirements would be suspended by order of the Oregon Supreme Court.

19.

On May 30, 2006, after proper notice to the Accused, the Accused was suspended from membership in the Oregon State Bar (hereinafter "Bar") for failing to meet his MCLE requirements. The Accused was reinstated to active Bar membership on June 9, 2006.

20.

Between May 30, 2006, and June 9, 2006, during the period of his suspension, the Accused engaged in the private practice of law by:

A. Appearing in court on behalf of a client;

B. Issuing a subpoena duces tecum for a deposition and document production;

C. Holding himself out to opposing counsel, his clients, the court, and the public as an attorney at law;

D. Communicating with and negotiating on behalf of a client with opposing counsel; and

E. Appearing for a deposition on behalf of a client.

21.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated ORS 9.160 and RPC 5.5(a).

Sanction

22.

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. *Duties violated.* By committing theft and engaging in various misrepresentations, the Accused violated the most fundamental duty which a lawyer owes to the public, the duty to maintain the standards of personal integrity upon which the community relies. *Standards,* § 5.0. By practicing in violation of the regulation of the profession and by engaging in misrepresentations to disciplinary authorities, the Accused also violated his duties to the profession. *Standards,* § 7.0.

b. *Mental state.* "Intent" is the conscious objective or purpose to accomplish a particular result. *Standards,* at 7. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the

conduct but without the conscious objective or purpose to accomplish a particular result. *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. *Id.* The Accused intentionally removed the PDA from the electronics store without paying for it. The Accused knowingly engaged in misrepresentation to others and to Bar disciplinary authorities. The Accused knowingly practiced law in violation of the regulations of the profession regarding insurance coverage. The Accused negligently practiced law while suspended from active Bar membership.

c. *Injury.* "Injury" is defined as "harm to a client, the public, the legal system or the professional which results from the lawyer's misconduct." *Standards,* at 7. Because the purpose of attorney discipline is to protect the public, the Bar need not prove actual injury. Potential injury is sufficient. *Standards*, § 3.0. The Accused caused actual injury to Fry's Electronics when he tampered with and stole its property. The Accused caused potential injury when he made misrepresentations to the deputy sheriff and Disciplinary Counsel. The Accused caused potential injury to his clients by performing legal services for them without the required malpractice insurance and without being an active member of the Bar. The Accused caused some actual injury because one client matter was required to be rescheduled when the Accused discovered he was suspended.

d. *Aggravating factors.* Aggravating factors include:

1. Prior disciplinary offenses. *Standards*, § 9.22(a). In 1997, a trial panel found the Accused guilty of violating DR 6-101(B) and DR 7-101(A)(2) in one matter and DR 9-101(C)(3) in another and imposed a 30-day suspension stayed pending the successful completion of a one-year period of probation. *In re Dobie*, 12 DB Rptr 19 (1997). In 2005, the Accused stipulated to violations of DR 9-101(C)(3) and DR 9-101(C)(4) and was publicly reprimanded. *In re Dobie*, 19 DB Rptr 6 (2005). The court has set forth a four-factor test for consideration of the appropriate effect of prior discipline: the relative seriousness of the prior offense and resulting sanction, the similarity of the prior offense to the current case, the number of prior offenses, and the recency of the prior offenses. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). Taken together, those factors suggest that the Accused's prior offenses are a significant aggravating factor.

2. A dishonest or selfish motive. *Standards*, § 9.22(b). The Accused's theft, misrepresentations, and avoidance of his PLF assessment sprung from dishonest or selfish motives.

3. A pattern of misconduct. *Standards*, § 9.22(c). The Accused's misconduct, including his prior disciplinary violations, continued over most of a decade and throughout varying circumstances.

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

5. Submission of false statements or other deceptive practices during the disciplinary process. *Standards*, § 9.22(f).

6. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused has been practicing law since 1978, and has been admitted in Oregon since 1990.

e. *Mitigating factors.* Mitigating factors include:

1. Imposition of other penalties or sanctions. *Standards*, § 9.32(k). A fine was imposed in connection with the Accused's conviction of theft as a violation.

2. Remorse. *Standards*, § 9.32(*l*).

3. Remoteness of prior offenses. *Standards*, § 9.32(m). The prior sanction imposed on the Accused in 1997 is somewhat remote.

23.

Prior to the consideration of aggravating and mitigating circumstances, the *Standards* recommend as follows.

a. DR 1-102(A)(2), DR 1-102(A)(3), DR 8.4(a)(3): The *Standards* recommend suspension where a lawyer has knowingly engaged in criminal conduct that reflects seriously adversely on the lawyer's fitness to practice but does not involve serious criminal conduct. *Standards*, § 5.12.

b. ORS 9.160, RPC 5.5(a), RPC 8.1(a)(1), RPC 8.4(a)(3): The *Standards* recommend suspension when a lawyer has knowingly engaged in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

24.

Oregon case law suggests that where a theft does not involve a client or other fiduciary relationship, a suspension is warranted. *In re Kimmell*, 332 Or 480, 489–491, 31 P3d 414 (2001) (lawyer who shoplifted a jacket and made misrepresentations during the investigation was suspended for six months).

25.

The Accused also made misrepresentations to disciplinary authorities concerning the theft matter. The court has found that similar violations warrant a six-month suspension where an absence of prior discipline was the only mitigating factor. *See In re Gustafson,* 327 Or 636, 654–655, 968 P2d 367 (1998) (six-month suspension imposed on lawyer who made misrepresentation to a court investigating allegations of wrongdoing by the lawyer).

26.

The Accused's practice of law in violation of the regulations of the profession warrants a lengthy suspension. The court has imposed sanctions that range from a one-year suspension to disbarment where attorneys have committed similar misconduct. *See In re Kluge,* 332 Or 251, 264–265, 27 P3d 102 (2001) (discussing sanctions imposed upon attorneys who practiced law while suspended); *In re Wyllie,* 327 Or 175, 957 P2d 1222 (1998) (two-year suspension imposed where the attorney misrepresented his CLE activities to the MCLE Board and lied to the Bar's investigatory board).

27.

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 two years for violations of ORS 9.160, DR 1-102(A)(2), DR 1-102(A)(3), RPC 5.5(a), RPC 8.1(a)(1), and RPC 8.4(a)(3), the sanction to be effective 30 days after this stipulation is approved.

28.

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.

29.

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 9th day of November 2007.

/s/ Brian J. Dobie
Brian J. Dobie
OSB No. 902490

EXECUTED this 15th 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 Nos. 07-71 and 07-173
	)	
MATTHEW A. CHANCELLOR,	)	SC S055643
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violations of RPC 1.7(a)(2), RPC 3.4(a), RPC 8.4(a)(2), RPC 8.4(a)(3), RPC 8.4(a)(4), and ORS 9.527(1). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	January 23, 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 one year, effective January 23, 2008.

DATED this 23rd day of January 2008.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on December 18, 1997, 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 May 17, 2007, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.7(a)(2), RPC 8.4(a)(3), and RPC 8.4(a)(4) of the Rules of Professional Conduct, Case No. 07-71. On December 14, 2007, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 8.4(a)(2), RPC 3.4(c), and ORS 9.527(1), Case No. 07-173. 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

Case No. 07-71

5.

At times mentioned herein, the Accused was a deputy district attorney with the Jackson County District Attorney's Office. About August 26, 2006, an alleged rape and other crimes occurred in Jackson County, Oregon. The matter was reported to the Medford Police Department, an investigation was commenced, and a suspect was thereafter identified (hereinafter "Sexual Assault Case").

6.

After August 26, 2006, the Medford Police Department consulted the Accused concerning the Sexual Assault Case. On October 12, 2006, the Medford Police Department held a voice identification and in-person lineup for the victim of the Sexual Assault Case to attempt to identify her assailant. The Accused attended the identification procedures as the Jackson County Deputy District Attorney assigned to the case. The victim identified the person who had attacked her. Thereafter, the victim left the police department.

7.

Later during the evening of October 12, 2006, the Accused unexpectedly ran into the victim of the Sexual Assault Case. During the evening of October 12, 2006, and the early morning hours of October 13, 2006, the Accused consumed alcohol and engaged in sexual contact with the victim. Prior to October 12, 2006, the Accused was not acquainted with the victim.

8.

On and after October 13, 2006, the Accused continued his involvement and responsibility for the Sexual Assault Case when there was a significant risk that the representation of the State of Oregon would be materially limited by his personal interests. On October 13, 2006, the Accused prepared a district attorney's information charging the alleged assailant with Rape I and other crimes concerning the Sexual Assault Case, and thereafter filed the information with the court, *State of Oregon v. Michael Ray Knight*, Jackson County Circuit Court Case No. 064543FE.

9.

About October 17, 2006, the Accused's conduct with the victim of the Sexual Assault Case came to the attention of the Jackson County District Attorney. On October 17, 2006, the Jackson County District Attorney met with and interviewed the Accused concerning his conduct. During the October 17, 2006, meeting, the Accused knowingly made false statements and failed to disclose material information concerning his contact, consumption of alcohol, and sexual conduct with the victim of the Sexual Assault Case.

10.

The Jackson County District Attorney requested that the Medford Police Department conduct an investigation concerning the Accused's conduct with the victim of the Sexual Assault Case. The Accused met with and was interviewed by a representative of the Medford Police Department. The Accused knowingly made false statements and failed to disclose material information to the representative of the Medford Police Department concerning his contact, consumption of alcohol, and sexual conduct with the victim of the Sexual Assault Case.

11.

Based on the foregoing, the Accused admits that his conduct constituted a violation of RPC 1.7(a)(2) (lawyer self-interest conflict), RPC 8.4(a)(3) (dishonesty or misrepresentation), and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

Case No. 07-173

12.

On November 28, 2006, the Accused committed the crime of Driving Under the Influence of Intoxicants, a Class A misdemeanor (ORS 811.010), in Clackamas County, Oregon, *State of Oregon v. Matthew A. Chancellor*, Clackamas County Case No. CR0613883 (hereinafter "Clackamas DUII"). On December 26, 2006, the Accused entered into a diversion agreement concerning the Clackamas DUII. In conjunction with the diversion, the Accused entered a guilty plea to the DUII charge.

13.

In and after December 26, 2006, the Accused failed to comply with the terms of the Clackamas DUII diversion. On June 19, 2007, the court filed an order to show cause why the diversion agreement should not be revoked and scheduled a revocation hearing for August 8, 2007. The Accused did not appear and the court issued a warrant for his arrest. Thereafter, the Accused was arrested and taken into custody. On August 8, 2007, the court revoked the diversion agreement and sentenced the Accused to a term of probation with conditions, which included, among others, that he obey all laws and conditions of probation; pay all fines and court costs; not drive without a license or insurance; not enter any establishment whose primary income is derived from the sale of alcoholic beverages; complete an alcohol evaluation and treatment program; and not possess or consume intoxicants. The court also suspended the Accused's driver license for one year.

14.

On February 7, 2007, the Accused committed the crime of Driving Under the Influence of Intoxicants, a Class A misdemeanor (ORS 813.010), and Reckless Driving, a Class A misdemeanor (ORS 811.140), in Douglas County, Oregon, *State of Oregon v. Matthew Chancellor*, Douglas County Case No. 07CR1185FE (hereinafter "Douglas DUII"). On October 22, 2007, the Accused entered a guilty plea to the DUII charge and was sentenced by the court to a term of probation with conditions, which included, among others, that he obey all laws and the terms of probation; pay all fines and court costs; participate and complete an alcohol evaluation and treatment program; not drive without a license or insurance; and not consume intoxicants. Also, the Accused's driver license was suspended for three years.

15.

On February 10, 2007, the Accused committed the crime of Disorderly Conduct, a Class B misdemeanor (ORS 166.025), *State of Oregon v. Matthew A. Chancellor,* Jackson County Circuit Court Case No. 071082MI. At the time of the offense, the Accused had consumed a great deal of alcohol and was drunk. On October 16, 2007, the Accused pled guilty to the charge. The court placed the Accused on probation with conditions, which included, among others, that he obey all laws and conditions of probation; abstain from the use/possession of all intoxicants; enter and successfully complete an alcohol/drug treatment program; and complete 100 hours of community service.

16.

In and between December 2006 and December 2007, the Accused failed to comply with the orders of the Clackamas, Douglas, and Jackson counties' courts, including the terms of the Clackamas DUII diversion, and the Clackamas, Douglas, and Jackson counties' probations by repeatedly consuming intoxicants, and failing to obey the law.

17.

Based on the foregoing, the Accused admits that his conduct constituted violations of RPC 3.4(a) (failure to obey orders of the court), RPC 8.4(a)(2) (criminal conduct reflecting adversely on a lawyer's fitness to practice law), and ORS 9.527(1) (commission of an act or course of conduct that would result in the denial of admission to the Bar).

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. *Duties violated.* The Accused violated his duties to the public and the legal system. *Standards,* §§ 5.1 and 6.2. "The public expects the lawyer to be honest and 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. He knowingly, deliberately, and repeatedly consumed alcohol and drove a motor vehicle when he was under the influence of intoxicants, and when he was prohibited from consuming intoxicants by orders of

the courts. The Accused acted intentionally when he engaged in sexual conduct with the victim of a case he was handling, and when he was not truthful with the district attorney and the police investigator concerning his conduct.

c. *Injury.* The Accused's conduct concerning the Sexual Assault Case caused at least potential injury to the public. Whether there will be actual injury is yet to be determined. The defendant wants to make an issue of the Accused's conduct at trial. The case remains pending. The Accused caused potential injury to the public every time he drove while intoxicated. He caused actual injury to the legal system by undermining the courts' orders and by demonstrating an indifference to the law. Such conduct also caused potential injury to the profession by damaging the public's confidence in lawyers.

d. *Aggravating factors.* Aggravating factors are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. The Accused's conduct demonstrates selfish motives insofar as he acted on his personal interests with the victim of the Sexual Assault Case, when he was not truthful with the district attorney and the police investigator, and when he drove for his personal convenience when he had consumed intoxicants and should not have been behind the wheel of a vehicle. *Standards*, § 9.22(b). A pattern of misconduct is demonstrated by the Accused's repeated violation of the criminal laws, and repeated and ongoing consumption of intoxicants in violation of the courts' orders. *Standards*, § 9.22(c). There are multiple offenses. *Standards*, § 9.22(d). Also, the Accused was admitted to practice in 1997 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. The Accused has no prior record of discipline. *Standards*, § 9.32(a). He cooperated with the Bar during the investigation of his conduct and in resolving this proceeding. *Standards*, § 9.32(e). Other penalties have been imposed insofar as the Accused was terminated from his position as a deputy district attorney, and he was sentenced by the court in the criminal proceedings. Also, the Accused's conduct since he was sentenced may result in the imposition of additional penalties for violation of the terms of the probations in Clackamas, Jackson, and Douglas counties. *Standards*, § 9.22(k). The Accused is remorseful. *Standards*, § 9.22(*l*).

19.

The *Standards* provide that a suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that seriously reflects on the lawyer's honesty, trustworthiness, or fitness to practice. *Standards*, § 5.12. Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is

injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standards,* § 6.12. Oregon case law is in accord. *See, e.g., In re McDonough*, 336 Or 36, 77 P3d 306 (2003) (18-month suspension for repeated motor vehicle violations); *In re McHugh*, 14 DB Rptr 23 (2000) (60-day suspension for violation of DR 1-102(A)(4), DR 5-101(A), and DR 5-110(A)); *In re O'Connor,* 20 DB Rptr 42 (2006) (one-year suspension for violations of law concerning a trust test and misrepresentations during the inquiry about the drug test).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for one (1) year for violations of RPC 1.7(a)(2), RPC 8.4(a)(3), RPC 8.4(a)(4), RPC 8.4(a)(2), RPC 3.4(c), and ORS 9.527(1).

21.

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

DATED this 2nd day of January 2008.

/s/ Matthew A. Chancellor
Matthew A. Chancellor
OSB No. 975375

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 Nos. 05-131 and 05-134
	)	
DENNIS M. ODMAN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Mark Morrell, Martha M. Hicks
Counsel for the Accused:	Donald Robertson
Disciplinary Board:	C. Lane Borg, Chair Anthony A. Buccino Howard Freedman, Public Member
Disposition:	Violation of DR 1-102(A)(3), DR 2-106(A), DR 6-101(B), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel Opinion. 181-day suspension.
Effective Date of Opinion:	January 27, 2008

TRIAL PANEL OPINION

FINDINGS OF FACT AND ORDER

THIS MATTER came before the Hearings Panel on September 19, 2007, at the Oregon State Bar office. The Bar was represented by Martha M. Hicks and Mark Morrell. The Accused was represented by Donald K. Robertson and Loren A. Gramson. Testimony was taken and exhibits were received. The Bar alleged a number of violations concerning two separate matters. This Order will address the matters separately.

Case No. 05-131

THE JOHNSTON MATTER

The Panel finds the following facts from the testimony:

This matter concerned the representation of a contractor/developer and his dispute with the City of Gresham over a small subdivision. The client, Ronald Johnston, came to Mr. Odman after the dispute was nearly full-blown, but before any lawsuits had been filed. Mr. Johnston was the developer of a small tract of land containing approximately 25 lots. The City of Gresham was refusing to release all of the lots for building until numerous items were resolved, mostly regarding drainage

and roads. Mr. Johnston felt the punch list was a pretext and wanted Mr. Odman to file a lawsuit immediately. Mr. Odman persuaded the client to allow him to negotiate with the City.

Mr. Johnston had obtained a construction performance bond. After ongoing but unsuccessful discussions, the City made a demand on the performance bond. Mr. Odman negotiated a reduction from the original bond to reflect what the City claimed was still at issue. This amount was $66,000.00 and was posted into court.

Eventually, in December of 2003, Mr. Odman filed a lawsuit on the failure to release the lots for building. Thereafter, Mr. Odman had minimal contact with the City on this lawsuit, and performed very little work, or at least did not provide billing statements for work, on this matter. Sometime in the late spring of 2004, Mr. Odman received a notice from the court that the case would be dismissed for failure to prosecute under UTCR 7.020. Mr. Odman took no action regarding the notice, and the case was dismissed.

After the case was dismissed, the client spoke to Mr. Odman on several occasions. There was a dispute in the testimony as to how many times they spoke, but even by Mr. Odman's admission the client made specific inquiry about the status of the case at least several times. Each time they spoke, the Accused told the client that they were waiting for a trial date. Each time the Accused told the client this after the dismissal date, it was a lie. The Accused never informed the client that the case had been administratively dismissed.

In December 2004, the City gave the Accused notice that they were seeking distribution from the court of the $66,000.00 that had been posted. Mr. Odman did not tell the client about this notice, and did not take any action to stop the distribution.

Mr. Johnston, on his own volition, contacted other attorneys in January and February of 2005. During one of these office visits, with attorney Charles E. Corrigan, the client found out that the case had been dismissed over six months prior. At this time, Mr. Johnston fired Mr. Odman and sought new counsel. The testimony from Mr. Corrigan was that while Mr. Odman was pleasant, it was difficult to reach him. Mr. Odman eventually forwarded some files, although not in a timely fashion.

Mr. Corrigan did not ultimately represent the client, and he could not say exactly what he had seen or not. The attorney the client eventually hired was Joseph A. Yazbeck. Mr. Yazbeck testified that he began his representation of Mr. Johnston in April 2005, and that he filed a new lawsuit relying on the deal the Accused had negotiated with the City regarding the claim on the performance bond. Mr. Yazbeck testified that at the time of this trial, in September of 2007, he had obtained a settlement from the City releasing the remaining lots. Mr. Yazbeck also testified that Mr. Odman's work was critical in obtaining the favorable result for Mr. Johnston.

Mr. Odman testified that Mr. Johnston was a difficult client, and that the City was making many picky complaints against him on this development. Mr. Odman

testified that he did not have a good reason for not prosecuting the case, but that he was continuing to negotiate with the City. Mr. Odman further testified that he did not tell the client that the case had been dismissed, and that when the notice to distribute the posted money arrived, he took no action and did not inform the client. He testified that he thought he would be able to re-file, so he believed the dismissal was not a serious impediment to the client's position. Finally, he testified that when he was requested to make the file available, it was large and he did not have assistance in copying it.

The Panel makes the following findings regarding the witnesses in the Johnston matter:

Mr. Johnston was a demonstrably difficult client, but he was damaged by the representation of Mr. Odman in that he had delay, stress, and expenses resulting from Mr. Odman's failure to prosecute and from his misrepresentations.

Mr. Corrigan was truthful but did not establish any claim of the Bar, as he could not confirm what file materials he had received from Mr. Odman.

Likewise, Mr. Yazbeck was truthful, but the Panel disagrees with his conclusion that Mr. Odman's actions did not harm the client. Mr. Odman admitted he had lied to the client on several occasions and did not prosecute the case.

Finally, Mr. Odman was not able to establish that he had done any significant work on the case after filing the lawsuit.

The Panel rules as follows:

The Panel finds by clear and convincing evidence that Mr. Odman violated DR 1-102(A)(3) by lying to the client on several occasions about the status of his case, specifically that by saying he was waiting for a trial date, when he knew the case had been dismissed, was a false statement to the client.

Further, the Panel finds that the Accused violated DR 6-101(B), neglect of a legal matter, by not prosecuting the lawsuit.

Finally, the Panel finds that the Accused violated RPC 1.16(d), failure to protect a client's interest in litigation, by not responding to the UTCR 7.020 notice to dismiss, by not responding to the notice to distribute posted funds, and by not informing the client of these actions in a timely fashion so that the client might seek counsel to stop these actions.

The Panel finds that the Bar has not proven by clear and convincing evidence that the Accused failed to provide the file or a full accounting of fees. In fact, on this last point the Panel notes that it was the lack of doing work that contributed to the problem, but that at least the Accused did not bill for work not done.

Further, the Panel finds that the Accused did not violate DR 2-110(A)(2), regarding withdrawal, as he did not withdraw, but rather he simply stopped working

on the matter. If he had withdrawn when he stopped working on the matter, he might have protected the client's interest.

Case No. 05-134

THE TAYLOR MATTER

The Panel finds the following facts from the testimony:

This matter involved Mr. Odman's representation of a conservator in Multnomah County Circuit Court. The protected person was taken into a care facility by a state social worker due to serious health issues. The original conservator was one of the protected person's sons, and was represented by attorney Stephen R. Owen. The protected person's brother hired Mr. Odman to intervene and to object to the son being the conservator/guardian. The son withdrew his petition and allowed the brother, Mr. Odman's client, to be appointed. Over the course of several years, the conservator claimed excessive fees for his services and made unauthorized expenditures from Estate funds. Mr. Odman failed to successfully control the conservator's actions. In some cases, Mr. Odman did return unauthorized funds that he received from the Estate account. Mr. Odman filed each inventory and accounting well after it was initially due.

At the first objection hearing in April of 2003, the Honorable Elizabeth Welch ordered that the checkbook be taken away from the conservator and that it be managed by Mr. Odman. At the second annual accounting objection hearing, Judge Welch removed Mr. Odman's client as the conservator and appointed a different son than the original petitioner. This son was also represented by Mr. Owen.

The Panel makes the following findings with regards to the allegations:

The Panel finds that while Mr. Odman's representation was problematic, for most of the allegations the Bar has not established the allegations by clear and convincing evidence. This is largely due to the testimony from Judge Welch, which the Panel finds was candid and credible. Judge Welch's testimony was that there is no consensus among the probate bar and bench that the attorney for a conservator has a duty to police the expenditures of the conservator, other than to inform the conservator of his or her duties and then to report truthfully what those expenditures were.

Further, the Bar alleged that the Accused failed to seek an income cap trust or failed to advise the conservator to pay certain bills of the Estate, yet the evidence from the witnesses was that the Accused was following the direction of his client, and the Bar presented no evidence to disprove that.

Further, the allegation that Mr. Odman misrepresented a conversation with Mr. Owen to the Court is undermined by Mr. Owen's testimony that he agreed on the record before Judge Welch that he (Mr. Owen) could understand how Mr. Odman could have thought there was an agreement. The Panel believes it is likely that Mr.

Odman did not really think there was an agreement. However, the Panel finds that the Bar has not established this allegation by clear and convincing evidence.

As to the allegation of late filings, Judge Welch testified that even though in over two years Mr. Odman did not make a single timely filing, extensions were routinely granted, even after deadlines had passed. The Panel finds this evidence persuasive, and therefore cannot find by clear and convincing evidence that the Accused failed to timely file as alleged in the Complaint.

The Panel finds by clear and convincing evidence that the Accused did not change his address with the Probate department as required by the UTCR.

The Panel finds that the Bar has established by clear and convincing evidence that the Accused took an unauthorized fee in the conservator matter. The Accused was aware that any attorney fees had to be authorized by the Court if they were taken from Estate funds. The Accused was receiving attorney fees payments from the conservator over the almost two and one-half years of the representation, sometimes receiving funds from the Estate and sometimes from the conservator's company. The Accused did perform work for the conservator's company that was separate from the conservator. However, all of the witnesses, including Mr. Odman, were in agreement, that the total attorney fees authorized for Mr. Odman from the estate was $15,000.00. Although the accountings were in some cases filed months late, the evidence is uncontroverted that Mr. Odman prepared all of the accountings which were filed by his client (Exs. 52, 53, 57, and 83).

These exhibits establish that Mr. Odman received for attorney fees, or reimbursement to the conservator for fees paid to Mr. Odman directly by the conservator, the amount of $11,151.85. These payments were as follows: $1,089.40 on April 12, 2002; $237.25 on May 6, 2002; $1,545.95 on May 6, 2002; $1,020.25 on May 30, 2002; $2,259.00 on August 16, 2002; and $5,000.00 on October 23, 2003. However, Mr. Odman only repaid $1,326.65 on October 14, 2003. Even though all but the first two payments were reimbursements to the conservator, Mr. Odman prepared the accountings and saw that these were reimbursements for unauthorized attorney fees, yet when he was asked about this at the hearing he had no explanation.

Finally, regarding the last accounting filed by Mr. Odman, even though he agreed that Judge Welch had only authorized $15,000.00 in total attorney fees, he took an additional $15,000.00 in attorney fees without any recognition of the other fees received. Further, Exhibit 56 is the Accused's own Attorney Fees Affidavit of June 4, 2004, in which he admits receiving $9,512.00 from the conservator's company for fees regarding the conservatorship. In addition, he was aware that the conservator had taken at least that much from the Estate accounts in reimbursements. Yet in the final accounting (Ex. 83), there is no offset for the funds already received. The Accused was paid at least $9,512.00 more than was authorized, and this is a violation of DR 2-106(A) as alleged in the Complaint.

COOPERATION WITH THE BAR

The Bar has alleged in each matter that when the Bar investigated complaints, the Accused was not cooperative. They presented evidence through Candace H. Weatherby, the attorney who investigated the allegations prior to the Complaint being filed. Ms. Weatherby testified that Mr. Odman ignored several requests from the Bar prior to her being assigned, and that she had difficulty receiving timely documents. Mr. Odman admitted to not fully responding the Bar's requests, but offers mitigation of depression from his previous discipline matter and from his wife's illness. We will address mitigation below; however, the Panel finds that the admission of failure to cooperate establishes this allegation by clear and convincing evidence.

SANCTIONS

The Panel must consider four factors when deciding on sanctions:

1. Rules violated:

The Panel finds that the rules the Accused violated are serious, as they involve dishonesty to a client about pending litigation, taking unauthorized funds from a conservator's Estate, failure to prosecute a pending action in court, and failure to respond to Bar inquiries. These violations merit, at a minimum, a significant suspension.

2. The Accused's mental state:

The circumstances which caused the behavior, whether it was depression, disorganization, or lack of resources, do not change the fact that as to the allegation of misrepresentation to a client, the conduct was intentional. However, the Panel does not find that the motive was greed or personal gain; rather, it was a lack of courage to face a difficult client.

The Panel finds that the failure to cooperate with letter inquiries was intentional.

Finally, the excessive fees were likely the result of an out-of-control accounting system reporting matters months and years after they occurred. However, as the Accused prepared all of the relevant documents, the Panel is troubled by his lack of explanation. That being said, the Panel does not find that the misappropriation was an intentional conversion of funds.

3. Actual or potential harm:

As to the Johnston matter, the harm was particular to one client, but the Panel finds that Mr. Odman's actions brought this client additional stress, delay, and attorney fees. The client was not easy to deal with, but it is an attorney's job to speak truthfully even to difficult clients.

Additionally, Mr. Odman's actions were prejudicial to the public's perception of attorneys.

As to the Taylor matter, Judge Welch's testimony was that the representation was problematic and cost the Estate significant excess fees in terms of litigation in order to bring the conservator into compliance with his duties. She found that the Accused's representation fell below the standard of care of a reasonable conservator's attorney, and the Panel agrees.

4. Aggravation and mitigation:

As to aggravation, the Bar has urged that we find Mr. Odman intentionally deceitful in his testimony. Although the Panel does not find aggravation from Mr. Odman's testimony, he does have substantial experience, which is an aggravating factor under the guidelines for sanctions.

As to mitigation, the Panel notes that Mr. Odman testified that he was depressed generally, that he was depressed because of his prior experience with Bar Disciplinary Counsel, and that he was depressed due to his wife's illness. The Panel does not doubt that these issues were significant. However, the Panel does not find that these mitigated his actions. Many of the connections between misconduct and depression came to light only at the trial. Although these factors were undoubtedly weighing on his mind, it does not appear that the depression caused the Accused to lie to Mr. Johnston about his case, or to fail to keep track of his attorney fees in the Estate matter.

The Panel finds that the lack of prior discipline is a mitigating factor.

The Panel rules as follows:

American Bar Association standards direct that when an attorney's conduct is intentional and harms a client, but is not for selfish gain, the sanction should be a suspension. The Panel finds that the appropriate sanction herein is a significant suspension. Therefore, the Panel recommends a suspension of 181 days.

DATED this 16th day of November 2007.

/s/ C. Lane Borg
C. Lane Borg
OSB No. 85029
Trial Panel Chair

DATED this 20th day of November 2007.

/s/ Howard Freedman
Howard Freedman
Public Member
Trial Panel Member

DATED this 27th day of November 2007.

/s/ Anthony A. Buccino
Anthony A. Buccino
OSB No. 75057
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-99
	)	
BILL KLOOS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	John C. Fisher
Disciplinary Board:	None
Disposition:	Violation of RPC 1.7(a)(1). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	January 28, 2008

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 1.7(a)(1).

DATED this 28th day of January 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Bill Kloos, 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 12, 1981, 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 August 23, 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 1.7(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.

Sunrise Ridge, LLC (hereinafter "Sunrise"), owned a tract of land in the City of Cottage Grove (hereinafter "the City") that it sought to develop into a subdivision. Sunrise applied for approval of a Planned Unit Development (hereinafter "PUD") for the subdivision. At all relevant times, Emerald Heights, LLC (hereinafter "Emerald"), owned a tract of land that adjoined the proposed Sunrise subdivision and Ross Murry (hereinafter "Murry") was a 50% owner of Emerald.

6.

The City's planning commission issued various conditions for the approval of the Sunrise PUD. Condition 12(c) provided for Sunrise to be reimbursed by adjoining landowners for improvements that benefited future development of the adjoining land and for the enforcement of reimbursement through the retention of a reserve strip that

would prevent the adjoining land from connecting to Sunrise utility and road improvements until Sunrise was reimbursed. In the City's proposal, Condition 12(c) provided that the City was to determine the amount of reimbursement adjoining landowners owed to Sunrise and the City controlled the release of the reserve strip that enforced reimbursement.

7.

In or about September 2005, the Accused undertook to represent Sunrise in a writ of mandamus action in Lane County Circuit Court that pertained to the PUD application. In the petition for a writ of mandamus, the Accused proposed that, under Condition 12(c), Sunrise would determine the amount of reimbursement to be paid by adjoining landowners prior to the release of the reserve strip and that Sunrise would control the release of the reserve strip. The Accused continued to represent Sunrise in the mandamus proceeding through the entry of a stipulated judgment in March 2006.

8.

Throughout the period that the Accused represented Sunrise in the mandamus proceeding, the Accused represented entities in which Murry had an interest in matters that were unrelated to the Sunrise mandamus proceeding.

9.

In January 2006 through March 2006, the Accused represented Emerald in matters that were unrelated to the Sunrise mandamus proceeding.

10.

In April 2006, Emerald filed a motion intervening in the Sunrise mandamus proceeding. Although the Accused arranged for substitute counsel to assist Sunrise in opposing the motion and negotiating an amendment to Condition 12(c), the Accused also appeared in court and prepared a document at the joint request of the parties' attorneys without obtaining a written waiver or formal consent executed by Emerald.

11.

During the times material herein, the Accused was negligent in failing to learn or recognize that the objective business and property interests of Sunrise in the mandamus proceeding were directly adverse to the objective business and property interests of Emerald. Insofar as client consent may have permitted the Accused to represent Sunrise and Emerald simultaneously in unrelated matters, the Accused did not have such consent.

Violations

12.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.7(a)(1) of the Rules of Professional Conduct.

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

b. *Mental state.* 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 substantial deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Standards,* at 7. The Accused negligently failed to recognize the conflict between the interests of Sunrise and Emerald.

c. *Injury.* There was potential injury to the interests of Emerald and Sunrise as a result of the Accused's divided loyalties.

d. *Aggravating factors.* Aggravating factors include:

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

e. *Mitigating factors.* Mitigating factors include:

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

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

    3. The Accused showed a cooperative attitude toward the disciplinary proceedings. *Standards,* § 9.32(e).

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

14

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially

affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

15.

Oregon case law is in accord. While suspension is the appropriate sanction where a lawyer has knowingly engaged in a conflict of interests and where the aggravating circumstances outweigh the mitigating circumstances, the court has stated that reprimand is appropriate where the mitigating circumstances predominate. *In re Knappenberger*, 337 Or 15, 32, 90 P3d 614 (2004). *See also In re Balocca*, 342 Or 279, 298, 151 P3d 154 (2007) (discussing *In re Hockett*, 303 Or 150, 163–164, 734 P2d 877 (1987)); *In re Howser*, 329 Or 404, 987 P2d 496 (1999) (after concluding that the mitigating factors outweighed the aggravating factors, court imposed a public reprimand for violations of DR 5-105(C) (former client conflict) and DR 2-110(B) (failure to withdraw from representation)); *In re Cohen*, 316 Or 657, 853 P2d 286 (1993) (after concluding that the mitigating factors outweighed the aggravating factors and that the accused lawyer's clients were not actually injured, court imposed a public reprimand for a violation of DR 5-105(E) (current client conflict)).

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.7(a)(1), the sanction to be effective upon the approval of this stipulation.

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 15th day of January 2008.

/s/ Bill Kloos
Bill Kloos
OSB No. 811400

EXECUTED this 22nd day of January 2008.

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 Nos. 03-110, 03-126, 04-104,
	)	04-115, 06-126, 07-08,
TIMOTHY P. DUNN,	)	07-09, 07-30, 07-65,
	)	07-66, 07-67, and 06-100
Accused.	)	
	)	
	)	
	)	

Counsel for the Bar:	Herbert C. Sundby, Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	William G. Blair, Chair Craig A. Crispin Loni J. Bramson, Public Member
Disposition:	Violation of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 2-110(A)(3), DR 6-101(B), DR 7-106(A), DR 9-101(A), DR 9-101(C)(3), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(1), RPC 8.1(a)(2), RPC 8.1(c)(4), and RPC 8.4(a)(4). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	February 20, 2008

OPINION AND ORDER

Procedural History

This matter is before this trial panel of the Oregon State Bar Disciplinary Board on two formal complaints under which 16 separate cases are consolidated for hearing and disposition.

On September 19, 2006, the Bar filed its Formal Complaint in No. 06-100, and that Complaint was duly served on the Accused on December 19, 2006.

On May 25, 2007, the Bar filed its Fifth Amended Complaint in Nos. 03-110, et al., and moved for an order requiring that the Accused file an answer or other

appropriate response. The trial panel chair, by order dated May 29, 2007, ordered that the Accused file a responsive pleading by June 15, 2007.

On June 5, 2007, the Bar moved for an order compelling discovery in No. 06-100, and on the same day moved for an order compelling discovery in No. 03-110, et al. In both cases the trial panel chair ordered compliance with outstanding discovery requests by June 19, 2007.

All orders described above were served on the Accused by the trial panel chair. The Accused responded to none of them as ordered, nor did he file an answer or other responsive pleading in either matter.

On June 13, 2007, the Bar moved for entry of default against the Accused in No. 06-100. On June 20, 2007, the Bar moved for entry of default against the Accused in No. 03-110, et al. The Accused did not respond to either motion, and on June 25, 2007, the trial panel (one member dissenting) found the Accused in default in both cases. The Accused filed motions in both cases to set aside the default, and those motions were denied by the trial panel. In so doing, however, the panel exercised its discretion under BR 5.8 to consider evidence and authority limited to the issue of sanctions only, and granted leave for the Accused to appear at a hearing convened for that purpose.

The Bar also moved for sanctions against the Accused for failure to comply with the orders compelling discovery. Those motions were denied since the orders of default had the effect of establishing all allegations of the formal complaints. In light of the nature and volume of the accusations in this consolidated matter, the panel was most concerned to hear from the Accused any explanation or information relevant to possible mitigation of the charges, regardless of whether documents relevant to that issue were not provided in discovery.

The matter proceeded to hearing before the trial panel on October 2 and 3, 2007, limited to the question of sanctions. The Bar, having the burden of proof as to sanctions, even where culpability for the alleged violations is established, elected to proceed with testimony on six particular matters, and documentary evidence as to all charges. The Accused testified on his own behalf with respect to appropriate sanctions relating to the various matters, but called no other witnesses and offered no documentary evidence.

Final arguments were presented at the close of testimony, and the hearing concluded on October 3, 2007.

General Nature And Scope Of The Charges

The Accused is charged with 24 violations of the former Oregon State Bar Disciplinary Rules and the current Oregon State Bar Rules of Professional Responsibility in connection with complaints from 16 different individuals and entities alleging various misconduct over a period of more than five years.

That "various misconduct" sorts into three general categories: neglect of entrusted legal matters (including actively misleading and not informing clients as to the status of their legal matters and the Accused's work on those matters), various fiscal improprieties involving fees and accounting for client funds, and failure to provide information and cooperation to the Bar in investigating complaints.

For the reasons that follow, the trial panel is unanimous in concluding that the conduct of the Accused warrants disbarment, and that certain cases require restitution of unearned fees.

Specific Acts of Misconduct

Because the inaction of the Accused resulted in an order of default and consequent establishment of the truth of the Bar's allegations against him, we need not discuss the nature of his misconduct in the context of determining guilt, but rather in the context of sanctions. We thus outline the nature of the Accused's violations in conclusory terms, borrowing from the Formal Complaints:

Case No. 03-126. The Accused represented the mother in connection with modification of custody, parenting time, and support. On December 10, 2002, the court granted the mother's motion for modification and instructed the Accused to prepare an order awarding the mother legal custody of her minor children and reducing her monthly child support obligation to her former husband. Between that date and the end of March 2004, the Accused failed to pursue the matter and failed to prepare an order as directed by the court. Further, he failed to keep his client informed as to the status of the matter and failed to respond to his client's inquiries about the status of the case.

When his client complained to the Bar, the Accused failed to respond to the Bar's initial request for a response, and failed to respond to inquiries from Disciplinary Counsel's Office thereafter. In this matter, the Accused has violated DR 6-101(B) and 1-103(C) of the then-current Code of Professional Responsibility.

Case No. 03-110. On April 29, 2003, the Accused was appointed to act as arbitrator in a civil case pending in the Washington County Circuit Court. One month later the Accused held the arbitration hearing and took the matter under advisement. UTCR 13.210(5) requires that the arbitrator file an award within seven days after taking a matter under advisement, and UTCR 13.220(1)(b) requires an arbitrator to file an award with the court within 14 days after conclusion of the arbitration. He did not do so.

On August 6, 2003, because no award had been filed, the court entered a judgment dismissing the case. It was not until July 13, 2004, that the Accused sent his award to either party, and not until September 17, 2004, that he filed his award with the court.

Meanwhile, on July 22, 2003, the Bar received a complaint from one of the parties concerning the Accused's delay. The Accused did not answer requests by the

Bar's Office of Disciplinary Counsel to respond to the complaint. In this matter, the Accused has violated DR 6-101(B) and 1-103(C) of the then-current Code of Professional Responsibility.

Case No. 04-104. On August 24, 2002, the Accused was cited for driving while under the influence of intoxicants. He entered a plea of "guilty" to that charge and, on May 1, 2003, was sentenced to two years of probation. Under the terms of his probation the Accused was required to be evaluated and treated for alcohol abuse and was prohibited from consuming or possessing alcohol or entering into an establishment where alcohol was served.

On February 19, 2004, after one probation violation, the Accused was scheduled to enter an inpatient treatment center. The day before he was scheduled to enter inpatient treatment, he met with a judge of the Washington County Circuit Court to review cases that were scheduled for hearing or trial during his absence for treatment. At that meeting the Accused admitted to the court that he had consumed alcohol earlier in the day. The court ordered that the Accused be taken into custody for violation of the terms of his probation. On March 31, 2004, the Accused admitted to the February 18th probation violation. In this matter, the Accused has violated DR 1-102(A)(4) and 7-106(A) of the then-current Code of Professional Responsibility.

Case No. 04-115. On July 9, 2003, a client hired the Accused to represent her in connection with two charges of driving while under the influence of intoxicants. Pursuant to an oral agreement, the client paid the Accused $500 to represent her in a hearing before the Motor Vehicles Division, and $500 to represent her in a criminal proceeding up through the pretrial conference. The Accused deposited those funds into his lawyer trust account. All of these events occurred on July 9, 2003.

The same day he deposited these funds, the Accused withdrew $500, and on July 25, 2003, he withdrew the remaining $500. The Accused did not provide the client an appropriate accounting for his handling of these funds. At the time he withdrew the funds, the Accused mistakenly believed he had earned them when, in fact, he had not.

On July 25, 2003, the Accused represented the client in the DMV hearing. Her pretrial conference was scheduled for August 6, 2003. Between the DMV hearing and the pretrial conference, the client discharged the Accused. After learning that he was discharged, the Accused failed to take reasonable steps to avoid foreseeable prejudice to the client's rights in that he failed to deliver to her all papers and property to which she was entitled, despite her request for this material. He also failed to refund to the client a portion of the funds she had paid representing unearned legal fees and expenses, again, despite her request for a refund. In this matter, the Accused has violated DR 2-110(A)(2) and (3), and DR 9-101(A) and (C)(3) of the then-current Code of Professional Responsibility.

Case No. 05-146. On November 22, 2003, a client retained the Accused to advise and assist him in dealing with the administration of the high school the client's son attended as a senior. The son had been falsely accused of misconduct and

suspended from school, resulting in certain associated consequences such as "detention" status and restriction from participating in certain school events, including certain events surrounding graduation.

The client gave the Accused a $500 check described as an "advance fee" under an oral agreement. The Accused and the client did not have a written fee agreement designating the advance fee as a nonrefundable retainer earned upon receipt. The Accused deposited the check into his personal account. From November 2003 until February 2004 the Accused conducted legal research and reviewed documents the client provided to him in connection with the matter. From April 1, 2004, until July 29, 2004, the Accused failed to take other steps to pursue the matter and failed to maintain adequate communication with the client.

The client's son graduated at the end of the '03–'04 academic year. On July 29, 2004, the Accused first contacted the high school administration. On September 2, 2004, the Accused went with the client to review the high school's files concerning the client's son. On September 23, 2004, the Accused spoke by phone with the dean of students. Based on that conversation, the Accused concluded that the high school's files had been completely purged of any reference to the prior accusations and disciplinary action against the client's son. The Accused failed to communicate this information or his conclusion to the client. In this matter, the Accused has violated DR 6-101(B), and DR 9-101(A) of the then-current Code of Professional Responsibility.

Case No. 06-37. In October 2002, a woman convicted of murder filed a pro se petition for postconviction relief. On November 18, 2002, the Accused was appointed to represent her in that matter. After January 2003, the Accused failed to maintain adequate communications with the client despite repeated requests by the client for information regarding the status of her case. On February 3, 2003, the court issued a notice stating that the case would be dismissed unless the State of Oregon filed a responsive pleading or the petitioner filed an application for default. The State did not make an appearance, the Accused did not move for default, and on April 3, 2003, the court dismissed the case. The Accused was aware of the dismissal and, though he intended to file a motion to set aside the dismissal, he neglected to do so. In this matter, the Accused has violated DR 6-101(B) of the then-current Code of Professional Responsibility.

Case No. 06-114. In late May or early June of 2002, the Accused undertook to represent a client in an insurance matter. Between November of 2002 and October 2004 the Accused failed to pursue the matter on behalf of the client. In October 2004 the Accused prepared a civil complaint on the client's behalf and had him sign an affidavit regarding the matter. After that, the Accused failed to further pursue the client's legal matter. On April 7, 2006, the Bar received a complaint from the client concerning the Accused's failure to properly represent his legal interests. On July 24, 2006, the Oregon State Bar Office of Disciplinary Counsel requested the Accused to provide additional information regarding his conduct as complained of by the client.

The Accused knowingly failed to respond to that letter, and similarly failed to respond to a subsequent letter sent on August 9, 2006. In this matter, the Accused has violated DR 6-101(B) and 1-103(C) of the then-current Code of Professional Responsibility.

Case No. 06-115. On July 1, 2006, the Accused received two citations requiring his appearance for arraignment before the Washington County Circuit Court on August 7, 2006, at 8:30 a.m. On the morning of August 7, 2006, the Accused checked in with the Washington County Circuit Court clerk, but thereafter failed to appear at the arraignment hearing, and the court issued a bench warrant for his arrest. The Trial Court Administrator reported to the Bar the Accused's failure to appear. On August 8, 2006, the Accused told the Bar that, without his knowledge, someone checked him in with the Washington County Circuit Court clerk on August 7, 2006. At the time the Accused made that report he knew that it was both false and material. In this matter, the Accused has violated Section 8.1(a)(1) of the Rules of Professional Conduct.

Case No. 06-126. The Accused was retained by a client who had been named as a defendant in a lawsuit commenced in February 2005. The matter was set for arbitration in September 2005. The Accused failed to inform the client about the arbitration date, failed to relay a settlement offer to the client, failed to submit a prehearing statement of proof, failed to present any evidence on the client's behalf at the arbitration, failed to forward the arbitration award to the client, and failed to advise the client about his options after entry of the arbitration award.

On September 21, 2006, the client lodged a complaint with the Bar, and that same day Disciplinary Counsel's Office forwarded a copy of the client's complaint to the Accused requesting his response. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on October 18, 2006. In this matter, the Accused has violated Sections 1.3, 1.4(a), 1.4(b), and 8.1(a)(2) of the Rules of Professional Conduct.

Case Nos. 07-08 and 07-09. In December 2005, a client retained the Accused to represent him as the respondent in connection with a petition for modification of the child support provisions of a dissolution of marriage judgment. The matter went to hearing in Multnomah County Circuit Court on June 19, 2006. On July 11, 2006, the court issued a letter opinion which instructed the Accused to prepare a judgment after he completed and submitted a child support worksheet. The Accused failed to respond to that letter.

In early August 2006, the court received a child support worksheet from the other side, a copy of which the judge sent to the Accused. The court left a telephone message for the Accused asking him to respond to his opponent's worksheet. The Accused failed to do so. On September 1, 2006, the court sent a letter to the Accused asking him to submit a child support worksheet and judgment on or before September 11, 2006. The Accused failed to respond to the court's letter in any way. Later in September 2006, the court left a telephone message for the Accused asking him to

call the court immediately. The Accused failed to contact the court, and did not otherwise respond to or acknowledge the message.

On October 4, 2006, the court left a message for the Accused demanding that he appear within 24 hours. The following day, the Accused's staff informed the court that the Accused had been at home ill for the prior two days. Thereafter the Accused failed to respond to the court's message, failed to appear before the court, and failed to submit a child support worksheet and judgment.

In July and August 2006, the client left a number of telephone messages for the Accused inquiring about the status of his legal matter. The Accused failed to respond to those messages. In August 2006 the client sent the Accused a series of e-mails inquiring about the status of the matter. The Accused responded to some, but not all of those inquiries. Those responses the Accused did make were incomplete, promising to provide additional information soon. He never did so.

In September 2006 the client spoke with the Accused who promised that he would pursue the client's legal matter, but thereafter the Accused continued to neglect and fail to pursue the matter. Finally, the court *sua sponte* prepared and entered a judgment based on the information then on the record. The judgment was less favorable than that sought by the client, although justified by the facts on the record.

On October 5, 2006, the Bar received a complaint from the court concerning the Accused's conduct in this matter. On October 20, 2006, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused, requesting a response. On October 11, 2006, the Bar received a complaint from the client concerning the Accused's conduct. On November 7, 2006, Disciplinary Counsel's Office forwarded a copy of the client's complaint to the Accused and requested a response to that complaint and to the court's prior complaint. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on November 22, 2006. In this matter, the Accused has violated Sections 1.3, 1.4(a), 8.1(a)(2), and 8.4(a)(4) of the Rules of Professional Conduct.

Case No. 07-30. On May 27, 2004, the Accused entered into an agreement with the State Lawyers' Assistance Committee (SLAC) that, in relevant part, required the Accused to abstain from the ingestion of controlled substances, except for physician or nurse practitioner prescribed pharmaceuticals, to attend one OAAP sponsored twelve-step meeting per week, to contact his SLAC monitor once a week, and to immediately report to his SLAC monitor any relapses with any controlled substances.

On or about July 1, 2006, the Accused ingested controlled substances not prescribed by a physician or nurse practitioner. The Accused failed to immediately report his conduct to his SLAC monitor. During 2006, the Accused failed to comply with his obligations to attend one OAAP sponsored twelve-step meeting per week, and to contact his SLAC monitor once a week.

On December 29, 2006, the Bar received a complaint from the Accused's SLAC monitor concerning his conduct. On January 4, 2007, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused, requesting his response. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on February 8, 2007. In this matter, the Accused has violated Sections 8.1(a)(2) and 8.1(c)(4) of the Rules of Professional Conduct.

Case No. 07-65. In January 2006, a client retained the Accused to represent him at a sentencing hearing and in a postconviction relief proceeding. Pursuant to an oral agreement, the client's family paid the Accused a flat fee of $1,800. After being so retained, the Accused failed to pursue the postconviction relief proceeding, failed to keep the client reasonably informed about the status of the matter, and failed to promptly comply with the client's reasonable requests for information about the matter. In August 2006 the client terminated the Accused's representation. At that time the Accused had not completed the postconviction relief proceeding.

The Accused failed to promptly refund to the client the unearned portion of the fee and failed to promptly surrender the client's file. The client requested an accounting for the $1,800. The Accused failed to provide a full accounting to the client.

On January 26, 2007, the Bar received a complaint from the client's sister about the Accused's conduct. On February 5, 2007, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested his response. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on February 28, 2007. In this matter, the Accused has violated Sections 1.3, 1.4(a), 1.5(a), 1.15-1(d), 1.16(d), and 8.1(a)(2) of the Rules of Professional Conduct.

Case No. 07-66. In May 2006, a client retained the Accused to represent her in a pending dissolution of marriage proceeding in which she was the petitioner. The client deposited a $1,000 retainer with the Accused against which he was to bill at the rate of $190.00 per hour.

At the time the Accused undertook representation of the client, an ORCP Rule 21 motion filed by the respondent spouse was pending. The Accused agreed to prepare for and respond to that motion. Thereafter the Accused failed to either prepare for or respond to the motion. On August 1, 2006, the court granted the respondent's motion and ordered the client to file an amended complaint within 10 days. Thereafter the Accused failed to file an amended complaint and failed to inform his client about the order until late September 2006.

In June 2006 the respondent spouse filed a motion to compel the production of documents. The Accused failed to inform his client about that motion and failed to file a response to it. In August the court granted the motion to compel and ordered the client to produce the requested documents. The Accused failed to inform his client of the order until late September 2006.

On September 1, 2006, the respondent spouse filed a motion to strike the complaint and enter judgment because the Accused had not filed an amended complaint on his petitioner-client's behalf. The Accused failed to inform his client that the motion had been filed and failed to respond to the motion. On September 26, 2006, the court ordered production of the requested documents by 9:00 a.m. the following day, on pain of dismissal of the proceeding. The Accused informed his client that she was required to produce the documents, but did not inform her that failure to do so would result in dismissal of her case.

On September 27, 2006, the client appeared at the Accused's office before 9:00 a.m. with the documents. Neither the Accused nor opposing counsel was there. The client was unwilling to leave the documents at the Accused's office and left a message for the Accused that she would return with the documents once she had spoken with him. The Accused thereafter failed to contact his client, and on October 3, 2006, the court dismissed the case on the grounds that the petitioner had willfully failed to comply with the court's order requiring production of the documents. The Accused failed to inform his client that her dissolution proceeding had been dismissed.

On October 7, 2006, the client requested from the Accused a copy of her file and an accounting. The Accused failed to respond to that request.

On February 27, 2007, the Bar received a complaint from the client about the Accused's conduct. On March 1, 2007, Disciplinary Counsel's Office forwarded a copy of the client's complaint to the Accused and requested his response. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on April 5, 2007. In this matter, the Accused has violated Sections 1.3, 1.4(a), 1.4(a), 1.15-1(d), and 8.1(a)(2) of the Rules of Professional Conduct.

Case No. 07-67. On January 14, 2005, a client retained the Accused to represent her in a dissolution of marriage proceeding. Pursuant to an oral agreement, she paid the Accused a $1,500 flat fee. Between then and June 2005, the Accused failed to pursue this client's legal matter, failed to keep her reasonably informed about the status of her matter, and failed to promptly comply with her reasonable requests for information.

In June 2005 the client instructed the Accused not to pursue her matter. In September 2005 she instructed the Accused to pursue it once again. After September 2005, the Accused failed to pursue the client's legal matter, failed to keep her reasonably informed about the status of her matter, and filed to promptly comply with her reasonable requests for information.

On January 25, 2006, the client terminated the Accused's services and asked for a refund. That day the Accused and the client had a brief telephone discussion in which she confirmed that she wanted her money back and he told her he had the papers ready to file. On January 27, 2006, the Accused filed a petition for dissolution

on behalf of the client and withdrew the $1,500 fee he had previously deposited in his client trust account, although at that time he had not yet earned the entire $1,500.

After January 27, 2006, the Accused failed to pursue the client's legal matter, failed to keep her reasonably informed about the status of her matter, and failed to comply promptly with her reasonable requests for information. On September 19, 2006, the client requested a refund from the Accused. He failed to do so, even though he had not yet completed the legal matter for which he accepted the $1,500 flat fee.

On February 28, 2007, the client complained to the Bar about the Accused's conduct. On March 1, 2007, Disciplinary Counsel's Office forwarded a copy of the complaint to the Accused and requested that he respond. The Accused knowingly failed to respond to that request, and similarly failed to respond to a subsequent request sent on April 5, 2007. In this matter, the Accused has violated Sections 1.3, 1.4(a), 1.5(a), 1.15-1(c), 1.16(d), and 8.1(a)(2) of the Rules of Professional Conduct.

Case No. 06-100. At the end of May 2004 the mother of a man facing criminal charges retained the Accused to represent her son. She paid the Accused a $1,000 retainer and deposited $25,000 with the court for bail. In mid-June 2004 the court reduced bail to $5,000 and assigned the $20,000 balance to the Accused to secure payment of his fees. Between June 4 and October 15, 2004, the Accused paid a total of $10,929.50 from his client trust account to his office account.

By early February 2005 the criminal matter had been completed and the mother began asking the Accused for a refund of unearned fees and a full accounting of the funds he had received. On April 11, 2005, the Accused refunded $7,500 from the client trust account to the mother, provided a statement of "total costs advanced" showing payment of $1,510.15 from the trust account, and promised to render a full accounting by the end of that week. He failed to render the promised accounting.

Between April 2005 and March 2006 the mother inquired repeatedly about a further refund and an accounting as promised by the Accused. The Accused did not respond to these requests until March 27, 2006, when the mother again asked for a refund. On April 3, 2006, the Accused sent her two refund checks. One, in the amount of $2,269, was from his client trust account; the other, in the amount of $500, was from his business account. With those checks he sent a handwritten note promising an explanation the following Monday. No further explanation or accounting was ever made. In this matter, the Accused has violated Sections 1.15-1(c) and 1.15-1(d) of the Rules of Professional Conduct.

Sanctions

The trial panel is bound to consider four factors in determining appropriate sanctions for violation of rules of conduct for lawyers: 1) the nature of the duty violated, 2) the mental state of the accused, 3) the actual or potential injury resulting from the conduct, and 4) the existence of aggravating and mitigating circumstances. ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*"); *In re Biggs*, 318 Or 281, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 852 P2d 831 (1993). In

considering those factors we are also guided by Oregon case law interpreting and supplementing the *Standards*.

Duties Violated

The Rules of Professional Conduct may be seen as generally falling into four categories as to nature of the duties owed: duty to clients, duty to the public, duty to the legal system, and duty to the legal profession. Of these, the lawyer's duty to a client is recognized by the *Standards* as being the most important. *Standards*, p. 9.

Duties to clients fall into four categories: loyalty, diligence, competence, and candor. The most common duties violated by the Accused are the duties of loyalty, diligence, and candor. The duty of loyalty includes preserving the property of the client. In this case the Accused has, with respect to several clients, inappropriately made disbursements to himself from client trust funds and failed to make proper accounting for client funds. In most of the cases there is an element of lack of diligence in pursuing a client's legal matters, and in several cases that lack of diligence is compounded by lack of candor in dealing with the client.

In 06-115 the panel concludes that he also violated his duty to the public to maintain personal integrity in that he engaged in "intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on [his] fitness to practice" by signing in at his arraignment as present, leaving the court before his case was called, and lying to the Bar when asked to respond to the trial court administrator's complaint about that conduct.

In three matters (04-104, and the companion matters 07-08 and 07-09) the Accused violated his duties to the legal system. In 04-104 he appeared for a conference with the court to sort out how to deal with scheduled court appearances while he was undergoing inpatient treatment for alcohol abuse, after having consumed alcohol knowing that a condition of his probation was that he abstain from consumption of alcohol. In 07-08 the Accused conspicuously disregarded repeated attempts by a circuit judge to contact him and promote his compliance with the court's direction that he complete a report to the court, respond to a report submitted by opposing counsel, and draft a judgment.

In nine of these 15 matters, the Accused violated his duty to cooperate in Bar investigations and in one he failed to comply with a SLAC agreement. In three matters he violated his duty to properly withdraw from representation, and in two matters he violated his duty not to collect excessive fees.

Mental State

The *Standards* provide the following definitions applicable here:

> "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.
>
> "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 trial panel finds that in the following cases there was a significant element of intent to engage in conduct that would violate a clear duty: 04-104, 06-115, 06-126, 07-08/09, 07-30, 07-65, 07-66, 07-67, and 06-100. In each of these cases the Accused acted with the intent to deceive (often a client), or to obtain access to a client's money in violation of the applicable rules.

Further, the panel finds that the Accused acted intentionally in failing to comply with his duty to cooperate with Bar investigations in nine of these matters.

With respect to the various cases in which the Accused neglected legal matters, the panel finds that such neglect was with "knowledge" of the general nature and probable consequences of his neglect.

Premature withdrawal of client trust account funds in 04-115 was negligent, but thereafter his conduct was knowing and intentional.

We are unable to find a single instance of failure to pursue a client's legal matter in which the Accused's conduct can be ascribed to "negligence," since in all cases either the court or the client at some point called the "neglect" to the Accused's attention.

Actual and Potential Injury

Each of the many cases in which the Accused simply dropped a client's matter for months or years each resulted in actual or potential injury to the client. A good example of actual injury is 03-126. Because of the failure of the Accused to submit an order reducing his client's child support obligation the State of Oregon continued to withdraw more than twice what she should have been required to pay from her monthly paychecks for almost a year and a half. That hard cash loss came in addition to the anxiety and frustration resulting from futile attempts to gain cooperation and communication from the Accused.

Although the court's independent analysis of the record produced a result in 07-08 and 07-09 that was clearly justified, the potential injury to a client whose child support modification has been so grossly mishandled is quite serious. Were it not for

a trial judge willing to do a good share of the lawyer's work, the injury to the client might well have been serious in fact.

Even in 05-146, where the client wanted primarily to clear his son's record and did not seek recompense or retribution, the Accused's failure to pursue the matter resulted in the client's son missing a substantial portion of the events and activities of his senior year in high school, and suffering the stigma of "detention" for much of that year.

In 06-37 the Accused's client may not have had much of a chance to get her conviction overturned, but it is clear that the Accused's conduct foreclosed one or more avenues of challenge that would otherwise have been available to her. *See In re Bourcier II*, 322 Or 561, 569, 909 P2d 1234 (1996).

In 03-110 the parties to the arbitration experienced not only the frustration of having their case drop from sight for over a year only to find that it had been dismissed, but at least one of them had to incur significant legal fees to get the judgment of dismissal set aside and an award properly entered.

In 07-08, the trial judge and her staff experienced a significant and wholly unnecessary compounding of work in futile attempts to get the Accused to respond to directions so ultimately simple as "appear in this court within the next 24 hours," and finally having to draft a judgment that the Accused would not draft. Likewise, in several cases (e.g., 04-104) a court was similarly burdened with extra effort and expense to undo the results of the Accused's misconduct.

Baseline Sanction

The *Standards* establish certain levels of sanction that, absent aggravating or mitigating circumstances, are appropriate based on the nature of the duty violated, mental state, and injury. As applicable to this case:

> **4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.**
>
> **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.**

In all of the cases involving violation of rules governing handling of client money, with the exception of 04-115, it is clear that the Accused acted at least knowingly in withdrawing client trust account funds or not depositing them into his trust account in the first place. The Bar does not assert and the trial panel finds no reason to believe that the Accused knowingly converted any client property to his own use. We thus conclude that suspension is the baseline sanction for the several cases involving mishandling of client funds.

4.41 Disbarment is generally appropriate when:

*** * ***

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

4.42 Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

In the following cases the Accused's neglect of client legal matters caused serious or potentially serious injury to a client: 03-126 (extra $261/month in child support payments taken from client's pay for nearly a year and a half); 05-146 (client's son stigmatized and wrongly disciplined for most of his senior year in high school); 06-114 (client's insurance claim lost); 06-126 (client lost case in arbitration); 07-66 (client's dissolution case lost because of discovery sanction). In other cases (e.g., 06-37, 07-08, and 07-67) there may be a question as to the seriousness of the injury, but clients were nonetheless injured by the Accused's misconduct.

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

The trial panel finds that the conduct of the Accused amounted to actively deceiving clients by intentionally failing to inform them of adverse events in the litigation in which he represented them: 03-126, 05-146, 16-126, 07-66, and 07-67. The Accused's failures to inform his clients of critical events in their several cases resulted in serious injury to their interests and was intended by the Accused to evade the consequences of his neglect.

6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

In 04-104 the Accused not only violated a court-ordered condition of his probation by consuming alcohol, but with the odor on his person then appeared for a conference with a judge of the court intended to adjust the court's calendar to accommodate the impact of the Accused's absence during inpatient alcoholism treatment. His conduct violated a court-ordered condition of probation, causing interference with legal proceedings.

6.23 Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential

injury to a client or other party, or causes interference or potential interference with a legal proceeding.

In 07-08 the Accused disregarded a series of court orders, directions, and attempts at contact, causing interference with a legal proceeding.

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

As detailed above, in nine of the pending 16 matters, the Accused has ignored attempts by the Bar to inquire into the complaints.

Aggravating and Mitigating Factors

The baseline sanction must be adjusted in light of aggravating and mitigating factors as found by the trial panel.

9.22 Factors which may be considered in aggravation.

Aggravating factors include:

(a) prior disciplinary offenses;

(b) dishonest or selfish motive;

In 2000 the Accused was admonished for failing to deposit client funds in trust and failing to account to a client. In 2003 the Accused was admonished for failing to promptly refund unearned fees and turn over relevant file materials to a client. Although the baseline sanction determined under 4.12 for the several violations involving mishandling of and improper accounting for client funds and fees would be suspension, the two prior disciplines involve violations of the same nature, and have apparently had no corrective effect. This aggravating factor weighs heavily toward a heightened sanction rather than the baseline.

We refrain from speculating on the exact motive of the Accused in prematurely withdrawing or not even depositing client funds prior to earning them, and in charging clearly excessive fees. We can find no other explanation for that conduct, however, than that of wanting to divert these funds to his own use. Coupled with the prior admonitions in 2000 and 2003, we can only find that selfish motivation is an aggravating factor.

(c) a pattern of misconduct;

(d) multiple offenses;

What the record discloses is a history of multiple offenses that both within individual matters and viewed as a whole over the past five years can only be seen as a clear and dangerous pattern of misconduct that is the single most significant aggravating factor.

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

Not only has the Accused refused to cooperate in the investigation of nine of the matters now before the trial panel, he has refused to comply with several orders of the trial panel itself, ultimately resulting in entry of an order of default. The trial panel can only conclude that the steadfast avoidance of important procedural obligations of cooperation and compliance established by the Rules of Professional Conduct, the Bar Rules of Procedure, and the orders of this trial panel represent bad faith obstruction of the disciplinary process, thus warranting weight as aggravating factors.

(i) substantial experience in the practice of law;

The Accused has been engaged in the practice of law in Oregon since 1979. The bulk of his practice has been criminal defense, including capital murder trials. His practice also has included a high percentage of family law and plaintiff's tort claim cases. With respect to the matters which he neglected, there was none that he could identify as being beyond his experience or capabilities based on his years of practice.

9.32 Factors which may be considered in mitigation.

Mitigating factors include:

(i) mental disability or chemical dependency including alcoholism or drug abuse 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 has testified, and the trial panel accepts as true, that he is a long-term alcoholic. He has also testified, but there is no medical evidence in the record to support, that he suffers from chronic depression and general anxiety disorder. We are not to speculate as to whether the Accused does, in fact, suffer from depression and anxiety disorder and, if so, whether those conditions amount to a mental disability. The Accused attributes at least some of his misconduct to either or both the alcoholism and depression/anxiety. The Accused testifies that he is in recovery

from his alcoholism, and that he has been in recovery since completing his inpatient treatment in 2004. Alcoholism thus cannot explain his subsequent misconduct, even if it could be said to explain his behavior up until he underwent inpatient rehabilitation. There is no evidence to demonstrate the Accused's recovery from either the alcoholism or the asserted mental problems "by a meaningful and sustained period of successful rehabilitation," nor to establish that any recovery "arrested the misconduct and recurrence of the misconduct is unlikely." The trial panel cannot find any mitigation based on recovery from alcohol dependency or mental illness.

(j) delay in disciplinary proceedings;

Although the many charges now before us bear case numbers dating to 2003 and involve conduct in 2002, it appears that the Accused and the Bar entered into a diversion agreement that, when breached, resulted in re-activation of the formal disciplinary process. The Accused does not assert, and we do not find any evidence in the record from which we can conclude, that there was any delay in bringing and prosecuting these disciplinary proceedings.

We thus conclude that there are no mitigating factors present in this case.

Sanctions Imposed

The purpose of sanctions is "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession." *Standards,* § 1.1; *In re Stauffer*, 327 Or 44, 66, 956 P2d 967 (1998). The single most compelling factor in our consideration of appropriate sanctions in this case is the pervasive and chronic pattern that weaves together four consistent strands: First is the inexplicable but obvious neglect of client legal matters of the most pedestrian nature for a practitioner of 28 years of experience. Second is the inexplicable inattention to the most basic communication with clients about the status of their cases, even when repeatedly asked by the clients for information. Third is the persistent refusal to institute the most basic accounting and contracting procedures for clearly establishing the nature and scope of representation, fees to be charged, regular billing, and client trust account controls. Fourth is the steadfast refusal to comply with Bar authorities, from the initial requests for an explanation to trial panel orders compelling discovery and setting deadlines for filing an answer.

One constant theme in Oregon case law on lawyer discipline is that a pervasive pattern is frequently cited in appellate opinions as justification for the ultimate sanction of disbarment. *See, e.g., In re Sousa*, 323 Or 137, 915 P2d 408 (1996); *In re Donovan*, 327 Or 76, 957 P2d 575 (1998); *In re Spies*, 316 Or 530, 852 P2d 831 (1993); and *In re Sassor*, 299 Or 720, 705 P2d 736 (1985). In light of the prior relevant discipline in 2000 and 2003, the aggravating factors discussed above, and the absence of mitigating factors, the trial panel concludes that the Accused should be disbarred.

The Bar has asked for the additional sanction of an order of restitution. BR 6.1(a) permits the trial panel to order "restitution of some or all of the money, property or fees received by the accused in the representation of a client . . . "

In 07-65 the Accused accepted a flat fee of $1,800 to represent Kenneth Jones in a postconviction relief proceeding. The details of that matter are discussed above. The Bar argues and the trial panel concurs that restitution of $900, half of the fee paid, fairly represents the value of the unearned portion of the fee.

In 07-67 the Accused accepted a flat fee of $1,500 to represent Joanna Story in a dissolution of marriage proceeding. The details of that matter are discussed above. The Bar argues that the entire $1,500 fee should be refunded as restitution. The Accused did, albeit after delay at the client's request and delay resulting from the Accused's own inaction, file a petition for dissolution on Ms. Story's behalf. Thereafter he took no further action on her behalf, rendering by his own inaction the work he had previously done valueless. The trial panel thus finds that restitution of the entire $1,500 fee is fair and equitable.

In 06-100 the Accused accepted a retainer of $1,000 to represent the defendant in a felony prosecution. He thereafter accepted the court's assignment of $20,000 in excess bail as a deposit for attorney fees. The bail money had been deposited with the court by the defendant's mother (who also paid the $1,000 retainer). There is no question as to the fact that the Accused did provide full and competent representation to the client. There is also no evidence in the record from which we can calculate what, if any, amount of the $21,000 held in the client trust account was attributable to the Accused's earned fee, although it does appear that after refunds and expenses, the Accused kept no more than $9,000 of the $21,000.

The Bar asserts that the client's mother is entitled to a refund of $3,091, but does not explain how that figure is calculated. Without sufficient information in the record on which to base a credible determination as to the amount of any unearned fee, the trial panel declines to order restitution in Case No. 06-100.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Accused, Timothy P. Dunn, be DISBARRED from the practice of law in the State of Oregon; and

IT IS FURTHER ORDERED that the Accused pay restitution as follows:

Case No. 07-65: To Kenneth Jones the sum of $900.00

Case No. 07-67: To Joanna Story the sum of $1,500.00

DATED this 19th day of December 2007.

/s/ William G. Blair
William G. Blair
OSB No. 69021
Panel Chair

/s/ Loni J. Bramson
Loni J. Bramson, Ph.D.
Public Member

/s/ Craig A. Crispin
Craig A. Crispin
OSB No. 82485
Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 07-23 and 07-24
	)	
IAIN E. LEVIE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.15-1(b) and RPC 8.4(a)(3). Stipulation for Discipline. Six-month suspension.
Effective Date of Order:	May 7, 2008

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, the sanction to be effective on May 7, 2008, upon the expiration of the one-year suspension imposed in *In re Levie*, 342 Or 462, 154 P3d 113 (2007) for violation of RPC 1.15-1(b) and RPC 8.4(a)(3).

DATED this 10th day of March 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Iain E. Levie, 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. At all relevant times herein, the Accused's office and place of business was located in Multnomah County, Oregon.

3.

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

4.

On March 13, 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 1.15-1(b) 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.

From about 2003 to on or about April 16, 2006, the Accused maintained a lawyer trust account in Oregon. During all relevant times herein, the Accused deposited his own funds into the lawyer trust account and paid personal or business obligations from that account.

6.

At all relevant times, the Accused knew that he was not ethically permitted to deposit or maintain his own funds in his lawyer trust account. The Accused had creditors who could have sought to obtain assets belonging to the Accused during the period of time that he maintained his personal funds in the trust account. The Accused knew that by maintaining his personal funds in his lawyer trust account he

was representing to others that the funds did not belong to him. The Accused knew that representation to others was false and material.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 1.15-1(b) and RPC 8.4(a)(3).

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. *Duties violated.* The Accused's failure to properly utilize his lawyer trust account violated his duties to the profession. *Standards,* § 7.0. The Accused failed to maintain his personal integrity when he engaged in a course of misrepresenting the ownership of his assets in the trust account. *Standards,* § 5.1.

b. *Mental state.* "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* at 7. The Accused knew that he was acting improperly when he used his lawyer trust account to maintain his own funds. The Accused also knew that by doing so, he was misrepresenting the ownership of the funds.

c. *Injury.* "Injury" is defined as "harm to a client, the public, the legal system or the profession which results from the lawyer's misconduct." *Standards,* at 7. Because the purpose of attorney discipline is to protect the public, the Bar need not prove actual injury. Potential injury is sufficient. *Standards,* § 3.0. The Accused's conduct gave rise to potential injury to client funds at those times when he also had client funds in the trust account. The Accused's conduct also gave rise to potential injury to his creditors since they would have been unaware that the Accused had in his trust account funds that belonged to him.

d. *Aggravating factors.* Aggravating factors include:

1. Prior disciplinary offenses. *Standards,* § 9.22(a). On April 7, 2006, Levie was reprimanded for his failure, in the summer of 2002, to keep complete records of the disbursements of settlement proceeds from his lawyer trust account. *In re Levie,*

20 DB Rptr 72 (2006). In May 2007, Levie was suspended from the practice of law for a one-year period. *In re Levie*, 342 Or 462, 154 P3d 113 (2007). The bulk of the suspension related to Levie's misrepresentation of the status of a client's property to opposing counsel and tribunals, but it also included violations that resulted from Levie's use of his lawyer trust account in 2003 as a personal checking account. The court has set forth a five-factor test for consideration of the appropriate effect of prior discipline: the relative seriousness of the prior offense and resulting sanction, the similarity of the prior offense to the current case, the number of prior offenses, the recency of the prior offenses, and the timing of the current offense in relation to the prior offense and resulting sanction. *In re Jones,* 326 Or 195, 200, 951 P2d 149 (1997). The seriousness of the conduct in the 2007 discipline, the number of prior offenses, and the recency of both prior cases all suggest that the Accused's prior offenses are a significant aggravating factor. However, the effect of the prior discipline is diminished by the fact that the misconduct in the present matter occurred for the most part prior to the imposition of sanction in either of the prior matters. *See In re Starr,* 326 Or 328, 347–348, 952 P2d 1017 (1998) ("On the other hand, the events giving rise to that stipulation occurred at roughly the same time as the events giving rise to the present proceeding, so the accused's acts herein do not reflect a disregard of an earlier adverse ethical determination. Therefore, the weight of the stipulation as an aggravating factor is somewhat diminished.").

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

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

e. *Mitigating factors.* There are no mitigating factors to be considered.

9.

Prior to the consideration of aggravating and mitigating circumstances, the *Standards* recommend suspension where a lawyer has knowingly commingled his own funds improperly with client funds and the lawyer's misconduct does not amount to misappropriation or conversion. *Standards,* § 4.12. The *Standards* generally recommend reprimand where a lawyer has knowingly engaged in noncriminal conduct that involves dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law. *Standards,* § 5.13.

10.

Oregon case law is in accord. The sanctions imposed on lawyers disciplined for using their trust accounts to shield money from creditors have fallen in the range of a 60-day suspension, even where the accused lawyer had some prior disciplinary history. *See In re McMurry*, 14 DB Rptr 193 (2000) (60-day suspension for violations of DR 9-101(A) and DR 1-102(A)(3) where lawyer with prior reprimand for unrelated misconduct used his trust account to shield himself or his law firm from the claims of creditors); *In re Bassett*, 12 DB Rptr 14 (1998) (60-day suspension for violations of DR 9-101(A) and DR 1-102(A)(3) where lawyer deposited his own funds into a lawyer trust account to avoid collection efforts by the IRS). However, where the misconduct overlapped with similar prior misconduct a greater sanction was found to be warranted. In *In re Andersen*, 19 DB Rptr 227 (2005), a six-month suspension was imposed for violations that arose from a lawyer's commingling his funds in his lawyer trust account with his client's funds. The lawyer's prior misconduct included a similar trust account violation. In *In re Starr*, 326 Or at 347–348, a lawyer was disciplined for dishonestly collecting earned but disputed money from her trust account. The Supreme Court imposed a six-month suspension, even though the lawyer had received an 18-month suspension in a prior matter for unrelated misconduct.

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for six months for violation of RPC 1.15-1(b) and RPC 8.4(a)(3), the sanction to be effective upon the expiration of the one-year suspension imposed in *In re Levie*, 342 Or 462, 154 P3d 113 (2007).

12.

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.

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 21st day of February 2008.

/s/ Iain E. Levie
Iain E. Levie
OSB No. 913597

EXECUTED this 27th day of February 2008.

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. 07-172
	)	
EDWARD L. DANIELS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	Donald P. Reiling
Disciplinary Board:	None
Disposition:	Violations of DR 5-101(A)(1), RPC 1.7(a)(2), DR 5-104(A), and RPC 1.8(a). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 10, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violations of DR 5-101(A)(1) (conflict of interest—lawyer self-interest (pre–January 1, 2005)); RPC 1.7(a)(2) (conflict of interest—lawyer self-interest (post–January 1, 2005)); DR 5-104(A) (business transaction with client (pre–January 1, 2005)); and RPC 1.8(a) (business transaction with client (post–January 1, 2005)) of the Code of Professional Responsibility and the Oregon Rules of Professional Conduct.

DATED this 10th day of March 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Edward L. Daniels, 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 21, 1973, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Linn County, Oregon.

3.

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

4.

On December 14, 2007, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of DR 5-101(A)(1) (conflict of interest—lawyer self-interest (pre–January 1, 2005)); RPC 1.7(a)(2) (conflict of interest—lawyer self-interest (post–January 1, 2005)); DR 5-104(A) (business transaction with client (pre–January 1, 2005)); and RPC 1.8(a) (business transaction with client (post–January 1, 2005)) of the Code of Professional Responsibility and 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.

The Accused represented Alton Sullivan on a wide variety of legal issues for many years before he and Sullivan decided, in 2002, to form an LLC to purchase a large parcel of land together. They hoped to use the land to raise and harvest Christmas trees. The Accused prepared the paperwork creating the LLC, and continued to act as Sullivan's attorney during their business partnership. In 2002, the partnership bought a 450-acre parcel of land and timber; Sullivan paid for his share of the property in cash, while the Accused financed part of his share by means of a contract with the seller. This contract was in both Sullivan's and the Accused's

names, although the amount due was owed entirely by the Accused. In 2006, the partnership bought two additional parcels of land. Sullivan paid for his share of the property in cash, while the Accused financed his entire share by means of a contact with the seller; the seller agreed to take a note only if Sullivan signed a personal guarantee, which Sullivan did. Because failure by the Accused to make payments might have had negative legal repercussions on Sullivan, the Accused's interests and Sullivan's interests in the transactions were not identical. The Accused did not make any full written disclosures within the meaning of DR 10-101(B) or RPC 1.8(a) in connection with these transactions. By entering into business transactions with a client when the Accused had differing interests therein and the client expected him to exercise his professional judgment on the client's behalf—without first obtaining client consent after full written disclosure—the Accused violated DR 5-104(A) and RPC 1.8(a) (business transaction with a client).

6.

During the time that the Accused and Sullivan were business partners, the Accused prepared all of the legal documents for the venture and for the purchase of properties. The Accused prepared the Timber Sale contract whereby he and Sullivan both became liable to make monthly payments on $275,000.00 owed to the seller, even though the Accused only owed the money. The Accused also allowed Sullivan to sign a personal guarantee that enabled the Accused to make the second property purchase in 2006, even though the Accused knew that he was becoming increasingly dissatisfied with his partnership with Sullivan and in fact took steps to dissolve the partnership shortly after this purchase. The Accused continued to represent Sullivan when his own personal, business, property, or financial interests reasonably could have affected his professional judgment on Sullivan's behalf. The Accused failed to give Sullivan full written disclosures of the conflict.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated DR 5-101(A)(1) (conflict of interest—lawyer self-interest (pre–January 1, 2005)); RPC 1.7(a)(2) (conflict of interest—lawyer self-interest (post–January 1, 2005)); DR 5-104(A) (business transaction with client (pre–January 1, 2005)); and RPC 1.8(a) (business transaction with client (post–January 1, 2005)).

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. *Duties violated.* By entering into business transactions with his client, without making full written disclosures, and by continuing to represent the client during the operation of their business partnership, again without making full written disclosures, the Accused violated the duty he owed to his client to avoid conflicts of interest. *Standards*, § 4.3.

b. *Mental state.* The Accused's mental state was negligent, which the *Standards* define as the failure of the lawyer to heed a substantial risk that circumstances exist or a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in this situation.

c. *Injury.* Although there is no evidence that Sullivan suffered actual injury as a result of either violation, there was potential injury in that the Accused's professional judgment could reasonably have been affected by his own personal or financial interests.

d. *Aggravating factors.* Aggravating factors include:

1. The only aggravating factor in this case is the Accused's substantial experience in the practice of law. *Standards*, § 9.22(i).

e. *Mitigating factors.* Mitigating factors include:

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

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

3. Cooperative attitude towards disciplinary proceedings. *Standards*, § 9.32(e).

9.

The *Standards* provide that a public reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interest and causes injury or potential injury to a client. *Standards*, § 4.33. The *Standards* therefore suggest that a public reprimand is the appropriate sanction.

10.

Oregon case law also supports the imposition of a public reprimand in instances where a lawyer has negligently engaged in improper self-interest conflicts but the violations cause only potential injury. *See In re Dickerson*, 19 DB Rptr 363 (2005); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986). *See also In re Bailey*, No. 05-81, 21 DB Rptr 64 (2007).

11.

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)(1) (conflict of interest—lawyer self-interest (pre–January 1, 2005)); RPC 1.7(a)(2) (conflict of interest—lawyer self-interest (post–January 1, 2005)); DR 5-104(A) (business transaction with client (pre–January 1, 2005)); and RPC 1.8(a) (business transaction with client (post–January 1, 2005)) of the Code of Professional Responsibility and the Oregon Rules of Professional Conduct.

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 20th day of February 2008.

/s/ Edward L. Daniels
Edward L. Daniels
OSB No. 730700

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. 08-24
	)	
MATTHEW R. AYLWORTH,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 3.5(b) and RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 14, 2008

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 3.5(b) and RPC 8.4(a)(4).

DATED this 14th day of March 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Matthew R. Aylworth, 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 9, 2007, 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 February 8, 2008, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 3.5(b) and RPC 8.4(a)(4) 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 January 23, 2007, a lawsuit was filed on behalf of Mid-America Credit Management against Sheri C. Stephens-Rodriguez-Hartel (hereinafter "Hartel"). The firm in which the Accused was an associate represented the plaintiff. On or about April 11, 2007, Hartel filed an answer to the lawsuit. On May 21, 2007, the Accused learned that Michael Baxter (hereinafter "Baxter") had been retained to represent Hartel in the lawsuit.

6.

On September 12, 2007, Baxter learned that plaintiff intended to dismiss the lawsuit against Hartel. In a September 13, 2007, conversation the Accused acknowledged to Baxter that if the lawsuit was dismissed, then Hartel was entitled to recover her reasonable attorney fees and costs. On September 14, 2007, Baxter sent

a statement of attorney fees and a proposed settlement regarding that issue to the Accused.

7.

On October 4, 2007, the Accused signed and sent to the court a notice for general judgment of dismissal without prejudice (hereinafter "notice") in which he represented that the plaintiff was dismissing the lawsuit and inaccurately represented that the dismissal was without costs to any of the parties. On that same day, the Accused also sent to the court for its consideration and signature a general judgment of dismissal without prejudice (hereinafter "proposed judgment") in which the Accused inaccurately asked the court to dismiss the lawsuit without costs to any of the parties.

8.

As required by UTCR 5.100, the Accused failed to serve a copy of the proposed judgment on Baxter not less than three days prior to submitting it to the court. The Accused also failed to serve a copy of the notice on Baxter.

9.

The court signed the proposed judgment on October 10, 2007. When Baxter brought the improperly obtained judgment to the Accused's attention, he agreed to and subsequently signed a stipulation to set it aside and reinstate the lawsuit.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, he violated RPC 3.5(b) and RPC 8.4(a)(4).

Sanction

11.

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

a. *Duties violated.* The Accused violated duties he owed to the legal system not to engage in conduct prejudicial to the administration of justice and not to have improper communications with the court. *Standards,* §§ 6.1 and 6.3.

b. *Mental state.* The Accused acted negligently in that he failed to review carefully the notice he signed or the proposed judgment before he

submitted them to the court. Nor did the Accused determine that service errors were committed with respect to the notice and proposed judgment.

c. *Injury*. The court was led to believe that the lawsuit should be dismissed with no costs awarded to Hartel. Hartel sustained actual injury in that an inaccurate judgment was entered. Time and expense were required to have the judgment set aside and the lawsuit reinstated.

d. *Aggravating circumstances.* Aggravating circumstances include:

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

e. *Mitigating circumstances.* Mitigating circumstances include:

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

2. Timely good faith effort to rectify the consequences of the misconduct. *Standards,* § 9.32(d).

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

4. Inexperience in the practice of law. The Accused had been a lawyer in Oregon for just over a year at the time of the misconduct. *Standards,* § 9.32(g).

12.

Reprimand is generally appropriate when a lawyer negligently engages in conduct prejudicial to the administration of justice, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards,* § 6.23. Reprimand is also appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of a legal proceeding. *Standards,* § 6.33.

13.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. See *In re Schenck,* 320 Or 94, 879 P2d 863 (1994); *In re Carusone,* 20 DB Rptr 231 (2006); *In re Penz,* 16 DB Rptr 169 (2002).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 3.5(b) and RPC 8.4(a)(4).

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 25th day of February 2008.

/s/ Matthew R. Aylworth
Matthew R. Aylworth
OSB No. 070930

EXECUTED this 28th day of February 2008.

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. 07-58 and 07-59
	)	
CLARK WILLES,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violation of RPC 1.2(c), RPC 3.3(a)(4), RPC 8.4(a)(3), RPC 8.4(a)(4), and ORS 9.460(2). Stipulation for Discipline. 30-day suspension.
Effective Date of Order:	March 27, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective March 27, 2008, or three (3) days after this Order is signed, whichever is later, for violations of RPC 1.2(c), RPC 3.3(a)(4), RPC 8.4(a)(3), RPC 8.4(a)(4), and ORS 9.460(2).

DATED this 19th day of March 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Clark Willes, attorney at law (hereinafter "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 19, 1986, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Benton County, Oregon.

3.

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

4.

On April 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 1.2(c) (engaging or assisting a client in conduct the lawyer knows is illegal or fraudulent); RPC 3.3(a)(1) (knowingly making a false statement of fact to a tribunal); RPC 3.3(a)(4) (knowingly concealing or failing to disclose to a tribunal that which the lawyer is required by law to reveal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation); RPC 8.4(a)(4) (conduct prejudicial to the administration of justice); and ORS 9.460(2) (seeking to mislead the court by artifice or false statement of law or fact). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On August 13, 2006, the Accused appeared at a criminal trial proceeding on behalf of the defendant, Brian Robert Shreeve (hereinafter "Shreeve"). The Accused was accompanied at counsel table by a young man roughly fitting the description of Shreeve, but who was not Shreeve.

6.

The Accused knowingly concealed and failed to disclose that the young man sitting beside him at counsel table was not Shreeve until after the State had called and examined its first witness and after the Accused had cross-examined the State's witness. The Accused concealed the identity of the young man next to him to induce the court, the State, and the witness to act in a manner beneficial to Shreeve.

7.

UTCR 3.070 prohibits persons within the bar of the courtroom, other than clients, attorneys, court personnel, and witnesses when called to the stand.

Violations

8.

The Accused admits that by presenting an imposter as the defendant in the proceeding, he engaged in or assisted a client in conduct he knew was illegal or fraudulent in violation of RPC 1.2(c); he knowingly concealed or failed to disclose to a tribunal that which he was required by law to reveal in violation of RPC 3.3(a)(4); he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of RPC 8.4(a)(3); he engaged in conduct prejudicial to the administration of justice in violation of RPC 8.4(a)(4); and he sought to mislead the court by artifice in violation of ORS 9.460(2).

9.

Upon further factual inquiry, the parties agree that the charges in the Second Cause of Complaint in the Formal Complaint of alleged violations of RPC 3.3(a)(1) (knowingly making a false statement of fact to a tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 8.3(a)(3) (conduct involving dishonesty or misrepresentation); and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice) in connection with a second matter should be and, upon the approval of this stipulation, are dismissed.

Sanction

10.

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

a. *Duties violated.* The Accused violated his duty of candor to the legal system, as well as his duties to refrain from conduct prejudicial to the

administration of justice and avoid abuse of the legal system. *Standards,* §§ 6.1 and 6.2.

b. *Mental state.* The Accused acted knowingly. He had the conscious awareness of the nature or attendant circumstances of his conduct but without the conscious object or purpose to accomplish a particular result.

c. *Injury.* Although the Accused notified the court of his artifice at the conclusion of the first witness, there was still both actual and potential harm as a result of his conduct. The Accused's presentation of an imposter defendant had the potential to produce erroneous testimony. It also delayed the resolution of the case, as the judge felt compelled to take the matter under advisement, rather than react immediately to the actions of the Accused by rendering a decision the same day.

d. *Aggravating factors.* Aggravating factors include:

1. The Accused was previously reprimanded for neglect of a legal matter and conduct prejudicial to the administration of justice. *In re Willes,* 17 DB Rptr 271 (2003). *Standards,* § 9.22(a).

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

3. The Accused was admitted to practice in Oregon in 1986, and has substantial experience in the practice of law. *Standards,* § 9.22(i).

e. *Mitigating factors.* Mitigating factors include:

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

2. Timely good faith effort to make restitution or to rectify consequences of misconduct. *Standards,* § 9.32(d).

3. Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. *Standards,* § 9.32(e).

4. The Accused expressed remorse for his conduct and apologized to the court. *Standards,* § 9.32(*l*).

11.

The *Standards* indicate that a suspension is generally appropriate when a lawyer knows that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards,* § 6.12. A suspension is similarly appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding. *Standards,* § 6.22.

Taking these presumptions together with the applicable aggravating and mitigating factors, a suspension of some duration is appropriate for the Accused's misconduct.

12.

Oregon cases are in accord. *See In re Jenson*, 1 DB Rptr 108 (1986) (presenting an imposter to the court resulted in a public reprimand for a young lawyer with no prior discipline); *In re Jones,* 326 Or 195, 951 P2d 149 (1997) (45-day suspension where attorney had a client sign blank documents containing perjury clauses, filled out the documents himself, and filed the documents with the court); *In re Greene*, 290 Or 291, 620 P2d 1379 (1980) (60-day suspension where lawyer intentionally failed to disclose nature of real estate transaction to the probate court).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of RPC 1.2(c), RPC 3.3(a)(4), RPC 8.4(a)(3), RPC 8.4(a)(4), and ORS 9.460(2); the sanction to be effective March 27, 2008, or 3 days after approval by the Disciplinary Board, whichever is later.

14.

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.

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 11th day of March 2008.

/s/ Clark Willes
Clark Willes
OSB No. 863160

EXECUTED this 13th day of March 2008.

OREGON STATE BAR

By: /s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott
OSB No. 990280
Assistant Disciplinary Counsel

Cite as 344 Or 368 (2008)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In the Matter of the Application	)
	)
for Reinstatement of	)
	)
BRUCE A. GUNTER,	)
	)
Applicant.	)

(SC S053579)

En Banc

Application for reinstatement to the practice of law in Oregon.

Submitted on the record December 12, 2007. Decided on March 27, 2008.

Bruce A. Gunter filed the briefs for himself.

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

PER CURIAM

Reinstatement denied.

SUMMARY OF THE SUPREME COURT OPINION

Applicant Bruce A. Gunter requests that this court reinstate him as an active member of the Oregon State Bar pursuant to Rule of Procedure (BR) 8.1. The Bar admitted Applicant to practice in 1982. After moving to California in 1985, Applicant transferred to inactive status. The Bar suspended him in 1995 for nonpayment of Bar dues. Applicant submitted a Form A (nondisciplinary) resignation in 2001. Applicant moved back to Oregon and filed an application for reinstatement in 2005. The Board of Governors determined that Applicant had failed to demonstrate that he presently possessed good moral character and general fitness to practice law, and recommended denying reinstatement. This court referred the matter to the Disciplinary Board. After a hearing, a trial panel issued an order denying reinstatement. The trial panel found that, in light of Applicant's past alcohol and drug use, and some of his personal financial dealings, Applicant had failed to demonstrate by clear and convincing evidence that he presently possessed good moral character and the requisite knowledge and legal ability to practice law. We review that order pursuant to BR 10.2. We agree with the trial panel's ultimate recommendation and deny reinstatement.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 06-75, 06-76, 07-26, 07-27,
	)	07-106, 07-107, 07-108, and 07-109
TODD W. WETSEL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	C. Lane Borg, Chair Lee Wyatt Patricia Martin, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(a), RPC 1.15-1(b), RPC 1.15-1(c), RPC 1.15-1(d), RPC 1.15-2(n), RPC 1.16(a)(2), RPC 1.16(d), RPC 8.1(a)(2), RPC 8.4(a)(3), RPC 8.4(a)(4), WRPC 1.3, 1.4(a)(3), 1.4(a)(4), 1.15A(b), 1.15A(c)(1), 1.16(a)(2), 8.1(a)(2), 8.1(b), and 8.4(c). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	March 31, 2008

TRIAL PANEL OPINION

FINDINGS OF FACT AND ORDER

THIS MATTER came before the Hearings Panel after a Motion for Default Judgment had been granted, for the purpose of determining sanctions. The Bar submitted written argument supported by exhibits. The Accused has not participated in this hearing process or submitted any material for consideration. The Panel finds that without objection or counter evidence the Bar has established that the conduct of the accused was knowingly, that his conduct of neglect was extensive and caused a great deal of actual and potential harm. The Panel notes that the harm was to his clients as well as their children in family law cases, to the public perception of the administration of justice and confidence in the profession, and to other litigants and the courts in the form of extra costs and prolonged litigation. Further, his failure to

reply or cooperate with the Bar process was intentional as well as detrimental to the public confidence in the profession.

The Bar has asked for disbarment. Mr. Wetsel has offered no mitigation. The Bar has offered as aggravation the fact that Mr. Wetsel has substantial experience and that he is currently on a suspension for similar conduct. The Panel notes that under ABA *Standards for Imposing Lawyer Sanctions* §§ 4.11 and 4.41 that disbarment is generally appropriate for conduct where in a lawyer has knowingly caused harm to a client, abandons his practice in a manner that causes serious harm to a client, and/or engages in a pattern or practice of neglect that could cause serious harm to a client. Mr. Wetsel has done each of these things in more than one instance. The appropriate sanction is disbarment.

Therefore it is the Order of the Panel that the accused shall be disbarred from the practice of law.

DATED this 4th day of January 2008.

/s/ C. Lane Borg
C. Lane Borg
OSB No. 85029
Trial Panel Chair

DATED this 22nd day of January 2008.

/s/ Patricia Martin
Patricia Martin, Public Member
Trial Panel Member

DATED this 24th day of January 2008.

/s/ Lee Wyatt
Lee Wyatt
OSB No. 98380
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-158
	)	
SAMANTHA N. DANG,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	David J. Elkanich
Disciplinary Board:	None
Disposition:	Violation of 1-102(A)(3). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	March 31, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

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

DATED this 31st day of March 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Samantha N. Dang, 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 19, 2002, 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 December 28, 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). 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 early 2002, Chien Nguyen and Christina Vu (hereinafter "Buyers") entered into negotiations with Superior Team Construction Company (hereinafter "Superior Team") for the construction of a house on a piece of property they owned. The Accused was the owner and licensed contractor for Superior Team, while her husband, Timothy Nguyen (hereinafter "Nguyen"), was the manager. Nguyen, not the Accused, negotiated with Buyers. Although the Accused was not involved in the negotiations, she learned that Buyers wanted to finance the entire cost of the house with a loan from Washington Mutual and that Washington Mutual was not willing to lend sufficient funds to Buyers so that they could build the house they wanted.

6.

On May 19, 2002, the Accused, on behalf of Superior Team, entered into a construction contract with Buyers. Under that contract, Superior Team agreed to construct a home for Buyers for a certain fixed price which was less than the cost of the house Buyers initially wanted to build. The Accused knew that the construction contract would be shown to Washington Mutual as part of the Buyers' application and approval process. The agreed-upon contract price was supported by a cost estimate prepared by Nguyen and signed by the Accused. The cost estimate separated profits from the cost of construction.

7.

On September 12, 2002, the loan from Washington Mutual to Buyers closed. At the closing the Accused signed and certified as true, accurate, and complete a document entitled Custom Construction Source and Use of Funds which listed the same fixed price as in the May 19, 2002, construction contract.

8.

At the closing on September 12, 2002, the Accused also signed a custom construction loan agreement (hereinafter "loan agreement") with Washington Mutual and Buyers. The loan agreement specifically stated that the improvements were being constructed pursuant to the May 19, 2002, construction contract described in paragraph 6 herein. The loan agreement further provided that no changes could be made to the May 19, 2002, construction contract without prior written approval of Washington Mutual.

9.

On September 18, 2002, the Accused signed as a witness a second construction contract between Superior Team and Buyers. The Accused knew this second construction contract was different than the May 19, 2002, construction contract in that the fixed price was greater. Also, construction profits would be paid pursuant to a separate promissory note between Nguyen and Buyers rather than from the proceeds of the Washington Mutual loan. The promissory note was to be repaid from the proceeds obtained by Buyers when they sold their current home and did not reference the house Superior Team intended to build. However, the amount due under the promissory note was the intended profit from Superior Team's construction of the house. Nguyen, not the Accused, negotiated the terms of and prepared the promissory note, which was executed by Buyers on September 23, 2002. Neither the Accused, Nguyen, nor Buyers informed Washington Mutual that Superior Team and Buyers had changed the terms of the May 19, 2002, construction contract.

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, she engaged in dishonesty, in violation of DR 1-102(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. *Duties violated.* The Accused violated a duty she owed to the public to maintain her personal integrity. *Standards,* § 5.0.

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. The Accused acted knowingly in that she recognized that the September 18, 2002, construction contract was different than the May 19, 2002, construction contract, and knew that the loan agreement provided for Washington Mutual to preapprove changes to the May 19, 2002, construction contract.

c. *Injury.* There was potential for injury. In light of its prior decision not to lend sufficient funds to Buyers so that they could build the house they wanted, Washington Mutual may not have approved the September 18, 2002, construction contract. Superior Team built the house for Buyers and Buyers have been and continue to make regular payments as required by the terms of the Washington Mutual loan.

d. *Aggravating circumstances.* The following aggravating circumstance is present:

    1. The Accused was motivated to protect the construction profits. *Standards,* § 9.22(b).

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 proceeding. *Standards,* § 9.32(e).

3. Inexperience in the practice of law. The Accused had been a lawyer for only a few months at the time she engaged in the misconduct. *Standards*, § 9.32(f).

12.

The *Standards* state that reprimand is generally appropriate when a lawyer knowingly engages in conduct, other than criminal conduct, that involves dishonesty, fraud, deceit, or misrepresentation which adversely reflects on the lawyer's fitness to practice law. *Standards*, § 5.13.

13.

Reprimands have been imposed on lawyers who have engaged in dishonesty or misrepresentation outside the practice of law. *In re Carpenter*, 337 Or 226, 95 P3d 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 which suggested that the teacher had engaged in sexual relations with students); *In re Kumley*, 335 Or 639, 75 P3d 432 (2003) (inactive lawyer who identified himself as an attorney in forms he filled out as a legislative candidate was reprimanded for knowingly making a false statement under election laws and false swearing); *In re Flannery*, 334 Or 224, 47 P3d 891 (2002) (reprimand imposed on deputy district attorney who submitted a false application for a driver license).

14.

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

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 5th day of March 2008.

/s/ Samantha Dang
Samantha N. Dang
OSB No. 020410

EXECUTED this 10th day of March 2008.

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. 07-139
	)	
KURT CARSTENS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Susan D. Isaacs
Disciplinary Board:	None
Disposition:	Violations of RPC 5.5(b)(2) and ORS 9.160. Stipulation for Discipline. Public reprimand.
Effective Date of Order:	April 7, 2008

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 5.5(b)(2) and ORS 9.160.

DATED this 7th day of April 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Kurt Carstens, 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 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lincoln County, Oregon.

3.

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

4.

The State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 5.5(b)(2) of the Rules of Professional Conduct and ORS 9.160. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

FACTS

5.

On and between February 5, 2006, and March 6, 2006, the Accused's license to practice law was suspended for a disciplinary rule violation, *In re Conduct of Kurt Carstens*, 20 DB Rptr 10 (2006). On and between February 5, 2006, and March 6, 2006, the Accused was not authorized to practice law, to hold himself out to the public, or to represent that he was an attorney at law or authorized to practice law.

6.

Between February 5, 2006, and March 6, 2006, the Accused held himself out to the public, represented that he was an attorney at law, and otherwise expressed or implied to the public that he was authorized to practice law in this state. The Accused at times continued to use and allowed members of his firm to use office letterhead on which he was identified as an attorney with the firm; failed to remove his name

and allowed his name to continue to be identified on the law firm Web site as an attorney with the firm; provided comments to the local press as an attorney, without qualifying his status as a suspended lawyer; and continued to display his name on the exterior of his office building.

VIOLATIONS

7.

Based on the foregoing, the Accused admits that he violated RPC 5.5(b)(2) and ORS 9.160.

SANCTION

8.

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

a. *Duties violated.* The Accused violated his duty to the profession. *Standards,* § 7.0.

b. *Mental state.* The Accused's conduct demonstrates negligence. *Standards,* p. 7. He failed to ensure that his name was removed from his law firm's letterhead, Web site, and other locations, and to qualify his status as a suspended member of the Bar when dealing with members of the public.

c. *Injury.* There was potential injury to the public and the profession. The public could have been misled as to the Accused's qualifications. There was also potential injury to the profession. To the extent that the Accused continued to hold himself out as an attorney while he was suspended, the public may have viewed his conduct to be an affront to lawyer regulation.

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

    1. The Accused was admitted to practice in 1972 and has substantial experience in the practice of law. *Standards,* § 9.22(*l*).

    2. The Accused has a prior record of discipline. In 2006, the Accused was suspended from the practice of law for thirty (30) days for violation of DR 1-102(A)(4). *In re Carstens,* 20 DB Rptr 10 (2006). In 2003, the Accused was suspended for

violations of DR 5-101(A), DR 5-103(B), and DR 5-105(C). *In re Carstens*, 17 DB Rptr 46 (2003). In 1984, he was reprimanded for violations of former DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.480(2) (current ORS 9.527(2)). *In re Carstens*, 297 Or 155, 683 P2d 992 (1984).

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

1. The Accused cooperated with disciplinary authority during the investigation of his conduct. *Standards*, § 9.32(e).

2. One of the Accused's prior cases of misconduct is remote in time. *Standards*, § 9.32(m).

9.

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*, § 7.13. Case law is in accord. Lawyers who inadvertently practiced law for brief periods of time have been reprimanded. *See, e.g.*, *In re Bassett*, 16 DB Rptr 190 (2002); *In re Davidson*, 20 DB Rptr 264 (2006).

10.

Consistent with the *Standards* and Oregon case law, the Bar and the Accused agree that the Accused shall be publicly reprimanded for violations of RPC 5.5(b)(2) of the Rules of Professional Conduct and ORS 9.160.

11.

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

DATED this 20th day of March 2008.

/s/ Kurt Carstens
Kurt Carstens
OSB No. 720484

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 Nos. 07-17 and 08-17
	)	
JAMES C. HILBORN,	)	SC S055898
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Allison D. Rhodes
Disciplinary Board:	None
Disposition:	Violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 8.1(a)(2), and RPC 8.4(a)(3). Stipulation for Discipline. Nine-month suspension, all but 60 days stayed, subject to the completion of a two-year term of probation.
Effective Date of Order:	May 16, 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 nine months, all except 60 days of which shall be stayed subject to the accused's completion of a two-year term of probation as set out in the stipulation, effective 30 days from the date of this order.

DATED this 16th day of April 2008.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

STIPULATION FOR DISCIPLINE

James C. Hilborn, 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 26, 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 June 7, 2007, a Formal Complaint was filed against the Accused in Case No. 07-17, pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 1.1 (duty to provide competent representation); RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (duty to keep a client reasonably informed of the status of a case); RPC 1.4(b) (duty to communicate with client sufficient to allow client to make informed decisions regarding the representation); RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority); and RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

5.

On February 8, 2008, the SPRB authorized formal disciplinary proceedings against the Accused in Case No. 08-17, for alleged violations of RPC 1.3, RPC 1.4(a), and RPC 1.4(b) of the Oregon Rules of Professional Conduct in connection with that matter. The SPRB further authorized that Case No. 07-17 and Case No. 08-17 be consolidated. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

LaFRANCE MATTER

(Case No. 07-17)

Facts

6.

In June 2005, Raymond LaFrance (hereinafter "LaFrance") employed the Accused to file a civil lawsuit against LaFrance's former employer, US Filter.

7.

In late May 2006, the Accused filed a civil complaint against US Filter in Washington County Circuit Court citing two causes of complaint, specifically: unlawful discrimination based upon a workers' compensation claim (hereinafter "discrimination claim") and reckless infliction of emotional distress (hereinafter "distress claim"). Prior to filing the complaint, the Accused recognized that that LaFrance's claims were vulnerable, but believed at that time that they were viable causes of action (or reasonable extensions thereof) under existing Oregon law.

8.

In July 2006, US Filter removed the case to the US District Court on the basis of diversity jurisdiction. The Accused was not familiar with the electronic filing procedures and format of the federal courts and did not take steps to obtain the requisite knowledge or associate an attorney with the requisite knowledge. The Accused did not notify LaFrance that he had limited experience in federal court. The Accused did not inform LaFrance that he and his staff were experiencing difficulties with the federal court procedures.

9.

In mid-August 2006, US Filter filed a motion to dismiss LaFrance's complaint, citing the expiration of the one-year statute of limitations on the discrimination claim and the lack of basis under Oregon law for the distress claim. The Accused did not file a response. Instead, the Accused assured LaFrance that he was confident that he had filed the case timely. However, the Accused did not notify LaFrance that he had determined that US Filter had a viable defense to the distress claim and that he believed that the motion to dismiss would be granted as to that claim. Being unfamiliar with federal practice, the Accused mistakenly believed if the distress claim was dismissed, he would be given the opportunity to replead that claim. The Accused did not notify LaFrance or discuss this strategy with him.

10.

In mid-September 2006, US Filter filed a supplemental memorandum arguing that the Accused's failure to timely respond to US Filter's motion to dismiss was an additional reason to grant the motion as to the entire complaint. The Accused did not

file a response, nor did he notify LaFrance that the motion to dismiss now included his failure to prosecute the case as a basis for dismissal.

11.

On October 30, 2006, the US District Court granted US Filter's motion and dismissed LaFrance's case with prejudice. The Accused did not notify LaFrance of the dismissal or that the court would not permit the Accused to replead LaFrance's claims.

12.

In mid-November 2006, LaFrance inquired about the status of his case against US Filter. The Accused knew at that time that the case against US Filter had been dismissed but knowingly failed to disclose this fact to LaFrance. Thereafter, the Accused did not notify LaFrance that his case had been dismissed and failed to respond to LaFrance's attempts to communicate with him.

13.

On January 5, 2007, Disciplinary Counsel's Office (hereinafter "DCO") requested that the Accused respond to allegations that he mishandled LaFrance's matter. The Accused did not respond, despite an additional request that he do so on or before February 8, 2007.

14.

On February 22, 2007, the Accused submitted a response that acknowledged his mishandling of the case. However, he failed to respond to two subsequent requests for additional information made by DCO.

Violations

15.

The Accused admits that his conduct in connection with the LaFrance matter violated RPC 1.1 (duty to provide competent representation); RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (duty to keep a client reasonably informed of the status of a case); RPC 1.4(b) (duty to communicate with client sufficient to allow client to make informed decisions regarding the representation); RPC 8.1(a)(2) (failure to respond to a lawful demand for information from a disciplinary authority); and RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

CORSON MATTER

(Case No. 08-17)

Facts

16.

In November 2006, the Accused filed a lawsuit on behalf of John Corson (hereinafter "Corson") against Home Options Solutions (hereinafter "Options") for claims arising out of the transfer and sale of Corson's home. Service was effectuated in December 2006.

17.

Counsel for Options did not file a timely answer, but later served a copy of a motion for summary judgment on the Accused. In the motion for summary judgment, the Accused was alerted of a potential affirmative defense stemming from Corson's alleged transfer of certain rights to Options. The Accused assumed that the motion had also been filed with the court at that same time that it was served upon him, and that the case was therefore still active. In fact, the motion was not received by the court until some days later and, in the interim, the court entered an administrative dismissal of the case in May 2007. The Accused and counsel for Options agreed that a later motion to set aside the dismissal would be unopposed. However, the motion to set aside was not filed and the Accused took no action on the matter prior to Corson filing a Bar complaint in July 2007.

18.

The Accused sent a letter to Corson on May 20, 2007, explaining the circumstances surrounding the dismissal but did not communicate with him further after that date. During the two months following the dismissal, the Accused did not respond to Corson's phone calls or alert Corson to the fact that an issue had been raised that was potentially devastating to his case.

Violations

19.

The Accused acknowledges that his conduct in connection with the Corson matter violated RPC 1.3 (neglect of a legal matter); RPC 1.4(a) (duty to keep a client reasonably informed of the status of a case); and RPC 1.4(b) (duty to communicate with client sufficient to allow client to make informed decisions regarding the representation).

SANCTION

20.

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

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

a. *Duties violated.* The Accused violated his duties of diligence, competence and candor to his clients. *Standards,* §§ 4.4, 4.5, and 4.6. The *Standards* provide that the most important ethical duties are those which a lawyer owes to clients. *Standards,* at 5. The Accused also violated his duty to the profession to cooperate with investigations into professional misconduct. *Standards,* § 7.0

b. *Mental state.* The Accused acted knowingly, which the *Standards* define as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* at 7.

c. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992). There is actual injury to the client where an attorney fails to actively pursue his or her case. *See, e.g., In re Parker,* 330 Or 541, 547, 9 P3d 107 (2000). In addition, the Accused's failure to communicate caused actual injury in the form of client anxiety and frustration. *See In re Cohen,* 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner II,* 325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle,* 308 Or 135, 140, 775 P2d 832 (1989).

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

d. *Aggravating factors.* Aggravating factors include:

1. The Accused acted with a selfish motive in misrepresenting the status of LaFrance's case. *Standards,* § 9.22(b).

2. A pattern of misconduct. The Accused's similar transgressions occurred in separate matters over a period of time. *Standards,* § 9.22(c).

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

4. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1977. *Standards,* § 9.22(i).

e. *Mitigating factors.* Mitigating factors include:

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

2. The Accused was experiencing difficulties with alcoholism at the time of the conduct in these proceedings, and his significant other was facing serious health concerns. *Standards*, § 9.32(c).

21.

The *Standards* suggest that suspension is generally appropriate for the Accused's misconduct. *Standards*, §§ 4.42, 4.52, 4.62, and 7.2. The *Standards* also provide that probation is a sanction that should be imposed when a lawyer's right to practice law needs to be monitored or limited. *Standards*, at 23. Probationary conditions must make sense in light of the misconduct at issue. *In re Haws*, 310 Or 741, 801 P2d 818 (1990).

22.

Under the circumstances of this case, the *Standards* suggest that a period of suspension with probation is the appropriate sanction. The Accused has been addressing the alcoholism that contributed to his misconduct, since which time there have been no further complaints concerning the Accused. Probation is intended to assist the Accused in maintaining his current course of treatment and to monitor his practice over a period of time.

23.

Probation is related to and intended to address the Accused's violations of RPC 1.1, RPC 1.3, RPC 1.4(a)–(b), and RPC 8.1(a)(2). It does not relate to or address the Accused's violation of RPC 8.4(a)(3), for which an imposed term of suspension is more appropriate.

24.

Oregon case law supports a term of suspension in conjunction with probation in this case. *See In re Mikkelsen*, 17 DB Rptr 237 (2003) (one-year suspension, all but 90 days stayed, pending a three-year probation for violations similar to the Accused in connection with two client matters). Mikkelsen's conduct was more egregious than that of the Accused because, in addition to misrepresenting the status of both cases to each of his respective clients, Mikkelsen also made affirmative misrepresentations to the court. *See also In re Scharfstein*, 19 DB Rptr 97 (2005); *In re Dodge*, 16 DB Rptr 278 (2002); *In re Seto*, 16 DB Rptr 10 (2002); *In re Cohen*, 9 DB Rptr 229 (1995); *In re Hughes*, 9 DB Rptr 37 (1995).

25.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for nine months, all except 60 days of which shall be stayed subject to the Accused's completion of a two-year term of probation, for violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 8.1(a)(2), and RPC 8.4(a)(3). The sanction shall be effective May 1, 2008, or 30 days following approval by the court, whichever is later. During the period of probation, the Accused shall comply with the following conditions:

a. The Accused shall comply with all the provisions of this stipulation, the Oregon Rules of Professional Conduct, and ORS Chapter 9.

b. The Accused shall maintain sobriety and refrain from all use of alcohol, and all controlled substances or medications that are not prescribed by a physician. Medications prescribed by a physician for the Accused shall be taken as prescribed.

c. The Accused's compliance with the terms of his probation and this Stipulation for Discipline as it relates to the Accused's substance issues and fitness to practice shall be monitored by the State Lawyers Assistance Committee (hereinafter "SLAC") pursuant to ORS 9.568(5). References in this stipulation to SLAC refer to the SLAC member or members assigned to monitor the Accused's compliance with this Stipulation for Discipline and his probation. The Accused acknowledges that SLAC is required to provide DCO with periodic reports concerning the Accused's compliance with his probation and is otherwise authorized to communicate with DCO regarding the Accused's compliance or noncompliance with the terms of his probation, and to release to DCO any information necessary to permit DCO to assess the Accused's compliance with his probation.

d. The Accused has been assessed and evaluated by Dr. Frank Colistro and Dr. Walton Byrd. Both doctors made recommendations for treatment. Within 14 days of the effective date of this Stipulation for Discipline, the Accused shall meet with Dr. Colistro or another doctor acceptable to the Bar (hereinafter "Treating Doctor"), and establish a treatment plan (hereinafter "Treatment Plan") or refine any Treatment Plan that may have been established previously. The Accused shall provide SLAC and DCO with a copy of the Treatment Plan within 10 days of meeting with his Treating Doctor. The Accused shall meet with his Treating Doctor no less than once every 180 days thereafter, or more frequently if reasonably requested by SLAC or DCO, to allow the Treating Doctor to assess the Accused's progress under the Treatment Plan. The Accused shall follow the Treatment Plan and all recommendations and instructions provided by the Treating Doctor, including all medical and chemical dependency treatment, as well as any recommended aftercare,

and the taking of any prescribed medication. Compliance with the Treatment Plan and this Stipulation for Discipline must include regular attendance at OAAP, AA, NA, or equivalent meetings as directed by the Treating Doctor or SLAC. The Accused agrees to obtain and provide to SLAC, within 10 days of each appointment, a form of acknowledgment from the Treating Doctor verifying that he has attended appointments as required in this section, and at the request of SLAC, shall provide verifications of attendance at the other meetings required by this section.

e. The Accused agrees that he will meet with SLAC as often as recommended by SLAC, and shall comply with all reasonable requests and recommendations made by SLAC to supplement his treatment and to promote compliance with this Stipulation for Discipline, including submission to random urinalysis testing at his own expense, at the discretion and direction of SLAC.

f. The Accused consents to the release of information by his Treating Doctor, other mental health or substance abuse treatment program or provider, OAAP, AA, NA, or any designee, to SLAC and to DCO, regarding the Accused's Treatment Plan, his progress under that plan, and his compliance with the terms of this Stipulation for Discipline, waives any privilege or right of confidentiality to permit such disclosure, and agrees to execute such releases as may be required by such providers upon request by SLAC or DCO. The Accused acknowledges and agrees that SLAC shall promptly report to DCO any violation of the terms of this Stipulation for Discipline.

g. The Accused shall report to SLAC and DCO within seven days of occurrence any civil, criminal, or traffic action, or other proceeding initiated by complaint, citation, warrant, or arrest, or any other incident, regardless of whether such incident results in complaint, citation, warrant, or arrest, in which it is alleged that the Accused has consumed alcohol or controlled substances not prescribed by a physician.

h. Kevin Luby, Esq., or such other person acceptable to the Bar, shall supervise the Accused's probation as it relates to the Accused's law practice (hereinafter "Supervising Attorney"). The Accused agrees to cooperate and shall comply with all reasonable requests of the Supervising Attorney and DCO that are designed to achieve the purpose of the probation and the protection of the Accused's clients, the profession, the legal system, and the public. The Accused acknowledges that the Supervising Attorney is required to provide DCO with periodic reports concerning the Accused's compliance with his probation and is otherwise authorized to communicate with DCO regarding the Accused's compliance or noncompliance with the terms of his

probation, and to release to DCO any information necessary to permit DCO to assess the Accused's compliance with his probation.

i. At least 14 days prior to the effective date of the Accused's 60-day suspension, the Accused shall meet with the Supervising Attorney to review his existing caseload and shall take all appropriate measures to conclude or to refer all cases to other counsel during the period of his suspension if reasonably necessary to protect the particular client.

j. At least 14 days prior to the end of the Accused's 60-day suspension, the Accused shall meet with the Supervising Attorney to review the Accused's caseload and office practices. The Accused shall thereafter take all appropriate actions as recommended by the Supervising Attorney to address any problems the Supervising Attorney may identify.

k. On or before the expiration of the Accused's 60-day suspension, the Accused shall attend at least 10 credit hours of accredited practical skills or law office management classes and report his attendance to the Supervising Attorney. These credit hours are in addition to any MCLE credit hours required of the Accused for his normal MCLE reporting period.

l. During the term of probation, the Accused shall meet no less than quarterly with the Supervising Attorney for the purpose of reviewing the status of the Accused's law practice, his entire caseload and his performance of legal services on behalf of clients. The Accused shall take all appropriate actions to address any problems the Supervising Attorney may identify. The Accused shall respond, while preserving client confidences, to all reasonable requests from the Supervising Attorney for information that will allow the Supervising Attorney to evaluate the Accused's fitness to practice law and his compliance with the terms of his probation. The Accused shall also consult with the Supervising Attorney regarding any difficulties he may encounter in his practice as such difficulties may arise and take the steps recommended by the Supervising Attorney to resolve those difficulties.

m. During the term of probation, the Accused shall submit, no less than quarterly, a written report to DCO, acknowledged and approved as to substance by SLAC and the Supervising Attorney, advising whether the Accused is in compliance with the terms of his probation. In the event that the Accused has not complied with any term of probation, the quarterly report shall describe the noncompliance and the reason for it.

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

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

26.

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.

27.

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

EXECUTED this 12th day of March 2008.

/s/ James C. Hilborn
James C. Hilborn
OSB No. 772205

EXECUTED this 13th day of March 2008.

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. 08-02
	)	
NYLE B. SMITH,	)	
	)	
Accused.	)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 5.5(a) and ORS 9.160. Stipulation for Discipline. Public reprimand.
Effective Date of Order:	April 21, 2008

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 5.5(a) and ORS 9.160.

DATED this 21st day of April 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Nyle B. Smith, 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, 1993, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Portland, Oregon. However, the Accused currently resides in Pleasant Grove, Utah.

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 12, 2008, the State Professional Responsibility Board authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 5.5(a) of the Oregon Rules of Professional Conduct, and ORS 9.160. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

On July 3, 2007, the Accused was suspended from the practice of law for failure to pay Bar dues. On July 30, 2007, the Accused appeared in Beaverton Municipal Court, representing a client in a traffic violation matter. The client entered into a traffic violation plea agreement whereby he agreed to enroll in and complete a high-risk-driving program. The agreement was signed by the Accused as defense counsel.

6.

When the Accused made this July 30, 2007, appearance, he was suspended from the practice of law in Oregon; he was therefore engaging in the unlawful practice of law.

Violations

7.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 5.5(a) of the Oregon Rules of Professional Conduct, and ORS 9.160.

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.

a. *Duties violated.* In violating RPC 5.5(a) and ORS 9.160, the Accused violated his duty to the profession to refrain from unauthorized practice. *Standards,* § 7.0.

b. *Mental state*. The Accused's mental state in committing these violations was knowing. The *Standards* define an act as done "knowingly" if it is done with the conscious awareness of the nature or tended circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result. *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 unauthorized practice of law created the potential of injuring the legal system and/or his client.

d. *Aggravating factors.* There is only one aggravating factor in this case: substantial experience in the practice of law. The Accused was admitted to the Oregon State Bar in 1993. *Standards,* § 9.22(i).

e. *Mitigating factors.* Mitigating factors include:

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

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

   3. Personal problems. *Standards,* § 9.32(c).

   4. Full and free disclosure to Disciplinary Counsel's Office and cooperative attitude towards proceedings. *Standards,* § 9.32(e).

5. Remorse. *Standards*, § 9.32(*l*).

9.

The *Standards* provide that a reprimand is generally appropriate when a lawyer is negligent in engaging 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.

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

In this case, because the mitigating factors outnumber and outweigh the aggravating ones, the *Standards* suggest that a public reprimand, rather than a suspension, is the appropriate sanction.

10.

Case law is in accord with the *Standards*. *See In re Dixon*, 17 DB Rptr 102 (2003) (attorney publicly reprimanded for continuing to practice law for several days after she was suspended for failure to pay her dues); *In re William Bassett*, 16 DB Rptr 190 (2002) (lawyer publicly reprimanded for continuing to practice law for two weeks after his suspension for failure to pay his PLF assessment).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violating RPC 5.5(a) and ORS 9.160.

12.

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

EXECUTED this 9th day of April 2008.

/s/ Nyle B. Smith
Nyle B. Smith
OSB No. 934300

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. 07-70
	)	
STEVEN C. BURKE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Richard Weill, Amber Bevacqua-Lynott
Counsel for the Accused:	Mark J. Fucile
Disciplinary Board:	Irene B. Taylor, Chair James Van Ness Robert P. Welch, Public Member
Disposition:	Trial Panel Opinion. Dismissed.
Effective Date of Opinion:	April 30, 2008

OPINION OF THE TRIAL PANEL

This matter came before a duly constituted trial panel of the Disciplinary Board of the Oregon State Bar on December 4, 2007, at the Oregon State Bar Center in Lake Oswego, Oregon. The panel consisted of Irene Bustillos Taylor, Esq., Trial Panel Chairperson; James Van Ness, Esq., Trial Panel Member; and Robert P. Welch, Public Panel Member. Mark J. Fucile, Esq., represented the Accused. Amber Bevacqua-Lynott, Bar Disciplinary Counsel, and Richard Weill, Esq., represented the Bar. The trial panel finds that the Complaint against the Accused should be dismissed.

BURDEN OF PROOF

The Bar must establish by clear and convincing evidence the Accused's misconduct in this proceeding. *In re Leisure,* 338 Or 508, 510, 113 P3d 412 (2005).

FINDINGS OF FACT

Steven C. Burke (hereinafter the "Accused") has been an Oregon State Bar member since 2000. In 2004, Ian McElroy (Client) employed the Accused to represent him in civil rights litigation against the City of Corvallis and several City employees, Defendants. Defendants were represented by Robert E. Franz Jr. and an associate in his office, Jason Montgomery. Montgomery was the attorney handling the case in Franz's office.

Professional relations between the Accused and Montgomery gradually deteriorated. On January 12, 2006, the Accused sent out an e-mail to Montgomery confirming a telephone conference between the two that took place that same date. In his e-mail, the Accused stated that Montgomery told him that he would provide all discovery requested by the Accused in one lump at some time in the future. The Accused also stated that he has advised Montgomery of his concerns about the subpoena for McElroy's medical records. The request included medical records of McElroy's HIV status. The Accused concluded the e-mail with the statement, "I expect to file a motion to quash shortly since you will not withdraw the subpoenas or modify them, despite agreeing some of the request are far beyond the scope of this case." (Ex. 102.)

On January 20, 2006, Montgomery wrote a letter to Judge Hogan requesting an order for McElroy to produce his medical records prior to the February 10, 2006, deposition of McElroy. The letter advised Judge Hogan that the Accused was to have advised Montgomery of the Accused's position regarding a request for the production of the previously mentioned medical records, but that the Accused had not done so. Montgomery made no mention in his letter to the judge of the objections the Accused had stated in his January 12, 2006, e-mail, nor did he mention the potential that the Accused would file a motion to quash.

On January 23, 2006, the Accused wrote a letter to Franz and Montgomery accusing Montgomery of making a false representation to Judge Hogan. Montgomery responded by writing a letter dated January 25, 2006, to the Accused stating that because he was being accused of making false statements to Judge Hogan, they should keep all future communications in writing.

Throughout the course of the Accused's representation of McElroy, both Franz and Montgomery owned Verizon Treo cell phones. McElroy testified that the attorneys often discussed their cell phones. Because of discussions with both Franz and Montgomery, when the Accused decided to purchase a new cell phone, he purchased a Treo cell phone. The Treo has an ability to record. When recording, it displays a light and beeps when the record mode is turned on. The beep can be disabled, but the light is always on when recording.

On May 31, 2006, the Accused and McElroy met with Montgomery to conduct the deposition of one of the defendants, Lee March. March arrived late. While waiting, the two attorneys began to discuss discovery matters. At this point the versions of what occurred diverge.

At the hearing, the Accused testified that the discussion started to get heated. He took his Treo out of his pocket and told Montgomery, "Okay, let's put this on the record." (Vol. 1, Tr. 64.) He also stated that he did the action with a flourish with his arm when he placed the Treo on the table. He could not recall if McElroy was still in the room or not. The court reporter had already left the room.

Montgomery testified that he was not advised by the Accused that he was being recorded. He testified that the Accused and his client were both seated at the

table. He and the Accused were discussing discovery issues when he noticed the light on the Accused's Treo. He asked the Accused straight out if he was being recorded. He testified that he never paid much attention to the type of cell phone and the features of the Treo. He also denied that the Accused said anything about "let's get it on the record." (Vol. 1, Tr. 113.) He testified, "Or I mean it just would have been something that was an odd statement to me. I would have been trying to figure out what he was talking about." (Vol. 1, Tr. 113.)

Montgomery also testified that the Accused and Mr. Franz often discussed Treo phones, and seemed to have an interest in them. However, he was not interested in technology. When questioned by the Bar if he was aware, on May 31, 2006, that the Treo might have the capability to make a voice recording, he stated that it never crossed his mind, and that he never considered the possibility.

McElroy testified that the Accused and Montgomery were arguing about discovery, when he received a telephone call. He did not want to be in the room on the phone with the two attorneys arguing, so he got up and left the room to take his call. The court reporter left at the same time. He was not in the room at the time Montgomery accused the Accused of recording their conversation. After the deposition, the Accused played the recording for McElroy.

The Accused testified that after he had played the recording for McElroy, he tried to upload the file to his computer, but he could not read the file. He had stored the file on a removable SD storage card on his phone, but in the transfer process, it became lost.

At the time of the hearing, McElroy testified that he had filed a Bar complaint against the Accused, and had also filed a malpractice case against him. McElroy was adamant that the Accused was lying about what took place regarding the recording. He testified that the Accused had always had his phone out on the table during the depositions. This was consistent with his deposition testimony that the Accused always had his cell phone out on the table. McElroy also testified that the Accused, Franz, and Montgomery often talked about the Treo cell phones that Franz and Montgomery had. The Treo phone was very desirable and that was why the Accused bought one when he got a new phone.

Montgomery requested a copy of the recording made on May 31, 2006, from the Accused on two occasions. McElroy and the Accused became concerned that the issue was going to interfere with case, and affect the Accused's ability to represent McElroy. The Accused even arranged for another attorney, Mr. McCaslin, to handle a June 16, 2006, deposition on behalf of Mr. McElroy. Montgomery filed a request for production of the recording on June 15, 2006, in federal court. Subsequently, Montgomery complained about the recording incident in a letter to Judge Hogan dated June 20, 2006. On this same date, the Accused expressed concern to McElroy in an e-mail that he may have to withdraw from the case due to Montgomery's allegations of illegal activity.

The Accused believed that the recording was irrelevant to McElroy's case. Both he and McElroy also believed that Montgomery was using the recording issue against McElroy's case to intentionally cause a distraction for the Accused.

McElroy testified that he first received a request for discovery of the recording in early July, around July 2, 2006. By mid-July, he was becoming concerned that requests for the recording were going to negatively affect his case. Subsequently, through an e-mail dated July 20, 2006, McElroy accused the Accused of malpractice. The Accused immediately filed a motion to withdraw from the case, and requested additional time for McElroy to file further pleadings and to locate another attorney. Judge Hogan granted the motion to withdraw on July 25, 2006.

ANALYSIS

I

As to the first cause of complaint, the trial panel finds a lack of credibility in testimony of the Bar's two key witnesses, Montgomery and McElroy. This lack of credibility finding is based on the demeanor of the witnesses, their testimony, and the evidence presented. Montgomery testified that he was unfamiliar with his Treo phone and was not familiar with technology. Yet, his testimony was that he immediately knew that the Accused was recording him. This is also contradicted by his allegations that he was unfamiliar with the Treo phone, and was unaware of its recording capabilities. One inference that can be derived from this conflict in facts is that Montgomery was aware of the recording and chose to not mention it until he felt it was to his benefit to object.

Montgomery also testified to the considerable animosity between he and the Accused. He confirmed that he felt any discussion between the two should be in writing. Yet, he testified that he would have been surprised and confused if the Accused had in fact, brandished his phone with a flourish and stated, "Let's get this on the record." He stated that he would not have known what to think about it.

Another example supporting the lack of credibility is Montgomery's January 20, 2006, letter to Judge Hogan. The panel believes that Montgomery was less than candid in his letter. It is clear from the record that the Accused and his client had some objections to the subpoena for McElroy's medical records. Montgomery's explanation to the court as to the Accused's position on the matter was tailored to Montgomery's interests. Montgomery used the recording incident to create additional tension between the parties to the case.

The trial panel believes that McElroy was motivated by wanting to further his malpractice suit against the Accused. He was adamant that the Accused was lying about having told Montgomery that he was recording their conversation, yet he admitted that he was not even present in the room at the time. McElroy affirmatively stated that the Accused always has his cell phone on the table during depositions, yet he never stated, either at the Bar hearing or in his own deposition, that he actually saw the cell phone on the table on May 31, 2006, before he left the room to answer

his phone call. Furthermore, the record reflects concern on the part of the Accused that McElroy was not following up on details he was to pursue on behalf of his case. If this was true, then McElroy could blame any failure on his case on the Accused, and deflect blame away from any failure on his part to follow through with the Accused's instructions for preparing his case for trial.

The panel also has credibility issues with the testimony of the Accused. However, it is the Bar that bears the burden, not the Accused. Therefore, even if the panel disregards or disbelieves all the testimony presented by the Accused, the Bar's witnesses are not sufficient to meet its burden of establishing the misconduct by clear and convincing evidence.

This is one case where the animosity and self-interests of all the parties are equally at issue. There was evidence presented to support the Bar's allegations. There was also evidence presented to support the Accused's version of what occurred. The panel has questions about testimony of all the key witnesses, resulting in a stalemate. When there is evidence to support each party's story, yet each version leaves questions about its credibility, the evidence is in equipoise, and clear and convincing evidence is not established. *See State v. James*, 339 Or 476, 123 P3d 251 (2005) (extensive discussion regarding the effect a factfinder's conclusion that evidence is in equipoise has on the party that has the burden of persuasion).

For the above reasons, as to the first complaint, the trial panel finds that the Bar has not established by clear and convincing evidence 1) that the Accused engaged in illegal conduct in violation of RPC 3.3(a)(5); 2) that the Accused used means that had no substantial purpose other than to embarrass, delay, harass, or burden a third person; or 3) that the Accused engaged in conduct that constituted a criminal act that reflected adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in violation of RPC 8.4(a)(2).

II

As to the second cause of complaint, the trial panel finds that it took a little more than one month's time for the Accused to determine whether he should withdraw from representing McElroy due to a conflict or whether obtaining a waiver was reasonable. When an attorney discovers there may be a conflict of interest with his client, he can take a reasonable amount of time to determine whether the conflict is such that he can obtain a written waiver from the client, or whether he should withdraw from the case. *In re Obert*, 336 Or 640, 647–648, 89 P3d 1173 (2004). In *Obert*, the accused discovered that the client's appeal had been dismissed. He then researched whether he could get the case reinstated. Upon finding out that he could not revive the case, the accused did nothing further on the case, until he withdrew five months later. The Oregon Supreme Court found that despite the dismissal, the accused's efforts to reinstate the appeal were not in conflict with the client's interests. The court also noted that the accused did no further work for the client, and that there was no evidence that his professional judgment was impaired while representing the client.

The one month's time it took the Accused to evaluate whether he had a conflict with McElroy is not unreasonable. During that time when the Accused was questioning whether Montgomery's pursuit of the recording issue was going to interfere with his ability to represent McElroy, he arranged for another attorney to assist his client. Once he was aware that a conflict had actually been created, even though he believed it was due to reasons other than the recording incident, he promptly moved the trial court to allow him to withdraw. The few actions taken by the Accused on behalf of McElroy from June 20, 2006, when Montgomery openly complained to Judge Hogan about the recording incident to July 20, 2006, when the Accused filed his Motion to Withdraw, were actions taken to the client's benefit.

The one-month period, from the date Montgomery first alleged to the court that the Accused's actions were illegal, to the point where the Accused filed his motion to withdraw from McElroy's case, was a reasonable amount of time for the Accused to take to review the matters and research to determine whether he was either going to continue to represent McElroy, or whether he was going to have to withdraw from the case. The trial panel finds that the Bar has not established by clear and convincing evidence that the Accused violated RPC 1.7(a)(2).

DISPOSITION

Based upon the above findings, it is the conclusion of the Trial Panel that the Bar has failed to prove, by clear and convincing evidence, that the Accused committed the charged violations.

Complaint dismissed.

DATED this 27th day of February 2008.

/s/ Irene B. Taylor
Irene B. Taylor
OSB No. 83166
Trial Panel Chairperson

/s/ James Van Ness
James Van Ness
OSB No. 99119
Trial Panel Member

/s/ Robert P. Welch
Robert P. Welch
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 07-50, 07-51, and 07-141
	)	
DAVID E. GROOM,	)	SC S055965
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of DR 6-101(B), DR 7-101(A)(2), DR 7-106(A), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 5.5(a), RPC 8.4(a)(3), and ORS 9.160. Stipulation for Discipline. One-year suspension, 10 months stayed, one-year probation.
Effective Date of Order:	May 10, 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 one (1) years, with 10 months of the suspension stayed during a one-year term of probation, effective three days from the date of this order.

DATED this 7th day of May 2008.

/s/ W. Michael Gillette
W. Michael Gillette
Presiding Justice

STIPULATION FOR DISCIPLINE

David E. Groom, 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, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely 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 6-101(B), DR 7-101(A)(2), and DR 7-106(A) of the Code of Professional Responsibility, and RPC 1.3 and RPC 1.4(a)–(b) of the Rules of Professional Conduct concerning Case Nos. 07-50 and 07-51. On September 21, 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)–(b), concerning Case No. 07-141. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

FACTS AND VIOLATIONS

5.

In and between 2004 and 2007, the Accused accepted court appointments to represent incarcerated persons in the appeal of their criminal convictions and denied petitions for postconviction relief, including the following individuals: Paul David Schweitzer (hereinafter "Schweitzer"), Clyde E. Taylor (hereinafter "Taylor"), and Robert O'Dell (hereinafter "O'Dell").

Case No. 07-50

Schweitzer Matter

6.

In the Schweitzer matter, the Accused was appointed to represent the client concerning the appeal of a decision denying a petition for postconviction relief. The Accused failed to file of a petition for review of the decision of the Court of Appeals after representing to the client that he would file it. The Accused also failed to keep his client reasonably informed about the status of the case and did not provide explanations reasonably necessary to permit the client to make informed decisions regarding the representation.

7.

The Accused admits that aforesaid conduct constituted neglect of a legal matter entrusted to him and failure to communicate with his client in violation of DR 6-101(B) of the Code of Professional Responsibility, and RPC 1.3 and RPC 1.4(a)–(b) of the Rules of Professional Conduct.

Case No. 07-51

Taylor Matter

8.

In September 2004, the Accused was appointed to represent Taylor concerning the appeal of his criminal convictions. The Accused failed to keep his client reasonably informed about the status of the appeal and did not provide explanations reasonably necessary to permit the client to make informed decisions regarding the representation. The Accused did not comply with the court's order directing him to put the client's handwritten supplemental brief in proper form and file it with the court by a date certain, or respond to the court's subsequent directives that he provide an explanation for his failure to comply or respond. The Accused did not notify the client that he had not filed or did not intend to file the supplemental brief, and did not seek an extension of time to do so. The Accused eventually filed the client's handwritten supplemental brief, but failed to put it in proper form or include an additional issue the client requested be included.

9.

The Accused admits that his conduct constituted neglect of a legal matter; intentional failure to carry out a contract of employment; and knowing violation of an order of the court in violation of DR 6-101(B), DR 7-101(A)(2), and DR 7-106(A) of the Code of Professional Responsibility.

Case No. 07-141

O'Dell Matter

10.

In the O'Dell matter, the Accused was appointed in 2006 to represent the client concerning the appeal of a decision denying the client's petition for postconviction relief. The Accused failed to keep his client reasonably informed about the status of the appeal, and failed to provide explanations reasonably necessary to permit the client to make informed decisions regarding the representation. The Accused failed to file the brief when due, which resulted in the Court of Appeals' filing notice of its intent to dismiss the appeal. The Accused took late action to avoid dismissal, but then again failed to take timely action to file the opening brief or obtain an extension of time to do so. The court dismissed the appeal on October 29, 2006. In November 2006, the Accused filed a motion to recall the appellate judgment and for an extension of time to file the opening brief. The appeal was reinstated, but not before there was considerable delay during which time the Accused failed to make timely or adequate inquiry with the court concerning the status of his motion, or to prepare the brief. During the representation, the Accused also engaged in conduct constituting misrepresentation when he expressed and implied to the client that the appeal was pending and that he was actively working on the matter when the appeal had been dismissed and had not yet been reinstated.

11.

Also during the representation of O'Dell, the Accused was suspended for 30 days concerning his conduct in other client matters. *In re Groom*, 20 DB Rptr 199 (2006). After the Accused had mailed the compliance affidavit and reinstatement fee to the Bar, but a few days before he was actually reinstated as an active member, the Accused used letterhead representing that he was an attorney at law and performed legal services for O'Dell.

12.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to him; failure to communicate with his client; holding himself out as an active member of the Bar and practicing law while suspended; and misrepresentation, in violation of RPC 1.3, RPC 1.4(a)–(b), RPC 5.5(a), and RPC 8.4(a)(3) of the Rules of Professional Conduct, and ORS 9.160.

SANCTION

13.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by the following factors: (1) the ethical duty violated, (2) the attorney's

mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards,* § 3.0.

a. *Duties violated.* In violating DR 6-101(B), RPC 1.3, RPC 1.4(a)–(b), DR 7-101(A)(2), DR 7-106(A), RPC 8.4(a)(3), RPC 5.5(a), and ORS 9.160, the Accused violated duties to his clients, the legal system, and the profession. *Standards,* §§ 4.4, 4.6, 6.2, and 7.0. The Accused failed to act with reasonable diligence and promptness and to take all reasonable steps to avoid foreseeable prejudice to his clients, made a misrepresentation, and failed to disclose information concerning the status of the clients' cases. *Standards,* §§ 4.4 and 4.6. The Accused's conduct also placed an additional burden on the court system, particularly where the court was required to issue an order threatening a contempt proceeding to compel the Accused to act, and to repeatedly issue notices of intent to dismiss and consider motions to reinstate the cases. *Standards,* § 6.2.

b. *Mental state.* The Accused acted negligently and knowingly. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. "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 communication with clients and the court and his follow-up concerning the various clients' matters was not sufficient, and that he had taken on more work than he reasonably could handle given his professional circumstances at the time. The Accused was negligent in failing to address and correct these issues in a timely manner.

c. *Injury.* For the purposes of determining sanction in a disciplinary case, consideration is given to both actual and potential injury. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992). There was some actual and potential injury to the clients and the legal system. Clients were frustrated because the Accused failed to communicate or timely communicate with them and failed to timely attend to their legal matters. The potential for injury was also present in that the reinstatement of an appeal after dismissal is within the discretion of the court. In addition, the appellate courts were unnecessarily burdened by the Accused's conduct.

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 has a prior record of formal discipline. *In re Groom,* 20 DB Rptr 199 (2006)

(30-day suspension for violations of former DR 6-101(B) and current RPC 1.3 (neglect) and RPC 1.4 (failure to communicate)). Some of the conduct occurred during the same time as the conduct in the prior disciplinary proceeding. There are multiple offenses and a pattern of misconduct. *Standards,* § 9.22(c), (d). The Accused was admitted to practice in 1978 and has substantial experience in the practice of law. *Standards,* § 9.22(i). The clients were vulnerable because they were incarcerated and relied on the Accused to protect and advance their interests, and to keep them informed concerning their legal matters. *Standards,* § 9.22(h).

e. *Mitigating factors.* Mitigating factors are considerations that may decrease the discipline that may be imposed. *Standards,* § 9.32. There is an absence of dishonest motive. *Standards,* § 9.32(b). The Accused is remorseful. *Standards,* § 9.32(*l*). Also, he cooperated in the investigation of his conduct and in resolving this proceeding. *Standards,* § 9.32(e).

14.

The *Standards* provide that suspension is generally appropriate when a lawyer fails to perform services for a client, or engages in a pattern of neglect, or knowingly deceives a client, and causes injury or potential injury to a client. *Standards,* §§ 4.42 and 4.62. Suspension is also appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards,* § 6.22. Oregon case law is in accord. *See, e.g., In re Knappenberger*, 340 Or 573, 135 P3d 297 (2006); *In re Worth*, 336 Or 256, 82 P3d 605 (2003); *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996); *In re Gresham*, 318 Or 162, 864 P2d 360 (1993); *In re Boland*, 288 Or 133, 602 P2d 1078 (1979).

15.

Probation, while not favored by the Supreme Court as a sanction in a contested case (*In re Obert*, 336 Or 640, 89 P3d 1173 (2004)), may be appropriate by agreement of the parties in a case in which the misconduct is caused in whole or in part by problems or circumstances that can be remedied and certain monitored conditions can be imposed to address those causes of the misconduct. *Standards,* § 2.7. *See, e.g., In re Grimes*, SC S52005, 18 DB Rptr 300 (2004); *In re Seto*, 16 DB Rptr 10 (2002); *In re Hellewell*, Or S Ct S44078 (1997); *In re Brownlee*, Or S Ct S43489 (1996). In this case, the Accused's systems and procedures for managing his caseload and communicating with his clients and the court were not adequate. Although he has made some changes to address these issues, additional attention to them is required and changes must be maintained.

16.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of one (1) year, with 10 months of the suspension stayed during a one-year term of probation, for violations of DR 6-101(B), DR 7-101(A)(2), DR 7-106(A), RPC 1.3, RPC 1.4(a)–(b), RPC 5.5(a), RPC 8.4(a)(3), and ORS 9.160. This sanction, including the 60 days of imposed suspension, shall be effective May 1, 2008, or three days after this stipulation is approved by the Supreme Court, whichever is later.

17.

During the term of probation, the Accused shall comply with the following conditions:

(a) The Accused shall comply with all provisions of this stipulation, the disciplinary rules applicable to Oregon lawyers, and the provisions of ORS Chapter 9.

(b) At or following the expiration of the 60 days of imposed suspension, the Accused may submit a compliance affidavit, the reinstatement fees, and shall otherwise comply with applicable rules for reinstatement. The Accused shall not commence the practice of law until he has confirmed with the Bar that he has been reinstated as an active member.

(c) Dennis N. Balske, or such other person acceptable to Disciplinary Counsel, shall supervise the Accused's probation (hereinafter "Supervising Attorney"). The Accused agrees to cooperate with the Supervising Attorney and Disciplinary Counsel's Office, and shall comply with all reasonable requests that are designed to achieve the purpose of the probation. The Accused acknowledges that the Supervising Attorney may provide Disciplinary Counsel with information concerning the Accused and his compliance with the terms of the probation. The Accused expressly consents to the Supervising Attorney providing any and all such information.

(d) At least 14 days before the effective date of the imposed suspension, the Accused shall meet with the Supervising Attorney to review the Accused's existing caseload. The Accused shall take all steps reasonably necessary to protect the clients' interests, which may include but are not limited to: giving reasonable notice to the clients and the courts, arranging for other counsel to attend to the clients' cases and to communicate with the clients during the suspension period, seeking extensions of time for actions concerning the clients' cases, and where required, for the appointment of other counsel.

(e) Not later than 30 days after the effective date of the suspension, the Accused shall consult with practice management advisors of the

Professional Liability Fund (hereinafter "PLF") for an audit concerning his office and client management systems and procedures. The Accused shall notify the Supervising Attorney of the date of the scheduled consultation, in advance, to permit the Supervising Attorney to attend the consultation.

The Accused shall adopt and implement all reasonable recommendations made by the law office management advisors and the Supervising Attorney, and shall use and maintain them upon resuming the active private practice of law. The Accused shall disclose to and provide a copy of all audits and recommendations of the practice management advisors concerning the Accused's law practice to the Supervising Attorney and Disciplinary Counsel's Office. The Accused expressly consents and authorizes the PLF's office management group and advisors to disclose information concerning its consultations with and recommendations to the Accused and the Accused's compliance with its recommendations to the Supervising Attorney and Disciplinary Counsel's Office.

(f) The Accused shall timely and diligently attend to his clients' legal matters. The Accused shall communicate with the clients so they are reasonably informed about the status of their cases and involved in the decision-making processes concerning their cases.

(g) The Accused shall meet with the Supervising Attorney at least one time each month, and more often as may be requested by the Supervising Attorney, for the purpose of reviewing the status of the Accused's law practice and caseload, the Accused's performance of legal services on behalf of clients, the adoption and use of law office systems and procedures, and compliance with the terms of the probation. The Accused shall respond to all reasonable requests for information from the Supervising Attorney and Disciplinary Counsel's Office that will allow the Supervising Attorney and Disciplinary Counsel's Office to evaluate the Accused's performance of legal services for his clients and his adoption of recommendations of the law office management advisors and the Supervising Attorney.

(h) At least quarterly, and by such dates as established by Disciplinary Counsel's Office, the Accused shall submit a written report to Disciplinary Counsel, approved in substance by the Supervising Attorney, advising whether he is in compliance with the terms of his probation. The Accused's report shall also identify: the dates and purpose of the Accused's meetings with the Supervising Attorney, the dates and purpose of meetings and other consultations with between the Accused and the PLF law office management advisors, and actions taken to adopt recommendations of the law office management program

advisors and the Supervising Attorney and whether the procedures adopted have been maintained. In the event the Accused has not complied with any term of probation, the report shall also describe the noncompliance and the reason for it, and when and what steps have been taken to correct the noncompliance.

(i) The Accused shall bear the financial responsibility for the cost of all professional services required under the terms of this stipulation and the terms of probation.

(j) In the event the Accused fails to comply with any condition of his probation, Disciplinary Counsel may initiate proceedings to revoke the Accused's probation pursuant to BR 6.2(d), and impose the stayed period of suspension. In such event, the probation and its terms shall be continued until resolution of any revocation proceeding.

(k) In the event the Accused successfully completes his probation and fully complies with the terms of this agreement, he shall be reinstated unconditionally after the expiration of the probationary term, without further order of the Disciplinary Board or the Supreme Court.

18.

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

DATED this 31st day of March 2008.

/s/ David E. Groom
David E. Groom
OSB No. 782310

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. 07-39
	)	
DAVID DeBLASIO,	)	
	)	
Accused.	)	

Counsel for the Bar:	David P.R. Symes, Amber Bevacqua-Lynott
Counsel for the Accused:	Christopher R. Hardman
Disciplinary Board:	None
Disposition:	Violation of DR 6-101(A)/RPC 1.1, DR 6-101(B)/RPC 1.3, RPC 1.4(a)–(b), RPC 1.15-1(d)/DR 9-101(C)(1), and RPC 1.15-1(d)/ DR 9-101(C)(4). Stipulation for Discipline. 30-day suspension and restitution.
Effective Date of Order:	June 13, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective June 13, 2008, or 30 days after approval by the Disciplinary Board, whichever is later, for violation of DR 6-101(A)/RPC 1.1, DR 6-101(B)/RPC 1.3, RPC 1.4(a)–(b), RPC 1.15-1(d)/DR 9-101(C)(1), and RPC 1.15-1(d)/DR 9-101(C)(4).

DATED this 14th day of May 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On July 20, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of DR 6-101(A) and RPC 1.1 (failure to provide competent representation); 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 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 1.15-1(d) and DR 9-101(C)(1) (failure to notify client of receipt of client funds; and RPC 1.15-1(d) and DR 9-101(C)(4) (failure to promptly pay client funds), all of which arose in the context of the representation of a single client. 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 early October 2003, Stev Parker ("Parker") and Neil Kiely ("Kiely"), partners of Exchange Street Capital ("ESC"), entered into a contingency agreement ("fee agreement") with the Accused, a partner with Harrington, Anderson & DeBlasio ("HAD"), for HAD to provide ESC with legal representation in the collection of a

portfolio of claims ESC purchased from a credit card company ("collection claims"). The fee agreement provided that HAD would remit proceeds belonging to ESC at least monthly.

6.

In October 2003, pursuant to the fee agreement, ESC sent the Accused the collection claims for collection action. At that time, the Accused's involvement in collection matters was limited to prosecuting the occasional contested litigation or appeal. He did not have prior experience handling the disposition of funds and reporting to clients in collection matters, as those tasks were handled by the Accused's partner, Kenneth Anderson ("Anderson"). Shortly after being retained, HAD sent demand letters in all of the collection claims, signed by Anderson. However, neither Parker nor Kiely was ever directed to speak with Anderson and never had any contact with Anderson.

7.

Between late October 2003 and September 2004, neither the Accused nor anyone else at HAD took any substantive action on any of ESC's collection claims except as noted below. Nor did the Accused respond to multiple requests for information from ESC, erroneously assuming that ESC's concerns would be addressed by Anderson's actions on the collection claims or that Anderson would contact them.

8.

In April and May 2004, Anderson prepared complaints regarding a majority of the collection claims, mistakenly listing the credit card company, rather than ESC, as the plaintiff. Anderson did not file or otherwise take any action with respect to these complaints.

9.

In mid-July 2004, Kiely spoke to the Accused, who apologized for the delay and promised action. Prior to that time, the Accused believed that Anderson had filed lawsuits on behalf of ESC. In late August 2004, upon discovering that no lawsuits had been filed, the Accused offered to advance costs on behalf of ESC to initiate lawsuits in select cases that Parker had authorized. In September 2004, Anderson filed the complaints in the limited number of collection claims authorized by ESC. However, in November 2004, the Accused—unaware that Anderson had drafted complaints in addition to those authorized by Parker—directed that all complaints on the ESC collection claims which had been signed by Anderson, but had not been filed, be filed (collectively "collection lawsuits").

10.

In late November 2004, Anderson died. From that point, the Accused was solely responsible for the ESC collection claims. The ESC collection lawsuits and

collection claims did not receive adequate attention by the Accused or his firm. As a consequence, ESC was not timely notified of all monies received from debtors on its collection claims, nor was any money remitted to ESC prior to November 2005. In addition, the Accused did not respond to numerous requests for information from ESC.

11.

As a result of the delay in filing the collection lawsuits, a number of the defendants could not be served, resulting in the dismissal of a portion of the collection lawsuits. At least one of the collection lawsuits in which service had been accomplished was also dismissed for lack of prosecution. ESC was not timely notified of these dismissals. In a number of these dismissed collection lawsuits, no subsequent efforts were made to locate the defendants or salvage the collection claim.

12.

In one of the collection lawsuits, a judgment was entered in the case after HAD received notice that a bankruptcy proceeding had been filed. After HAD realized that a stay was in place, no further action to collect on the judgment was taken. While judgments were obtained in many of the collection lawsuits, little, if any, action was taken to collect the judgments.

Violations

13.

The Accused admits that, by engaging in the conduct described in this stipulation, he failed to provide competent representation, in violation of DR 6-101(A) and RPC 1.1; neglected a legal matter entrusted to him, in violation of DR 6-101(B) and RPC 1.3; failed to adequately communicate with ESC, in violation of DR 6-101(B) and RPC 1.4(a)–(b); and failed to promptly notify a client of the receipt of and remit client funds, in violation of DR 9-101(C)(1) and (4) and RPC 1.15-1(d).

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. *Duties violated.* The Accused violated his duties to his client to act with diligence and competence and to preserve client property. *Standards*, §§ 4.1, 4.4, and 4.5. The *Standards* provide that the most important

ethical duties are those which a lawyer owes to his clients. *Standards*, at 5.

b. *Mental state*. The Accused acted negligently or knowingly in these matters. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, at 9.

The Accused initially negligently failed to take action on the ESC collection claims, believing his partner was handling them. Around the time of Anderson's death, however, the Accused's conduct in thereafter failing to adequately pursue the collection claims was knowing, as was his failure to communicate with ESC.

The Accused knew that he did not have the requisite expertise to handle those aspects of the collection matters sent to the firm by ESC but relied on his partner's expertise in accepting the representation on behalf of HAD. After Anderson's death, however, the Accused chose to continue to represent ESC in these matters. The Accused negligently failed to notify or remit monies to ESC.

c. *Injury*. Injury can be actual or potential. In this matter, ESC was actually injured to the extent that it did not timely receive its share of collection proceeds. ESC also incurred costs in those suits that it did not authorize. There was also injury to Parker and Kiely in terms of the time, anxiety, and aggravation in attempting to obtain information and cooperation from the Accused and his staff. *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989). ESC was potentially injured by those additional monies that may have been recovered from the collection claims had they been timely and adequately pursued.

d. *Aggravating circumstances.* Aggravating circumstances include:

1. There are multiple offenses arising out of the Accused's representation of ESC, in terms of both incidents and charges. *Standards*, § 9.22(d).

2. The Accused has substantial experience in the practice of law, having been admitted in Oregon in 1974. *Standards*, § 9.22(i).

e. *Mitigating circumstances.* Mitigating circumstances include:

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

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

3. The Accused has cooperated fully in both the investigation and formal proceeding in this case. *Standards*, § 9.32(e).

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

5. The Accused has expressed remorse for the events in this matter and will reimburse the costs incurred for the cases that were erroneously filed in November 2004. This payment shall be made prior to, and is a condition of, the Accused's reinstatement. *Standards*, § 9.32(*l*).

15.

Under the ABA *Standards*, a suspension is generally appropriate for the Accused's knowing failure to communicate and diligently pursue ESC's collection claims, and for his lack of competence. *Standards*, §§ 4.42 and 4.52. A reprimand is generally appropriate for the Accused's negligent conduct. *Standards*, §§ 4.13, 4.43, and 4.53.

16.

Oregon cases suggest that a short suspension is the appropriate sanction. *See In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (30-day suspension for failing to properly deposit, account for, and return unearned fee); *In re Bettis*, 342 Or 232, 149 P3d 1194 (2006) (30-day suspension for failing to review client materials and become familiar with the facts of the case); *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension where attorney failed to pursue an adoption in one matter and failed to file an appeal in another matter, or timely respond to requests for return of files); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003) (60-day suspension where attorney filed lawsuit on last day before SOL, but failed to timely serve it, resulting in its dismissal).

17.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 30 days for violation of DR 6-101(A)/RPC 1.1, DR 6-101(B)/RPC 1.3, RPC 1.4(a)–(b), RPC 1.15-1(d)/DR 9-101(C)(1), and RPC 1.15-1(d)/DR 9-101(C)(4), effective June 13, 2008, or 30 days after approval by the Disciplinary Board, whichever is later.

18.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Chris O'Neill, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files

during the term of the Accused's suspension. The Accused represents that Chris O'Neill has agreed to accept this responsibility.

19.

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.

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 29th day of April 2008.

/s/ David DeBlasio
David DeBlasio
OSB No. 740750

EXECUTED this 2nd day of May 2008.

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 Nos. 07-42 and 07-74
	)	
BRIAN J. SUNDERLAND,	)	SC S056045
	)	
Accused.	)	

Counsel for the Bar:	Timothy J. Resch, Jane E. Angus
Counsel for the Accused:	John M. Petshow
Disciplinary Board:	None
Disposition:	Violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), RPC 1.4(a), RPC 8.1(a)(1), and RPC 8.1(a)(2). Stipulation for Discipline. Nine-month suspension to run consecutively with prior case.
Effective Date of Order:	October 7, 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 nine months. The suspension shall commence on October 7, 2008, and run consecutively to the one-year suspension that is currently in effect. *In re Sunderland*, 21 DB Rptr 257 (2007).

DATED this 29th day of May 2008.

/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 No. 07-74—DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), RPC 8.1(a)(1) and (2), and RPC 8.4(a)(3); and Case No. 07-42—RPC 1.4(a), RPC 1.15-1(d), and RPC 1.16(d). 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

Case No. 07-74

Lancaster Matter

5.

Prior to April 5, 2004, Genevieve Lancaster retained the Accused to pursue the dissolution of her marriage from Scott Lancaster. About April 5, 2004, the Accused filed a petition for dissolution of marriage in the Circuit Court of the State of Oregon for the County of Multnomah, *Genevieve Marie Lancaster, Petitioner, and Scott Edward Lancaster, Respondent,* Case No. 040463455 (hereinafter "Dissolution Case"). About June 1, 2004, the Accused filed a motion for order of default against Scott Lancaster in the Dissolution Case. On June 3, 2004, the court signed the order of default.

6.

In early July 2004, Scott Lancaster retained attorney Lawrence Klang (hereinafter "Klang") to represent his interests in the Dissolution Case. On July 7, 2004, Klang notified the Accused that he represented Scott Lancaster, asked the Accused not to file a judgment without 10 days' prior written notice, and notified that he intended to file a motion to set aside the order of default within a few days. Klang also asked the Accused if he would agree to stipulate to the entry of an order setting aside the order of default. The Accused did not respond.

7.

On July 9, 2004, Klang filed a motion to set aside the order of default. The court scheduled a hearing on the motion for September 7, 2004. Klang served the Accused with a copy of the motion and related documents and notified him of the September 7, 2004, hearing date.

8.

After July 9, 2004, Klang spoke with the Accused. Klang told the Accused that he should not submit a judgment in the Dissolution Case until the court held a hearing and resolved the motion to set aside the order of default. The Accused disagreed with Klang and stated that he intended to submit the judgment of dissolution to the court.

9.

On July 12, 2004, Klang sent a letter to Judge Elizabeth Welch, then presiding domestic relations court judge, in which he requested that no judgment be signed in the Dissolution Case until after the motion to set aside the order of default had been heard. Klang sent a copy of the letter to the Accused. About July 14, 2004, the Accused submitted a general judgment, a declaration of Genevieve Lancaster, and other documents to the court. The Accused did not contemporaneously send a copy of the judgment, the declaration, and other documents to Klang.

10.

The court did not sign the general judgment, and about July 16, 2004, returned it and other documents to the Accused. The judgment and other documents did not comply with the requirements of the law, and a hearing on a motion to set aside the order of default was scheduled for September 7, 2004. The Accused received the documents.

11.

About July 26, 2004, the Accused submitted another general judgment and related documents to the court for signature. On July 26, 2004, the Accused sent a letter to Klang, with which he enclosed a copy of a general judgment that he had

submitted to the court. The Accused did not enclose or otherwise provide Klang with a copy of other documents he submitted with the judgment.

12.

The Accused's July 26, 2004, letter was received in Klang's office on July 27, 2004. An attorney who was monitoring Klang's cases during Klang's absence from his office reviewed the Accused's letter and enclosure. On July 28, 2004, the attorney sent a letter to Judge Welch renewing Klang's request that a judgment not be signed, and also pointed out several problems with the content of judgment that the Accused submitted to the court. The attorney contemporaneously sent a copy of his letter to the Accused and to all of the Multnomah County Circuit Court domestic relations judges. The Accused received a copy of the July 28, 2004, letter.

13.

On August 4, 2004, court staff returned the Accused's July 26, 2004, general judgment to the Accused with a letter telling him that Judge Welch had denied the request to waive the statutory 90-day waiting period on the basis of "no grounds." The letter also reported that Judge Welch had directed that "no judgment to be entered—see letter from L. Klang." The Accused received the court's August 4, 2004, letter.

14.

On August 16, 2004, the Accused appeared ex parte, without notice to Klang, and presented a General Judgment of Dissolution to Judge Katherine Tennyson, which differed from the form of judgment the Accused had provided earlier to Klang. Judge Tennyson signed the general judgment the Accused presented. The Accused did not disclose material information to Judge Tennyson that: (a) a motion to set aside the order of default had been filed, (b) a hearing was scheduled on the motion to set aside the order of default, and (c) Judge Welch had directed that no judgment be entered in the Dissolution Case pending hearing on the motion to set aside the order of default.

15.

On August 19, 2004, Klang received a letter dated August 18, 2004, from the Accused. With that letter, the Accused enclosed a copy of the judgment that had been signed by Judge Tennyson on August 16, 2004. On August 20, 2004, Klang sent the Accused a letter in which he asked questions concerning the submission of the form of judgment and whether or not the Accused had disclosed certain information to Judge Tennyson when he presented the form of judgment to her. The Accused did not respond.

16.

On August 23, 2004, Klang sent a letter to Judge Tennyson setting forth the history of the Dissolution Case, Judge Welch's instruction, and the Accused's disregard of that instruction. Klang contemporaneously sent a copy of his letter to Judge Tennyson to the Accused. As a result of Klang's August 23, 2004, letter, Judge Tennyson scheduled and held a hearing on September 3, 2004. The Accused and Klang appeared at the hearing. Judge Tennyson vacated the judgment signed on August 16, 2004. Pursuant to the court's September 3, 2004, order, the hearing on the motion to set aside the order of default was scheduled for September 15, 2004.

17.

On September 15, 2004, Judge Tennyson held a hearing on Klang's motion to set aside the order of default in the Dissolution Case. The Accused and Klang appeared at the hearing. Judge Tennyson granted the motion. Klang submitted a proposed order to the court, and contemporaneously delivered a copy thereof to the Accused. The Accused requested and was granted two (2) days to review the proposed order and to submit any objections to its form.

18.

On September 21, 2004, Judge Tennyson signed the order setting aside the order of default in the Dissolution Case. As of that time, the Accused had not specified any objections to the court, and Klang had not received any objections to the proposed order or other communications from the Accused since the September 15, 2004, hearing.

19.

Thereafter, the Accused sent a letter to Judge Tennyson. The Accused dated the letter September 21, 2004, and represented to Judge Tennyson that he notified Klang on September 16, 2004, that he objected to the form of order setting aside the order of default. The Accused intended that the court rely on his representations. The Accused sent Klang a copy of the September 21, 2004, letter, contained in an envelope postmarked September 29, 2004. The Accused's representations concerning the September 16, 2004, notification to Klang were not true. Klang never received a September 16, 2004, letter from the Accused, and did not receive the Accused's September 21, 2004, letter until September 30, 2004.

20.

The Accused admits that the aforesaid conduct constituted violations of DR 1-102(A)(3) (dishonesty and misrepresentation), DR 1-102(A)(4) (conduct prejudicial to the administration of justice), and DR 7-102(A)(3) (failure to disclose that which the lawyer is required by law to reveal).

21.

About November 16, 2005, Klang submitted a complaint to the Bar concerning the Accused's conduct. On December 1, 2005, Disciplinary Counsel requested the Accused's explanation by December 22, 2005. Thereafter, the Accused requested, and was granted, extensions of time to provide his response.

22.

On January 23, 2006, the Accused submitted his response to Disciplinary Counsel. The Accused expressed or implied that he sent Klang a letter on September 16, 2004; he mailed a copy of a letter dated September 21, 2004, to Klang on September 21, 2004; and he sent a copy of the September 21, 2004, letter to Klang via facsimile on September 21, 2004. The Accused's representations were not true or were misleading.

23.

As a result of the foregoing, the Accused admits that he, in connection with a disciplinary matter, made misleading statements of material fact, and failed to disclose facts necessary to correct misapprehensions known by the Accused to have arisen in the matter in violation of RPC 8.1(a)(1) and (2) of the Rules of Professional Conduct.

Case No. 07-42

Kennen Matter

24.

About March 2006, Cindy Kennen (hereinafter "Kennen") retained the Accused to pursue the dissolution of her marriage from Gregg James Kennen. Kennen paid a retainer and a cost advance to the Accused. About March 16, 2006, the Accused filed a petition for dissolution of marriage in the Circuit Court of the State of Oregon for the County of Multnomah, *Cindy Ellen Kennen, Petitioner, and Gregg James Kennen, Respondent,* Case No. 060362729 (hereinafter "Dissolution Case").

25.

In and between about May 2006 and January 2007, the Accused failed to comply promptly with Kennen's requests. The court signed a stipulated general judgment of dissolution of marriage and money award on January 5, 2007, and the Accused's representation was concluded. The Accused failed to properly notify Kennen that the court had signed the judgment of dissolution and provide her with a copy of the signed judgment.

26.

Based on the foregoing, the Accused admits that his conduct constituted violation of RPC 1.4(a) of the Rules of Professional Conduct.

OTHER ALLEGATIONS

27.

On further factual inquiry, the parties agree that the alleged violations of RPC 8.4(a)(3) in the Second Cause of Complaint, Case No. 07-74, and RPC 1.4(b), RPC 1.15-1(d), and RPC 1.16(d) in Case No. 07-42 shall, upon approval of this stipulation, be dismissed.

SANCTION

28.

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. *Duties violated.* The Accused violated duties to his clients, the legal system, and the profession. *Standards,* §§ 4.4, 6.1, 6.2, 6.3, and 7.0.

b. *Mental state.* The Accused's conduct demonstrates intent, knowledge, and negligence. 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. Intent is the conscious objective to cause a particular result. *Standards,* p. 7.

   The Accused acted intentionally when he submitted the judgment to the court after Judge Welch directed that no judgment be entered until after the hearing on the motion to set aside the default. He acted knowingly when he failed to disclose and withheld material information from Judge Tennyson concerning the status of the case, and when he withheld information from Klang. The Accused made representations to the disciplinary authority knowing he had not confirmed that they were true. The Accused acted negligently when he failed to promptly communicate with and respond to Kennen's requests for information.

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, the public, and the profession. Kennen was frustrated with the Accused's failure to keep her informed.

   The Accused caused actual injury to the court and Klang. The court relied on the Accused to comply with its directives and to not present

the judgment until the motion to set aside the order of default was decided. By withholding material information concerning the status of the Lancaster Dissolution Case and Judge Welch's directives, the court and Klang were required to devote additional time and resources to address the matter.

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 1996 for violation of DR 1-102(A)(3), and reprimanded in 2002 for violation of DR 6-101(B). *In re Sunderland,* 16 DB Rptr 230 (2002). Also, the Accused was suspended for one (1) year, effective October 7, 2007, for violations of multiple disciplinary rules concerning conduct involving several clients' matters. *In re Sunderland,* 21 DB Rptr 257 (2007). *Standards,* § 9.22(a). The timing of the current offenses in relation to the conduct in *In re Sunderland,* 21 DB Rptr 257 (2007) is about the same; however, the Accused was not sanctioned in the prior proceeding before engaging in the conduct that is the subject of this proceeding. *In re Jones,* 326 Or 195, 200, 951 P2d 149 (1997).

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. *Standards,* § 9.32(e).

29.

Under all the circumstances present, the *Standards* suggest that a period of suspension is the appropriate sanction. *Standards,* §§ 4.12, 4.42, 6.12, 6.22, 6.32, 7.2, and 8.2.

Oregon case law is in accord. *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 Benson,* 317 Or 164, 854 P2d 466 (1993) (six-month suspension for violations of DR 1-102(A)(3), DR 7-102(A)(5), DR 7-102(A)(7), and DR 1-103(C)); *In re Claussen,* 322 Or 466, 909 P2d 862 (1996) (one-year suspension for violations of DR l-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(3)); and *In re Balocca,* 342 Or 279, 151 P3d 154 (2007) (90-day suspension for violation of DR 2-110(A)(3) and other rules). *See also In re MacMurray,* 12 DB Rptr 115 (1998) (six-month suspension for violations 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)).

30.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for a period of nine (9) months for violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 7-102(A)(3), RPC 1.4(a), and RPC 8.1(a)(1), (2). The suspension shall commence on October 7, 2008, and run consecutively to the one (1) year suspension that commenced on October 7, 2007. *In re Sunderland*, 21 DB Rptr 257 (2007).

31.

In addition, the Accused shall pay to the Bar its reasonable and necessary costs of $632 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.

32.

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.

33.

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 chairperson. This stipulation shall be submitted to the Supreme Court for consideration pursuant to the terms of BR 3.6.

DATED this 8th day of April 2008.

/s/ Brian J. Sunderland
Brian J. Sunderland
OSB No. 924780

OREGON STATE BAR

By: /s/ Jane E. Angus
Jane E. Angus
OSB No. 730148
Assistant Disciplinary Counsel

Cite as 344 Or 559 (2008)

IN THE SUPREME COURT
OF THE STATE OF OREGON

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

(OSB No. 05-54, 05-109, 05-110; SC S054821)

En Banc

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

Argued and submitted March 6, 2008. Decided June 5, 2008.

Roy Pulvers, Hinshaw & Culbertson LLP, Portland, argued the cause and filed the reply brief for the Accused. With him on the reply brief was David J. Elkanich. Allan F. Knappenberger filed a brief pro se.

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

PER CURIAM

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

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar (Bar) charged Allan F. Knappenberger (the Accused) with four violations of the Disciplinary Rules (DR) of the Oregon Code of Professional Responsibility in three causes of complaint. In the Miller matter and the Albright matter, the Bar alleges that the Accused violated DR 2-106(A) (lawyer may not charge illegal or clearly excessive fee). In the Dobler matter, the Bar alleges that the Accused violated DR 1-102(A)(4) (lawyer may not engage in conduct prejudicial to the administration of justice) and DR 7-106(A) (lawyer may not advise client to disregard court order). A trial panel of the Disciplinary Board concluded that the Accused had violated the rules as alleged. Based on those violations, and on a variety of other violations of the disciplinary rules for which the Accused had been sanctioned in other proceedings, the trial panel permanently disbarred the Accused. We conclude that the Accused violated the disciplinary rules as charged in the Miller and Albright matters, but not in the Dobler matter. As to sanction, we suspend the Accused from the practice of law for two years.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-104
	)	
TRACY TRUNNELL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Marc A. Spence, Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of DR 6-101(B) and RPC 1.3, RPC 1.4(a), RPC 1.4(b), and DR 1-102(A)(4) and RPC 8.4(a)(4). Stipulation for Discipline. Four-month suspension.
Effective Date of Order:	June 27, 2008

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 four months, effective June 15, 2008, or three days after the date this Order is signed, whichever is later, for violation of DR 6-101(B) and RPC 1.3, RPC 1.4(a), RPC 1.4(b), and DR 1-102(A)(4) and RPC 8.4(a)(4).

DATED this 24th day of June 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Tracy Trunnell, 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 30, 1999, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Lane County, Oregon.

3.

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

4.

On August 22, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.1 (failure to provide competent representation); 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 maters 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); and DR 1-102(A)(4) 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.

Between 2003 and late 2006, Eric Roost ("Roost"), a bankruptcy trustee, retained the Accused, individually, and/or by and through her law firms, to represent him in numerous contested bankruptcy matters. During this time, the Accused failed to take substantive action on a number of these bankruptcy matters, despite Roost's requests that she do so. In particular, the Accused:

A. Failed to initiate or take any substantive action on a number of contested cases for a number of months following referral from Roost, including:

1. Matters related to the William Boursaw bankruptcy, including timely pursuit of a claim for preferential transfer/payment prior to being replaced by substitute counsel shortly before the expiration of the statute of limitations.

2. An action to set aside a purportedly fraudulent transfer of real property from Mary Cox to her daughter and son-in-law ("the Fords"). Approximately seven months after the Accused was employed by Roost on this matter, the Fords filed their own Chapter 13 bankruptcy, but the Accused did not file a claim on behalf of the Cox bankruptcy estate in the Fords' bankruptcy proceeding.

3. An action to avoid the distribution of separately titled real property under a stipulated divorce decree to Donna Hansen's former spouse. Approximately eight months after agreeing to represent Roost on the Hansen bankruptcy claim the real property that was the subject of the Hansen contested case was sold by Hansen's former spouse. The Accused did not timely conduct the confirming research necessary for her to advise Roost of a course of action, or otherwise take any action to avoid the transfer prior to being replaced by substitute counsel a few months before the expiration of the statute of limitations.

4. An adversary proceeding for the collection of a debt in the Nicholas and Michelle Lusk ("the Lusks") bankruptcy for approximately sixteen months.

B. Failed to initiate several contested cases until the eve or the last day possible under the two-year statute of limitations applicable to the respective claims, including:

1. An adversary proceeding related to the Angela Gibson ("Gibson") bankruptcy.

2. A lawsuit for avoidance of a security interest in vehicles related to the Gregory and Linda Bowers bankruptcy.

3. An adversary proceeding to collect Tina Moore's portion of real property which had allegedly been inequitably divided pursuant to a divorce decree with her former spouse.

4. An adversary proceeding related to the Erik Valance bankruptcy.

C. Failed to initiate several contested cases until after the two-year statute of limitations applicable to the respective claims had expired, including:

1. An adversary proceeding against one bankruptcy debtor's former spouse.
2. An adversary proceeding against the former spouse and the brother of a second bankruptcy debtor.
3. An adversary proceedings related to Edward Reeves's bankruptcy.
4. An adversary proceeding related to the Keith and Lori Currey bankruptcy.

6.

After the Accused filed the adversary proceeding related to the Gibson bankruptcy, she did not timely effectuate service and, once service was accomplished, the Accused failed to timely respond to a settlement offer from opposing counsel, Stephen Behrends ("Behrends"). Although the Accused transmitted the settlement offer from Behrends to Roost, she failed to follow up with Roost as promised. She thereafter failed to timely respond to Roost's inquiries regarding his options and her recommended course of action on Behrends's settlement offer.

7.

After the Accused filed an adversary proceeding related to Tracy Snyder's bankruptcy and served the defendants, she did not seek a default or communicate with the court her reasons for not doing so. This resulted in the bankruptcy court issuing a notice of intent to dismiss if no action was taken by March 7, 2006. On March 9, 2006, the Accused filed a motion for default, which triggered contact from the defendants and allowed the case to proceed.

8.

After the Accused filed the adversary proceeding related to the Lusks' bankruptcy and served the defendant, the Accused understood that Roost would obtain new counsel, as she requested. Accordingly, although she timely sought continuances, the Accused did not advance the contested case, resulting in the bankruptcy court dismissing the adversary proceeding for lack of prosecution.

Violations

9.

The Accused admits that, by failing to take action on the foregoing matters, she neglected legal matters entrusted to her, in violation of DR 6-101(B) and RPC 1.3. The Accused further admits that by failing to timely communicate necessary information to Roost, she failed to keep her client reasonably informed about the status of matters and failed to explain matters to the extent reasonably necessary to permit him to make informed decisions regarding the representation in violation of RPC 1.4(a) and (b). Finally, the Accused admits that her delay in these contested

proceedings that resulted in notices and hearings issued or initiated by the bankruptcy court amounted to conduct prejudicial to the administration of justice, in violation of DR 1-102(A)(4) and RPC 8.4(a)(4).

10.

Upon further factual inquiry, the parties agree that the charge of the Accused's alleged violation of RPC 1.1 (failure to provide competent representation) related to the Hansen matter should be and, upon the approval of this stipulation, is dismissed.

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. *Duties violated.* The Accused violated her duty of diligence to her 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 her duty to the legal system to expedite litigation. *Standards,* § 6.2.

b. *Mental state.* The Accused acted knowingly. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.

   On January 1, 2005, the Accused was appointed as a full-time bankruptcy trustee. Due to the changes in the bankruptcy laws that occurred in October 2005, the bankruptcy system experienced an enormous influx of filings in 2005 that increased exponentially as the year progressed. The Accused, like all bankruptcy trustees at the time, was assigned an extremely high volume of cases. The Accused found it difficult to incorporate her work on Roost's cases into her own practice. As the newest trustee, the Accused found herself pressed for time and knowingly failed to attend to Roost's adversary proceedings or actively communicate regarding them. The Accused similarly knowingly failed to expedite the litigation, causing conduct prejudicial to the administration of justice.

c. *Injury.* Injury can be actual or potential. The Accused's neglect and failure to communicate created injury in the form of diminished value to the estates (and by correlation, to the fees that Roost could collect, since a trustee's fees in asset cases are tied to the value of the assets

collected). The Accused's delays also had the potential to create significant harm in those matters where she missed the deadlines because they had the potential of being dismissed altogether. Fortunately, however, most went by default and were not challenged. Actual harm occurred in those matters that the court was required to send reminders or become involved due to the Accused's failure to timely file the complaint or subsequently have it served. It also caused potential injury in those cases where she did not file documents timely, but in which there was no objection to the delay.

d. *Aggravating circumstances.* Aggravating circumstances include:

1. A pattern of misconduct. This is not an isolated instance of misconduct. Rather, it became the Accused's practice not to review or take any action on the Roost files until it was absolutely necessary to act.

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

3. The Accused has substantial experience in the practice of law. She was admitted in Oregon in 1999 and has practiced exclusively or primarily in the area of bankruptcy the entire time. *Standards,* § 9.22(i).

e. *Mitigating circumstances.* Mitigating circumstances include:

1. 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 has been cooperative with the Bar in its investigation and in these proceedings. *Standards,* § 9.32(e).

4. There have been other penalties and sanctions imposed on the Accused. Specifically, the Accused's handling of these matters was among the reasons cited by the U.S. Trustee's Office in its suspension and subsequent removal of the Accused as a bankruptcy trustee. *Standards,* § 9.32(k).

5. The Accused has expressed remorse for her conduct, waiving her fees in many of these cases. *Standards,* § 9.32(*l*).

12.

Under the ABA *Standards,* a suspension is generally appropriate when a lawyer engages in knowing neglect and interference with legal proceedings and causes actual or potential injury. *Standards,* §§ 4.42 and 6.22.

13.

Oregon case law also suggests that a suspension is appropriate. The supreme court has repeatedly held that 60-day suspensions are appropriate for one or two instances of neglect. *See, e.g., In re Redden,* 342 Or 393, 153 P3d 113 (2007) (failing to complete one client's legal matter); *In re LaBahn,* 335 Or 357, 67 P3d 381 (2003) (lawyer neglected client's tort claim resulting in dismissal and did not inform his client of the dismissal for more than a year); *In re Schaffner,* 323 Or 472, 918 P2d 803 (1996) (neglected clients' case for several months by failing to communicate with clients and opposing counsel); *In re Kissling,* 303 Or 638, 740 P2d 179 (1987) (lawyer failed to investigate and pursue claims for two clients and had misled them about his inaction); *In re Dugger,* 299 Or 21, 697 P2d 973 (1985) (lawyer neglected client's case and misrepresented the status of the case to the client); *In re Morrow,* 297 Or 808, 688 P2d 820 (1984) (neglect in filing a civil action while leading his client to believe that the matter had been filed and that the lawyer was negotiating a settlement). Consequently, something more than a 60-day suspension is warranted for the Accused's multiple neglects.

However, the Accused's conduct is distinguishable from *In re Meyer II,* 328 Or 220, 970 P2d 647 (1999), and *In re Knappenberger IV,* 340 Or 573, 135 P3d 297 (2006), each of whom received one-year suspensions for neglect based in large part on their significant discipline histories. The Accused has no prior discipline.

The Accused's conduct prejudicial to the administration of justice is analogous, although not as egregious, as *In re Worth,* 336 Or 256, 82 P3d 605 (2003) (90-day suspension where a criminal defense consortium lawyer failed to read the provisions of the consortium contract, failed to notify the court of his appointment, and did not attend to or monitor client matters, resulting in their repeated dismissals and subsequent reinstatements; and where lawyer also failed to communicate with his clients or cooperate with the bar).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for four months for violations 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 maters 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); and DR 1-102(A)(4) and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice), the sanction to be effective June 15, 2008, or three days after approval by the Disciplinary Board, whichever is later.

15.

In addition, on or before October 15, 2008, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $1,169.20,

incurred in conducting the Accused's deposition. Should the Accused fail to pay $1,169.20 in full by October 15, 2008, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

16.

The Accused acknowledges that she has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to her clients during the term of her suspension. The Accused represents that it is not necessary to establish an active attorney for client contact, as she stopped accepting new clients in October 2004 and has no active cases or files.

17.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. She is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that she cannot hold herself out as an active member of the Bar or provide legal services or advice until she is notified that her license to practice has been reinstated.

18.

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

EXECUTED this 9th day of June 2008.

/s/ Tracy Trunnell
Tracy Trunnell
OSB No. 993826

EXECUTED this 12th day of June 2008.

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 Nos. 07-63 and 07-77
	)	
JAMES D. LANG,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	David J. Elkanich
Disciplinary Board:	C. Lane Borg, Chair Gerard P. Rowe John Rudoff, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(d), RPC 1.16(d), RPC 8.1(a)(2), and RPC 8.4(a)(3). Trial Panel Opinion. 45-day suspension.
Effective Date of Opinion:	July 5, 2008

TRIAL PANEL OPINION

FINDINGS OF FACT AND ORDER

THIS MATTER came before the Hearings Panel after a Motion for Default Judgment had been granted, for the purpose of determining sanctions. The Bar submitted written argument supported by exhibits. The Accused has not participated in this hearing process nor submitted any written material for consideration. The Panel finds that without objection or counter evidence the Bar has established that the conduct of the Accused was knowing, and that his conduct of neglect caused actual and potential harm. Further, his failure to reply or cooperate with the Bar process was intentional as well as detrimental to the public confidence in the profession.

The Bar has asked for a suspension of six months. The Panel discussed and noted that while the violation of RPC 1.3, neglect of a legal matter, and RPC 8.4 (3), duty to be candid to clients and counsel, are serious matters, the most troubling aspect of this case is the failure of the Accused to participate in the Bar's investigation, and answer questions from the Bar. The Panel's collective experience takes note that Accused is a lawyer with 27 years of experience, and who has no disciplinary history. Accused is now deemed to have had lapses in judgment, candor, and diligence,

coupled with complete nonresponsiveness to reasonable inquiry, a response to which is mandatory. The Panel considers that these lapses, and their possible causes, are troubling, and, unrepaired, may remain possibly harmful to the public. Of concern to the Panel is that should the Bar's sanction be adopted, the Accused could simply wait out six months and never have to address this matter to the Bar or anyone.

The Panel discussed and noted that probation under BR 6.2 could have been useful in trying to balance the need for sanction with the need to understand the lack of responsiveness of the Accused. However, *In re Obert*, 336 Or 640, 89 P3d 1173 (2004), cited by Bar Counsel, does preclude probation in other than stipulated discipline cases. The *Obert* case presents some similarity to the allegations in this case, although a noteworthy difference is that the Accused in *Obert* participated in the process. The Bar in *Obert* likewise asked for a six-month suspension; the Panel gave 18 months probation; and the Court, rejecting both approaches, gave a 30-day suspension. Simply put, the Panel feels that while a suspension is warranted based on the findings of the default order, it is more important to determine whether there are ongoing issues that could cause this conduct to be repeated. Therefore, it is the Order of the Panel that the Accused shall be suspended for 45 days, but under BR 8.3, in order to obtain reinstatement, the Accused must submit information to the Bar sufficient to demonstrate that he has obtained a mental health screening for depression and/or substance abuse and has followed whatever treatment, if any, is recommended. Further, the Accused shall submit to the Bar an explanation regarding what steps he has taken to address office management issues and his ability to track and complete work he has agreed to perform. These requirements are in addition to those already required under BR 8.3.

DATED this 24th day of March 2008.

/s/ C. Lane Borg
C. Lane Borg
OSB No. 85029
Trial Panel Chair

DATED this 20th day of March 2008.

/s/ John Rudoff, M.D.
John Rudoff, M.D., FACC
Public Member, Trial Panel

DATED this 19th day of March 2008.

/s/ Gerard P. Rowe
Gerard P. Rowe
OSB No. 94216
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 06-09
	)	
JOSEPH G. WATSON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	Mary Kim Wood, Chair James D. Van Ness Joan J. LeBarron, Public Member
Disposition:	Violations of RPC 1.15-1(d), RPC 8.1(a), RPC 8.4(a)(2), and RPC 8.4(a)(3). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	July 14, 2008

OPINION OF TRIAL PANEL

This matter came on regularly before a Trial Panel of the Disciplinary Board consisting of Mary Kim Wood, Chair; James D. Van Ness, Member; and Joan J. LeBarron, Public Member, on March 10, 2008. The Oregon State Bar was represented by Jane Angus, Assistant Disciplinary Counsel. The Accused did not appear and had previously had a default taken against him. The Trial Panel has considered the pleadings, exhibits, sanctions memorandum, and argument of counsel.

Based upon the findings and conclusions made below, we find that the Accused has violated RPC 1.15-1(d), RPC 8.2(a)(2), RPC 8.4(a)(3), and RPC 8.1(a). We further determine that the Accused should be disbarred from the practice of law.

INTRODUCTION

At the direction of the State Professional Responsibility Board, Joseph G. Watson (hereinafter "the Accused") was charged with three (3) causes of violating RPC 1.15-1(d), failure to promptly deliver and to account for client funds; RPC 8.2(a)(2), criminal conduct reflecting adversely on a lawyer's honesty, trustworthiness,

or fitness to practice law; RPC 8.4(a)(3), dishonesty; and RPC 8.1(a), failure to respond to lawful demands for information from the disciplinary authority.[1]

The Bar filed its Formal Complaint against the Accused on February 28, 2006, and an Amended Formal Complaint on May 24, 2006. The Bar was unable to locate the Accused for personal service, so filed a motion to allow service by publication. On November 21, 2007, the Supreme Court granted the Bar's motion and filed an order allowing service of the Accused by publication. The notice of completion of service by publication was filed by the Bar on January 14, 2008.

No response having been received from the Accused, the Bar filed a Motion for Order of Default. It was granted by the Region 6 Disciplinary Board chairperson on January 30, 2008. Pursuant to BR 5.8(a), the allegations of the Bar's Amended Formal Complaint are 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).

FACTS

FIRST CAUSE OF COMPLAINT

At all relevant times, the Accused, Joseph G. Watson, was an attorney at law, duly admitted by the Supreme Court of the State of Oregon on April 15, 1988, to practice law in this state and was a member of the Bar, having his office and place of business in the County of Clackamas, State of Oregon.

On May 31, 2005, David Francis Jones (hereinafter "Jones") was arrested and booked in the Clackamas County Jail. At that time, the sheriff's office took custody of his personal property, including his wallet, which contained three (3) money orders in the amounts of $90.00, $125.00, and $500.00 (collectively "Money Orders").

On June 1, 2005, Jones was formally charged with Assault IV and other crimes. On or about June 6, 2005, the court appointed the Accused, a member of the Clackamas Indigent Defense Corporation, to represent Jones in the Criminal Action.

During the pendency of the criminal action, Jones was held in the Clackamas County Jail. On July 27, 2005, Jones signed a request to release his wallet and its contents, including the Money Orders, to the Accused for safekeeping. On or about July 27, 2005, the Clackamas County Jail released Jones's wallet and the Money Orders to the Accused.

Jones was released from custody in or about early October 2005. Following his release, Jones asked the Accused to return his wallet and Money Orders. The

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[1] The former Code of Professional Responsibility applies to conduct occurring prior to January 1, 2005, the effective date of the new Oregon Rules of Professional Conduct. The Rules of Professional Conduct applies to conduct occurring on and after January 1, 2005, pursuant to the Oregon Supreme Court's order dated December 1, 2004.

Accused returned the wallet to Jones, but did not return or account for the Money Orders or for all of the funds represented by the Money Orders.

Jones appeared for a restitution hearing in the Clackamas County Circuit Court on September 27, 2005. The Accused also appeared. Jones asked for the return of his money. The Accused told Jones to come to his office to pick it up from Chelsea, the Accused's secretary. When Jones went to the Accused's office no one was there. Jones continued his efforts. Eventually a woman named "Chelsea" delivered $100 in cash to Jones. The Accused told Jones that he would pay the balance. Jones continued his attempts to contact the Accused, but as of November 1, 2005, the Accused's telephone number had been disconnected.

The aforesaid conduct of the Accused constituted failure to promptly deliver property the client was entitled to receive and failure to account for client funds in violation RPC 1.15-1(d) of the Rules of Professional Conduct. It was intentional.

SECOND CAUSE OF COMPLAINT

On or about July 27 and 28, 2005, the Accused committed the crimes of Theft II in violation of ORS 164.045, a Class A misdemeanor, and Forgery II in violation of ORS 165.007, a Class A misdemeanor when he falsely endorsed and cashed the Money Orders.

By engaging in the foregoing conduct, the Accused committed criminal conduct reflecting on his honesty, trustworthiness, or fitness to practice law, and engaged in conduct constituting dishonesty, in violation of RPC 8.4(a)(2) and RPC 8.4(a)(3) of the Rules of Professional Conduct.

The Clackamas County District Attorney's Office has filed a District Attorney's Information charging the Accused with Theft II (ORS 164.045); Forgery II (ORS 165.007); and Criminal Possession of a Forged Instrument II (ORS 165.017). The warrant for the Accused's arrest remains outstanding. However he has not been convicted of any crime.

THIRD CAUSE OF COMPLAINT

On or about October 24, 2005, Jones brought his concerns to the attention of the administrator of the Clackamas Indigent Defense Corporation ("Administrator"). After an initial investigation, on or about November 28, 2005, the Administrator notified the Bar of Jones's claims. The matters was referred to Disciplinary Counsel for investigation. As part of that investigation, Disciplinary Counsel sent a letter to the Accused on December 6, 2005, asking him to provide his explanation and account of the matter by December 27, 2005. The Accused did not respond to Disciplinary Counsel's request or to a second request made on December 28, 2005.

While the subject of a disciplinary investigation, the Accused failed to respond to lawful demands for information from the disciplinary authority, which is

empowered to investigate or act on the conduct of lawyers. The Accused violated RPC 8.1(a)(2) of the Rules of Professional Conduct.

FINDINGS

1. The Accused violated RPC 1.15-1(d) of the Rules of Professional Conduct.

RPC 1.15-1(d) provides in relevant part:

> (d) . . . 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, and on request by the client or third person, shall promptly render a full accounting regarding such property.

The Accused failed to account for and failed to promptly deliver the funds Jones was entitled to receive. This failure violated RPC 1.15-1(d).

2. The Accused violated RPC 8.4(a)(2) and RPC 8.4(a)(3) of the Rules of Professional Conduct.

RPC 8.4(a)(2) provides that it is professional misconduct for a lawyer to:

> (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

RPC 8.4(a)(3) provides that it is unprofessional conduct for a lawyer to:

> (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation reflecting adversely on a lawyer's fitness to practice.

A violation of RPC 8.4(a)(2) (former DR 1-102(A)(2)) requires that the lawyer's conduct be a violation of the criminal laws that reflect adversely on a lawyer's honesty, trustworthiness, or fitness to practice. It is not necessary to establish the criminal conduct beyond a reasonable doubt, but only by clear and convincing evidence. It is also unnecessary to establish that the lawyer was convicted of the crime. *In re Anson*, 302 Or 446, 453–454, 730 P2d 1229 (1986); *In re Lawrence*, 332 Or 502, 507, 31 P3d 1078 (2001); *In re Hassenstab*, 325 Or 166, 175–176, 934 P2d 1110 (1997).

Forgery and theft in their various forms are dishonest acts that reflect adversely on a lawyer's honesty, trustworthiness, and fitness to practice law and a violation of RPC 8.4(a)(3) (former DR 1-102(a)(3)). *See In re Morin*, 319 Or 547, 878 P2d 393 (1994) (theft by deception); *In re Murdock*, 328 Or 18, 968 P2d 1270 (1998) (embezzlement from lawyer's law firm); and *In re King*, 320 Or 354, 883 P2d 1291 (1994) (theft).

The Accused forged his client's signature and cashed each of his client's money orders, then kept the funds for his own use and benefit. The Accused's

conduct was criminal (theft and forgery in violation of ORS 164.045 and ORS 165.007), which reflects adversely on his honesty, trustworthiness, and fitness to practice law. As a result, the Accused violated RPC 8.4(a)(2) and RPC 8.4(a)(3) of the Rules of Professional Conduct.

3. The Accused violated RPC 8.1(a)(2) as alleged in the Bar's Third Cause of Complaint.

RPC 8.1, in relevant part provides:

> (a) . . . , a lawyer . . . in connection with a disciplinary matter, shall not:
>
> (2) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

The rule imposes obligations previously stated in DR 1-103(C). Although the text of DR 1-103(C) and RPC 8.1 are different, the obligations are the same. The duty to comply with this rule is no less important than other ethical responsibilities. *In re Hereford*, 306 Or 69, 756 P2d 30 (1988). The court has expressed a virtual no-tolerance approach to a lawyer's failure to cooperate. *In re Miles*, 324 Or 218, 222–223, 923 P2d 1219 (1996).

A lawyer may violate RPC 8.1(a)(2) when he does not respond to the inquiries or requests of Disciplinary Counsel, which is empowered to investigate the conduct of lawyers. *Id.*; *In re Bourcier*, 322 Or 561, 909 P2d 1234 (1996); *In re Bourcier*, 325 Or 429, 939 P2d 604 (1997); *In re Schaffner*, 323 Or 472, 477, 918 P2d 803 (1996). In this case, the Accused did not respond to Disciplinary Counsel's requests for his explanation. The allegations of the Bar's complaint are deemed true. BR 5.8(a).

SANCTION

The ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered in determining the appropriate sanction. *In re Spencer*, 335 Or 71, 85–86, 58 P3d 228 (2002). 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.

Applying those standards to the instant action it is clear that:

1. The Accused violated duties to his client, the public, and the profession. *Standards*, §§ 4.1, 5.0, and 7.0.

2. The Accused's conduct demonstrates both intent and knowledge. He knowingly, intentionally, and falsely completed and then uttered forged instruments and stole Jones's funds. *Standards*, p. 7.

3. The Accused caused actual injury to his client, the public, and the profession. *Standards,* p. 7. He stole his client's funds, which totaled $715, and has returned only $100. He also failed to respond to Disciplinary Counsel. The profession is judged by the conduct of its members. *See, e.g., In re Gastineau,* 317 Or 545, 558, 857 P2d 136 (1993), and *In re Holm,* 285 Or 189, 194, 590 P2d 233 (1979) (court noting lawyers' misconduct as examples of why the public holds members of the Bar in disrespect).

The final criteria to be considered before imposing sanctions are the existence of any aggravating or mitigating factors. *Standards,* §§ 9.22 and 9.32, respectively.

Aggravating Factors

1. The Accused's conduct demonstrates dishonest and selfish motives by his forgery and theft of his client's funds. *Standards,* § 9.22(b).

2. He was admitted to practice in 1988 and has substantial experience in the practice of law. *Standards,* § 9.22(i).

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

4. The Accused's client was vulnerable. Jones was incarcerated and delivered his money orders to the Accused for safekeeping, and relied on the Accused to keep them safe and promptly return them after he was released. *In re Bourcier,* 322 Or 561, 570, 909 P2d 1234 (1996). *Standards,* § 9.22(h).

5. The Accused has demonstrated indifference to making full restitution. *Standards,* § 9.22(j).

Mitigating Factors

The sole mitigating factor is that the Accused has no prior record of discipline. *Standards,* § 9.32(a).

The decision of the trial panel was unanimous. The Accused should be disbarred. He not only failed to preserve a client's property, in this case the money orders, he cashed them and kept the client's money for himself. The Accused took this action while his client was incarcerated and dependent on the Accused to protect the client's interests. When the client was released and came to the Accused, trusting that his attorney would return his funds, the Accused failed to do so and knowingly misrepresented to the client his intention to do so. The Accused closed his office without making any provision for returning the stolen funds to his client. The Accused is an officer of the court yet knowingly and intentionally engaged in criminal conduct. Additionally, the Accused violated his duty to the profession by failing to cooperate with Disciplinary counsel.[2]

[2] Unlike the breach of duty to his client, the violation of which calls for disbarment, the *Standards* only call for suspension for failure to cooperate with the Bar.

CONCLUSION

The purpose of lawyer discipline is 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. *Standards*, § 1.1, p. 7. The *Standards* alone, before considering aggravating factors, provide authority for disbarment. Aggravating factors only increase the grounds for that disposition. The Accused has demonstrated a total disregard for his obligations to his client, the public, and the profession. He should not be a member of the Bar. Disbarment is the appropriate sanction for the Accused's misconduct. Further, he should be ordered to make restitution to his client and/or reimburse the Client Security Fund for $615.00.[3]

RESPECTFULLY submitted this 12th day of May 2008.

/s/ Mary Kim Wood
Mary Kim Wood
Trial Panel Chair

/s/ James D. Van Ness
James D. Van Ness
Trial Panel Member

/s/ Joan J. LeBarron
Joan J. LeBarron
Trial Panel Member

[3] BR 6.1(a) provides as follows: "In conjunction with a disposition or sanction referred to in this rule, an accused may be required to make restitution of some or all of the money, property or fees received by the accused in the representation of a client . . . "

Cite as 345 Or 106 (2008)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
MONTGOMERY W. COBB,	)
	)
Accused.	)

(OSB 05-07; SC S054584)

En Banc

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

Argued and submitted March 6, 2008. Decided on July 17, 2008.

Montgomery W. Cobb, Newberg, in *propria persona*, argued the cause and filed the briefs. With him on the briefs were Eric M. Bosse and Katharine W. Mathews, Newberg.

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

PER CURIAM

The complaint is dismissed.

SUMMARY OF THE SUPREME COURT OPINION

In this case, the Bar charges that the Accused made false representations and acted dishonestly by filing a client's false financial disclosure statement and schedules and by giving false answers to questions posed by the bankruptcy trustee; that the Accused engaged in conduct prejudicial to the administration of justice by failing to file both an amended financial disclosure statement setting forth the existence of the notes and payments and a statutorily required statement of his fees; and that the Accused failed to call upon his client to rectify its bankruptcy fraud. We conclude that the Bar did not prove its first set of charges by clear and convincing evidence. The second set of charges alleges that the Accused violated conflict of interest rules. We conclude that the Bar did not prove its second category of charges by clear and convincing evidence, and we therefore dismiss the Bar's complaint.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 07-06 and 08-16
	)	
TODD STEPHEN HAMMOND,	)	
	)	
Accused.	)	

Counsel for the Bar:	Susan K. Hohbach, Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	Llewellyn M. Fischer, Chair James C. Edmonds Joan J. LeBarron, Public Member
Disposition:	Violation of RPC 1.5(a). Trial Panel Opinion. 30-day suspension.
Effective Date of Opinion:	July 19, 2008

OPINION OF THE TRIAL PANEL

Introduction

On April 22, 2008, this matter came before a trial panel consisting of Llewellyn M. Fischer, Chair; James C. Edmonds, Esq.; and Public Member Joan L. LeBarron. Amber Bevacqua-Lynott, Assistant Disciplinary Counsel, and Susan K. Hohbach, Esq., represented the Oregon State Bar. The Accused appeared in person and represented himself.

Facts

Colton Matter

(Case No. 07-06)

The Accused first consulted with Shelta Colton of Baker City, Oregon, by telephone on May 3, 2005. Ms. Colton was seeking legal representation on the denial of her Federal Employee's Compensation Act (FECA) claim with the Office of Workers' Compensation (OWCP) at the U.S. Department of Labor. Ms. Colton had been injured in an accident during her employment with the U.S. Forest Service in 1989 and had been involved with various stages of the OWCP process since her injury. Accordingly, she became familiar with OWCP procedures and requirements. Ms. Colton sought the Accused's help because of conflicting medical evidence

concerning her ability to work more than her current part-time schedule of four hours per day.

The Accused and Ms. Colton discussed two possible fee arrangements for his representation. The first called for the payment of a $500 retainer each month with an hourly rate of $240 per hour. The second agreement recited a flat fee of $6,000 that would be earned upon receipt. After some discussion about the potential length of the representation, Ms. Colton indicated that she wanted to proceed under the second, flat fee, arrangement. The Accused agreed to begin representation even though Ms. Colton said that she could only raise $500 immediately. In response to a fax from the Accused's agreements, Ms. Colton signed both agreements and remitted $500 payment on May 9, 2005. The Accused requested Ms. Colton's file on the same day and OWCP sent the Accused a letter on May 17, 2005, acknowledging his representation and enclosing instructions for obtaining the required approval of his fees under OWCP procedures. Ms. Colton and her husband raised the additional $5,500 and sent it to the Accused during June 2005.

The Accused reviewed the Colton file and used a Statement of Accepted Facts by one of the OWCP Claims Examiners to draft a "concurrence" letter to Dr. Bishop, one of Ms. Colton's treating physicians. Dr. Bishop returned the letter to the Accused on August 25, 2005. After reviewing its results, the Accused believed there was nothing further he could do even though Ms. Colton believed that Dr. Bishop had provided some negative medical information by mistake.

After having some difficulty in communicating with the Accused about how to proceed, Ms. Colton and her husband had a personal meeting with him at his office in Salem, Oregon, on December 2, 2005. In the course of the meeting, the Accused advised that he had stopped working on her case after receiving the negative information from Dr. Bishop in August 2005. When Ms. Colton requested a refund of part of her retainer, the Accused said that the money had been "earned" under the flat fee arrangement. The Accused and the Coltons discussed further steps that might be taken in her case including his representation of her at a hearing. The Accused also provided her with a draft concurrence letter to be completed by other doctors.

The Accused took no further action on Ms. Colton's OWCP claim and acknowledged that he did not seek approval from the OWCP for the $6,000 flat-fee arrangement. After Ms. Colton complained to the Bar during February 2006, the Accused provided the Bar with an itemized state of the time he spent on her case. However, he later refunded 10% of the $6,000 fee, reportedly because she expressed "concerns" about his services.

DISCUSSION AND ANALYSIS

In the Colton matter, the Bar has charged the Accused with violations of RPC 1.2(a) (failure to abide by a client's decisions concerning the objectives of representation); RPC 1.3 (neglect); 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 necessary to permit the client to make informed decisions regarding the representation); RPC 1.5 (entering into an agreement for, charging, or collecting an illegal or clearly excessive fee); and RPC 1.16(d) (failure to take steps upon withdrawal to protect a client's interests, such as giving reasonable notice and refunding unearned fees).

Failure to Communicate in Violation of RPC 1.4(a) and 1.4(b).

The Bar alleges that the Accused failed to "adequately or sufficiently" communicate in the following particulars: that he did not explain the difference between his "hourly" and "flat fee" arrangements; that he did not advise her of the limited representation provided for the $6,000 flat fee; that he did not communicate with her adequately about the importance of Dr. Bishop's response; and, finally, that he did not explain the status of her case when she and her husband met with him on December 2, 2005.

The evidence and the testimony do indicate that there may have been some confusion about the more limited scope of the Accused's flat-fee representation. The evidence also indicates that there was a gap in communication between the Accused and Ms. Colton about the legal impact of Dr. Bishop's response on her case. Finally, there is little doubt that Ms. Colton and her husband were somewhat unclear about how the Accused intended to proceed with her case after their meeting.

Nonetheless, the evidence also shows that the Accused did stay in touch with Ms. Colton over the period of representation and that Ms. Colton was knowledgeable enough about OWCP procedures that she understood the status of her case.[1] It is also evident that even though Ms. Colton and her husband were dissatisfied about how much the Accused had charged them in fees up to the point of their December meeting, the precise terms of the earned fee agreement had been fulfilled.[2] Moreover, it appears the Accused made overtures to continue his representation even though the explicitly stated services had been performed.[3]

In light of all the circumstances, the Trial Panel believes that while the Accused is not blameless and certainly could have been more attentive, the Bar has failed to carry its burden by clear and convincing evidence that he failed to keep her "reasonably informed" about matters and explain issues about his representation and

[1] In fact, Ms. Colton responded to OWCP herself when she became concerned about potentially missing a deadline in the process. Testimony of Shelta Colton, Hearing Transcript at 35. She also communicated with the Accused about Dr. Bishop's letter before the December meeting. *Id.* at 30–31.

[2] OSB Trial Exhibits, Ex. 11, sets forth the services to be provided and specifically excludes anything else (p. 2). Ms. Colton certainly appeared intelligent and discerning in all aspects of handling her case; she also had the assistance of her husband in determining the terms of the fee agreement.

[3] As both Mr. and Ms. Colton conceded, the Accused offered to represent Ms. Colton at a forthcoming oral hearing. HT at 40, 63.

fees so that she—with the active assistance of her spouse—could make informed decisions about the representation.

Neglect of a Legal Matter, Failure to Abide by his Client's Decisions concerning Objectives of Representation, and Failure to Protect her Interests upon Termination of his Representation, all in violation of RPC 1.3, RPC 1.2(a), and RPC 1.16 (d).

In this instance, the Bar is alleging that when the Accused received Dr. Bishop's response, he should have taken further action to contact him and attempted to clarify his comments so an accurate concurrence letter could be submitted to OWCP. His failure to do so, in the Bar's view, was neglect and a failure to abide by his client's objectives.

As discussed above, the testimony and the evidence indicate that there was some ambiguity at their meeting in December about whether the Accused's representation was finished. Both Ms. Colton and her husband indicated that the Accused gave them additional materials to complete with other doctors and stated he would represent them at an oral hearing. Moreover, the evidence indicates that the Accused believed further contact with Dr. Bishop would be futile.[4] Although the Accused did not contact Dr. Bishop as requested by Ms. Colton, he did provide her with alternatives and there is no clear indication that this exercise of his legal judgment constituted neglect or negatively affected the status of her OWCP claim. Although Ms. Colton had a somewhat different view than the Accused about the importance of Dr. Bishop's opinion concerning her claim, the ultimate objective was to receive a favorable outcome. The Accused gave her options to achieve this result without Dr. Bishop.

Neither is it evident that the Accused failed to protect Ms. Colton's interests when he stopped work on her claim. It is undisputed that she was familiar with the process and, in fact, continued to respond to OWCP whenever submissions concerning her claim were due. The OWCP regulations emphasize the informal and collaborative nature of the claims process. Although a claimant is permitted to have a representative, all notices and procedural requests are sent to the claimant as well as any representative. The evidence does not show that Ms. Colton was disadvantaged in pursuing her claim or that her interests were adversely affected when Ms. Colton herself finally terminated his representation.[5] Neither is it apparent from the evidence developed that the Accused neglected her claim within the meaning of RPC 1.3. That

[4] He noted that Ms. Colton requested him not to forward Dr. Bishop's response to OWCP. HT at 245. "Colton didn't want to submit Dr. Bishop's letter to OWCP. The agreement with the IME report was a dagger through the heart of her claim and the subjective complaints that she was only capable of working four hours per day." *Ibid*.

[5] Testimony of Ms. Colton, HT at 42. "*Q*. Did Mr. Hammond withdraw from your case in the meantime? *A*. I don't know if he ever formally withdrew to [*sic*] OWCP, but I had to ask OWCP on four occasions to stop forwarding information to him."

Rule requires the Bar to show a *course of negligent conduct* that was not demonstrated here.[6]

In light of the foregoing it is the Trial Panel's determination that the Bar has failed to carry its burden on these allegations.

Entered into and Collected an Illegal or Clearly Excessive Fee in Violation of RPC 1.5.

The Accused does not dispute that representation of a claimant in an OWCP proceeding requires the attorney or other representative to comply with OWCP procedures concerning attorney fees.[7] Yet his position is that approval of fees by OWCP was not necessary in this case. This was so, he maintains, because at the time he requested Ms. Colton's file from the OWCP and was serving as her appointed representative, they did have an hourly fee arrangement that required OWCP approval. He points out, however, that this fee arrangement was cancelled and superseded by a second "flat fee" agreement that only provided for more limited advisory services not amounting to OWCP "representation."[8]

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[6] *In re Magar*, 335 Or 306, 321, 66 P3d 1014, 1022 (2003) (citing *In re Eadie*, 333 Or 42, 36 P3d 468 (2001)) (emphasis added).

[7] 5 USC § 8127(b) provides that "A claim for legal or other services furnished in respect to a case, claim, or award for compensation under this subchapter [5 USC § 8101 et seq.] is valid only if approved by the Secretary." Applicable regulations at 20 CFR 10.702 note that a fee and other costs associated with representation may be charged a claimant but, "Before any fee for services can be collected . . . the fee must be approved by the Secretary." Moreover, it is noted that collecting a fee without this approval may constitute a misdemeanor under 18 USC § 292. *Id.*

The regulations also provide for an appointment of a representative under 20 CFR 10.700. The appointment must be in writing. In his deposition, the Accused conceded that his representation before OWCP commences with a letter of representation. Exhibit 3, p. 25. The regulations note that "the claims process under the FECA is informal and the employer is not a party to the claim." 20 CFR 10.700(a). Under the regulations, OWCP will not recognize another representative after one has been appointed until the claimant withdraws the authorization of the first individual. 20 CFR 10.700(b). The regulations make clear that the appointed representative "may make a request or give direction to OWCP regarding the claims process, including a hearing." *Id*., at 10.700(c). There is little doubt that "representation" includes acting on behalf of a claimant at any stage in the claims process, not just appearing formally at a hearing or other formal presence "before" the OWCP as the Accused indicated at some stages of this proceeding.

[8] For example, Ex. 32 wherein the Accused responds to the OSB in a letter dated April 5, 2006. He states, in pertinent part, "In lieu of the initial agreement, we agreed to completely replace that previous agreement by the flat rate, earned fee agreement for just the listed legal services and nothing else. The flat rate, earned fee agreement required me to review her file, draft a concurrence letter to the doctor of her choice and forward the results of the concurrence letter, if Ms. Colton desired. Ms. Colton did not want the concurrence letter forwarded and all of my legal services were completed and the flat rate, earned fee was

The Accused's explanation concerning his theory of when OWCP approval of attorney fees is required is not tenable. At no point during the representation did the Accused or Ms. Colton notify OWCP that the former was no longer serving as her appointed representative. In fact, the Accused never did notify OWCP he was no longer representing Ms. Colton. Rather, Ms. Colton did this belatedly herself when she discovered that OWCP was still sending the Accused submissions after he had stopped working on her claim.[9] The evidence in the record establishes to a clear and convincing degree that the fees charged by the Accused for the legal services provided to Ms. Colton were within the purview of the regulations and required OWCP approval. Thus, as charged by the Bar, the Accused charged and collected an illegal fee.[10]

It is less clear that the fees charged by the Accused were "clearly excessive" within the meaning of RPC 1.5.[11] The Bar presented testimony by other attorneys who had practiced federal workers' compensation law,[12] but there is at least some doubt that their practice was typical or represented a standard by which the Accused's fees should be measured.[13] The Bar also raised questions about the accuracy of the Accused's time records, particularly the amount of time he claimed for reviewing Ms. Colton's file.[14] In response, the Accused testified with some persuasiveness about the amount of time he spent reviewing her file, analyzing issues, and preparing documents, including physician concurrence letters.[15] And, although the Bar also alleged that the Accused's fee was excessive because he failed to fulfill his employment contract or refund the unearned portion of the fees, it is unclear that the parties understood the Accused's representation was completely terminated until Ms. Colton filed her Bar complaint on February 1, 2006. As noted above, both Ms. Colton

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completely earned. * * * No legal services were provided under the initial attorney fee agreement and no legal fees were collected under the initial attorney fee agreement."

[9] See testimony of Ms. Colton, HT at 42, quoted in fn 5, *supra*.

[10] *In re Sassor*, 299 Or 570, 704 P2d 506 (1985); *In re Adams*, 293 Or 727, 652 P2d 787 (1982).

[11] Rule 1.5 provides a list of factors that may be used as a guide to determine the reasonableness of fees. Those factors are not helpful in the two cases involving the Accused, in part because the "flat fee" agreements at issue here do not depend upon time records and, to some extent, the lack of area attorneys practicing this type of law.

[12] Testimony of Roger Wallingford, HT at 128, and Richard A. Sly, HT at 173.

[13] Mr. Wallingford indicated in his testimony that he charged fees to some extent on the ability of his clients to pay and conceded that individual cases were different and he "was never exceptionally good at money." HT at 131. Mr. Sly stated that his practice of federal workers' compensation was "more than ten years" ago.

[14] OSB Trial Memorandum at 21.

[15] Hammond Testimony, HT 217–220; 233–241.

and her husband conceded that the Accused indicated at their December he would continue to represent them at a forthcoming hearing.[16]

Despite the foregoing, both Ms. Colton and her husband testified credibly about the Accused's inability and unwillingness to justify his fees when they confronted him for an accounting during their meeting on December 2, 2005.[17] It was also noted that the Accused seemed to lose interest in Ms. Colton's claim and became unresponsive when he received a seemingly adverse response from Ms. Colton's treating physician, Dr. Bishop.[18] And, in fact, he did not provide any further services. Yet his overtures about representing her at a future oral hearing without further payment suggest that the Accused believed Ms. Colton deserved additional services for the fees she paid.

On balance, the evidence provided by the Bar on this issue is more persuasive although the matter is not free of doubt and remains a close question in the view of the Trial Panel. Nonetheless, the balance tilts toward the conclusion that the fee of $6,000 was beyond the boundary of what was permissible in light of all the proffered evidence and so was clearly excessive under the circumstances.

Weiss Matter

(Case No. 08-16)

Facts

Kathleen Weiss consulted the Accused on March 29, 2006, after OWCP terminated her wage loss and medical benefits. Ms. Weiss began receiving OWCP benefits for a "work adjustment disorder" after leaving the U.S. Postal Service in January 1985. She had consulted with lawyers on various issues related to her claims over the years and was familiar with OWCP's process and procedures, including the requirement that attorney fees must be approved by the OWCP prior to payment. At the time she sought assistance from the Accused, she had retained a nonlawyer representative but was concerned about the quality of his services in light of her limited amount of time to appeal an OWCP decision terminating her benefits.

After meeting with the Accused, Ms. Weiss agreed to engage his services for a flat fee of $7,200 in three payments of $2,400 each. As set forth on the first page of the written fee agreement, the Accused would review her medical records, meet with her for up to an hour, and draft a letter to a psychologist of her choice.[19] Ms.

[16] Shelta Colton Testimony, HT at 40: "He did say that he would represent me at an oral hearing with OWCP." Michael Colton Testimony, HT at 59–60: "He said, if we wanted an oral hearing, he would represent us and we should send in the paper and ask for an oral hearing."

[17] Testimony of Shelta Colton, HT 38–39; Testimony of Michael Colton, HT at 62.

[18] *Id.*, HT at 31–32.

[19] In her testimony, Ms. Weiss said that she never saw the first page of the Fee Agreement and did not understand that the services would be so limited. The evidence on this issue is

Weiss paid the first $2,400 installment on the fee and an additional $1,000 for a psychologist to review her records. In return, the Accused reviewed her records and drafted a concurrence letter to be signed by a psychologist, Dr. McQueen. When Dr. McQueen provided a responsive and favorable report for Ms. Weiss, the Accused faxed a transmittal letter bearing her letterhead, the report, and an appeal request to OWCP on May 4, 2006. The materials did not indicate that Ms. Weiss was represented by the Accused.

The OWCP denied Ms. Weiss's claim on May 22, 2006, and indicated that it had not received the McQueen report. On May 26, 2006, and August 13, 2006, the Accused prepared the text of two letters that were handwritten by Ms. Weiss and then transmitted to OWCP concerning her appeal. OWCP did not respond.

At Ms. Weiss's request, the Accused agreed to obtain her OWCP file to determine whether it contained the McQueen report. To this end, Ms. Weiss and the Accused executed a second fee agreement on September 19, 2006.[20] This agreement contained provisions for an hourly rate and provided that the Accused would submit his fee to OWCP for approval. Although the OWCP acknowledged the Accused's representation and provided the Weiss file, the file did not contain the McQueen report. When the Accused determined there was nothing more he could do for Ms. Weiss, he prepared an appeal letter dated November 26, 2006, for her signature, on her letterhead. This document was to be sent to the appellate Branch of OWCP, the Employee Compensation Board. As part of that letter, it was stated that the Accused no longer represented Ms. Weiss and would not be seeking any attorney fees for his representation of her before the OWCP.

DISCUSSION AND ANALYSIS

In the Weiss matter, the Bar has charged the Accused with violations of RPC 1.1. (competent representation); RPC 1.4(b) (failure to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation); RPC 1.5 (entering into an agreement for, charging, or collecting an illegal or clearly excessive fee); RPC 1.4(b) (failure to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation); RPC 1.5 (entering into an agreement for, charging, or collecting an illegal or clearly excessive fee); RPC 8.4(a)(1) (violating the professional rules by assisting or inducing another to do so); and RPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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inconclusive.

[20] Reportedly, it was necessary to execute this second agreement documenting the Accused's representation to obtain the Weiss file from OWCP because a claimant's representative is entitled to additional information from the claimant's file.

Failure to Communicate; Failure to Adequately Investigate, Prepare, and Handle her Claim in Violation of RPC 1.4(b) and RPC 1.1.

The evidence establishes that Ms. Weiss was in understandable distress about the termination of her OWCP benefits at the time she sought the Accused's representation and that she was under some time pressure to file an appeal. At the same time, the testimony indicates, as discussed above, that she was familiar with the OWCP process and had used the services of several attorneys as well as a non-attorney since beginning the process in 1985.[21] The evidence also suggests that there may have been some confusion about the nature of the attorney fee agreement and services, even though Ms. Weiss signed a copy of the agreement and paid the Accused a total of $2,400.[22]

The Accused testified credibly that he prepared extensive notes concerning Ms. Weiss's file and drafted a concurrence letter for the psychologist, Dr. McQueen, on her behalf.[23] But the Bar alleges that the Accused could have taken additional steps to strengthen her appeal, including making additional inquiries about her current medical treatment. Although it is certainly arguable that the Accused could have done more, the evidence does not support the conclusion to a clear and convincing degree that the Accused did not provide competent representation. Ms. Weiss appeared to understand the legal strategy that the Accused was pursuing and, from all indications, was satisfied with the potential value of Dr. McQueen's report to her appeal. The Bar's allegation that the Accused did not explain matters sufficiently to allow Ms. Weiss to make informed decisions is not supported by the requisite evidence.

When the Accused faxed Dr. McQueen's report to the OWCP claims examiner, it is apparent from the testimony that he used this form of transmittal at Ms. Weiss's request. Nonetheless, the Bar maintains that he should have followed up to ensure that the report had been received. It is incontrovertible that, as a matter of extra prudence, the Accused could have taken additional steps to ensure OWCP received the report. This, despite the recognition that the appropriate documentation demonstrated the report had been properly transmitted.

The legal standard, however, is that competent representation involves the "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." As *In re Bettis* instructs, inquiries into competence are a "fact specific inquiry."[24] Moreover, incompetence is not the same as neglect.[25]

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[21] Testimony of Katherine Weiss, HT at 66–67.

[22] *Id*., at 70–71. Exhibit 52.

[23] Exhibits 55–56.

[24] *In re Bettis*, 342 Or 232, 237 (2006), citing *In re Eadie*, 333 Or at 60.

[25] *In re Magar*, 335 Or 306, 320, 66 P3d 1014 (2003). "A lawyer—otherwise knowledgeable, skillful, thorough, and prepared—might commit a misstep for which he or she might have to respond in damages. That lawyer, although negligent, has not violated DR 6-101(A)(RPC 1.3 predecessor)."

In the view of the Trial Panel, the circumstances surrounding the Accused's conduct here are at odds with *Bettis,* where the Accused failed to review the charging instruments and did not even know the charges and evidence against his client before seeking the waiver of a jury trial.[26] In both of the matters involving the Accused, the clients were duly impressed with his legal knowledge and expertise in the area of federal workers' compensation law. Neither has it been demonstrated with any persuasiveness that the Accused lacked thoroughness or was unprepared for the services he performed. In the judgment of the Trial Panel, the Accused should not have been charged with a lack of competent representation for this omission or his other services within the meaning of RPC 1.1.[27]

Entered into an Agreement for, Charged, and Collected an Illegal and Excessive fee in Violation of RPC 1.5.

The Accused has conceded that he did not seek OWCP approval of the $2,400 fee he obtained from Ms. Weiss in March of 2006. As with Ms. Colton, his position was that he was not representing Ms. Weiss before the OWCP for the legal services he provided.

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[26] *In re Bettis,* 342 Or at 238. Moreover, no weight is placed on the outcome of the underlying matter.

[27] The Board cites in support of this allegation the cases of *In re Bettis,* 342 Or 232; *In re Dodge,* Or S Ct No S49777, 16 DB Rptr 278 (2002); and *In re Magar,* 296 Or 799, 681 P2d 93 (1984). In *Bettis* the Accused failed to gain any understanding of the legal or factual issues in the case before seeking a jury trial waiver of an important constitutional right. The court noted that the defendant was charged with serious crimes for which he could have received a prison term and that, other than the death penalty, a prison sentence is the most serious deprivation of liberty that a human being in our society can suffer. *Id.*, at 239. This case, although the clients' claims were obviously important to their economic well-being, does not nearly rise to that dimension of gravity. Neither is *In re Dodge* apposite. That proceeding resulted in a Stipulation for Discipline. Although the Accused represented his client in a workers' compensation claim his conduct was much more egregious. One month prior to the hearing, the client instructed the Accused to postpone the hearing, but the Accused neither did so nor advised the client that the hearing was still scheduled. The Accused failed to prepare for the hearing, and on the hearing date, withdrew his request for hearing. After the opposing attorney moved to dismiss, the Accused took no action in response but falsely represented that he had been forced to withdraw the hearing request because his client had not cooperated with him. One week later, the Accused withdrew from representation without disclosing to his client that he had failed to postpone the hearing, that he had withdrawn the request, or that the opposing counsel had sought dismissal with prejudice. The Accused took no steps to avoid foreseeable prejudice to his client's rights. 16 DB Rptr at 279–280. Finally, *In re Magar* does not apply here because the accused was charged under an earlier disciplinary rule (DR 6-101(2)) that only focused adequate preparation rather than competence. Moreover, there the accused failed to question his client about some basic information about the due dates of debts she wanted to discharge in bankruptcy. It was noted that had he done so, he would have recognized that the debts were not dischargeable.

The "Earned Fee Agreement"[28] between the Accused and Ms. Weiss does not specify that it is for the purpose of representing her before the OWCP. Instead, it recites that it is limited to the legal services of "reviewing her medical materials, meeting for one additional hour to discuss what the review revealed, and drafting a letter to a psychologist of Ms. Weiss' choice." It provides for a total amount of $7,200 in payments of $2,400 each. Although there could have been no doubt on the part of Ms. Weiss or the Accused that the services to be provided were for Ms. Weiss's OWCP claim, neither advised OWCP that the Accused was to serve as her "representative" under the applicable statutory and regulatory procedures.

Both the statute and the regulations allow the appointment of a representative by the claimant, but the OWCP process is described as informal and not requiring representation. Should the claimant want a representative, one must be appointed in writing.[29] This process of appointing the Accused as a representative did not take place until September 19, 2006, when he sent a letter to OWCP signed by Ms. Weiss indicating he was to be her representative and requesting a copy of her file. As noted above, this was for the express purpose of seeing if Dr. McQueen's report was in her file. The Accused also prepared an appeal for Ms. Weiss's signature and letterhead to the ECAB. It is his position, however, that since he charged no fee for these services, OWCP approval was not required.

The Accused's argument may be in the realm of "sharp practices" and not within the spirit of the law and regulatory intent concerning OWCP procedures. On the other hand, charging fees for "coaching" a claimant without acting as an authorized OWCP representative appears to be a gray area that is not specifically covered by the statute and regulations. The testimony of an OWCP witness proved inconclusive on this issue and indicated that there may be no OWCP remedy for a claimant who has been charged attorney fees for informal "coaching" without being appointed a representative.[30] Based on the foregoing, there is sufficient doubt that the

[28] Trial Exhibit 52.

[29] 5 USC § 8127(a); 20 CFR 10.700(a). As noted by the regulations, the claims process under the FECA is informal, the employer is not a party to the claim, and OWCP acts as an "impartial evaluator of the evidence." *Ibid*. Nevertheless, a claimant may appoint an individual to represent his or her interests, but the appointment must be in writing.

[30] Hearing Transcript, Testimony of Barbara C. McDonald, at 164: "*THE WITNESS*: There's no recourse for either the attorney or the injured worker, that is true, if there's been no attorney fee request submitted." See also Trial Exhibit 50, U.S. Department of Labor Instructions relating to Representative Fee Applications, at 3, noting that the ECAB has ruled that the OWCP is not prohibited from approving a fee after a fee has been collected and suggesting that OWCP could approve a fee even when a representative is withholding money from the claimant in violation of 18 USC § 292 and 20 CFR 10.702. The remedy against a representative who collects a fee without approval by the Office is not withholding approval of a fee but rather the criminal sanctions imposed by 18 USC § 292.

Accused charged an "illegal fee" within the meaning of RPC 1.5 and so the Bar has not met its burden of demonstrating this point by clear and convincing evidence.

The Bar also maintains that the fee charged and collected was clearly excessive. The Accused did initially provide for payment of $7,200 which, on its face, appears excessive for the limited services described in the Agreement. On the other hand, as the Bar concedes, Ms. Weiss had a long history with the OWCP process dating back to January of 1985 and multiple representations. It is not unlikely that the Accused factored that—as well as the difficulty of successfully pursuing her claim—into the flat fee agreement in the event the services he promised to provide became protracted and complicated.[31] In any event, Ms. Weiss was aware of the total amount that the Accused proposed to charge her and did not raise any questions.[32] Most importantly, the Accused never did attempt to collect the full amount but, instead, provided the agreed-upon services in addition to other matters for the first installment of $2,400.

The Trial Panel is not unmindful of Ms. Weiss's difficult financial circumstances and other problems related to her unsuccessful pursuit to restore her OWCP benefits. She and her former attorney testified credibly concerning her plight and the Bar understandably emphasized her personal circumstances and vulnerability in raising allegations against the Accused. Notwithstanding the foregoing, when all the evidence is considered, the Trial Panel believes that a lawyer of ordinary prudence would not be left with a "definite and firm conviction" that the fees charged by the Accused were in excess of a reasonable fee.[33] Accordingly, the Bar has failed to carry its burden on this allegation.

Misrepresentation under RPC 8.4(a)(3) and Violation of Rules of Professional Conduct through the Acts of Another under RPC 8.4(a)(1).[34]

The Bar alleges that the Accused committed an affirmative misrepresentation when he submitted the September fee agreement to OWCP to obtain the Weiss file when the March fee agreement was already in effect and allowed Ms. Weiss to sign

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[31] Given the less stringent evidentiary rules governing the Bar disciplinary process, it does not seem inappropriate for the Trial Panel to take something analogous to "judicial notice" of the Panel's experience concerning factors bearing on attorney fee agreements.

[32] Testimony of Ms. Weiss, Hearing Transcript at 69. Ms. Weiss believed that if they were successful she could use her backpay to cover the fees. *Id*., at 70.

[33] The testimony provided by the Bar's attorney witnesses was not persuasive. See discussion under Colton at fn 13, *supra*.

[34] RPC 8.4(a)(3): It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

RPC 8.4(a)(1): It is professional misconduct for a lawyer to violate the Rules of Professional Conduct, knowingly assist or induct another to do so, or do so through the acts of another.

documents he had prepared. Moreover, the Bar alleges, the Accused committed yet another misrepresentation when he drafted a letter to the ECAB stating that he had not received any fee for representation before the OWCP. In fact, the Bar points out, he had received $2,400 from Weiss earlier. Because he made the statement through Weiss on her letterhead, it is alleged, the Accused used her to make the misrepresentation as well. Finally, the Bar maintains, the Accused's use of Weiss's stationery to make OWCP submissions was an attempt to conceal his involvement in the case and a misrepresentation by omission in violation of RPC 8.4(a)(3).

As discussed previously, the Accused prepared a new fee agreement in September as Ms. Weiss's OWCP representative for the express purpose of determining if the OWCP had received and included the McQueen report in her file. The Accused testified that he did so because Ms. Weiss "begged" him to do so.[35] As noted earlier, the Accused had received payment for his services under the March "earned fee" agreement without having been appointed as Ms. Weiss's representative under the applicable OWCP procedures. Under the circumstances, there was no misrepresentation to OWCP that the Accused had an earlier agreement for the purpose of acting as her representative. Neither the Accused nor Ms. Weiss had requested that the Accused serve as her OWCP representative before September. In any event, Ms. Weiss clarified the Accused's status in a November 2, 2006, letter to the ECAB. She stated that the Accused had requested a copy of her file to see why OWCP had refused to process her request and that the OWCP advised her to make this request to the ECAB. The letter noted, correctly, that the Accused was no longer representing her and he had not received any attorney fees for his representation of her before the OWCP.[36]

Although the Bar alleges that the Accused attempted to conceal his involvement from the OWCP, it is also likely based on the evidence submitted that the Accused recognized that he had a difficult case, based on the long history of what had happened to Ms. Weiss and the nature of her claim, that he wanted to assist her informally rather as her appointed OWCP representative. Based on all the circumstances, the Bar has failed to carry its burden of establishing that misrepresentation—either affirmatively, by omission, or through the acts of another—has been established by clear and convincing evidence.

CONCLUSION

On the Colton matter, the Trial Panel has found that the Bar has failed to carry its burden of proving by the preponderance of the evidence that the Accused violated RPC 1.2(a) by failing to abide by the client's wishes concerning the objectives of representation and RPC 1.3 by neglect of a legal matter. Likewise, it is the Trial Panel's view that the Accused did not violate RPC 1.4(a) requiring a lawyer to keep

[35] Testimony of Todd Hammond, HT at 264. Ms. Weiss did not contradict this in her testimony.

[36] Trial Exhibit 65.

a client reasonably informed or RPC 1.4(b) explaining a matter to the extent reasonably necessary to permit the client to make informed decisions. Finally, it is concluded, based on the evidence presented, that the Accused did not fail to protect the client's interest upon termination of representation as provided by RPC 1.16(d). It is the Trial Panel's conclusion that the Bar did prove that the Accused collected an illegal fee and a clearly excessive fee in violation of RPC 1.5.

On the Weiss matter, the Trial Panel has found that the Bar did not prove by the requisite evidence that the Accused failed to provide competent representation within the meaning of RPC 1.1. Likewise, the Bar failed to carry its burden to prove that the Accused did not explain matters in a fashion reasonably necessary to permit the client to make informed decisions. Moreover, in the view of the Trial Panel, the Bar did not prove by the necessary evidence that the Accused engaged in affirmative misrepresentations or misrepresentation by omission by himself or through the acts of another within the meaning of RPC 8.4(a)(1) and RPC 8.4(a)(3). Finally, it was found that the Accused did not charge or collect an illegal or clearly excessive fee in violation of RPC 1.5.

SANCTION

In determining the appropriate sanction, guidance is provided by the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law. According to the *Standards*, the following factors are suggested for assessing an appropriate sanction: (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating circumstances.

The Bar has recommended that the Accused be suspended from practice for a period of 120 days and should be ordered to make restitution to both Colton and Weiss. For the following reasons, the Trial Panel does not agree with that recommendation.

(1) Duty Violated

As reflected above, the Trial Panel has found that the Accused charged and collected an illegal fee and an excessive fee in the Colton matter within the meaning of Rule 1.5. In that connection, the Accused violated his duty to the legal system and profession to refrain from charging improper fees. *Standards*, § 7.0.

(2) Mental State of the Accused

It is evident from the evidence developed and his testimony that the Accused was familiar with the applicable OWCP statutes, rules, and policy concerning the approval of attorney fees. The evidence indicates that the Accused never intended to act as Ms. Weiss's authorized OWCP representative and that he was never appointed in that capacity or received attorney fees as her representative under the March Agreement for which he collected $2,400. At Ms. Weiss's request during September 2006 he prepared a new fee Agreement and did become her authorized representative.

However, he did not receive fees for his services after that date. The Trial Panel found that he did not violate the prohibition against charging and collecting fees and did not later commit a misrepresentation to that effect to OWCP himself or through Ms. Weiss.

His representation of Ms. Colton, however, stands on a different footing. From the very beginning, he sent a letter to OWCP requesting her file and the OWCP responded acknowledging his representation. Under the circumstances, his argument that he did not need to obtain approval of fees for advice, consultation, and preparation of documents for Ms. Colton even though he was appointed her OWCP representative is specious and unconvincing.

In his deposition, the Accused conceded that a letter of representation amounts to representation before OWCP.[37] He thus made a knowing and intentional decision to charge and collect fees from Ms. Colton without seeking OWCP approval. His behavior in that regard indicates an intentional and knowing state of mind.[38]

(3) Actual or Potential Injury

The Bar maintains that the Accused's conduct did cause actual harm to both Colton and Weiss because they paid the Accused fees for fewer services than they understood they were to receive. Also, that they were both actually injured by their respective loss of OWCP benefits. While it is true that both clients did ultimately lose OWCP benefits, it is unclear that these losses were caused by the Accused. Moreover, the Trial Panel did not find the Bar established by the necessary evidentiary standard that his clients received less legal services than were reflected in the fee Agreements they signed.

There is, however, injury to the legal system or the profession where, as here, an attorney collects an illegal fee and excessive fees as the Accused did in the Colton case. Circumventing the legally mandated federal government procedure that is specifically designed to protect OWCP clients causes a loss of faith in the legal profession and reflects a disrespect for established law. Obviously, the client also sustains an actual injury when the attorney collects an excessive fee. Under the applicable *Standards*, at 7.2, a suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of his duty as a professional and causes injury or potential injury to the legal system and his clients.

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[37] Exhibit 3 at 25.

[38] In assessing what sanction should be imposed against the Accused, the Bar maintains in its Trial Memorandum that he "acknowledged to the Bar several times that he knew he was pushing the envelope in claiming his 'limited' representation of Colton and Weiss" did not require OWCP approval and that lawyers are "supposed to" go right "up to the line" of what is permissible. At the hearing, the Accused did not acknowledge any such statements and the Bar did not cite to any evidence that would corroborate these statements. Bar Trial Memorandum at 30.

(4) Aggravating and Mitigating Circumstances.

The Trial Panel agrees with the Bar's contention that the Accused's actions and practices in both the Colton and Weiss cases are similar and indicate a pattern of misconduct. It is true that in both cases the Accused used a flat fee agreement and did not seek OWCP approval of the attorney fees even though in the Weiss case he did not collect fees for services after he was officially recognized as her OWCP representative. The Trial Panel agrees that his failure to follow OWCP procedures undermines the legal system and that it can be inferred from the similarity of how he charged fees in the Colton and Weiss cases that there was a pattern of misconduct. As suggested by the Bar, there was an element of disingenuous behavior in the Accused's use of hyper-technical arguments to evade OWCP procedures for approval of attorney fees. That aggravating factor has been taken into account in imposing the penalty of suspension.

The Trial Panel does not agree, however, that the evidence shows that the Accused has "repeatedly and adamantly" denied that his acknowledged conduct runs contrary to any statute or ethical consideration and that this should be taken into account as an aggravating factor.[39] As part of his closing argument, the Accused noted that he has taken "extensive corrective measures" once he became aware of potential problems with OWCP representation and earned fee agreements. He stated that he has revamped his office procedures and other practices and that he has sought PLF assistance to ensure his approach complies with applicable ethical standards.[40] The Accused also expressed remorse that his clients had to endure the disciplinary process.[41] The Trial Panel finds this contrition and remorse believable. Moreover, even though they were obviously adverse witnesses, the Accused treated both of his former clients with deference and respect during their testimony and throughout this proceeding.

The Bar cited the vulnerability of the victims as disabled persons as an additional aggravating factor. It was pointed out that Ms. Weiss is elderly and mentally fragile. Finally, the Bar indicates they both had limited options for representation given the small size of the federal workers' compensation bar in Oregon. But the Bar did not present any convincing evidence that the Accused contributed in any way to his clients' dilemma. And, it is puzzling that the Bar apparently believes that the Accused should somehow be held accountable for the limited number of federal workers' compensation practitioners in Oregon. The Trial Panel believes that the Bar's position on this point is untenable as an aggravating factor.[42]

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[39] OSB Trial Memorandum at 32.

[40] Hearing Transcript at 337.

[41] *Ibid.*

[42] The Bar also refers to the Accused's "disingenuous" behavior in its Trial Memorandum as a concern. Trial Memorandum at 33. In this connection, it notes elsewhere that the Accused appeared "disingenuous" when he initially submitted a copy of Fee Agreement A

The Accused has been a lawyer in Oregon since 1998 and practices primarily in the areas of workers' compensation and disability law. His experience and expertise should be taken into account as an aggravating factor.

The absence of a prior disciplinary record for the Accused and his cooperation in the disciplinary proceeding are mitigating factors and have been taken into account by the Trial Panel in assessing a sanction.

As the Accused pointed out, and the Trial Panel agrees, an additional mitigating factor is that the Accused has already sustained some degree of punishment because the Bar has removed his name from Oregon State Bar referral system for federal workers' compensation cases.

(5) Oregon Case Law

In applying Oregon case law to this proceeding, the Bar has cited a number of cases that it believes are analogous but they generally involve findings of multiple violations of the Rules of Professional Conduct as the Bar has alleged here. In this case, we are concerned only with violations of Rule 1.5 concerning illegal and excessive fees in the Colton matter.

In its Trial Memorandum, the Bar cites *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007), and a number of other cases for the proposition that a suspension of at least 30 days, but less than one year, is appropriate for the Accused's illegal and excessive fees in both these matters.[43] The Trial Panel agrees that a 30-day suspension is an appropriate sanction even though the evidence only supports a violation of Rule 1.5 in the Colton matter.

(6) Restitution

In addition to a suspension from the practice of law for at least 120 days, the Bar has asked the Trial Panel to impose the extraordinary remedy of restitution in this case. Although it has been found that the Accused charged and collected an illegal and excessive fee in the Colton matter, the evidence indicates that the Accused did perform substantial services and was willing to further assist his clients at the time his services were terminated. Under the circumstances, requiring the Accused to make restitution does not seem warranted.

CONCLUSION

The Trial Panel finds the Accused violated RPC 1.5 on both charges brought by the Bar in the Colton matter, but that the Bar failed to prove by the requisite evidence the remainder of the multiple charges under various rules it advanced

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to the OWCP (hourly agreement) on May 9, 2005, and then also sent a copy of Fee Agreement B (flat fee) to the OWCP and argued that Agreement B superseded Agreement A. The Trial Panel took this into account in imposing the penalty of suspension.

[43] OSB Trial Memorandum at 35.

against the Accused in both the Colton and Weiss matters. It is ordered that the Accused be suspended from the practice of law for a period of 30 days.

/s/ Llewellyn M. Fischer
Llewellyn M. Fischer
Trial Panel Chair

/s/ James C. Edmonds
James C. Edmonds
Trial Panel Member

/s/ Joan L. LeBarron
Joan L. LeBarron
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 07-15, 07-16, 07-127,
	)	and 07-136
DAVID TOMBLESON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	Mary Kim Wood, Chair W. Bradford Jonasson Joan J. LeBarron, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel Opinion. Two-year suspension, plus restitution.
Effective Date of Opinion:	July 27, 2008

OPINION OF THE TRIAL PANEL

This matter came on regularly before a Trial Panel of the Disciplinary Board consisting of Mary Kim Wood, Chair; W. Bradford Jonasson, Member; and Joan J. LeBarron, Public Member, on April 15, 2008. The Oregon State Bar was represented by Stacy Hankin, Assistant Disciplinary Counsel. The Accused did not appear and had previously had a default taken against him. The Trial Panel has considered the pleadings, exhibits, sanctions memorandum, and argument of counsel.

Based upon the findings and conclusions made below, we find that the Accused has violated RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), RPC 1.16(d), and RPC 8.1(a)(2). We further determine that the Accused should be suspended from the practice of law for two years.

INTRODUCTION

At the direction of the State Professional Responsibility Board, David Tombleson (hereinafter "Accused") was charged with four (4) causes of violating RPC 1.3, neglect of a legal matter; four causes of violating RPC 1.4(a), failure to comply with a reasonable request from a client; three violations of RPC 1.15.1(d),

failure to render an accounting; one cause of failure to refund unearned fees in violation of RPC 1.16(d); and two causes for violation of RPC 8.1(a), failure to respond to lawful demands for information from the disciplinary authority.[1]

The Bar filed its Formal Complaint against the Accused on June 18, 2007, an Amended Formal Complaint on September 20, 2007, and a Second Amended Formal Complaint on October 17, 2007. The Bar was unable to locate the Accused for personal service, so filed a motion to allow service by certified mail or publication. On December 26, 2007, the Supreme Court granted the Bar's motion and filed the appropriate order. Service by certified mail was completed on January 7, 2008.

No response having been received from the Accused, the Bar filed a Motion for Order of Default. It was granted by the panel chair on February 19, 2008. Pursuant to BR 5.8(a), the allegations of the Bar's Second Amended Formal Complaint are 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).

FACTS

FIRST CAUSE OF COMPLAINT

At all relevant times, the Accused, David Tombleson, was an attorney, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and was a member of the Bar, having his office and place of business in the County of Clackamas, State of Oregon.

A. Collins matter (Case No. 07-15)

In April 2004, the Accused filed a lawsuit on behalf of Kevin Collins (hereinafter "Collins"). Thereafter, the Accused failed to pursue Collins's legal matter resulting in a dismissal by the court on August 2004, for want of prosecution. In May 2005, the Accused re-filed the lawsuit. In December 2005, the Accused received notice from the court that the case would be dismissed for want of prosecution. Despite that notice, the Accused failed to pursue Collins's legal matter and the second lawsuit was dismissed in February 2006.

In January 2006, the Accused informed Collins that he would be moving his offices and asked Collins to provide him with $300.00 for arbitration fees. Between January 2006 and August 2006, Collins left numerous telephone messages for the Accused asking for his new office address and inquiring about the status of his legal matter. The Accused failed to respond to Collins's inquiries.

[1] The former Code of Professional Responsibility applies to conduct occurring prior to January 1, 2005, the effective date of the new Oregon Rules of Professional Conduct. The Rules of Professional Conduct applies to conduct occurring on and after January 1, 2005, pursuant to the Oregon Supreme Court's order dated December 1, 2004.

The Accused neglected Collins's legal matter, in violation of RPC 1.3; failed to keep Collins reasonably informed about the status of his legal matter and failed to promptly comply with Collins's reasonable requests for information, in violation of RPC 1.4(a).

B. Gilpin matter (Case No. 07-16)

In April 2006, the Accused filed a petition for dissolution of marriage on behalf of Katherine Gilpin (hereinafter "Gilpin"). Thereafter, the Accused failed to pursue the petition which was dismissed by the court in September 2006 for want of prosecution.

Between April 2006 and October 2006, Gilpin left numerous telephone messages for the Accused inquiring about the status of her legal matter. The Accused failed to respond to many of Gilpin's inquiries.

In October 2006, Gilpin learned the court had dismissed her case. The Accused assured her he would reinstate the case within a week, but thereafter failed to pursue it and failed to respond to Gilpin's continuing inquiries about the status of her legal matter.

Gilpin eventually terminated the Accused and requested an accounting of the funds she had provided to him and a refund of all unearned fees. As of the date of the hearing neither request had been met.

During the course of the Accused's representation, Gilpin paid the Accused $1,400.00.[2] On November 1, 2006, Gilpin terminated the Accused's representation, and requested an accounting and refund of unearned fees. The Accused failed to make a refund or an accounting.

The Accused neglected Gilpin's legal matter, in violation of RPC 1.3; failed to keep Gilpin reasonably informed about the status of her legal matter and failed to promptly comply with Gilpin's reasonable requests for information, in violation of RPC 1.4(a); failed to promptly render a full accounting, in violation of RPC 1.15-1(d); and failed to make a refund of unearned fees, in violation of RPC 1.16(d).

C. Drews matter (Case No. 07-127)

In June 2006, the Accused was retained by Laurie Drews (hereinafter "Drews") to pursue a breach of contract claim against an individual and his business. In September 2006, the Accused filed a lawsuit on Drews's behalf. After mid-November 2006, the Accused failed to pursue Drews's legal matter and failed to respond to her inquiries about the status of that matter. The Accused also failed to respond to the Bar's inquiries about his conduct.

[2] The Second Amended Formal Complaint alleges that Gilpin initially paid the Accused $400.00 which was earned when he filed the petition, then made a second payment of $800.00 for future legal services. However, Gilpin has provided evidence that she actually paid the Accused $1,400.00 in total.

The Accused neglected Drews's legal matter, in violation of RPC 1.3; failed to keep Drews reasonably informed about the status of her legal matter and failed to promptly comply with Drews's reasonable requests for information, in violation of RPC 1.4(a); and failed to respond to a lawful demand for information from a disciplinary authority in violation of RPC 8.1(a)(2).

D. Harlan matter (Case No. 07-136)

In January 2006, John Harlan (hereinafter "Harlan") retained the Accused to represent him in the dissolution of a business partnership. The parties resolved the matter in July 2006. In connection with the settlement, Harlan was to receive title to two pieces of equipment. Harlan understood that the Accused received title documents for the equipment in January 2007. Thereafter the Accused failed to forward the documents to Harlan and failed to respond to his inquiries. Harlan later learned that the Accused had not in fact received the titles.

During the course of the Accused's representation Harlan paid the Accused $3,500.00. When the parties resolved the matter at the July 21, 2006, hearing, the Accused informed Harlan that once the settlement was completed, he would refund the unearned portion of the $3,500.00, indicating it would be a significant portion of that amount. Despite his representations the Accused failed to make a refund to Harlan. The Accused also failed to respond to the Bar's inquiries about his conduct.

The Accused neglected Harlan's legal matter, in violation of RPC 1.3; failed to keep Harlan reasonably informed about the status of his legal matter and failed to promptly comply with Harlan's reasonable requests for information, in violation of RPC 1.4(a); failed to promptly deliver funds as requested by Harlan, in violation of RPC 1.15-1(d); and failed to respond to a lawful demand for information from a disciplinary authority in violation of RPC 8.1(a)(2).

FINDINGS

1. <u>The Accused violated RPC 1.3 of the Rules of Professional Conduct.</u>

RPC 1.3 states that a "lawyer shall not neglect a legal matter entrusted to the lawyer."

In the cases presented to it, the Panel finds the Accused neglected the matters entrusted to him by Collins and Gilpin. BR 5.8 states that when a default has been entered against the Accused, the Panel shall deem all allegations in the complaint true. However, as there are no supporting facts in the Second Amended Complaint nor provided at the hearing, the Panel is unable to make any findings as to neglect in the Drews matter. The facts alleged in Harlan are that the Accused was retained in January 2006 and resolved the matter by July 2006. The failure to deliver titles which it is conceded he never had, does not appear to be neglect, but a failure to communicate which is addressed below. The Panel does not find any neglect in Harlan.

2. The Accused violated RPC 1.4(a) of the Rules of Professional Conduct.

RPC 1.4(a) provides that a "lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

Accepting the allegations in the Second Amended Complaint as true, the Panel finds that the Accused violated RPC 1.4(a) in all four matters in that he repeatedly and consistently failed to communicate with his clients, refused to provide information when requested, failed to notify Collins and Gilpin that their matters had been dismissed, and indeed went so far as to relocate his office without providing his clients with updated contact information.

3. The Accused violated RPC 1.15-1(d) of the Rules of Professional Conduct.

RPC 1.15-1(d) provides in relevant part:

> (d) . . . 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, and on request by the client or third person, shall promptly render a full accounting regarding such property.

The Accused failed to account for funds in Collins, Gilpin, and Harlan. He failed to promptly deliver funds his clients were entitled to receive in Gilpin and Harlan. This failure violated RPC 1.15-1(d).

4. The Accused violated RPC 1.16 of the Rules of Professional Conduct.

RPC 1.16-1(d) provides in relevant part:

> (d) Upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of fee or expense that has not been earned or incurred.

The testimony in Gilpin is that the client made multiple requests to the Accused for information on the status of her case and for an accounting. When the information was not received, she terminated the Accused and renewed her demand for an accounting and a refund of fees. From the allegations in the Second Amended Formal Complaint, the testimony of Gilpin and the fact the court dismissed her case for failure to prosecute, the Panel finds that the Accused did no work of any value in this matter after filing the initial petition. As a result, the Accused violated RPC 1.16(d) in that upon termination by Gilpin, he failed to refund fees which he had received but not yet earned.

5. The Accused violated RPC 8.1(a)(2) of the Rules of Professional Conduct.

RPC 8.1, in relevant part, provides:

> (a) . . . a lawyer . . . in connection with a disciplinary matter, shall not:
>
> (2) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

The rule imposes obligations previously stated in DR 1-103(C). Although the text of DR 1-103(c) and RPC 8.1 are different, the obligations are the same. The duty to comply with this rule is no less important than other ethical responsibilities. *In re Hereford,* 306 Or 69, 756 P2d 30 (1988). The court has expressed a virtual no-tolerance approach to a lawyer's failure to cooperate. *In re Miles,* 324 Or 218, 222–223, 923 P2d 1219 (1996).

A lawyer violates RPC 8.1(a)(2) when he does not respond to the inquiries or requests of Disciplinary Counsel, which is empowered to investigate the conduct of lawyers. *Id*.; *In re Bourcier,* 322 Or 561, 909 P2d 1234 (1996); *In re Bourcier,* 325 Or 429, 939 P2d 604 (1997); *In re Schaffner,* 323 Or 472, 477, 918 P2d 803 (1996). In this case, the Accused did not respond to Disciplinary Counsel's requests for an explanation.

SANCTION

The ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered in determining the appropriate sanction. *In re Spencer,* 335 Or 71, 85–86, 58 P3d 228 (2002). 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.

Applying those standards to the instant action it is clear that:

1. The Accused violated duties to his client, the public, and the profession. *Standards,* §§ 4.1, 5.0, and 7.0.

2. The Accused's conduct demonstrates both intent and knowledge. He received notices of the court's intent to dismiss the Collins and Gilpin matters, but took no action to prevent the dismissals or to cure the Gilpin matter. Although he successfully reinstated the Collins matter, he then allowed a second dismissal. The Accused received requests for an accounting and refund from Gilpin. He told Harlan that Harlan was entitled to receive a refund of the bulk of the monies advanced to the Accused in that action. He received repeated phone calls and messages from his clients but failed to respond to them. He intentionally kept monies to which he was not entitled. *Standards,* p. 7.

3. The Accused caused actual injury to his client, the public, and the profession. *Standards,* p. 7. He took $300.00 from Collins, ostensibly for arbitration, then allowed the case to be dismissed the following month. He allowed Gilpin's matter to be dismissed, forcing her to retain new counsel and start over in the pursuit of her dissolution. His neglect of the legal matters entrusted to him created problems for the court which dismissed his client's claims. The dismissals required his clients to secure new counsel and suffer additional expense and delay. He also failed to respond to Disciplinary Counsel. The profession is judged by the conduct of its members. *See, e.g., In re Gastineau,* 317 Or 545, 558, 857 P2d 136 (1993), and *In re Holm,* 285 Or 189, 194, 590 P2d 233 (1979) (court noting lawyers' misconduct as examples of why the public holds members of the Bar in disrespect). The Accused's conduct appears to justify that low opinion of the Bar.

4. Without considering aggravating and mitigating circumstances, the following *Standards* are applicable:

Standards, § 4.12. Suspension 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, § 4.41(b). Disbarment when a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client.

Standards, § 4.41(c). Disbarment when a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

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

Standards, § 7.2. Suspension 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.

The final criteria to be considered before imposing sanctions are the existence of any aggravating or mitigating factors. *Standards,* §§ 9.22 and 9.32, respectively. In the instant action, those factors are:

5. Aggravating Circumstances. The following aggravating circumstances are present:

   a. Pattern of misconduct. The Accused engaged in misconduct in four separate matters over the course of two and a half years. *In re Schaffner,* 323 Or 472, 918 P2d 803 (1996). *Standards,* § 9.22(c).

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

   c. Indifference to making restitution. *Standards,* § 9.22(j).

6. Mitigating Circumstances. The following mitigating circumstances are present:

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

b. Inexperience in the practice of law. The Accused was licensed to practice law in Oregon in 2002. *Standards,* § 9.32(f).

The Accused's wrongful conduct and neglect of his clients began the year following his admittance to the Bar. The aggravating factors including not only neglect, but intentional wrongful withholding of client monies, far outweigh any mitigating circumstances. In this case, the *Standards* suggest that either disbarment or suspension is appropriate.

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). Appropriate discipline deters unethical conduct. *In re Kirkman,* 313 Or 181, 188, 830 P2d 206 (1992). In order to protect the public and the integrity of the profession, the Panel unanimously concluded that a suspension of two (2) years was appropriate.

Further, the Panel notes that BR 6.1(a) provides that:

> an accused may be required to make restitution of some or all of the money, property or fees received by the accused in the representation of a client . . .

In light of the Accused's failure to earn the monies he kept, the Panel orders that he make restitution to:

1. Gilpin—of $1,000.00, representing the amount the Accused received after filing the original petition. As a result of the Accused's misconduct, Gilpin's legal matter was dismissed. She had to retain a new lawyer to secure her dissolution and suffer the additional costs and delays that entailed. Any legal work the Accused performed on Gilpin's behalf after filing the original petition had no value.

2. Harlan—of $2,500.00, in light of Harlan's description of the few contacts he had with the Accused, the short time frame within which the Harlan matter was resolved and the uncontroverted representation made by the Accused that Harlan would receive the bulk of his initial payment back, the Panel deems this amount appropriate.

CONCLUSION

The purpose of lawyer discipline is 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. *Standards*, § 1.1, p. 7. In the instant actions, that purpose is best met by suspending the Accused for two years and ordering that he make restitution to Gilpin and Harlan for their actual financial losses.

RESPECTFULLY submitted this 23rd day of May 2008.

/s/ Mary Kim Wood
Mary Kim Wood
Trial Panel Chair

/s/ W. Bradford Jonasson
W. Bradford Jonasson
Trial Panel Member

/s/ Joan J. LeBarron
Joan J. LeBarron
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-85
	)	
BENJAMIN E. FREUDENBERG,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	Arden J. Olson
Disciplinary Board:	Dwayne R. Murray, Chair Megan B. Annand Thomas W. Pyle, Public Member
Disposition:	Violation of RPC 1.3 and RPC 1.4(a). Trial Panel Opinion. Public reprimand.
Effective Date of Opinion:	August 5, 2008

TRIAL PANEL OPINION

INTRODUCTION

This matter came before a duly constituted trial panel of the Disciplinary Board of the Oregon State Bar on January 22, 2008, in Medford, Jackson County, Oregon. The Accused waived his right to have the hearing in Josephine County. 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 Oregon State Bar (hereinafter "the Bar") has charged the Accused with violation of RPC 1.3 (a lawyer shall not neglect a legal matter entrusted to the lawyer) and RPC 1.4(a) (a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information).

The Accused has admitted to these violations and argues for public reprimand instead of a 60-day suspension sought by the Bar.

FACTS

On or about March 29, 2006, Ann Chandler, the President of Trufir Lumber Company, called the Accused from Yachats and mailed him some information about a problem with a sewer connection affecting a tract of land Trufir owned in Grants Pass.

On April 10, 2006, the Accused discussed the material with Chandler by telephone and opened a file to deal with the matter. The Accused charged a flat $75.00 for the initial conference, and requested and received a $400.00 deposit on the matter.

On April 21 and June 2, 2006, the Accused recorded a half hour each day for his time working on the case; the first for reviewing maps sent by Chandler and the second for a conference at the city of Grants Pass with a city representative, Kathy S. (Ex. 13), about the sewer issue. The Accused also personally went to and viewed the site.

Chandler's local attorney called the Accused on May 30, 2006, and received a status report. The Accused did not believe there was any imminent deadline or urgency about obtaining a solution, other than the general rule that reasonable promptness is a normal expectation of clients.

As of June 2, 2006, the Accused intended next to go to the city surveyor and public works offices to investigate further, and then to issue a demand letter to the person who generated the sewer problem. The Accused later decided he did not need information from the surveyor, and placed the file on his credenza as a reminder to go to the public works office.

From June 2 to July 18, 2006, the Accused did not work on the case though he testified that he was aware of the case on nearly a daily basis. During this time the Accused was taking medication and in counseling for mild depression for a period of over one year.

On July 18, 2006, the Accused received a facsimile from Chandler asking when the matter was going to be resolved and indicating that Trufir wanted to sell the property sometime "this summer."

The Accused neither responded to Chandler nor took any action on the matter. The file remained in the Accused's "to do" pile until some time in September 2006.

Chandler's niece called the Accused, at Chandler's request, in September 2006, to inquire about the matter. On September 18, 2006, Chandler's niece went to the Accused's office and was given the file materials previously provided by Chandler.

The Accused refunded Trufir the unused portion of the $400.00 deposit shortly after his September 20, 2006, letter to Chandler (Tr. 119.14). The Accused, in September or October of 2007, also refunded the entire amount deposited by Chandler.

During the course of the hearing the Accused expressed remorse in a convincing manner.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to him and failure to communicate in violation of RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct.

The Trial panel finds the Accused's conduct violates RPC 1.3 and RPC 1.4 of the Rules of Professional Conduct.

SANCTION

In deciding a sanction in this case, the trial panel has considered the American Bar Association Standards (hereinafter "*Standards*") and Oregon case law. *Biggs,* 318 Or 281, 864 P2d 1310 (1994); *In re Spies,* 316 Or 530, 541, 852 P2d 831 (1993).

A. ABA Standards.

The Standards establish the framework to analyze the Accused's conduct, including (1) the ethical duty violated, (2) the attorney's mental state, (3) the actual or potential injury, and (4) the existence of aggravating and mitigating circumstances. *Standards,* § 3.0.

1. Duty violated.

The Accused violated his duty to act with reasonable diligence and promptness in representing Chandler and the duty to adequately communicate with her. *Standards,* § 4.4.

2. Mental state.

Under *Standards,* §§ 4.42 and 4.43, the key to whether suspension or reprimand is appropriate in these circumstances is whether or not the Accused deliberately ignored the duties of diligence and of communicating about the matter:

> 4.42 Suspension is generally appropriate when:
>
> (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
>
> (b) a lawyer engages in a pattern of neglect (and) causes injury or potential injury to a client.
>
> 4.43 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.

The difference between "knowing" failure to perform services and "negligent" failure is therefore the most important distinction between the initial test for suspension or reprimand. As defined in the *Standards,* "knowledge" is the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." Negligence is "the failure of a lawyer to heed a substantial risk that a result will follow" deviating from the standard of care a reasonable lawyer would exercise in the situation.

We believe that although the Accused admits that he was aware that the file needed attention and wanted to "get to it," that, in itself, is not enough to elevate his negligence to a knowing failure to act under *Standards,* § 4.42. His intention was to get the work done, and the issue was getting it done within a reasonable time; he was

not intending to neglect the matter. There was no clear timeline or deadline that the Accused failed to meet. The Accused was not given any deadlines but was informed that his client wanted to dissolve Trufir "this summer" (Tr. 49.20).

3. Injury or Potential Injury.

Injury or potential injury is an element of the *Standards* quoted above. Each of the applicable *Standards* includes the same element of injury. The degree and type of injury is a factor weighed by the Supreme Court in these cases. Chandler has alleged that injury has resulted, but other than a bare allegation we have no evidence of injury beyond the obvious frustration and anxiety caused by delay. We therefore conclude that the nature of the injury, if any, is not a significant factor requiring suspension rather than reprimand.

4. Aggravating Circumstances.

The Standards set out potential aggravating circumstances, of which two apply here:

(1) The Accused has one prior disciplinary matter. On July 27, 2006, the Accused stipulated to a 30-day suspension for violation of RPC 1.7 and RPC 8.4(a)(4). *Standards,* § 9.22(a).

(2) The Accused has been an active member of the Oregon State Bar since 1977, which constitutes "substantial" experience in the law.

5. Mitigating Circumstances.

We find the following mitigating circumstances applicable here under the *Standards*:

(1) Absence of a dishonest or selfish motive.

(2) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings. The Bar has also listed this as a mitigating circumstance in its analysis.

(3) Personal or emotional problems. The Accused was undergoing some psychological treatment and was negotiating a stipulated agreement on another matter with the Bar during the relevant time.

(4) Timely good-faith effort to make restitution or to rectify consequences of misconduct. The Accused refunded all funds received from the client, albeit not immediately, but in our estimation within a timely manner.

(5) Character or reputation. Roger Harding testified to the good reputation enjoyed by the Accused in the Grants Pass area.

(6) Remorse. The Accused testified in a convincing manner as to his remorse for this conduct.

DISCUSSION

The Accused's prior disciplinary matter involved conflict of interest (*Standards,* § 1.7) and conduct prejudicial to the administration of justice (*Standards,* § 8.4(a)(4)).

Standards, § 8.2, states:

> Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Neither of the violations considered here involve the same rules as before nor the same or similar conduct. *Standards,* § 8.2, does not control.

The Accused has substantial experience in the practice of law. Experience doesn't necessarily dictate the correct path when depression or inaction is the counterinfluence. Substantial experience is an aggravating factor to be considered but not determinative of our decision.

There has been no evidence or even a suggestion that the Accused had a selfish or dishonest motive connected to his inaction.

From all accounts the Accused has fully cooperated and has made full and free disclosure of all the facts related to this matter. He has stipulated to the essential facts and that his conduct constituted a violation of the RPC 1.3 and 1.4(a). Degree of discipline remains the issue.

Personal and emotional problems appear to have had a significant influence in this matter. The Accused had previously received counseling for depression, 18 sessions in 2005 (Ex. R-16) as well as January and August of 2006. During the time in question, April through September of 2006, the Accused was negotiating with the Bar about the previous violation to which he stipulated to a 30-day suspension. Suspension was imposed in October 2006.

The Accused returned the unearned portion of his client's $400 deposit soon after he returned the client's file material. The portion that he had collected for time spent on the matter was also returned much later. It is the panel's conclusion that the return of the earned portion was both "timely" and a "good faith effort." The Accused believed, until informed otherwise by his counsel, that he was prevented from contacting Chandler in any way after the complaint was filed.

The sincerity of the Accused's explanation and his demeanor during the hearing and testimony convinced the panel of his remorse and that similar conduct is unlikely in the future.

The Bar suggests that the court has generally imposed 60-day suspensions on lawyers who knowingly neglect a legal matter. *See In re Redden,* 342 Or 393, 153 P3d 113 (2007) (60-day suspension imposed on lawyer who knowingly neglected a legal matter); *In re Schaffner,* 323 Or 472, 480, 918 P2d 803 (1996) (60-day

suspension imposed on lawyer who failed to act on his client's behalf, failed to return their telephone calls, and failed to communicate important information to them); *In re Holm*, 285 Or 189, 590 P2d 233 (1979) (60-day suspension for lawyer who failed to provide any explanation as to why he did not complete client's legal matter until after they filed a complaint with the Bar, despite numerous telephone messages from them over the course of seven months).

The Accused has urged that the present case is distinguishable from *Redden*, where a 60-day suspension was imposed, because in *Redden* (a) the accused knowingly failed to complete a stipulated reduction in child support arrearages for a period of 21 months, and (b) the accused caused actual injury by denying her the benefit over that period of the reduction, with three mitigating factors: no prior discipline, no dishonesty, and inexperience in the law. In the present case, the period of neglect is no more than three or four months, the injury was much less tangible, and the mitigating factors weigh more in the Accused's favor. The Accused would also distinguish *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003), because (a) the accused in that case affirmatively attempted to hide from his client the facts that he failed to file the certificate of service and that the client's case had been dismissed as a result, (b) the conduct involved affirmative action by the lawyer to "avoid his client's telephone calls," and (c) the conduct extended for over a year. Here, the Accused failed to act timely or respond for several months, but there was no pending proceeding and, to his knowledge, nothing untoward had occurred other than the delay.

A case more like the present case is *In re Cohen*, 330 Or 489, 8 P3d 953 (2000), where the accused committed two instances of neglect, one for five months and the other for ten months. After concluding that the presumptive sanction was public reprimand because the accused's mental state was more negligent than knowing, and despite multiple prior disciplines, the Court determined that public reprimand was the proper sanction given mitigating factors, including evidence of the accused's depression.

CONCLUSION

Where, as here, there has been a single instance of neglect for a limited time period the panel finds the weight of evidence and legal authority dictates a public reprimand.

The Accused is reprimanded.

DATED this 2nd day of June 2008.

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

/s/ Megan B. Annand
Megan B Annand
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. 08-06
	)	
HERBERT W. LOMBARD,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 5.5(a), RPC 1.16(a)(1), and ORS 9.160. Stipulation for Discipline. Public reprimand.
Effective Date of Order:	August 24, 2008

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 5.5(a), RPC 1.16(a)(1), and ORS 9.160.

DATED this 24th day of August 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Herbert W. Lombard, 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 in 1957, 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 January 12, 2008, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 5.5(a) and RPC 1.16(a)(1) of the Oregon Rules of Professional Conduct, and ORS 9.160. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Facts

5.

In April 2006, the Accused undertook to represent defendants in a lawsuit filed in Lane County Circuit Court (hereinafter "lawsuit"). In July 2006, an additional lawyer associated as counsel for the defendants in the lawsuit.

6.

Effective January 1, 2007, the Accused transferred to inactive status with the Bar. Pursuant to ORS 9.160 only active Bar members may practice law. The Accused failed to withdraw from representing the defendants in the lawsuit.

7.

In mid-February 2007, the Accused deposed the plaintiff in the lawsuit.

8.

On February 16, 2007, the Accused presented his client's case at a two-hour arbitration hearing.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated RPC 5.5(a), RPC 1.16(a)(1), and ORS 9.160.

Sanction

10.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated, (2) the 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 he owed to the profession. *Standards,* § 7.0.

b. *Mental state.* The Accused acted knowingly in that he was aware of his inactive status and that he was ineligible to practice law. The Accused was motivated by a desire to save his client the cost of paying for another lawyer.

c. *Injury.* The Accused's conduct did not cause any actual injury, but had the potential to cause injury. At the time the Accused engaged in the unlawful practice of law, he was not covered by malpractice insurance. Also, for a period of time, the court and the plaintiff's lawyer continued to communicate with the Accused regarding the lawsuit even though he was no longer eligible to practice law. Fortunately, those communications were received by associate counsel because his office was located at the same address. Associated counsel handled all aspects of the lawsuit after the February 16, 2007, arbitration hearing.

d. *Aggravating circumstances.* Aggravating circumstances include:

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

   2. Substantial experience in the practice of law as the Accused has been a lawyer in Oregon since 1957. *Standards,* § 9.22(i).

e. *Mitigating circumstances.* Mitigating circumstances include:

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

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

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

4. Remorse. The Accused acknowledged his misconduct. *Standards*, § 9.32(m).

11.

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. 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.

12.

Generally, lawyers who knowingly engage in the unlawful practice of law have received short suspensions. *See In re Fritzler*, 15 DB Rptr 75 (2003) (60-day suspension for lawyer who engaged in the unlawful practice of law for two months); *In re Stater*, 15 DB Rptr 216 (2001) (60-day suspension of lawyer who filed a motion to postpone a hearing and then in a telephone conference regarding that motion failed to disclose that he was suspended).

In this case, the mitigating circumstances are significant when compared to the aggravating circumstances. In particular, the lack of a prior disciplinary record for 50 years is a strong mitigating circumstance. *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996). Under these circumstances, a public reprimand is the appropriate sanction.

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 5.5(a), RPC 1.16(a)(1), and ORS 9.160.

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 15th day of July 2008.

/s/ Herbert W. Lombard
Herbert W. Lombard
OSB No. 570491

EXECUTED this 24th day of July 2008.

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. 07-52, 08-64, 08-82,
	)	and 08-83
ROBERT G. KLAHN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Lawrence Matasar
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3 and RPC 1.4(a). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	October 17, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 60 days, effective October 17, 2008, for violations of RPC 1.3 and RPC 1.4(a).

DATED this 28th day of August 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ Carl W. Hopp
Carl W. Hopp Jr., Esq., Region 1
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Robert G. Klahn, 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 18, 1980, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Umatilla County, Oregon.

3.

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

4.

On June 13, 2008, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB") in Case Nos. 07-52 and 08-64, alleging violations of RPC 1.3 (neglect) and RPC 1.4(a) (failure to keep client reasonably informed) 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 Case Nos. 07-52 and 08-64.

5.

On July 12, 2008, the SPRB authorized formal disciplinary proceedings against the Accused in Case Nos. 08-82 and 08-83, for alleged violations of 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 Case Nos. 08-82 and 08-83. This stipulation provides for one sanction for all four client matters (Case Nos. 07-52, 08-64, 08-82, and 08-83).

Zastera Matter

(Case No. 07-52)

Facts

6.

On April 7, 2005, the Accused was appointed by the court to represent Jerry Zastera (hereinafter "Zastera") in a postconviction relief matter that Zastera had filed pro se.

7.

Following his appointment, the court gave the Accused until August 12, 2005, to file an amended petition. Between April 7, 2005, and August 12, 2005, Zastera wrote to the Accused a number of times and provided him with materials he wanted included in the amended petition. The Accused did not respond to these written communications, nor did he timely file the amended petition.

8.

On September 13, 2005, the state filed a motion to dismiss Zastera's pro se petition. The Accused responded to the motion to dismiss but still did not file the amended petition at any time prior to the court granting the state's motion to dismiss on April 13, 2006. Thereafter, the Accused filed a notice of appeal and a new attorney was appointed to represent Zastera on appeal.

9.

The only communication the Accused had with Zastera prior to his Bar complaint in June 2006 was a brief meeting in May 2005 and a second meeting on April 12, 2006—the day before the hearing on the state's motion to dismiss.

Violations

10.

The Accused acknowledges that his failure to file Zastera's amended petition constituted neglect of a legal matter, in violation of RPC 1.3. The Accused further acknowledges that his failure to respond to Zastera's written correspondence and his failure to more timely notify him of the events and status of his case, amounted to a failure to keep his client reasonably informed or comply with reasonable requests for information, in violation of RPC 1.4(a).

Miller Matter

(Case No. 08-64)

Facts

11.

On September 17, 2006, the Accused was appointed by the court to represent Mark Miller (hereinafter "Miller") on a Petition for Writ of Habeas Corpus that Miller had filed pro se.

12.

Although the Accused met with Miller fairly soon after his appointment, at that time he had not yet reviewed the pleadings, so he could not meaningfully communicate with Miller about the substance of his case.

13.

Between the Accused's appointment and November 17, 2006, when Miller's replication was due, Miller sent the Accused multiple letters, transmitting documentation for the Accused to utilize in preparing the replication and requesting that the Accused contact Miller to discuss the case. The Accused did not respond, and did not contact Miller before filing a replication on his behalf.

14.

In response to the replication, the state filed a motion to strike and dismiss, and a hearing on those motions was subsequently scheduled. Miller was not notified of the hearing on the motion to strike until shortly before the scheduled date, and was not thereafter notified that it had been rescheduled, despite multiple inquiries, until after he filed a complaint with the Bar.

Violation

15.

The Accused acknowledges that his failure to respond to Miller's correspondence and his failure to notify Miller of events in and the status of his case constituted a failure to keep his client reasonably informed or comply with reasonable requests for information, in violation of RPC 1.4(a).

Evanoff Matter

(Case No. 08-82)

Facts

16.

On August 1, 2006, the Accused was appointed to represent Kyle Evanoff (hereinafter "Evanoff") in a postconviction proceeding that Evanoff had filed pro se.

17.

The Accused met briefly with Evanoff shortly after his appointment and eventually filed an amended petition on Evanoff's behalf in late January 2007. Thereafter, however, the Accused failed to respond to Evanoff's requests, from June through September 2007, that a newly discovered restitution claim be added to the amended pleading. The Accused did not notify Evanoff of his belief that the amended petition was sufficient as drafted to argue the newfound restitution issue.

18.

In mid-October 2007, the Accused's office notified Evanoff of the scheduled hearing on the amended petition set for October 25, 2007, and asked Evanoff to call. However, Evanoff was required to call collect due to his incarcerated status and, due to the Accused's unavailability, the Accused's office did not accept the calls. The Accused allowed the scheduled hearing date to pass without notice to Evanoff that it had been rescheduled.

Violation

19.

The Accused acknowledges that his failure to respond to Evanoff's requests regarding his restitution claim or to otherwise inform him of the Accused's strategy regarding the restitution, and the Accused's failure to notify Evanoff of events in and the status of his case constituted a failure to keep his client reasonably informed or comply with reasonable requests for information, in violation of RPC 1.4(a).

Johnson Matter

(Case No. 08-83)

Facts

20.

In late March 2007, the Accused was appointed to represent Samuel Johnson (hereinafter "Johnson") in a postconviction case that Johnson had filed pro se.

21.

Johnson believed there were errors in the transcripts of his underlying proceedings and wanted those transcripts settled before the Accused filed the amended petition. The Accused filed the amended petition in May 2007, which removed a majority of the claims asserted by Johnson in his pro se petition, without first contacting Johnson, and without first settling the underlying transcripts.

22.

In June 2007, the Accused agreed to revise the amended petition to include the issues the Accused had removed from Johnson's pro se petition, and provided Johnson with a draft of the second amended petition for his approval. The Accused also agreed that he would acquire the transcripts at issue and file a motion to settle the record.

23.

Between June 2007 and November 2007, Johnson sent numerous letters to the Accused requesting that the Accused file the second amended petition and ensure that the record was settled prior to trial. The Accused did not respond to these letters. During this time, Johnson also attempted to reach the Accused by telephone, without success. The Accused did not file the second amended petition or obtain all of the transcripts necessary to settle the record at any time prior to trial on November 8, 2007.

Violations

24.

The Accused acknowledges that his failure to file the second amended petition on behalf of Johnson and his failure to make more timely efforts to settle the transcript constituted neglect of a legal matter, in violation of RPC 1.3. The Accused further acknowledges that his failure to provide a substantive response to Johnson's correspondence constituted a failure to comply with reasonable requests for information, in violation of RPC 1.4(a).

Sanction

25.

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 of diligence to his clients. *Standards,* § 4.4. The *Standards* presume that the most

important ethical duties are those obligations which a lawyer owes to clients. *Standards,* at 5.

b. *Mental state.* The Accused acted knowingly, that is, with a 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 9.

c. *Injury.* Injury can be either actual or potential under the *Standards*. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992).

It is difficult to assess the extent of actual injury to the Accused's clients because postconviction proceedings and habeas corpus cases have a very low rate of success, even when pursued appropriately. Accordingly, there is no evidence that the Accused's lack of diligence or communication ultimately had any actual impact on his clients' legal claims. However, these clients nevertheless deserved the opportunity to exercise their postconviction and habeas corpus rights timely and fully. The Supreme Court has held that there is actual injury to the client where an attorney fails to actively pursue the client's case. *See, e.g., In re Parker,* 330 Or 541, 547, 9 P3d 107 (2000). In addition, the Accused's failure to adequately communicate with his clients caused actual injury in the form of client anxiety and frustration. *See In re Cohen,* 330 Or 489, 496, 8 P3d 953 (2000) (client anxiety and frustration as a result of the attorney's 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).

d. *Aggravating circumstances.* Aggravating circumstances include:

1. Prior disciplinary offenses. *Standards,* § 9.22(a). The Accused was publicly reprimanded in 2000 for violations of DR 2-106(A) (charging or collecting an illegal or clearly excessive fee) and DR 1-103(C) (failing to respond to the Bar). *In re Klahn,* 14 DB Rptr 65 (2000). The Accused was again reprimanded in 2005 for violations of DR 9-101(A) (failing to deposit or maintain client funds in trust) and DR 9-101(C)(3) (failing to account for client property). *In re Klahn,* 19 DB Rptr 1 (2005).

2. A pattern of misconduct. *Standards,* § 9.22(c). There are sufficient similarities in the Accused's handling of these matters and lack of communication with his clients to establish a pattern and practice concerning these client matters spanning from 2005 to 2007.

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

4. Vulnerability of victims. *Standards,* § 9.22(h). The court has held that incarcerated clients are vulnerable, because they have no

ability to travel to the lawyer's office to obtain a direct answer to their inquires, but must rely solely on mail and the telephone. *In re Obert*, 336 Or 640, 653, 89 P3d 1173 (2004).

5. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused was admitted in Oregon in 1980.

e. *Mitigating circumstances.* Mitigating circumstances include:

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

2. Cooperation in these proceedings. *Standards*, § 9.32(e).

26.

Under the ABA *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42.

27.

Oregon case law reaches the same result. *See, e.g., In re Redden*, 342 Or 393, 153 P3d 113 (2007) (60-day suspension for failing to attend to a 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, aggravated by pattern of misconduct when combined with prior similar discipline); *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); *In re Meyer*, 328 Or 220, 225, 970 P2d 647 (1999) (one-year suspension for single neglect aggravated substantially by prior similar discipline).

28.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violations of RPC 1.3 and RPC 1.4(a), the sanction to be effective October 17, 2008.

29.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Craig Childress, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that Craig Childress has agreed to accept this responsibility.

30.

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.

31.

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 31st day of July 2008.

/s/ Robert G. Klahn
Robert G. Klahn
OSB No. 800683

EXECUTED this 13th day of August 2008.

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. 07-137
	)	
DANIEL J. BERTAK,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	Gregory E. Skillman, Chair Laurence E. Thorp Mitchell P. Rogers, Public Member
Disposition:	Violations of RPC 1.3, RPC 1.5(a), RPC 1.16(d), and RPC 8.4(a)(3). Trial Panel Opinion. Disbarment.
Effective Date of Opinion:	September 2, 2008

TRIAL PANEL DECISION

This matter came before a Region 2 Trial Panel of the Oregon State Bar Disciplinary Board on June 11, 2008, in Eugene, Oregon, to consider the sanctions sought by the Bar against the Accused.

Procedural History

The Accused was served with the Bar's Formal Complaint and Notice to Answer, by personal service, on January 12, 2008. On January 16, 2008, the Bar filed and served a Notice of Intent to Take Default if the Accused did not file an answer or otherwise appear by January 28, 2008. The Accused failed to answer or otherwise appear within the time allowed, and on February 6, 2008, the Bar's Motion for Order of Default was granted.

As a result of the Accused's default, the allegations of the Bar's Complaint were deemed to be true. BR 5.8(a). On April 7, 2008, the Bar served the Accused with a copy of its Motion for Sanctions, which sought the Accused's disbarment.

On May 22, 2008, the Trial Panel Chairperson sent the Accused a letter informing him that the Trial Panel would convene to consider the Bar's Motion for Sanctions, and offering him an opportunity to provide the Trial Panel with evidence

of mitigation of his misconduct. The letter requested that such information be submitted to the Trial Panel on or before June 5, 2008. The Accused failed to provide any evidence of mitigation or otherwise respond to the Trial panel.

Therefore, the only issue considered by the Trial Panel was the sanction sought by the Bar.

Findings and Conclusions of the Trial Panel

As explained below, the Trial Panel finds that the appropriate sanction in this case is disbarment. In making its determination, the Trial Panel considered the allegations of the Bar's Formal Complaint, the Order of Default, the Bar's April 7, 2008, Sanction Memorandum, and the Exhibits provided to the Trial Panel by the Bar. Due to the Accused's default, the Trial Panel accepted all allegations of the Formal Complaint as true.

The exhibits considered by the Trial Panel included the uncontested June 1, 2007, letter to the Bar from the father of the Accused's former client, Erin DuBois, complaining that a total of $1,350 was paid by check and cash to the Accused to represent Ms. DuBois in her divorce, but that the Accused did not do any work or file any pleadings. (Ex. 2, p. 1.) The June 1, 2007, letter was accompanied by a copy of Ms. DuBois' father's cancelled check to the Accused in the amount of $1,000.00. (Ex. 2, pp. 2–3.)

Notwithstanding the Exhibit 2 letter, the Trial Panel notes that the Bar's Formal Complaint alleges that Ms. DuBois paid the Accused "about $333 for expenses," and that the Bar's Sanction Memorandum states that Ms. DuBois paid him "about $300." (Formal Complaint, ¶7, Sanction Memorandum, pp. 3, 8, and 12.) In the absence of additional documentation supporting the higher amounts of cash allegedly paid by Ms. DuBois, the Trial Panel determines that $300 should be the appropriate figure.

The Trial Panel also considered copies of correspondence from the Bar to the Accused, prior to the filing of the Formal Complaint, evidencing the Bar's attempts to communicate with the Accused that were not answered. (Exs. 3, 4, 5, 7, and 8.) In addition, the Trial Panel considered the Affidavit of Due Diligence, which recounted the process server's attempts to serve the Accused during November and December of 2007, and the January 12, 2008, Proof of Service on the Accused. (Exs. 10A and 10B.)

The Bar also submitted Exhibit 11A, a copy of the *In re Bertak* (*Bertak I*) decision, Case Nos. 05-150, 05-179, 05-148, 05-149, and 06-28 (November 22, 2006), and Exhibit 11B, a copy of the Second Amended Formal Complaint in that matter, as evidence of the Accused's prior and similar misconduct. However, these Exhibits were not considered by the Trial Panel. The Panel is cognizant of the fact that the conduct described in *Bertak I* occurred during July through October of 2005, shortly after the conduct complained of herein, which occurred during February through April of 2005.

Therefore, the sanction issued in *Bertak I* could not have been ignored by the Accused at the time the misconduct in the case now before the Trial Panel occurred. Pursuant to *In re Knappenberger*, 344 Or 559, 186 P3d 272 (2008) (*Knappenberger V*), the Accused's prior sanction, and the misconduct upon which it was based, was disregarded for the purposes of determining the sanction herein.

Based on its consideration of the allegations and evidence received, the Trial Panel agrees with the Bar regarding the professional duties violated by the Accused. The Panel finds that the Accused violated RPC 1.3 by neglecting the legal matter entrusted to him by his client, Ms. DuBois, by failing to file or prepare a petition for dissolution of her marriage, by failing to file or prepare a response to Ms. DuBois' husband's petition for dissolution, by failing to communicate with his client or respond to her, and by failing to protect and advance her interests in the DuBois divorce proceedings.

The Panel finds that the Accused violated RPC 1.5(a) by collecting an excessive fee from his client because he performed no services for the not less than $1,300.00 received from his client and her father to perform those services. The Accused also violated RPC 1.3 by retaining and failing to return any of the money paid to him by or on for Ms. DuBois, after having performed no legal services and having incurred no costs on her behalf. Moreover, by failing to account for and deliver to his client all unearned fees and expenses upon the termination of his employment, the Accused violated RPC 1.16(d).

The Panel finds that in February of 2005, the Accused represented to his client that he had prepared and filed, or attempted to file, a petition for the dissolution of her marriage. This representation was knowingly false and misleading, and material, because the Accused did not do what he told his client, and did nothing to protect his client's interests in the dissolution case. The Panel finds that the Accused violated RPC 8.4(a)(3) by making this material misrepresentation to his client.

The Trial Panel further finds that the Accused also violated RPC 8.4(a)(3) by his failure to return to his client the funds tendered to him for the promised legal services and anticipated expenses. There is no reason set forth in the record for the Accused's retention of these funds. The Panel determines that, by retaining these funds after his employment was terminated, the Accused knowingly converted his client's funds to his own use. This conduct is dishonest and violates RPC 8.4(3)(a).

Sanction

In considering the appropriate sanction, the Trial Panel reviewed the ethical duties violated by the Accused, his mental state, the actual injury caused to his client, the existence of aggravating factors, and the absence of any mitigating factors. ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"), § 3.0.

A. *Duties violated.*

The Panel determined that the Accused violated RPC 1.3, 1.5(a), 1.16(d), and 8.4(3)(a), thus violating his ethical duties to his client and the profession. *Standards,* §§ 4.1, 4.6, and 7.0.

B. *Mental state.*

The Trial Panel determined that the Accused's misrepresentations regarding his client's case and his actions regarding his client's money were done knowingly. "Knowledge" is defined by the *Standards* as "the conscious awareness of the nature or attendant circumstances of the conduct, but without the conscious objective or purpose to accomplish a particular result." *Standards,* p. 7.

It is uncontested that the Accused misrepresented that he prepared and filed or attempted to file a petition for dissolution. It is uncontested that the Accused did not do what he said he would do for his client. It is uncontested that the Accused received money from his client and her father for legal services that he did not perform and for costs that he did not incur, and that he retained the money and converted it to his own use. The Accused acted knowingly in these matters.

C. *Injury.*

The Trial Panel finds that the Accused retained and converted his client's funds to his own use, and failed to return or account for any part of these funds. In doing so, the Accused has caused actual injury to his client, the legal profession, and the public.

D. *Aggravating and mitigating factors.*

In considering the appropriate sanction, the Trial Panel considered the aggravating and mitigating factors described in the *Standards,* §§ 9.2 and 9.3.

Aggravating factors.

The Trial Panel found the following aggravating factors:

1) The Accused's retention of his client's funds and failure to return or account for them was evidence of his dishonest and selfish motive. *Standards,* § 9.22(b).

2) The Accused committed multiple ethical violations. *Standards,* § 9.22(d).

3) The Accused's client relied upon him to handle her legal matter in a prompt and appropriate manner and he failed to protect or advance her interests during the representation. *Standards,* § 9.22(h).

4) The Accused was admitted to the Bar in 1993 and has substantial experience in the practice of law. *Standards,* § 9.22(i).

5) The Accused has demonstrated indifference to making restitution to his client of the funds paid to him. *Standards,* § 9.22(j).

Mitigating factors.

The Trial Panel made a direct and specific request to the Accused for evidence of any mitigating factors he wished to present, but received nothing from him or from anyone on his behalf. The Panel finds no mitigating factors that might reduce a sanction. *Standards,* § 9.3.

Conclusion

"Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." *Standards,* § 4.11. By comparison, a suspension is reserved for circumstances when the lawyer knows or should know that the lawyer is dealing improperly with the client's property. *Standards,* § 4.12.

In *In re Martin*, 328 Or 177, 188–190, 192–193, 970 P2d 638 (1998), the Court stated that "a single act of intentional misappropriation of client funds to the lawyer's own use . . . generally warrants disbarment," and disbarred the lawyer for converting $375 of a $500 retainer to his own use. The Court has similarly stated that, "if the bar can prove a lawyer guilty of dishonesty by intentionally appropriating clients' funds to the lawyer's use, the sanction is disbarment." *In re Phelps*, 306 Or 508, 513, 760 P2d 1331 (1988). A lawyer who holds money in trust for another and converts that money to his own use has engaged in conduct involving dishonesty. *Id*., *citing In re Holman,* 297 Or 36, 56–58, 682 P2d 243 (1984).

In addition to the other serious ethical violations found by the Trial Panel, the evidence in this case shows that the Accused received a $1,000 check from the client's father and endorsed it. In addition to the check, the Accused took not less than $300 in cash from his client for expenses. However, the Accused did not draft or file any documents, performed no other legal services, and incurred no expenses on behalf of his client. There is no evidence that the Accused returned the funds, or made any effort to do so. The Trial Panel finds that the Accused should make restitution of the amount of $1,300.00 to his client and her father, or to the Client Security Fund in the event their claims are paid by the Fund.

The Trial Panel concludes that the Accused converted his client's funds to his own use. Taking his client's money, doing nothing on her behalf, and failing to return the funds violates the trust placed in the attorney by the client and the public. Apart from the other ethical violations found by the Trial Panel, this conduct alone could support a sanction of disbarment.

Now, therefore, based on all of the foregoing findings and conclusions of the Trial Panel, it is hereby Ordered that the Accused be Disbarred.

It is further Ordered, pursuant to BR 6.1(a), that the Accused pay restitution in the amount of $300.00 to his client, Erin DuBois, and in the amount of $1,000.00

to her father, Larry Maes, or that the Accused reimburse the Client Security Fund in the event such claims are paid by the Fund.

DATED this 19th day of June 2008.

/s/ Laurence E. Thorp
Laurence E. Thorp
Trial Panel Member

/s/ Mitchell P. Rogers
Mitchell P. Rogers
Public Member

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

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-156
	)	
LARRY EPSTEIN,	)	SC S056473
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	Wayne Mackeson
Disciplinary Board:	None
Disposition:	Violation of RPC 8.4(a)(2) and ORS 9.527(2). Stipulation for Discipline. One-year suspension.
Effective Date of Order:	December 5, 2007

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 one year, effective December 5, 2007.

DATED this 12th day of September 2008.

/s/ Paul J. De Muniz
Paul J. De Muniz
Chief Justice

STIPULATION FOR DISCIPLINE

Larry Epstein, 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 his office and place of business in Multnomah County, Oregon.

3.

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

4.

On December 7, 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)(2) and ORS 9.527(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.

ORS 164.684 provides that a person may not knowingly develop, duplicate, publish, print, disseminate, exchange, display, finance, attempt to finance, or sell any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child or possess such matter with the intent to develop, duplicate, publish, print, disseminate, exchange, display, or sell it while knowing or being aware of and consciously disregarding the fact that creation of the visual recording of sexually explicit conduct involves child abuse. ORS 163.686 provides that a person may not knowingly possess or control any photograph, motion picture, videotape, or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person while knowing or being aware of and consciously disregarding the fact that creation of the visual recording of sexually explicit conduct involves child abuse.

6.

On September 25, 2006, the Accused engaged in conduct that violated the statutes described in paragraph 5 herein.

7.

On July 17, 2007, the Accused pled guilty to one count of violating ORS 163.684, a Class B felony.

Violations

8.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 7, he violated RPC 8.4(a)(2) and ORS 9.527(2).

Sanction

9.

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

a. *Duties violated.* By engaging in felonious conduct, the Accused violated a duty he owed to the public. *Standards*, § 5.1.

b. *Mental state.* The Accused acted intentionally.

c. *Injury.* The Accused's misconduct indirectly injured the children involved in the pornography he viewed.

d. *Aggravating circumstances.* The following aggravating circumstances are present:

   1. Selfish motive. *Standards*, § 9.22(b).

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

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

   4. Substantial experience in the 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 disciplinary record. *Standards*, § 9.32(a).

   2. Personal or emotional problems. At the time of the underlying events, the Accused was experiencing significant depression. The Accused sought treatment for that condition in August 2006, and continues to receive treatment. *Standards*, § 9.32(c).

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

   4. Imposition of other penalties or sanctions. As a result of the criminal prosecution, the Accused served 30 days in jail and is subject to probation for a period of five years. *Standards*, § 9.32(*l*).

5. Remorse. *Standards,* § 9.32(m).

10.

The *Standards* provide that suspension is generally appropriate when a lawyer knowingly engages in certain criminal conduct that seriously adversely reflects on the lawyer's fitness to practice. *Standards,* § 5.12.

11.

An 18-month suspension was imposed on a lawyer who engaged in sexual conduct with a minor client. See *In re Wolf,* 312 Or 655, 826 P2d 628 (1992). The present matter is less egregious because the Accused did not actually engage in sexual conduct with a minor.

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for one year for violation of RPC 8.4(a)(2) and ORS 9.527(2), the sanction to be effective December 5, 2007, the day the Oregon Supreme Court suspended the Accused from the practice of law pursuant to BR 3.4.

13.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has no active clients or legal matters.

14.

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, and specifically the provisions of BR 8.1. 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.

15.

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

EXECUTED this 28th day of July 2008.

/s/ Larry Epstein
Larry Epstein
OSB No. 790386

EXECUTED this 4th day of August 2008.

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. 08-53
	)	
JAMES L. LANE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Allison D. Rhodes
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(3). Stipulation for Discipline. 30-day suspension.
Effective Date of Order:	September 19, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 30 days, effective September 19, 2008, or three days after approval by the Disciplinary Board, whichever is later, for violation of DR 1-102(A)(3).

DATED this 15th day of September 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

James L. Lane, 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 13, 1983, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On July 10, 2008, 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) (conduct involving dishonesty or misrepresentation). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

Facts

5.

On April 19, 2000, the Accused met with an established client, Trevor Smith (hereinafter "Smith") and his business associate, John Olsen (hereinafter "Olsen"). Smith hired the Accused to draft a promissory note from Smith in favor of a company, Jaychem. Smith reported that in 1999, Jaychem, through its principal, Olsen, had loaned Smith $250,000 at 6 percent interest and that Smith was currently repaying the loan. To memorialize the loan, the Accused drafted the promissory note (hereinafter "first note") as requested and accurately represented in the first note that it had been "executed this 26th day of April, 2000." The Accused also drafted a letter transmitting the first note to Jaychem dated May 8, 2000 (hereinafter "first transmittal letter"). The first transmittal letter stated: "In accordance with your request at your meeting with Trevor Smith at my office on April 19, 2000, we are enclosing the

original of a promissory note executed by Mr. Smith in favor of Jaychem, Inc.[,] in the amount of $250,000."

6.

Shortly after Smith executed the first note, and before either the first note or the first transmittal letter were delivered to Olsen, Smith advised the Accused that Smith and Olsen had discussed the matter and determined that the 1999 loan amount was actually $390,000. Smith requested that the terms of the promissory note be changed to show an increased loan amount of $390,000. Smith also requested that the promissory note reflect that the date of the loan was in 1999 and that the transmittal letter be backdated to 1999 to match the note for his internal record-keeping purposes.

7.

After some contemplation about the potential requested note revision, the Accused drafted a new promissory note (hereinafter "second note"), increasing the stated amount of the loan from Jaychem to Smith to $390,000 and reflecting that the note was dated (not *executed*) "this 26th day of April, 1999."

8.

The Accused also drafted a second letter transmitting the second note to Jaychem, as had been requested. The second transmittal letter was falsely dated May 8, 1999, and omitted any mention of the April 2000 meeting date, stating: "In accordance with your request at your meeting with Trevor Smith at my office, we are enclosing the original of a promissory note executed by Mr. Smith in favor of Jaychem, Inc.[,] in the amount of $390,000."

9.

Smith later was criminally convicted of tax fraud based, in part, on his financial dealings with Olsen and/or Jaychem. The Accused testified at Smith's trial that he had intentionally changed the date and amount of the promissory note and letter at Smith's request, because he "wanted to reflect that it was a transaction that took place in 1999," and that the backdating of the documents was "an unethical thing to do."

Violation

10.

The Accused admits that, by knowingly altering the transmittal letter, together with the note, to reflect that they had been written on an earlier date, the Accused engaged in a misrepresentation or dishonest conduct in violation of DR 1-102(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. *Duties violated.* The Accused violated his duty to the public to maintain his personal integrity. *Standards,* § 5.1.

b. *Mental state.* The Accused acted knowingly, that is, 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 9.

c. *Injury.* Injury can be actual or potential. The taxing authorities were actually injured by their reliance on representations contained in the second note and second transmittal letter. There was potential injury insofar as others may have relied on the contents of those documents.

d. *Aggravating circumstances.* In aggravation, the Accused has substantial experience in the practice of law. *Standards,* § 9.22(i).

e. *Mitigating circumstances.* Mitigating circumstances include:

1. Absence of a prior disciplinary record in 25 years of law practice. *Standards,* § 9.32(a).

2. Absence of a selfish motive. The Accused did not gain from the loan transaction beyond his receipt of a nominal legal fee. *Standards,* § 9.32(b).

3. Cooperation with the Bar in its investigation and these proceedings. *Standards,* § 9.32(e).

4. Character or reputation. A number of individuals provided testimonials regarding the Accused's long record of professional and public service. *Standards,* § 9.32(g).

5. Remorse. *Standards,* § 9.32(*l*).

12.

Under the *Standards,* a reprimand is generally appropriate when a lawyer knowingly engages in noncriminal conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. A suspension or disbarment may be appropriate where the conduct seriously adversely reflects on the lawyer's fitness to practice. *Standards,* §§ 5.11, 5.12, and 5.13.

13.

The Oregon Supreme Court has suspended lawyers who have engaged in conduct similar to that of the Accused. *See, e.g., In re Melmon,* 322 Or 380, 908 P2d 822 (1995) (90-day suspension where attorney created an aircraft bill of sale falsely representing to insurance company that the attorney was the seller of the aircraft and falsely identifying a pilot as the buyer in order for a client to obtain a more favorable premium); *In re Dinerman,* 314 Or 308, 840 P2d 50 (1992) (63-day suspension for knowingly making false statements to assist client in obtaining straw loan from bank). This is particularly true where, as here, the misrepresentation was in the course of the lawyer's practice and ultimately served to mislead governmental or regulatory authorities. *In re Fitzhenry,* 343 Or 86, 113, 162 P3d 260 (2007) (120-day suspension for misrepresentations made to private auditors that ultimately were conveyed to the SEC, a regulatory authority); *see also In re Strickland,* 339 Or 595, 124 P3d 1225 (2005) (one-year suspension where, in connection with the representation of his mother regarding a construction project, lawyer falsely reported to police that he had been threatened and assaulted by construction workers); *In re Spencer,* 335 Or 71, 58 P3d 228 (2002) (60-day suspension for fraudulently registering with DMV a nonresident client's RV in order to avoid taxes and fees); *In re Unrein,* 323 Or 285, 917 P2d 1022 (1996) (attorney suspended for 120 days for dishonestly applying for and receiving unemployment insurance benefits at a time when she knew that she was ineligible for unemployment benefits); *In re Benson,* 317 Or 164, 854 P2d 466 (1993) (six-month suspension for preparing and recording at client's request false deeds of trust on client's real property).

Although the case law indicates that lawyers who engage in this type of misconduct generally receive two- to six-month suspensions, the mitigating circumstances in this case far exceed the aggravating circumstance. In particular, the Accused's lack of a prior disciplinary record for 25 years is a strong mitigating circumstance. *In re Schaffner,* 323 Or 472, 480, 918 P2d 803 (1996). Under these circumstances, a 30-day suspension is the appropriate sanction.

14.

Considering the *Standards* and consistent with Oregon case law, the parties agree that the Accused shall be suspended for 30 days for his violation of DR 1-102(A)(3), the sanction to be effective September 19, 2008, or three days after approval by the Disciplinary Board, whichever is later.

15.

The Accused acknowledges that he has certain duties and responsibilities under the Rules of Professional Conduct and BR 6.3 to immediately take all reasonable steps to avoid foreseeable prejudice to his clients during the term of his suspension. In this regard, the Accused has arranged for Richard J. Parker, Parker Bush & Lane PC, Suite 200, 1336 East Burnside Street, Portland, Oregon 97214, an active member of the Oregon State Bar, to either take possession of or have ongoing access to the

Accused's client files and serve as the contact person for clients in need of the files during the term of the Accused's suspension. The Accused represents that Richard Parker has agreed to accept this responsibility.

16.

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.

17.

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

EXECUTED this 2nd day of September 2008.

/s/ James L. Lane
James L. Lane
OSB No. 832682

EXECUTED this 2nd day of September 2008.

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. 07-159
	)	
SAMUEL J. NICHOLLS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	None
Disciplinary Board:	Mary Kim Wood, Chair Irene Bustillos Taylor Joan J. LeBarron, Public Member
Disposition:	Violation of RPC 1.15-1(d), RPC 1.16(a)(1), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and ORS 9.160. Trial Panel Opinion. Disbarment, plus restitution.
Effective Date of Opinion:	September 17, 2008

OPINION OF THE TRIAL PANEL

This matter came on regularly before a Trial Panel of the Disciplinary Board consisting of Mary Kim Wood, Chair; Irene Bustillos Taylor, Member; and Joan J. LeBarron, Public Member, on April 15, 2008. The Oregon State Bar was represented by Stacy Hankin, Assistant Disciplinary Counsel. The Accused did not appear and had previously had a default taken against him. The Trial Panel has considered the pleadings, exhibits, sanctions memorandum, and argument of counsel.

Based upon the findings and conclusions made below, we find that the Accused has violated RPC 1.15-1(d), RPC 1.16(a)(1), RPC 5.5(a), RPC 8.1(a)(2), RPC 8.4(a)(3), and ORS 9.160. We further determine that the Accused should be disbarred.

INTRODUCTION

At the direction of the State Professional Responsibility Board, Samuel J. Nicholls (hereinafter "Accused") was charged with violating RPC 1.15.1(d) (failure to render an accounting); failure to withdraw when continued representation would result in violation of the RPC in violation of RPC 1.16(a)(1); engaging in the

unauthorized practice of law in violation of RPC 5.5(a); engaging in conduct involving misrepresentation in violation of RPC 8.4(a)(3); failing to respond to lawful demands for information from the disciplinary authority in violation of RPC 8.1(a)(2); and practicing law in violation of a regulation of the legal profession in violation of ORS 9.160.

The Bar filed its Formal Complaint against the Accused on November 15, 2007. The Accused accepted service on January 9, 2008, but thereafter failed to appear or make any response to the Bar's Complaint. The Bar filed a Motion for Order of Default which was granted by the Panel chair on February 19, 2008. Pursuant to BR 5.8(a), the allegations of the Bar's Complaint are 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).

FACTUAL FINDINGS

FIRST CAUSE OF COMPLAINT

At all relevant times, the Accused, Samuel J. Nicholls, was an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and was a member of the Bar, having his office and place of business in the County of Clackamas, State of Oregon.

The Accused was retained by Linda Eisele (Eisele) on or about April 26, 2005, to handle various matters including defense of a fee bill claimed by her former attorney for services rendered in a dissolution proceeding. Over time Eisele paid the Accused a retainer of $7,000.00. During the course of his representation, Eisele repeatedly asked the Accused for an accounting of the fees paid him, but none was provided.

In March of 2006, Eisele's former attorney filed a lawsuit against her for the fees allegedly owed. On June 12, 2006, the Accused filed an Answer on Eisele's behalf. On June 13, 2006, the Accused was suspended from the practice of law. The Accused not only failed to withdraw from representation of Eisele, he failed to tell her he had been suspended, and indeed continued to represent her during his suspension.

SECOND CAUSE OF COMPLAINT

For its second cause of action the Bar alleges that the Accused knowingly failed to respond to a lawful demand for information with regard to the Eisele matter.

1. The Accused violated RPC 1.15-1(d).

RPC 1.15-1(d) provides in relevant part:

> (d) . . . 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, and on request by the client or third

> person, shall promptly render a full accounting regarding such property.

The Accused failed to account for funds received from Eisele despite repeated requests that he do so. This failure violated RPC 1.15-1(d).

2. The Accused violated RPC 1.16(a)(1).

In June 2006 the Accused was suspended from the practice of law. Despite his suspension, the Accused failed to withdraw from his representation of Eisele and knowingly failed to disclose to her and others that he had been suspended. Such conduct violates RPC 1.16 (a)(1).

3. The Accused violated RPC 5.5(a) and ORS 9.160.

RPC 5.5 prohibits the unauthorized practice of law. The undisputed allegation of the Bar is that the Accused continued to represent Eisele after he was suspended from the practice of law in June 2006. The Panel finds that at the Accused practiced law while suspended in violation of both RPC 5.5(a) and ORS 9.160.

4. The Accused violated RPC 8.4(a)(3).

RPC 8.4(a)(3) provides that it is professional misconduct for a lawyer to engage in conduct involving misrepresentation. In this case not only did the Accused fail to disclose his suspension, he continued to represent Eisele, which is an affirmation by conduct that he was legally qualified to do so. The Panel finds that this conduct and his silence constitute a knowing misrepresentation.

5. The Accused violated RPC 8.1(a)(2).

RPC 8.1,[1] in relevant part provides:

> (a) . . . a lawyer . . . in connection with a disciplinary matter, shall not:
>
> (2) . . . knowingly fail to respond to a lawful demand for information from . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

A lawyer violates RPC 8.1(a)(2) when he does not respond to the inquiries or requests of Disciplinary Counsel, which is empowered to investigate the conduct of lawyers. *Id*.; *In re Bourcier,* 322 Or 561, 909 P2d 1234 (1996); *In re Bourcier*, 325 Or 429, 939 P2d 604 (I997); *In re Schaffner,* 323 Or 472, 477, 918 P2d 803 (1996). In this case, the Accused did not respond to repeated requests from Disciplinary Counsel for an explanation of his actions. His failure constitutes a violation of RPC 8.1(a)(2).

[1] The rule imposes obligations previously stated in DR 1-103(C). Although the text of DR 1-103(C) and RPC 8.1 are different, the obligations are the same.

SANCTION

The ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered in determining the appropriate sanction. *In re Spencer*, 335 Or 71, 85–86, 58 P3d 228 (2002). 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.

Applying those standards to the instant action it is clear that:

1. The Accused violated duties to his client, the public, and the profession. *Standards*, §§ 4.1 (Failure to Preserve the Client's Property), 5.0 (Violations of Duties Owed to the Public), 5.1 (Failure to Maintain Personal Integrity), and 7.0 (Violations of Duties Owed as a Professional).

2. The Accused's conduct demonstrates both intent and knowledge. He knew he was suspended yet failed to disclose it to either his client, opposing counsel, or the court. He continued to represent Eisele by conducting settlement negotiations with opposing counsel while suspended. He failed to insure that his client's interests were protected by neglecting to advise her of pending hearings or of requests for admissions and other discovery demands. Most egregious, by concealing his suspension he prevented his client from obtaining competent legal counsel who could have looked after her legal interests. His actions not only allowed, but actually caused, significant financial and emotional injury to his client. In this case, the Panel finds that his conduct in concealing his suspension was intentional, was done with knowledge of the harm it would do to his client, and was for his own financial gain.

3. The Accused caused actual injury to his client, the public, and the profession. *Standards*, p. 7. He took client funds, failed to account for them despite repeated requests that he do so, failed to take proper steps to protect his client, and caused his client to incur additional costs to resolve the matter the Accused had been retained to handle. He also failed to respond to Disciplinary Counsel.

Preliminary Sanction Analysis. Without considering aggravating and mitigating circumstances, the following *Standards* are applicable:

Standards, § 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

Standards, § 4.42. Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury

to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standards, § 7.1. Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession 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.

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.

Standards, § 8.1(a). Disbarment is generally appropriate when a lawyer intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession.

Standards, § 8.1(b). Disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that causes injury or potential injury to a client, the public, the legal system, or the profession.

The final criteria to be considered before imposing sanctions are the existence of any aggravating or mitigating factors. *Standards*, §§ 9.22 and 9.32, respectively. In the instant action, several aggravating factors are present including:

a. Presence of a prior disciplinary record. *Standards*, § 9.32. In February 1991, the Accused was admonished for neglecting a legal matter. On October 28, 2002, the Accused entered into a disciplinary stipulation involving four separate cases in which he admitted he had failed to provide an appropriate written accounting to prior clients. He also admitted that he had failed to respond to written inquiries from the Bar in several of the cases. The stipulations also included that he failed to take action in several cases, including failing to follow through on necessary legal action in several lawsuits. There was actual or potential injury to all the affected clients. The June 13, 2006, suspension pending disciplinary action, referenced in the present case, resulted in a three-year suspension arising out of three different cases. In that case the trial panel found that the Accused neglected all three legal matters, DR 6-101(B) and RPC 1.3, and that the Accused failed to provide an appropriate accounting of the clients funds DR 9-101(C)(3) and RPC 1.15-1(d) in two of the cases. They also found that the Accused collected an excessive fee, DR 2-106(A), in one case, failed to promptly refund an unearned fee, DR 2-110(A)(3), and failed to keep a client reasonably informed and to promptly comply with a client's request for information, RPC 1.4(a), in two of the separate matters. Lastly, the panel found that the Accused failed to respond to the Bar's lawful demands for information, RPC 8.1(a), in all three cases. The Accused

has been previously disciplined for the same violations found to have occurred in the present case.

b. Multiple offenses. *Standards,* § 9.22(d). This conduct at issue herein does not involve just a one-time violation in the course of his representation of the client. The violations took place over a period of time, through all of which the Accused knew that his concealment of his suspension was actually harming his client and that his refusal to provide an accounting of the funds she had given him would probably harm his client.

c. Dishonest or selfish motive. *Standards,* § 9.22(b). The failure to advise the client, to advise opposing counsel, or to advise the relevant court of his suspension was intentional and designed to allow the Accused to retain monies he was not legally entitled to. The dishonesty which motivated him is further supported by the failure of the Accused to do any substantive work on Eisele's case, except for the Answer filed one day before his suspension took effect. Even then, the pleading he filed failed to include the counterclaim for the excessive fee being charged by Knappenberger, Eisele's former attorney. That counterclaim was critical to his client's financial future. The failure to include it and the subsequent stress of trying to cope with the legal mess the Accused created eventually forced his client into a settlement she could ill afford, but lacked the fiscal and physical wherewithal to oppose. Finally, when the file was finally provided to Eisele's new attorney, there was no indication of any appreciable work having been done on her case to justify his retention of any fees paid by her.

d. A pattern of misconduct. *Standards,* § 9.22(c). Despite his prior disciplinary sanctions, the Accused continued to fail to provide appropriate accountings to his clients, and continued to ignore lawful inquiries from the Bar. When an attorney demonstrates that less onerous sanctions are not effective, it is clear more severe sanctions must be considered.

e. Vulnerability of the victim. *Standards,* § 9.22(h). The client in the present case was basically left destitute as a result of the Accused's conduct. The Accused was fully aware that his client was disabled, emotionally vulnerable, and with a limited income to support herself. Her home and the ability to rent part of it was her only appreciable means of support. Her Social Security benefits were too minor to even rent an apartment, much less pay her expenses. The lien wrongfully placed on her home would have left Eisele on the street if later counsel had not been able to assist her and preserve it.

f. Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rules or orders of the disciplinary agency.

Standards, § 9.22(e). The Accused has two prior disciplinary sanctions for failing to respond to the Bar's requests for information regarding disciplinary complaints. His failure to respond to any requests from the Bar in the present case not only prolonged the proceedings, but can only be seen as intentional, given that prior experience has made him fully cognizant of the consequences of such failure.

g. Refusal to acknowledge wrongful nature of conduct. *Standards*, § 9.22(g).

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

There are no mitigating circumstances.

In making its analysis the Panel has paid particular attention to the Accused's prior disciplinary history. The conduct which gave rise to the earlier discipline was similar to that at issue in the instant proceeding. Despite that history and the substantial sanctions previously imposed, the Accused has not amended his behavior.

The Accused's failure is especially troubling in this case. Eisele had limited financial resources and had been the victim of an abusive husband. She was disabled and her home was her only asset following a bitter divorce. Her former attorney, Knappenberger, was hounding her for additional legal fees of approximately $115,000.00. She retained the Accused to defend her, explaining how important it was for her to keep her home. He advised her to wait until Knappenberger brought an action against her, at which point the Accused was to answer and file a counterclaim for excessive fees.

The Accused answered the complaint but failed to raise the counterclaim. This allowed Knappenberger to obtain a judgment and commence foreclosure of Eisele's home. Eisele was forced into bankruptcy to save her house. She obtained new counsel, attorney Michael Green, who requested the Accused's file only to learn it was virtually nonexistent. Over strenuous objections, Greene was able to have Knappenberger's judgment set aside. Eventually Eisele settled with Knappenberger for $75,000.00 as she did not have the physical resources to continue fighting him.[2]

CONCLUSION

The purpose of lawyer discipline is 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. *Standards*, § 1.1, p. 7. It is not intended to be punitive but to deter future wrongful conduct.

In light of his previous disciplinary history, the Accused's representation of Eisele clearly shows the futility of additional censure or suspensions. Eisele was

[2] Eisele did have access to legal services in that the attorney she retained after the Accused was moved to take her case on a pro bono basis when he learned of the Accused's actions. The Panel members commend attorney Greene for his compassion and his professionalism so signally lacking in the conduct of the other attorneys connected with this case.

vulnerable. She entrusted the defense of her home to the Accused and he betrayed that trust. He knowingly and intentionally concealed his suspension, preventing Eisele from retaining other counsel until after Knappenberger obtained a judgment against her. Furthermore, Greene's testimony regarding the lack of evidence of any work having been done on Eisele's case supports a finding that the Accused did not remove himself from Eisele's case and did not provide an appropriate accounting in writing for selfish reasons and for his own personal benefit and financial gain. The Accused's conduct was intentional, as was his retention of the monies paid to him by Eisele and his refusal to provide her with an accounting of those funds. Having considered the pleadings submitted by the Bar and the wholly credible testimony of Eisele and Greene, the Panel unanimously agrees that the Accused should be disbarred. The Panel also orders that the Accused refund to Eisele the entire $7,000 retainer fee.

DATED this 17th day of July 2008.

/s/ Mary Kim Wood
Mary Kim Wood
Trial Panel Chair

/s/ Irene Bustillos Taylor
Irene Bustillos Taylor
Trial Panel Member

/s/ Joan J. LeBarron
Joan J. LeBarron
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 06-132 and 06-133
	)	
CATHERINE DIXON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jeffrey D. Sapiro
Counsel for the Accused:	None
Disciplinary Board:	Mary Kim Wood, Chair Llewellyn Fischer Martin Johnson, M.D., Public Member
Disposition:	Violation of DR 9-101(A), RPC 1.1, RPC 1.3, RPC 1.4(a), and RPC 8.1(a)(2). Trial Panel Opinion. 12-month suspension.
Effective Date of Opinion:	September 17, 2008

OPINION OF TRIAL PANEL

This matter was submitted on the pleadings to a Trial Panel of the Disciplinary Board consisting of Mary Kim Wood, Chair; Llewellyn Fischer, Member; and Dr. Martin Johnson, Public Member. The Oregon State Bar was represented by Jeffrey Sapiro who submitted a Trial Memorandum and supporting documents for the Panel's consideration. The Accused had not appeared and had previously had a default taken against her. Subsequent to entry of that default, a new address was located for the Accused and she was advised of the Panel's intent to consider the claims against her. In response the Accused submitted a handwritten letter explaining her actions and detailing the factors contributing to the breach of her obligations. The Panel has considered the documents submitted to it.

Based upon the findings and conclusions made below, we find that the Accused has violated RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 8.1(a)(2), and DR 9-101(A)(RPC 1.15-1(c)). We find that the Accused did not violate RPC 8.4(a)(3). We further determine that the Accused should be suspended for 12 months.

INTRODUCTION

At the direction of the State Professional Responsibility Board, Catherine Dixon (hereinafter "Accused") was charged with violating RPC 1.1 (failing to exercise the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent her client); RPC 1.3 (neglecting a legal matter entrusted to her); RPC 1.4(a) (failing to keep a client reasonably informed); RPC 8.1(a)(2) (failing to respond to lawful demands for information from the Bar); RPC 8.4(a)(3) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and DR9-101(A)(RPC 1.15-1(c)) (requiring the Accused to maintain client funds in a trust fund until earned).

The Bar filed its Formal Complaint against the Accused on August 22, 2007. The Accused accepted service on September 11, 2007, but thereafter failed to appear or make any response to the Bar's Complaint. The Bar filed a Motion for Order of Default which was granted by the Region 6 Chairperson on February 8, 2008. Pursuant to BR 5.8(a), the allegations of the Bar's 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

FIRST CAUSE OF COMPLAINT

At all relevant times, the Accused was an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and was a member of the Bar, having her office and place of business in the County of Marion, state of Oregon.

The Accused was retained by Craig Ayer ("Ayer") in January 2002, to represent him in posttrial motions and an appeal following a 2001 conviction. She did so. In May 2004 the Court of Appeals affirmed the trial court judgment. In September of that same year, the Oregon Supreme Court denied Ayer's petition for review, which denial was entered October 20, 2004. At about the same time, the Accused agreed to represent Ayer in seeking postconviction relief. She was paid $3,500.00 as a retainer for that representation but failed to deposit the money into her lawyer trust account.

Shortly after she was retained, the Accused sent Ayer a letter stating she was almost done with his petition and planned to file the following month. From that time through the end of 2005, Ayer made multiple attempts to communicate with the Accused but without success. In December 2005 the Accused allegedly told Ayer that the petition had been filed or was ready for filing. She then resumed her pattern of failing to respond to Ayer's calls. Eventually Ayer retained other counsel. In October 2006, within the two (2) year statute of limitations, the Accused filed Ayer's petition. However, due to the delay in filing and her failure to toll the AEDPA one year statute, Ayer lost his ability to file for a writ of *habeas corpus*.

SECOND CAUSE OF COMPLAINT

In September 2006, the Bar's Client Assistance Office ("CAO") sent a letter to the Accused regarding a complaint it had received from Eric Phillips, a client of the Accused. The letter requested a response from the Accused but none was received. Subsequent letters from the CAO were also ignored.

FINDINGS

1. The Accused violated RPC 1.1.

RPC 1.1 requires an attorney to exercise the legal knowledge, skill, thoroughness, and preparation reasonably necessary to represent his or her clients. In the Ayer matter this required the Accused to file the postconviction petition within one year of the Supreme Court's denial of the petition for review or to take the necessary steps to toll the running of the one year AEDPA limitation period for *habeas corpus* relief. She failed to do so. The Panel finds her failure constitutes a violation of RPC 1.1.

2. The Accused violated RPC 1.3.

RPC 1.3 prohibits an attorney from neglecting a legal matter entrusted to her or him. The Accused filed the petition within the two-year state statute of limitation. However, the delay, especially in light of her client's continuous contacts requesting the status of the filing, evidences neglect of the Ayer matter by the Accused.

3. The Accused violated RPC 1.4(a).

RPC 1.4(a) requires that an attorney keep the client reasonably informed about the status of the client's legal matters. It is clear from the Bar's allegations and the Accused's admissions that she failed to do so in this case.

4. The Accused did not violate RPC 8.4(a)(3).

RPC 8.4(a)(3) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. In its memorandum, the Bar argues that the Accused falsely stated to Ayer that she had filed his petition or was ready to file it. Leaving aside that this alleged fact is hearsay, it creates two conflicting alternatives for the Panel to consider.

Since the Accused had not filed the petition, saying she had would have been a falsehood. However, stating she was almost ready to file is not necessarily false. The Panel is aware that the petition did not get filed until October 2006, but that does not mean the Accused had not intended to file it earlier or that she misrepresented her intentions to Ayer. The road to hell may be paved with good intentions, but the Panel is not willing to sanction an attorney for them.

The Bar then argues that the Accused knew Ayer had formed the impression she had filed the petition and that she did nothing to disabuse him of that impression for about one and a half years. That argument is not supported by the facts. The

Accused undertook the representation in October 2004 and indicated she would be filing the petition soon. Ayer repeatedly attempted to contact the Accused to confirm she had done so. There is nothing in the record to indicate that Ayer held any belief the petition had been filed. In December 2005 the Accused allegedly told Ayer that the petition had been filed or would be. His continued calls indicate the latter, if any such representation was actually made. Again there is no persuasive evidence that Ayer believed it had been done.

Although the granting of a default means the Panel must deem facts alleged by the Bar to be true, there is no requirement to believe the worst of conflicting allegations or to accept negative inferences as facts. The Panel does not believe the Accused acted in a dishonest or deceitful manner or in any other way violated RPC 8.4(a)(3) as alleged. The Bar has failed to carry its burden on this issue.

5. The Accused violated DR 9-101(A) (RPC 1.15-1(c)).

DR 9-101(A) was the applicable rule in effect at the time the Accused received a $3,500.00 retainer on behalf of Ayer. That rule required that monies be deposited into a trust account until such time as the attorney has done the work and is entitled to be paid, or expended costs and is entitled to be reimbursed. The exception to this requirement is a written agreement between attorney and client that the fee is earned upon receipt.

The Accused claims a fee agreement existed, presumably one which would have allowed her to take the fee upon receipt, but no such agreement was produced. Accordingly, the Panel concludes there is no such agreement. The Bar alleges that the fee was not deposited into a client trust account and the Panel accepts that allegation as true. Accordingly, the Panel finds the Accused violated DR 9-101(A).

6. The Accused violated RPC 8.1(a)(2) of the Rules of Professional Conduct.

RPC 8.1 requires that a lawyer involved in a disciplinary matter cooperate with the Bar in its investigation and evaluation of the claims against the lawyer. This ethical obligation to the profession is no less important than any other ethical duty. In this case, the Accused did not respond to the CAO's request for a response to Phillips's complaint. Her failure to do so violates RPC 8.1.

SANCTION

The ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered in determining the appropriate sanction. *In re Spencer,* 335 Or 71, 85–86, 58 P3d 228 (2002). 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.

Applying those standards to the instant action it is clear that:

1. The Accused violated duties to her client, the public, and the profession. *Standards,* §§ 4.1, 5.0, and 7.0.
2. The Accused's conduct is negligent.
3. The Accused has not caused actual injury to her client, the public, or the profession. *Standards*, p. 7

Preliminary Sanction Analysis. Without considering aggravating and mitigating circumstances, the following *Standards* are applicable:

Standards, § 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

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

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.

The final criteria to be considered before imposing sanctions are the existence of any aggravating or mitigating factors. *Standards,* §§ 9.22 and 9.32, respectively. In the instant action, several relevant factors are present including:

Aggravating Circumstances

a. Presence of a prior disciplinary record. *Standards,* § 9.32.
b. Multiple offenses. *Standards,* § 9.22(d).
c. Substantial experience in the practice of law. *Standards,* § 9.22(i).

Mitigating Circumstances

a. Family and professional pressures.
b. Physical and mental issues impairing her abilities.
c. Remorse and recognition of her wrongful conduct. *Standards,* § 9.32(*l*).

The aggravating factor which was most troubling to the Panel was the prior disciplinary record. In 1994 the Accused was admonished for neglecting a client's postconviction appeal. This is similar to the situation in Ayer. However, it also occurred ten (10) years prior to the conduct in Ayer. In the intervening time, the only evidence of client neglect is contained in claims of failing to communicate with the Bar. The Accused notes that the bulk of the actual complaints were dismissed, indicating the Bar found there was no merit to them. It appears the admonishment had

the desired effect and thereafter the Accused was diligent in attending to her clients' legal affairs.

The disciplinary record discloses two sanctions for failing to communicate with the Bar. In the instant action, the failure to respond to the Bar was limited to the Phillips claim.[1] There was no such allegation related to Ayer and, in fact, the Accused states that she was working with the Bar on Ayer which was being addressed at the same time as Phillips. A review of the prior discipline discloses that the Accused has a sporadic pattern of working with the Bar rather than refusing to do so. While the Panel notes, and agrees with, the Accused's recognition that the press of work is not an excuse for failing to respond, it also notes that the Accused was taking court-appointed criminal cases, which have short timelines and require quick turnaround. This required the Accused to balance the needs of her clients, frequently incarcerated, with the demands of the Bar. The Accused's failure to accommodate both clients and the Bar has led to a public reprimand and a 90-day suspension.

The written letter from the Accused details certain factors, not to excuse her behavior for she admits her neglect, but to explain it. Those factors include diabetes and Graves' disease, both of which contribute to tiredness and physical exhaustion. This was compounded by lack of sleep and worry over a son serving in Iraq. Additionally, the Accused has a history of chronic depression for which she is being treated. The Panel notes that all of these factors reduce the Accused's ability to function. The Panel also notes that they are largely factors outside the Accused's control.

The Panel finds there was no intent by the Accused with regard to Ayer, Phillips, or her failure to communicate with the Bar. The Panel also finds that the Accused realized she was neglecting the Ayer matter. The Panel does not believe the Accused made any misrepresentation to Ayer or that any of her actions were motivated by a dishonest or selfish motive.

The Bar argues that Ayer was injured by the uncertainty caused by the Accused's neglect and that the Bar was injured in that the Accused's failure to respond forced it to conduct an independent investigation to determine that the Phillips matter was without merit. The Panel finds that both arguments have merit.

The Panel has considered the argument that the loss of his right to pursue a *habeas corpus* claim is an injury to Ayer, but given the speculative nature of a successful *habeas corpus* proceeding, believes this damage claim is too speculative to be given much weight. The claim of damage as a result of the failure to deposit the retainer is not persuasive. The Accused was insured throughout this time such that Ayer would have had recourse to any misfeasance by the Accused.

[1] The Bar argues that the vulnerability of her clients was an issue as both were incarcerated. However, the Phillips matter is limited to failing to communicate with the Bar, neglect of a duty owed to the profession, not that owed to a client. Phillips's status is not a fact before the Panel and is not relevant to this inquiry.

CONCLUSION

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). Appropriate discipline deters unethical conduct. *In re Kirkman,* 313 Or 181, 188, 830 P2d 206 (1992).

The Panel finds nothing in the submissions to indicate unwillingness on the part of the Accused to meet her duties. There is evidence of difficulty in doing so but it appears that she is receiving treatment and recognizes the need to continue her efforts in this area.

The Bar has recommended a minimum two (2) year suspension. The Accused argues that eighteen (18) months would be an adequate sanction. The Panel has reviewed the documents submitted to it, the prior disciplinary history, and the authority cited in the Bar's trial memorandum. It has concluded that suspension is in order. However, going from a 90-day suspension to two (2) years seems excessive, especially in light of the claims which gave rise to this action. Upon review and discussion of the merits the Panel unanimously concluded that a twelve (12) month suspension is appropriate under the facts presented to it.

DATED this 17th day of July 2008.

/s/ Mary Kim Wood
Mary Kim Wood
Trial Panel Chair

/s/ Llewellyn Fischer
Llewellyn Fischer
Trial Panel Member

/s/ Martin Johnson, M.D.
Martin Johnson, M.D.
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 07-162 and 08-102
	)	
DERRICK E. McGAVIC,	)	
	)	
Accused.	)	

Counsel for the Bar:	Michael A. Lewis, Stacy J. Hankin
Counsel for the Accused:	Robert H. Fraser
Disciplinary Board:	None
Disposition:	Violation of DR 7-104(A)(1), RPC 3.5(b), RPC 4.2, and RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	September 21, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 7-104(A)(1), RPC 3.5(b), RPC 4.2, and RPC 8.4(a)(4).

DATED this 21st day of September 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 12, 1963, 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 January 3, 2008, a Formal Complaint was filed against the Accused in Case No. 07-162 (Richardson matter) pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 3.5(b), RPC 4.2, and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct. On August 15, 2008, the SPRB authorized formal disciplinary proceedings against the Accused in Case No. 08-102 (OSB matter) for alleged violation of DR 7-104(A)(1) of the Code of Professional Responsibility. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Case No. 07-162 (Richardson Matter)

Facts

5.

On May 2, 2007, the Accused, on behalf of a client, instituted a lawsuit against Susan Richardson (hereinafter "Richardson") for payment of an outstanding debt. On or about June 9, 2007, the Accused learned that Richardson had retained a lawyer to represent her in the lawsuit.

6.

On June 22, 2007, at a time when the Accused knew that Richardson was represented by a lawyer, one of the Accused's employees sent a letter directly to Richardson on the subject of the representation.

7.

On June 21, 2007, the Accused signed and sent a Notice of Intent to Apply for a Default in 10 days to Richardson's lawyer. On June 29, 2007, the Accused's office mailed an unsigned document entitled "Stipulated Ex Parte General Judgment and Plaintiff's Motion Thereon" to the court. A copy was not served on Richardson's lawyer.

8.

At the time the Accused's office filed the document described in paragraph 7 herein, the 10-day time limit for Richardson's lawyer to file a response in the lawsuit had not expired and, contrary to the representation in the document, Richardson had not signed a stipulation to entry of a general judgment.

9.

The court signed the improper judgment, discovered that it should not have been signed, and set the judgment aside *sua sponte.*

Violations

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, he violated RPC 3.5(b), RPC 4.2, and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct.

Case No. 08-102 (OSB Matter)

Facts

11.

In February 2003, the Accused obtained a default judgment against John Anliker (hereinafter "Anliker"). Thereafter, the Accused began efforts to collect on the judgment.

12.

On or about April 9, 2003, the Accused learned that Anliker had retained a lawyer to represent him in the collection matter.

13.

On June 17, 2003, one of the Accused's employees, after consulting with the Accused, made a telephone call to and spoke directly with Anliker on the subject of the representation.

Violations

14.

The Accused admits that, by engaging in the conduct described in paragraphs 11 through 13, he violated DR 7-104(A)(1) of the Code of Professional Responsibility.

Sanction

15.

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

a. *Duties violated.* The Accused violated duties he owed to the legal system not to engage in conduct prejudicial to the administration of justice and not to have improper communications with individuals in the legal system. *Standards,* §§ 6.1 and 6.3.

b. *Mental state.* The Accused acted negligently. Evidence provided indicates that the improper contacts occurred because of poor staff training and inadequate office procedures. As a result of these violations, the Accused has altered his office procedures and provided additional training to his employees.

c. *Injury.* The court sustained actual injury in the Richardson matter as it signed the improperly submitted General Judgment and then spent time and resources setting it aside. Richardson also sustained actual injury in that a General Judgment was improperly obtained against her. There was also the potential for injury to both Richardson and Anliker as a result of the improper communication.

d. *Aggravating circumstances.* The following aggravating circumstances exist:

    1. A pattern of misconduct. The Accused engaged in similar improper communication in multiple matters. *Standards,* § 9.22(c).

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

3. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1963. *Standards,* § 9.22(i).

e. *Mitigating circumstances.* The following mitigating circumstances exist:

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

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

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

16.

Under the *Standards,* reprimand is generally appropriate when a lawyer negligently engages in conduct prejudicial to the administration of justice, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards,* § 6.23. Reprimand is also appropriate when a lawyer is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of a legal proceeding. *Standards,* § 6.33.

17.

Oregon case law is in accord. See *In re Aylworth*, 22 DB Rptr 77 (2008) (reprimand imposed on lawyer who negligently submitted a proposed judgment to the court that contained inaccurate statements and then failed to serve a copy of the proposed judgment on the opposing lawyer); *In re Fitch*, 21 DB Rptr 311 (2007) (reprimand imposed on lawyer who negligently submitted a form of judgment to the court that contained inaccurate statements concerning the opposing party's position and failed to disclose that the opposing party objected to the form and content of the judgment); *In re Carusone,* 20 DB Rptr 231 (2006) (reprimand imposed on lawyer who communicated on the merits of a matter with the court without providing statutorily required notice to the opposing party); *In re Lewelling,* 296 Or 702, 707, 678 P2d 1229 (1984) (in the absence of other misconduct involving dishonesty or breach of trust, reprimand is appropriate where a lawyer improperly communicates with a represented person).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of DR 7-104(A)(1), RPC 3.5(b), RPC 4.2, and RPC 8.4(a)(4).

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 27th day of August 2008.

/s/ Derrick E. McGavic
Derrick E. McGavic
OSB No. 630543

EXECUTED this 3rd day of September 2008.

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. 07-47
	)	
MARK L. RUNNELS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	Ronald L. Roome, Chair Daracy Kindschy Thomas J. Maresh, Public Member
Disposition:	Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(a)(2), and RPC 8.4(a)(4). Trial Panel Opinion. One-year suspension.
Effective Date of Opinion:	October 7, 2008

TRIAL PANEL OPINION

PROCEDURAL HISTORY

This matter is before this Trial Panel of the Oregon State Bar Disciplinary Board on a Formal Complaint against the Accused, Mark L. Runnels.

The Formal Complaint in Case No. 07-47 was filed on August 21, 2007. A Notice to Answer, sent to the Accused, was also filed on that date. The Formal Complaint and the Notice to Answer were personally served upon Mr. Runnels on February 20, 2008.

Mr. Runnels did not file an Answer or make a formal appearance in the matter. On March 6, 2008, the Oregon State Bar gave notice of its intent to take a default judgment against Mr. Runnels by mailing notice to Mr. Runnels by first-class mail. The Oregon State Bar then filed a Motion for Order of Default on March 19, 2008, due to the failure of Mr. Runnels to Answer or otherwise appear in the action.

An Order of Default in this matter was signed on March 22, 2008, by Carl W. Hopp Jr., Esq., Region 1 Disciplinary Board Chairperson. That Order of Default recited as follows:

> IT IS HEREBY ORDERED that the Accused, Mark L. Runnels, is in default, that such default is hereby entered of record, and the allegations of the Bar's Formal Complaint are deemed true.

As a result of the Default taken against the Accused, it was not necessary to convene the Trial Panel for purposes of hearing factual testimony in this matter. The Trial Panel's role in this case, as a result of the default of the Accused, was to evaluate an appropriate sanction for the Accused's conduct.

The Oregon State Bar filed and served upon the Accused, on May 13, 2008, the Oregon State Bar's Memorandum Re: Sanction and Affidavit of ADC Amber Bevacqua-Lynott In Support of OSB's Memorandum Re: Sanction. Mr. Runnels did not respond to the Oregon State Bar's sanction memorandum and did not otherwise make an appearance in this action.

Neither the Oregon State Bar nor Mr. Runnels requested the Trial Panel to convene to hear testimony in order to evaluate whether a sanction was appropriate for the Accused's conduct.

The Trial Panel convened on July 9, 2008, to evaluate the appropriate sanction for the Accused's conduct. No testimony was taken. This Opinion represents the unanimous decision of the Trial Panel.

GENERAL NATURE AND SCOPE OF THE CHARGES

The Accused is charged with accepting an illegal fee, neglecting a legal matter for well over one year, and failing to withdraw from the representation of a client when his physical or mental condition materially impaired his ability to represent the client. The charges all represent violations of the Oregon State Bar Rules of Professional Responsibility.

For the reasons that follow, the Trial Panel is unanimous in concluding that the conduct of the Accused, Mark L. Runnels, warrants the sanction of suspension from the practice of law for one year.

SPECIFICS ACTS OF MISCONDUCT

The Region 1 Disciplinary Board Chair entered an Order of Default against the Accused. This means that the allegations in the Formal Complaint against Mr. Runnels are deemed true (BR 5.8 (a)). It is therefore not necessary to discuss the nature of the Accused's misconduct in the context of determining whether the Accused is guilty. Rather, the Accused's violations are discussed below in conclusory terms in the context of the Trial Panel's determination as to the appropriate sanction to be levied against the Accused.

Case No. 07-47. Mr. Runnels began representing Norma Webb in August 2005 as the Personal Representative of her deceased brother's estate. On November 22, 2005, the Accused accepted a $2,500 check issued from the Estate funds for his attorney fees without first obtaining prior Court approval. This constituted charging

or collecting an illegal fee in violation of the Oregon Rules of Professional Conduct, RPC 1.5(a).

From September 2005 through November 2006, a period extending over one year, Mr. Runnels failed to undertake necessary actions required to complete the Estate matter, and around March 2006 stopped opening all written correspondence sent to him related to the Estate. This conduct constituted neglect of a legal matter, failure to keep a client reasonably informed, failure to reasonably explain the matter so that the client can make informed decisions, and conduct prejudicial to the administration of justice. This conduct violated the Oregon Rules of Professional Conduct, RPC 1.3, 1.4(a), 1.4(b), and 8.4(a)(4).

Mr. Runnels was suffering from a physical or mental condition between March 2006 and June 2007 that materially impaired his ability to represent Webb. He was unable to even open mail related to the Estate matter. This constituted a failure to withdraw from representation when the Accused's physical or mental condition materially impaired his ability to represent his client. This was a violation of the Oregon Rules of Professional Conduct, RPC 1.16(a)(2).

SANCTIONS

As a result of the default by Mr. Runnels the facts of the underlying Rule violations, as set forth in the Formal Complaint, are deemed to be true. BR 5.8(a); *In re Kluge,* 332 Or 251, 27 P3d 102 (2001).

The Trial Panel considered the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"), Oregon case law, and the Oregon State Bar's Memorandum Re: Sanction filed in this matter. The *Standards* set out the factors for the Trial Panel to consider in its evaluation of the Accused conduct: (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.

1. *Duties violated*. The Accused, Mark L. Runnels, violated his duties to his client to avoid taking an illegal fee, to diligently attend to her legal matter, to communicate with her regarding the status of the matter, and to avoid conflicts of interest. *Standards,* §§ 4.3 and 4.4. The most important ethical duties are the obligations a lawyer owes to his clients. *Standards,* § 5. The Accused also violated his duties to the legal system in not expediting the handling of the Estate, and his conduct was prejudicial to the administration of justice in charging an improper fee. *Standards,* §§ 6.2 and 7.0.

2. *Mental state*. The Trial Panel determined that the Accused acted knowingly or intentionally. The Accused knowingly or intentionally accepted a fee in the absence of Court approval. He knowingly neglected his client's matter, and he knowingly failed to communicate with his client. The Accused also knowingly failed to withdraw from the representation when he knew that his ability to represent his client was impaired.

The relevant definitions from the *Standards*, § 7, applicable here are:

> "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.

3. *Actual or potential injury*. There was actual injury in this case as a result of the conduct of the Accused. Webb was found in contempt of Court as a result of the Accused's inaction. Webb was sanctioned at the rate of $100 per day for failure to comply with the Court order. Webb was not notified of the Court Order for a considerable period of time. The Court was forced to make extra effort to move the Estate towards completion, due to the failure of the Accused to prosecute the matter. The Estate is apparently still not closed, but may well have been closed by this time if the Accused had provided timely and adequate representation to Webb.

There was also potential injury to the Estate and to Webb when the Accused accepted a fee without the required Court approval.

4. *Sanctions and aggravating or mitigating circumstances*. The Standards set out the appropriate level of sanctions, absent aggravating or mitigating circumstances:

> Suspension is generally appropriate when:
>
> (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client or
>
> (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standards, § 4.42

Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or party, or causes interference or potential interference with a legal proceeding. *Standards,* § 6.22.

Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client. *Standards,* § 4.32.

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional (charging or collecting illegal fees), and causes injury or potential injury to a client, the public or the legal system. *Standards,* § 7.2.

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional (charging or collecting illegal fees), with the intent to obtain a benefit for the lawyer, and causes serious or potentially serious injury to a client, the public or the legal system. *Standards,* § 7.1.

The Accused had an ethical duty to pursue his client's matter and to timely and reasonably communicate with her about that matter. He also had a duty not to charge an illegal fee and not to prejudice the administration of justice. When he was unable to cope with the requirements of representing his client, the Accused had a duty to withdraw from representation. Knowingly disregarding and failing to comply with these ethical obligations resulted in substantial actual and/or potential injury to his client, to the Estate, and to the Court.

The only mitigating factor is the absence of a prior disciplinary record for the Accused. *Standards,* § 9.32(a).

Aggravating circumstances in this matter include the Accused's substantial experience in the practice of law. *Standards,* § 9.22(i). Mr. Runnels was admitted to practice law in the state of Oregon in 1980. Additionally, multiple offenses were charged against the Accused in this matter. *Standards,* § 9.22(d). The Accused also failed to participate in this formal proceeding against him. *Standards,* § 9.22(e). Finally, it appears that the Accused obtained his attorney fees without Court approval for his own benefit. *Standards,* § 9.22(b).

SANCTIONS IMPOSED

The purpose of sanctions is "to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system and the legal profession." *Standards,* § 1.1; *In re Stauffer,* 327 Or 44, 66, 956 P2d 967 (1998). The Trial Panel unanimously concluded that, in order to protect the public and the Oregon State Bar, the Accused should be suspended from the practice of law for one year.

ORDER

For the foregoing reasons,

IT IS HEREBY ORDERED that the Accused, Mark L. Runnels, be SUSPENDED from the practice of law in the state of Oregon for a period of one year.

DATED this 31st day of July 2008.

/s/ Ronald. L. Roome
Ronald. L. Roome
OSB No. 880976
Panel Chair

DATED this 31st day of July 2008.

/s/ Thomas J. Maresh
Thomas J. Maresh
Public Member

DATED this 4th day of August 2008.

/s/ Darcy A. Kindschy
Darcy A. Kindschy
OSB No. 973044
Panel Member

Cite as 345 Or 350 (2008)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
Ronald D. Schenck,	)
	)
Accused.	)

(OSB Nos. 05-127, 05-128; SC S054585)

En Banc

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

Argued and submitted March 6, 2008. Decided October 9, 2008.

Ronald D. Schenck, Wallowa, argued the cause and filed the briefs *in propria persona*.

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

PER CURIAM

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

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar (Bar) charged Ronald D. Schenck (the Accused) with violating Code of Professional Responsibility Disciplinary Rules (DR) 1-102(A)(3) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 5-101(A)(1) (prohibiting conflict of lawyer's self-interest); DR 5-101(B) (barring preparation of instrument giving lawyer or person related to lawyer any substantial gift from unrelated client); DR 5-104(A) (limiting business relations with client); DR 5-105(E) (prohibiting multiple current client conflict of interest); and Oregon Rules of Professional Conduct (RPC) 8.1(a)(2) (requiring response to lawful demand for information from disciplinary authority). The record establishes, by clear and convincing evidence, that the Accused violated the rules identified by the trial panel. We also agree with the trial panel's conclusion that the Accused should be suspended for one year.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-69
	)	
ROGER J. LEO,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violation of DR 5-105(C) and DR 5-105(E). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	October 12, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

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

DATED this 12th day of October 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

3.

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

4.

On July 17, 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 5-105(C), DR 5-105(E), RPC 8.1(a)(1), 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.

From about 1976 until about November 1997, the Accused undertook to advise and represent Taylor Electric Supply, Inc., in legal matters including construction lien litigation and credit and collections policies and practices. In about November 1997, Taylor Electric Supply was acquired by Summers Group, Inc., and became Rexel Taylor (hereinafter "REXEL"), and the Accused continued to advise and represent REXEL in similar matters until August 2003.

6.

In late October 2002, a REXEL employee referred the Accused to and the Accused undertook to advise and represent Northwest Electrical Specialties, Inc.

(hereinafter "NWES"), an entity that purchased electrical supplies from REXEL and had open credit accounts with amounts owed to REXEL.

7.

At the time the Accused undertook the representation the Accused was informed that NWES was current on its accounts with REXEL. After the Accused undertook to represent NWES, NWES became delinquent on payments to REXEL on several accounts while the Accused continued to represent REXEL.

8.

In or around May and June 2003, the Accused assisted the principals in NWES to form Northwest Electrical Group, Inc. (hereinafter "NWEG"), and Northwest Mechanical Specialties, Inc. (hereinafter "NWMS"), as separate entities, in part, to carry on business that would formerly have been carried on by NWES. The Accused should have known that he was assisting NWES to take action potentially adverse to NWES's creditor REXEL at a time when he continued to represent REXEL in unrelated matters.

9.

In or about March 2004, REXEL filed an action for payment and construction lien foreclosure against NWES. The Accused undertook to defend NWES in the action although the Accused knew or should have known that his former representation of REXEL provided him with confidences and secrets that would likely inflict injury or damage upon REXEL.

10.

Insofar as consent from NWES and REXEL was available to enable the Accused to represent NWES, after full disclosure to each client, the Accused failed to obtain such consent.

Violations

11.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 10, he violated DR 5-105(C) and DR 5-105(E) of the Code of Professional Responsibility. Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 8.1(a)(1) and RPC 8.4(a)(3) should be and, upon the approval of this stipulation, are dismissed.

Sanction

12.

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

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

a. *Duties violated.* The Accused violated his duty to his clients to avoid conflicts of interest. *Standards,* § 4.3.

b. *Mental state.* The Accused negligently failed to recognize the likely current client conflict between the interests of REXEL and NWES because he was focused on the benefit both companies could derive from his representation of NWES in collections and construction matters. Regarding the former client conflict, the Accused was focused on other aspects of NWES's defense in the payment and foreclosure action, and negligently failed to realize that confidences and secrets he learned from REXEL could be damaging to REXEL in the action.

c. *Injury.* The Accused caused potential injury in that REXEL was exposed to the possibility of its confidences and secrets being used in a manner that would embarrass, damage, or injure REXEL. The Accused caused actual injury in that REXEL was required to move to disqualify the Accused from representing NWES in the payment and foreclosure action and NWES was required to obtain new counsel.

d. *Aggravating circumstances.* Aggravating circumstances include:

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

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

e. *Mitigating circumstances.* Mitigating circumstances include:

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

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

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

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

13.

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

14.

Oregon case law is in accord. Where a lawyer has knowingly violated conflict of interest rules but mitigating factors outweighed aggravating factors, the court has imposed a public reprimand. *See, e.g., In re Howser,* 329 Or 404, 987 P2d 496 (1999). Where a lawyer has negligently violated DR 5-105(C) and DR 5-105(E) and

the mitigating factors outweighed the aggravating factors, the Disciplinary Board has imposed a public reprimand. *See, e.g.*, *In re Drake*, 18 DB Rptr 225 (2004).

15.

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

16.

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

EXECUTED this 23rd day of September 2008.

/s/ Roger J. Leo
Roger J. Leo
OSB No. 731795

EXECUTED this 25th day of September 2008.

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. 07-134
	)	
GREGORY P. BARTON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	Susan D. Isaacs
Disciplinary Board:	None
Disposition:	Violation of DR 1-102(A)(2). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	October 12, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of DR 1-102(A)(2).

DATED this 12th day of October 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Gregory P. Barton, 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 22, 1995, and has been a member of the Oregon State Bar continuously since that time. The Accused has since August 1999 maintained his office and place of business in Multnomah County, Oregon.

3.

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

4.

On October 12, 2007, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of ORS 9.527(2) and DR 1-102(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.

In August 2006, the Accused and his spouse were medical marijuana cardholders pursuant to the Oregon Medical Marijuana Act (hereinafter "OMMA"). The OMMA permitted the Accused to grow marijuana at his residence in limited allotments for medicinal use by the Accused and his spouse.

6.

On or about August 25, 2006, law enforcement officers checked the Accused's duly registered marijuana grow site and discovered an excess of marijuana plants at the site.

7.

At all relevant times, ORS 475.864 provided as follows; "(1) It is unlawful for any person knowingly or intentionally to possess marijuana. (2) Unlawful possession of marijuana is a Class B felony. (3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation if the amount possessed is less than one avoirdupois ounce [. . .]."

8.

The Accused admits that on August 25, 2006, he knowingly possessed a mixture or substance containing marijuana that was in excess of the combined OMMA allotments of the Accused and his spouse, and the excess marijuana weighed over one avoirdupois ounce. On or about March 28, 2007, a judgment of conviction for the felony of Unlawful Possession of Marijuana, in violation of ORS 475.864(2) was entered against the Accused by plea in *State v. Gregory Paul Barton,* Multnomah County Circuit Court Case No. 060935225. On or about April 8, 2008, the felony conviction was reduced to a misdemeanor after the Accused successfully completed a one-year period of probation.

Violations

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated DR 1-102(A)(2). The parties agree that based upon the reduction of the felony conviction to a misdemeanor, the charge of an alleged violation of ORS 9.527(2) has been dismissed by the State Professional Responsibility Board.

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 maintain personal integrity. *Standards,* § 5.1.

b. *Mental state.* The Accused knew that he grew and possessed marijuana in excess of his allotment pursuant to the Oregon Medical Marijuana Program.

c. *Injury.* The Accused's conduct cast a negative light on the profession and on the Oregon Medical Marijuana Program.

d. *Aggravating circumstances.* There are no applicable aggravating circumstances.

e. *Mitigating circumstances.* Mitigating circumstances include:

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

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

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

4. Imposition of other penalties or sanctions in the criminal case arising from the same facts. *Standards,* § 9.32(k). The Accused was sentenced to serve a period of probation and to perform 80 hours community service.

11.

Prior to the consideration of aggravating or mitigating circumstances, the ABA *Standards,* § 5.12, generally recommend suspension where a lawyer knowingly engages in criminal conduct that seriously adversely reflects on the lawyer's fitness to practice, but which does not contain the elements listed in *Standards,* § 5.11(a), such as trafficking in controlled substances or dishonesty, fraud, deceit, or misrepresentation. *Standards,* § 5.12. Since there are no aggravating circumstances and several mitigating circumstances in the present matter, reprimand may be appropriate.

12.

The Oregon Supreme Court has suspended lawyers engaged in felony possession or trafficking in controlled substances. *See, e.g., In re Allen,* 326 Or 107, 120–124, 949 P2d 710 (1997) (lawyer violated DR 1-102(A)(2) where lawyer's conduct constituted possession of a controlled substance and it caused substantial actual injury to another); *In re Taylor,* 316 Or 431, 435, 851 P2d 1138 (1993) (citing the recommendation of the *Standards* that disbarment is generally appropriate for trafficking in controlled substances). Although the Accused's conduct of registering in the Oregon Medical Marijuana Program and then knowingly disregarding the limitations under the program reflects adversely on his fitness to practice, there was no allegation of trafficking and little actual or potential injury. There are several mitigating factors in the case and no aggravating factors. Lawyers who have engaged in criminal conduct not arising from the practice of law have received reprimands on prior occasions where the mitigating factors have outweighed the aggravating factors. *See, e.g., In re Flannery,* 334 Or 224, 47 P3d 891 (2002) (lawyer reprimanded for conviction of making a false application for a driver license where mitigating factors outweighed aggravating factors).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 1-102(A)(2), the sanction to be effective upon approval of this stipulation.

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 15th day of September 2008.

/s/ Gregory P. Barton
Gregory P. Barton
OSB No. 95208

EXECUTED this 22nd day of September 2008.

OREGON STATE BAR

By: /s/ Linn D. Davis
Linn D. Davis
OSB No. 03221
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-171
	)	
JAMES DODGE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Barry J. Goehler, Martha M. Hicks
Counsel for the Accused:	Robert J. Gunn
Disciplinary Board:	None
Disposition:	Violations of RPC 3.4(c) and RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	October 12, 2008

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 3.4(c) and RPC 8.4(a)(4).

DATED this 12th day of October 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

James Dodge, 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 22, 1983, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On March 13, 2008, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violations of RPC 3.4(c) and RPC 8.4(a)(4) 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.

In 2004, the Accused undertook to represent Brian Newman (hereinafter "Newman") who was seeking workers' compensation benefits from his employer. In conjunction with the representation, the Accused and Newman participated in the mediation of Newman's workers' compensation claims. The mediator was an administrative law judge of the Workers' Compensation Board.

6.

Prior to mediation, the Accused, Newman, and Newman's employer (who was unrepresented) executed a Mediation Confidentiality Agreement which provided, in relevant part, as follows:

> Mediation communications will be confidential. Mediation communications include all memoranda, work products and other materials contained in the mediator's mediation file, and oral or written communications made on or in connection with this mediation which are not otherwise independently obtained.

7.

At all relevant times herein, ORS 36.224(5) provided that communications in any mediation regarding a claim for workers' compensation benefits pursuant to rules adopted by the Workers' Compensation Board are confidential.

8.

During the course of the workers' compensation mediation, the parties discussed allegations by Newman of employment discrimination by the employer, and the employer made a substantial monetary offer to settle all Newman's claims relating to his employment. Newman rejected this offer. After the mediation concluded, the employer made no further settlement offers, and the parties did not continue to negotiate Newman's claims of employment discrimination.

9.

In or about July 2005, the Accused undertook to represent Newman in an administrative proceeding with the Civil Rights Division of the Oregon Bureau of Labor and Industries (hereinafter "BOLI") concerning the employment discrimination claims Newman raised in the workers' compensation mediation. Thereafter, BOLI undertook to investigate and determine whether there was substantial evidence to support Newman's claims.

10.

On or about July 31, 2006, the Accused knowingly disclosed to BOLI's investigator that Newman's employer had offered to settle all Newman's employment claims, including his discrimination claims, during the workers' compensation mediation. The Accused also disclosed the amount of the employer's settlement offer.

Violations

11.

The Accused admits that, by engaging in the conduct described in this stipulation, he violated RPC 3.4(c) and RPC 8.4(a)(4) of the Oregon Rules of Professional Conduct.

Sanction

12.

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

Lawyer Sanctions (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 the legal system to meet an obligation under the rules of a tribunal. *Standards,* § 6.2.

b. *Mental state.* The Accused acted negligently. *Standards,* at 7.

c. *Injury.* The Accused caused little actual injury to Newman's employer, but releasing confidential information acquired in a workers' compensation mediation to third persons had the potential to injure the employer in the BOLI investigation and to injure the integrity of the workers' compensation mediation process. *Standards,* at 6.

d. *Aggravating factors.* Aggravating factors include:

   1. The Accused has a prior record of discipline. In 2002, the Accused was suspended for two years, with 21 months stayed pending the completion of a two-year probation, for violations of DR 1-102(A)(3), DR 1-102(A)(4), DR 2-106(A), DR 2-110(A)(2), DR 2-110(B)(4), DR 6-101(A), DR 6-101(B), DR 7-101(A)(2), DR 9-101(C)(3), and DR 9-101(C)(4). *In re Dodge*, 16 DB Rptr 278 (2002). *Standards,* § 9.22(a).

   2. The Accused has substantial experience in the practice of law, having been admitted to the Bar in 1983. *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 displayed a cooperative attitude toward these proceedings. *Standards,* § 9.32(e).

13.

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

14.

Decisions of the Disciplinary Board also suggest that a public reprimand is an appropriate sanction under the circumstances of this case. *See In re Bean,* 20 DB Rptr 157 (2006) (public reprimand for violations of RPC 3.3(d) and RPC 8.4(a)(4)); *In re Carusone,* 20 DB Rptr 231 (2006) (public reprimand for violations of DR 1-102(A)(4) and DR 7-110(B)(2) and (3)); *In re Foley*, 19 DB Rptr 205 (2005)

(public reprimand for violations of DR 1-102(A)(4) and DR 7-106(C)(7)); and *In re Egan*, 13 DB Rptr 96 (1999) (public reprimand for violations of DR 1-102(A)(4), 7-102(A)(1), and DR 7-106(A)).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of RPC 3.4(c) and RPC 8.4(a)(4).

16.

On or before December 1, 2008, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of $327.15, incurred for the Accused's deposition. Should the Accused fail to pay $327.15 in full by December 1, 2008, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

17.

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

DATED this 1st day of October 2008.

/s/ James Dodge
James Dodge
OSB No. 830337

OREGON STATE BAR

By: /s/ Martha M. Hicks
Martha M. Hicks
OSB No. 751674
Assistant Disciplinary Counsel

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 08-88
	)	
JOHN MICHAEL UNFRED,	)	
	)	
Accused.	)	

Counsel for the Bar:	Mary A. Cooper
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 1.3, RPC 1.4(a), and RPC 1.5(a). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	October 12, 2008

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 1.3, RPC 1.4(a), and RPC 1.5(a).

DATED this 12th day of October 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

John Michael Unfred, 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 15, 1989, and has been a member of the Oregon State Bar continuously since that time. The Accused practiced for four years as an Air Force Judge Advocate and has practiced in Marion County, Oregon, since 1994.

3.

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

4.

On July 12, 2008, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.3, RPC 1.4(a), and RPC 1.5(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.

Phyllis Barney ("Barney") hired the Accused in April 2006 to handle a dissolution action. Barney paid the Accused a retainer of $1,125.00, and signed a retainer agreement providing that she would be billed at the rate of $131.25 per hour. The agreement specifically noted that Barney was receiving a discounted hourly rate (from the Accused's regular rate of $175.00 per hour), because of a contract that the Accused had signed with Barney's employee assistance program.

6.

Over the course of the representation, which lasted approximately a year, the Accused billed Barney at the undiscounted rate of $175.00 per hour. In June 2007, after becoming dissatisfied with the Accused's inactivity on her case, Barney fired

the Accused and demanded that he return her entire retainer. After Barney filed a complaint with the Bar, the Accused refunded all of Barney's retainer.

7.

Between April 2006, when the Accused was retained to represent Barney, and January 2007, the Accused was active on her case. However, after January 2007—although Barney telephoned and e-mailed the Accused repeatedly with questions and requests for action—she received only occasional, nonsubstantive responses from the Accused's paralegal.

8.

Unbeknownst to Barney, the Accused was not receiving the telephone calls and e-mails she was placing to his office. Rather, the Accused's paralegal was intercepting these communications and failing to pass them along. The Accused was unaware that Barney was trying to contact him until Barney terminated his services in June 2007.

9.

The Accused did no work on Barney's case between January 2007 and June 2007. He did not communicate with Barney during this time.

Violations

10.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 9, he violated RPC 1.3 (neglect of a legal matter) and RPC 1.4(a) (duty to keep client reasonably informed about the status of their matter and promptly comply with reasonable requests for information).

11.

The Accused also admits that he billed Barney at the rate of $175.00, rather than the discounted rate of $131.25, agreed upon in the retainer agreement. The Accused acknowledges that under RPC 1.5(a) the difference in rates is characterized as a clearly excessive fee and does not contest the Bar's characterization of his conduct as a violation of RPC 1.5(a), although he ultimately refunded her entire retainer.

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. *Duties violated.* The Accused violated his duty to his client to act diligently on her case and to communicate adequately with her. *Standards,* § 4.4. He also violated his duty to the profession to refrain from charging a clearly excessive fee. *Standards,* § 7.0.

b. *Mental state.* The Accused acted negligently in failing adequately to supervise his staff and instruct them on their duties with respect to his clients. The *Standards* define conduct as "negligent" if the lawyer has failed to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation.

c. *Injury.* The Accused's conduct caused at least potential injury to the client in that her dissolution was left unattended for several months. The *Standards* define "potential injury" as the harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's misconduct. *Standards,* at 7.

d. *Aggravating circumstances.* Aggravating circumstances include the Accused's substantial experience in the practice of law. *Standards,* § 9.22(i).

e. *Mitigating circumstances.* Mitigating circumstances include the absence of a prior disciplinary record (*Standards,* § 9.32(a)); the absence of a dishonest or selfish motive (*Standards,* § 9.32(b)); the Accused's personal or emotional problems (*Standards,* § 9.32(c)); a timely good faith effort to make restitution or rectify consequences of misconduct—that is, the Accused's refund of Barney's entire retainer (*Standards,* § 9.32(d)); and a cooperative attitude toward proceedings (*Standards,* § 9.32(e)).

13.

Under the *Standards,* a public reprimand is generally appropriate when the lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards,* § 4.43. A public reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession (e.g., to charge reasonable fees) and causes injury or potential injury to a client, the public, or the legal system. *Standards,* § 7.3.

14.

Oregon case law supports the imposition of a public reprimand in cases in which a lawyer has negligently failed to represent a client with reasonable diligence and/or negligently charged a clearly excessive fee. In *In re Benjamin M. Karlin,* 21

DB Rptr 75 (2007), a lawyer who negligently failed to act on a spousal support matter was publicly reprimanded. The neglect occurred over a five-month period, and also included a failure to communicate adequately with the client. Likewise, in *In re Jon Springer*, 21 DB Rptr 294 (2007), a lawyer who negligently failed to act promptly or to communicate adequately with his client in a criminal matter (over a period of about seven months), and who also negligently mishandled his client's funds, was publicly reprimanded.

15.

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 1.5(a), the sanction to be effective immediately.

16.

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

EXECUTED this 17th day of September 2008.

/s/ John Michael Unfred
John Michael Unfred
OSB No. 893730

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. 08-71
	)	
MICHAEL E. FARTHING,	)	
	)	
Accused.	)	

Counsel for the Bar:	Stacy J. Hankin
Counsel for the Accused:	John Fisher
Disciplinary Board:	None
Disposition:	Violation of RPC 1.4(a). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	October 19, 2008

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 1.4(a).

DATED this 19th day of October 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Michael E. Farthing, 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 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 June 2, 2008, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter "SPRB"), alleging violation of RPC 1.4(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 2005, the Accused undertook to represent Albert and Colette Esgate (hereinafter "the Esgates") in a land use matter. In March 2007, the Accused filed a lawsuit on behalf of the Esgates. On December 12, 2007, the Accused withdrew from representing the Esgates.

6.

Between August 30, 2007, and December 11, 2007, the Esgates left numerous telephone messages and sent numerous e-mails to the Accused requesting information about the status of their legal matter. The Accused failed to promptly respond to the Esgates' inquiries.

Violations

7.

The Accused admits that, by engaging in the conduct described in paragraphs 5 and 6, he violated RPC 1.4(a) of the Oregon Rules of Professional Conduct.

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. *Duties violated.* The Accused violated his duties to act with reasonable diligence and promptness in representing the Esgates. *Standards*, § 4.4.

b. *Mental state.* Initially, the Accused acted negligently. However, by mid-October 2007, the Accused knew that he had not responded to the Esgates' numerous inquiries.

c. *Injury*. The Esgates sustained actual injury in the form of frustration stemming from the Accused's failure to respond to their inquiries. *In re Knappenberger II*, 337 Or 15, 31, 90 P3d 614 (2004); *In re Schaffner II*, 325 Or 421, 426–427, 939 P2d 39 (1997).

d. *Aggravating circumstances.* The following aggravating circumstance exists:

   1. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1974. *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. Personal or emotional problems. The Accused, a recovering alcoholic, provided evidence that during the relevant period of time he experienced marital difficulties and began binge drinking. The Accused also provided evidence that in the fall of 2007, he voluntarily entered and completed treatment for alcohol abuse, and that he continues to participate in follow-up care. *Standards*, § 9.32(c).

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

5. Remorse. The Accused promptly apologized to the Esgates for his failure to respond to their inquiries. *Standards,* § 9.32(m).

9.

Under the *Standards,* suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards,* § 4.42. 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.

10.

Generally, lawyers who knowingly neglect a legal matter are suspended for 60 days. *In re Redden*, 342 Or 393,153 P3d 113 (2007) (60-day suspension imposed on lawyer who knowingly neglected a legal matter for nearly two years); *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996) (60-day suspension imposed on lawyer who failed to act on his client's behalf, failed to return their telephone calls, and failed to communicate important information to them).

However, where, as in this case, the mitigating circumstances substantially outweigh the aggravating circumstances, a reprimand is the more appropriate sanction. *In re McBride*, 21 DB Rptr 19 (2007), and *In re Hughes*, 21 DB Rptr 1 (2007) (reprimand imposed on lawyers who knowingly neglected one or more matters where mitigating circumstances far outweighed aggravating circumstances). The Accused's more than 30-year unblemished disciplinary record is a substantial mitigating circumstance. *In re Schaffner*, 323 Or at 480.

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.4(a).

12.

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

EXECUTED this 6th day of October 2008.

/s/ Michael E. Farthing
Michael E. Farthing
OSB No. 740919

EXECUTED this 8th day of October 2008.

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. 08-65
	)	
TIMOTHY E. NIELSON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	Clayton H. Morrison
Disciplinary Board:	None
Disposition:	Violations of RPC 1.3 and RPC 1.4(a). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	October 19, 2008

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 and RPC 1.4(a).

DATED this 19th day of October 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

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

STIPULATION FOR DISCIPLINE

Timothy E. Nielson, 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 January 22, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Washington County, Oregon.

3.

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

4.

On July 10, 2008, 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) and RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and comply with reasonable requests for information). 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 September 2004, Garry and Jan Thomson (collectively "the Thompsons") hired the Accused to file for bankruptcy relief. The Accused created a Chapter 13 bankruptcy plan for the Thompsons, and the court confirmed it.

6.

Beginning in early 2006, the Thompsons fell behind on their mortgage payments. Their mortgage company was subsequently granted relief from the bankruptcy stay and initiated foreclosure proceedings in July 2006.

7.

In response to the foreclosure proceedings, the Accused advised the Thompsons to convert their Chapter 13 bankruptcy to a Chapter 7 bankruptcy. The Thompsons agreed, and on July 21, 2006, the Accused filed a Motion to Convert Case to Chapter 7 with the bankruptcy court.

8.

On July 24, 2006, the court issued a notice of intent to deny the Thompsons' conversion to a Chapter 7 bankruptcy. The Thompsons immediately discussed this situation with the Accused, who agreed to petition the court to convert their case back to a Chapter 13 bankruptcy on July 31, 2006.

9.

Thereafter, the Accused took no substantive action on behalf of the Thompsons and the bankruptcy was dismissed by the bankruptcy court.

10.

Between July 28, 2006, and October 27, 2006, the Accused failed to respond to the Thompsons' attempts to contact him or substantively communicate with them regarding their bankruptcy.

Violations

11.

The Accused admits that his failure to take steps to reinstate the Thompsons' Chapter 13 bankruptcy, despite his representation that he would do so and despite the Thompsons' inquiries, constituted neglect of a legal matter, in violation of RPC 1.3. The Accused further admits that his failure to respond to the Thompsons' inquiries for several months constituted a failure to keep his clients reasonably informed about the status of their matter and promptly comply with reasonable requests for information, in violation of RPC 1.4(a).

Sanction

12.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following 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 of diligence to his client. *Standards,* § 4.4. The *Standards* presume that the most important ethical

duties are those obligations which a lawyer owes to his clients. *Standards,* at 5.

b. *Mental state.* The Accused initially acted negligently, but later acted knowingly in failing to take action on behalf of and in avoiding the Thompsons. Negligence is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards,* at 9.

c. *Injury.* Injury can be actual or potential. The Thompsons were actually and potentially injured by the dismissal of their bankruptcy. While they may still have some rights or recourse to pursue a bankruptcy filing, they were left without a bankruptcy case or protection with respect to their creditors. They were also out the money and the time expended on the bankruptcy filing handled by the Accused. The Thompsons were also actually injured by the Accused's lack of communication measured in terms of the time, anxiety, and aggravation, in attempting to coax cooperation from the Accused. *In re Arbuckle,* 308 Or 135, 140, 775 P2d 832 (1989).

d. *Aggravating circumstances.* Aggravating circumstances include:

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

2. The Accused has substantial experience in the practice of law. *Standards,* § 9.22(i). He was admitted in Oregon in 1996.

e. *Mitigating circumstances.* Mitigating circumstances include:

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

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

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

4. The Accused has expressed remorse for his handling of the Thompsons' matter. *Standards,* § 9.32(*l*).

13.

Under the *Standards,* a reprimand or suspension is generally appropriate when a lawyer negligently or knowingly fails to perform services for a client and causes injury or potential injury. *Standards,* §§ 4.42(a) and 4.43.

14.

Oregon cases reveal that both reprimands and suspensions have issued for misconduct similar to the Accused's conduct. However, suspensions have generally been imposed for prolonged periods of neglect and/or multiple acts. *See, e.g., In re Redden,* 342 Or 393, 153 P3d 113 (2007) (60-day suspension for attorney's failure to complete a child support matter for nearly two years, despite lack of prior discipline); *In re Coyner,* 342 Or 104, 149 P3d 1118 (2006) (three-month suspension where attorney took no action on court-appointed appeal for nearly a year, allowed the appeal to be dismissed, and failed to disclose dismissal to the client); *In re Knappenberger,* 337 Or 15, 90 P3d 614 (2004) (90-day suspension where attorney abandoned client's appeal after oral argument and failed to respond to inquiries); *In re Obert,* 336 Or 640, 89 P3d 1173 (2004) (30-day suspension for attorney's delay and failure to communicate status and other important information in three separate matters); *In re LaBahn,* 335 Or 357, 67 P3d 381 (2003) (60-day suspension for attorney's failure to effect timely service on defendants, resulting in dismissal, and attorney's subsequent failure to notify his client of the dismissal for over a year).

Where, as here, the neglect was not prolonged, the injury was not severe, and the lawyer was not previously disciplined for similar misconduct, a public reprimand has generally been found sufficient. *See, e.g., In re MacNair,* 21 DB Rptr 316 (2007) (lawyer received reprimand for failing to communicate with criminal client for several months, or provide client with amended order that was the subject of the representation); *In re Karlin,* 21 DB Rptr 75 (2007) (lawyer failed to timely serve divorce on behalf of one client for a few months and took no substantial action on a spousal support modification for another client over a few months, despite client inquiries); *In re Bisaccio,* 21 DB Rptr 35 (2007) (lawyer was reprimanded for failing to provide the court requested documentation in connection with a conservatorship for several years, despite requests, but where the conservatorship did not suffer any actual injury); *In re McBride,* 21 DB Rptr 19 (2007) (reprimand where lawyer took no action on a bank garnishment for several months).

15.

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

16.

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

EXECUTED this 8th day of October 2008.

/s/ Timothy E. Nielson
Timothy E. Nielson
OSB No. 960161

EXECUTED this 14th day of October 2008.

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. 06-17
	)	
CHRISTOPHER K. SKAGEN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott, Martha Hicks
Counsel for the Accused:	None
Disciplinary Board:	David W. Green, Chair Lee Wyatt Howard Freedman, Public Member
Disposition:	Violation of RPC 1.15-1(a) and RPC 1.15-1(c). Trial Panel Opinion. 18-month suspension.
Effective Date of Opinion:	October 21, 2008

OPINION OF THE TRIAL PANEL

This matter came regularly before a trial panel of the Disciplinary Board consisting of David W. Green, Esq., Chair; Lee Wyatt, Esq.; and Howard Freedman, Public Member, on June 24 and 25, 2008, at offices situated at 900 SW Fifth Avenue, Portland, Oregon. Amber Bevacqua-Lynott and Martha Hicks represented the Oregon State Bar. The Accused represented himself, pro se.

The Trial Panel has considered the pleadings, trial memoranda, and arguments of counsel. The Trial Panel also considered all testimony and exhibits that were presented by the parties. Based on the findings and conclusions made below, we find that the Accused violated RPC 1.15-1(a) and RPC 1.15-1(c). We further determine that the Accused should be suspended from the practice of law for a period of 18 months.

INTRODUCTION

The Complaint: A Formal Complaint was filed on March 22, 2007, against the Accused that asserted violations of the Oregon Rules of Professional Conduct (RPC). The Oregon State Bar (hereinafter "the Bar") claimed that in numerous instances the Accused failed to deposit and maintain client trust money in his lawyer trust account until earned, violating RPC 1.15-1(c), which provides: "A lawyer shall deposit into

a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred."

The Bar claimed that the Accused failed to keep sufficient records of client funds, resulting in his inability to account for client funds in his possession, violating RPC 1.15-1(a), which provides in relevant part:

> A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses . . . shall be kept in a separate "Lawyer Trust Account" * * * . Complete records of such account funds * * * shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

The Bar claimed that the Accused failed to respond to lawful demands for information by the Disciplinary Counsel's Office (DCO) and by the Multnomah County Local Professional Responsibility Committee (the LPRC) in connection with this disciplinary matter, violating RPC 8.1(a)(2), which provides: "[A] lawyer * * * in connection with a disciplinary matter, shall not knowingly fail to respond to [a] * * * lawful demand for information from [a] . . . disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 [attorney-client privilege]."

The Answer: An Answer was filed on February 7, 2008, by the Accused. The Accused admitted some facts but generally denied most aspects of the Bar's complaints. The Accused raised several affirmative defenses, including that the Bar was wrongfully using client documents and information that were privileged and/or secret.

Witnesses, Exhibits, and Transcript: The Bar called as witnesses the Accused and Margaret Weddell. The Accused called as witness Cynthia Suzanne Skagen. The Accused also testified on his own behalf.

The Bar introduced Exhibits 1 through 60. Exhibits 1 and 2 were withdrawn by the Bar. The following Exhibits were admitted: 3, 4 (first and last pages only), 6, 7–49, and 51–60. The Accused introduced Exhibits 101 through 104. Exhibit 101 was withdrawn by the Accused. Exhibits 102 through 104 were admitted.

Capri-Iverson Certified Freelance Reporters (Karen M. Smith) provided court reporting services. The transcript was received on July 9, 2008. There were no motions to correct the transcript, so it was settled on July 23, 2008.

FINDINGS OF FACT

The Accused is an attorney admitted to practice law in the state of Oregon since 1991 and is a member of the Bar. The Accused presently resides in New Zealand and has not kept an address in Oregon since 2007. (Tr. 44, 47.) In December

2004, the Accused established a lawyer trust account (account No. 0045 4068 3556) ("lawyer trust account") at Bank of America, N.A. ("the Bank"). (Ex. 8.)

Roberts Filing Fee

On January 7, 2005, the Accused deposited $200 that he received from client Donald Roberts ("Roberts") into his lawyer trust account. (Exs. 7, 8, 10, 47, and 48.) This $200 was the only client money the Accused held on behalf of Roberts in his lawyer trust account. (Exs. 7, 10, and 47.) On or before February 14, 2005, on behalf of Roberts, the Accused issued check number 1002 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 10, 47, and 48.) The check was likely in payment of filing fees for Roberts's bankruptcy petition. (Ex. 60 at 19.) On February 14, 2005, the Bank honored check number 1002, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 10, and 48.) The amount deducted from the lawyer trust account was $9 more than what the client had advanced for costs.

McCoy Filing Fee

On or before February 23, 2005, on behalf of client Cynthia McCoy ("McCoy"), the Accused issued check number 1006 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 11, 47, and 48.) The check was likely in payment of filing fees for McCoy's bankruptcy petition. (Ex. 60 at 20.) At the time the check was issued, McCoy had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 11, and 47.) On February 23, 2005, the Bank honored check number 1006, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 11, and 48.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Aker Filing Fee

On January 25, 2005, the Accused deposited $209 that he received from client Rosemary Aker ("Aker") into his lawyer trust account. (Exs. 7, 8, 12, 47, and 48.) This $209 was the only client money the Accused held on behalf of Aker in his lawyer trust account. (Exs. 7, 15, 12, and 47.) On or before February 14, 2005, on behalf of Aker, the Accused issued check number 1001 from his lawyer trust account in the amount of $200. (Exs. 7, 8, 12, 47, and 48.) The check was likely in payment of filing fees for Aker's bankruptcy petition. (Ex. 60 at 19.) On February 14, 2005, the Bank honored check number 1001, and $200 was deducted from the Accused's lawyer trust account. (Exs. 8, 12, and 48.)

On or before March 4, 2005, on behalf of Aker, the Accused issued check number 1091 from his lawyer trust account in the amount of $210. (Exs. 7, 8, 12, 47, and 48.) On March 4, 2005, the Bank honored check number 1091, and $210 was deducted from the Accused's lawyer trust account. (Exs. 8, 12, and 48.) The amount deducted from the lawyer trust account was $201 more than the remaining balance of monies that the client had advanced for costs.

Hopkins Filing Fee

On March 17, 2005, the Accused deposited $109 that he received from clients Curt and Theresa Hopkins ("Hopkins") into his lawyer trust account. (Exs. 7, 8, 13, 47, and 48.) This $109 was the only client money the Accused held on behalf of Hopkins in his lawyer trust account. (Exs. 7, 13, and 47.) On or before April 8, 2005, on behalf of Hopkins, the Accused issued check number 1036 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 13, 47, and 48.) The check was likely in payment of filing fees for Hopkins's bankruptcy petition. (Ex. 60 at 20.) On April 8, 2005, the Bank honored check number 1036, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 13, and 48.) The amount deducted from the lawyer trust account was $100 more than what the client had advanced for costs.

Thompson Filing Fee

On March 29, 2005, the Accused deposited $174 that he received from client Khalida Thompson ("Thompson") into his lawyer trust account. (Exs. 7, 8, 14, 47, and 48.) This $174 was the only client money held on behalf of Thompson in the Accused's lawyer trust account. (Exs. 7, 14, and 47.) On or before April 8, 2005, on behalf of Thompson, the Accused issued check number 1038 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 14, 47, and 48.) The check was likely in payment of filing fees for Thompson's bankruptcy petition. (Ex. 60 at 20.) On April 8, 2005, the Bank honored check number 1038, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 14, and 48.) The amount deducted from the lawyer trust account was $35 more than what the client had advanced for costs.

Oster Filing Fee

On or before May 3, 2005, on behalf of client Ronald Oster ("Oster"), the Accused issued check number 1057 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 15, 47, and 48.) The check was likely in payment of filing fees for Oster's bankruptcy petition. (Ex. 60 at 22.) At the time the check was issued, Oster had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 15, and 47.) On May 3, 2005, the Bank honored check number 1057, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 15, and 48.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Chalk Filing Fee

On May 17, 2005, the Accused deposited $209 that he received from client Nicole Chalk ("Chalk") for payment of her filing fee into a bank account that was not his lawyer trust account. (Exs. 16 and 47.) As a result, the Accused held no funds on behalf of Chalk in his lawyer trust account on that date. (Exs. 7, 16, and 47.)

On May 17, 2005, on behalf of Chalk, the Accused issued check number 1103 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 16, 47, and 48.) The check was in payment of filing fees for Chalk's bankruptcy petition. (Exs. 16, 48, and

60 at 23.) On May 27, 2005, the Bank honored check number 1103, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 16, and 48.) The amount deducted from the lawyer trust account was therefore $209 more than funds in the lawyer trust account from this client.

Williams Filing Fee

On June 28, 2005, on behalf of client Jacinda Williams ("Williams"), the Accused issued check number 1108 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 17, 47, and 48.) The check was in payment of filing fees for Williams's bankruptcy petition. (Exs. 17, 48, and 60 at 24.) At the time the check was issued, Williams had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 16, and 47.) On June 30, 2005, the Bank honored check number 1108, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 17, and 48.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Van Boeckel Filing Fee

On May 24, 2005, on behalf of client Edward Van Boeckel ("Van Boeckel"), the Accused issued check number 1126 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 18, 47, and 48.) The check was in payment of filing fees for Van Boeckel's bankruptcy petition. (Exs. 18, 48, and 60 at 24.) At the time the check was issued, Van Boeckel had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 18, and 47.) On June 30, 2005, the Bank honored check number 1126, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8, 18, and 48.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Downie Filing Fee

On July 29, 2005, on behalf of client Barbara Downie ("Downie"), the Accused issued check number 1130 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 19, 47, and 48). The check was in payment of filing fees for Downie's bankruptcy petition. (Exs. 19 and 60 at 24.) At the time the check was issued, Downie had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 19, and 47.) On August 1, 2005, the Bank honored check number 1130, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 19.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Leslie or Jerome Filing Fee (Check No. 1062)

On August 12, 2005, on behalf of a client (most likely either Cheryl Leslie ("Leslie") or Jerome Smith ("Jerome")), the Accused issued check number 1062 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 20, and 47.) The check was in payment of filing fees for a bankruptcy petition. (Exs. 20 and 60 at 25.) At

the time the check was issued, neither Leslie nor Smith had any funds on deposit in the Accused's lawyer trust account. (Exs. 7 and 47.) On August 15, 2005, the Bank honored check number 1062, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 20.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Taylor Filing Fee

On July 26, 2005, the Accused deposited a check for $209 that he received from client Sarah Taylor ("Taylor") into his lawyer trust account. (Exs. 8, 21, and 48.) On August 1, 2005, the Accused was notified that Taylor's check was returned by her bank for insufficient funds. (Ex. 21.) As a result, the Accused held no monies on behalf of Taylor in his lawyer trust account. (Exs. 21 and 47.) On July 27, 2005, on behalf of Taylor, the Accused issued check number 1117 from his lawyer trust account in the amount of $209. (Ex. 21.) The check was in payment of filing fees for Taylor's bankruptcy petition. (Exs. 21 and 60 at 25.) The Accused did not present this check to the bankruptcy court until he filed Taylor's petition on August 30, 2005. (Exs. 21 and 60 at 25.) On August 31, 2005, the Bank honored check number 1117, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 21.) Taylor did not make her check good to the Accused until November 18, 2005. (Ex. 21.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Schmidt Filing Fee

On July 26, 2005, the Accused deposited $204 that he received from client Ronald Schmidt ("Schmidt") into his lawyer trust account. (Exs. 7, 8, 22, 47, and 48.) This $204 was the only client money the Accused held on behalf of Schmidt in his lawyer trust account. (Exs. 7, 22, and 47.) On July 29, 2005, on behalf of Schmidt, the Accused issued check number 1131 from his lawyer trust account in the amount of $209. (Exs. 7, 22, and 47.) The check was in payment of filing fees for Schmidt's bankruptcy petition. (Exs. 22 and 60 at 26.) The Accused did not present the check to the bankruptcy court until he filed Schmidt's petition on August 31, 2005. (Exs. 22 and 60 at 26.) On September 2, 2005, the Bank honored check number 1131, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 22.) The amount deducted from the lawyer trust account was therefore $5 more than what the client had advanced for costs.

Olsen Filing Fee

On August 31, 2005, on behalf of client Donald Olsen ("Olsen"), the Accused issued check number 1008 from his lawyer trust account in the amount of $209. (Exs. 7, 8, 23, and 47.) The check was in payment of filing fees for Olsen's bankruptcy petition. (Exs. 23, 47, and 60 at 26.) At the time the check was issued, Olsen had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 22, and 47.) On September 2, 2005, the Bank honored check number 1008, and $209 was deducted

from the Accused's lawyer trust account. (Exs. 8 and 23.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Mahoney Filing Fee

On September 15, 2005, on behalf of client Susan Mahoney ("Mahoney"), the Accused issued check number 1013 from his lawyer trust account in the amount of $209. (Exs. 7, 24, and 47.) The check was in payment of filing fees for Mahoney's bankruptcy petition. (Exs. 24 and 60 at 27.) At the time the check was issued, Mahoney had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 24, and 47.) On September 20, 2005, the Bank honored check number 1013, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 24.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

John Does 1 and 2 Filing Fees

On October 11, 2005, the Accused received advance payment of $209 from each of two unidentified clients ("John Does"). (Exs. 25 and 35.) The checks were likely in payment of filing fees for bankruptcy petitions. The deposits were made into a bank account that was not his lawyer trust account. (Exs. 8, 9, 25, and 35.)

Jamie Smith Filing Fee

On September 27, 2005, the Accused deposited $25 that he received from client Jamie Smith ("Jamie") into his lawyer trust account. (Exs. 7, 8, 26, and 47.) On October 6, 2005, the Accused received an additional $184 in cash from Jamie that he did not deposit into his lawyer trust account. (Exs. 7, 8, 26, and 47.) As a result, the $25 deposited in September was the only client money held on behalf of Jamie in the Accused's lawyer trust account. (Ex. 26.) On October 11, 2005, on behalf of Jamie, the Accused issued check number 1029 from his lawyer trust account in the amount of $209. (Exs. 7, 26, and 47.) The check was in payment of filing fees for Jamie's bankruptcy petition. (Exs. 26 and 60 at 29). On October 20, 2005, the Bank honored check number 1029, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 26.) The amount deducted from the lawyer trust account was therefore $184 more than funds in the lawyer trust account from this client.

Green Filing Fee

On October 7, 2005, on behalf of client Joshua Green ("Green"), the Accused issued check number 1021 from his lawyer trust account in the amount of $209. (Exs. 7, 27, and 47.) The check was in payment of filing fees for Green's bankruptcy petition. (Exs. 27 and 60 at 29.) At the time the check was issued, Green had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 27, and 47.) On October 17, 2005, the Bank honored check number 1021, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 27.) The amount deducted from

the lawyer trust account was therefore $209 more than what the client had advanced for costs.

Grovom Filing Fee

On October 11, 2005, on behalf of client Shannan Grovom ("Grovom"), the Accused issued check number 1025 from his lawyer trust account in the amount of $209. (Exs. 7, 28, and 47.) The check was in payment of filing fees for Grovom's bankruptcy petition. (Exs. 28 and 60 at 30.) At the time the check was issued, Grovom had no funds on deposit in the Accused's lawyer trust account. (Exs. 7, 28, and 47.) On October 20, 2005, the Bank honored check number 1025, and $209 was deducted from the Accused's lawyer trust account. (Exs. 8 and 27.) The amount deducted from the lawyer trust account was therefore $209 more than what the client had advanced for costs.

McKnight Matter

On May 26, 2005, the Accused deposited $1,500 into his lawyer trust account that he received from client Mark McKnight ("McKnight") as an advance for costs. On October 26, 2005, on behalf of McKnight, the Accused issued check number 1066 in the amount of $1,500 from his lawyer trust account to American Medical Forensic Specialists, Inc. ("AMFS"). The check was to pay costs related to McKnight's case. (Ex. 29.) At the time the check was issued, the balance in the Accused's lawyer trust account was less than $1,500. (Exs. 8 and 29.) Nevertheless, on November 1, 2005, the Bank honored check number 1066, and $1,500 was deducted from the Accused's lawyer trust account, causing an overdraft. (Exs. 8 and 29.) The Accused then made a correcting $450 deposit on November 3, 2005, from his personal funds. (Exs. 8 and 35; Tr. 137.) The Accused had received an advance from McKnight in May 2005 that was sufficient to pay the AMFS bill in October 2005. (Tr. 135.) However, the net effect of other actions the Accused had taken with client trust accounts (listed above) was that there were insufficient funds in the lawyer trust account in October 2005 to pay the AMFS bill, resulting in an overdraft of $293. (Tr. 135.)

Bar Investigation

On November 8, 2005, the Oregon State Bar was notified by the Bank that the Accused had overdrawn his lawyer trust account as a result of check number 1066. (Ex. 30.) The DCO requested that the Accused explain the cause of the overdraft and provide supporting documentation by November 29, 2005. (Ex. 30.) The Accused requested and obtained an extension of the November 29 date until December 23. (Ex. 31.) On December 23, the Accused requested an extension until the following week, and gave an update that the Accused had not been able to finish the work to respond to the requests. (Exs. 32 and 33.) On January 3, 2006, the Bar notified the Accused that he needed to submit his response by January 6, 2006. The Accused provided a substantive responsive to DCO's inquiry on January 10, 2006. (Ex. 35.)

On January 18, 2006, DCO requested that the Accused respond to additional inquiries and provide additional documentation by February 1, 2006. (Ex. 36.) On February 3, 2006, the Accused requested and obtained an extension of the date to respond until February 24, 2006. (Ex. 37.) On February 24, 2006, the Accused notified DCO that he had had the flu and would send an answer to DCO requests on Monday, February 27, 2006. On February 28, 2006, the Accused responded to the requests in writing. The Accused asserted that he had already provided the requested information, except for information that was privileged and except for matters that were a "fishing expedition into my law practice and trust account." (Ex. 39 at 614.) The Accused's health was suffering, and he was incapacitated for medical reasons during March 2006. (Ex. 104 at 1028, 1034.)

In response to the Accused's refusal to respond further, DCO referred the matter to the LPRC for further investigation. (Ex. 40.) Investigators John Parsons ("Parsons") and Margaret Weddell ("Weddell") were assigned to conduct the investigation ("investigators"). On April 19, 2006, Parsons issued records subpoenas to the Accused and to the Bank with a deadline of May 5, 2006. (Ex. 41.) On May 4, 2006, the Accused moved to quash the subpoenas. (Ex. 42.) Following a hearing on May 5, 2006, Multnomah County Circuit Court ordered the Accused to comply with the LPRC's subpoenas by May 12, 2006. (Ex. 44.)

On May 11, 2006, the Accused appeared for a statement under oath and provided answers to questions of the investigators and copies of records in response to the subpoena. (Ex. 3.) Although investigator Parsons considered that the records were not complete, Parsons considered the Accused to be " . . . quite forthcoming, perhaps even remarkably so." (Ex. 102 at 579.) Almost immediately after the May 11 appearance, the Accused was hospitalized for significant medical problems. (Exs. 103 at 568, and 104 at 1015–1016.) The Accused sent additional information and documents to the LPRC on June 19, 2006 (Ex. 47), and on July 10, 2006 (Ex. 48).

Service of the Formal Complaint

On September 22, 2006, DCO notified the Accused of the formal prosecution in this proceeding, Case No. 06-17. (Ex. 51.) On September 27, 2006, the Accused acknowledged that he had received this notice and stated that he would accept service of the formal complaint by mail. (Ex. 52.) On March 22, 2007, DCO mailed the complaint to the Accused at the address on record with the Bar. In addition to the Formal Complaint, the March 22, 2007, communication included one original and one copy of an acceptance of service. (Ex. 53.) The Accused responded on April 25, 2007 (Ex. 55), but did not return the acceptance of service. (Ex. 56.)

The Bar gave the Accused until May 25, 2007, to return the acceptance of service or the Bar intended to submit a motion to the Oregon Supreme Court to permit service by publication. After not receiving the acceptance of service, the Bar then sought and obtained on October 15, 2007, an order from the Oregon Supreme Court granting service by publication. Soon thereafter, the Bar was able to effect

personal service of the Accused with the Formal Complaint in New Zealand, for a $500 service fee. (Ex. 59.)

DISCUSSION AND CONCLUSIONS OF LAW

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 first 22 causes of complaint against the Accused involve violations of RPC 1.15-1(a) and RPC 1.15-1(c). We will discuss the respective causes of complaint in groups based on the Rule that was the subject of the violation.

A. The Accused Violated RPC 1.15-1(c) by Failing to Deposit and Maintain Client Money in His Lawyer Trust Account Until Earned.

The Bar alleged that the Accused failed, in numerous instances, to deposit and maintain client money in his lawyer trust account until earned, violating RPC 1.15-1(c), which provides: "A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred."

The Accused took some steps to create an office system of recording client deposits in the client file, noting client names on deposits and checks, and tracking how the deposits were used through Quickbooks. The Accused testified that he generally tried to reconcile bank statements on a monthly basis, in the time period in question, until his case workload increased in 2005 because of a pending change in the bankruptcy laws. (Ex. 3 at 1001.) At that point, the Accused got behind, significantly, on his ability to use his system to track and match client deposits and checks.

The Accused testified that he put an "extra" $60 of his own money into the lawyer trust account. (Tr. 84.) The Accused testified that in at least one case, Roberts, he believed the shortfall between the amount the client had advanced and the check for filing fees was paid from the $60 (Tr. 90), but generally the Accused did not know whose funds were used in the cases discussed in our Findings of Fact. The Trial Panel finds that the Bar established by clear and convincing evidence that the Accused paid bills of a client using other client monies in the lawyer account.

The Trial Panel did not find (nor did the Bar allege) that the Accused consciously knew, at the time the Accused was writing a check from his lawyer trust account to pay filing fees or other costs, that the Accused did not have sufficient money from that client in the lawyer trust account. However, on the matters in question in this case, the Accused did not verify that he had in his lawyer trust account enough funds from the particular client to pay the filing fee or expense for that client. Therefore, other than the $60 "extra" deposit that the Accused had made

from his own money, client advances were used by the Accused to pay other clients' filing fees and costs.

RPC 1.15-1(c) does not require proof of a mental state for it to be violated. Even if the Accused's lawyer trust account violations were negligent, and not done knowingly, they violate the Rule. *In re Skagen,* 342 Or 183, 199, 149 P3d 1171 (2006) ("*Skagen I*"). Also, although the dollar amounts are not huge in each instance, the amount does not provide justification for failure to comply with RPC 1.15-1(c). *See Id.*, at 200.

The Accused failed to deposit both the Chalk advanced costs and John Does filing fees into his lawyer trust account. Instead, he deposited these funds into other bank accounts but wrote checks from his lawyer trust account to pay the Chalk costs and John Does filing fees. The Accused failed to comply with RPC 1.15-1(c) with respect to the Chalk and John Does matters.

The Accused withdrew $209 from the lawyer trust account on six occasions to pay filing fees for Roberts, Aker, Hopkins, Thompson, Schmidt, and Jamie. Each of these clients had less money in the client trust account than the amount of the check written to pay their filing fees.

The Accused withdrew $209 from his lawyer trust account on 12 occasions to pay filing fees for McCoy, Oster, Chalk, Williams, Van Boeckel, Downie, either Leslie or Jerome (check 1062), Taylor, Olsen, Mahoney, Green, and Grovom. Each of these clients had no money on deposit in the lawyer trust account.

There is no evidence that any of the clients the Accused represented had given permission for the Accused to use funds they had deposited with the Accused to pay the filing fees or other costs of other clients. The Accused violated RPC 1.15-1(c) each time he used client funds in the lawyer trust account to provide funds that would cover checks for other clients. *See Skagen I*, 342 Or at 199 (failure to maintain balance in trust sufficient to cover outstanding client funds violated former rule).

B. The Accused Violated RPC 1.15-1(a) by Failing to Keep Sufficient Records of Client Funds Resulting in His Inability to Account for Client Funds in His Possession.

The Bar alleged that the Accused failed to keep sufficient records of client funds, resulting in his inability to account for client funds in his possession, violating RPC 1.15-1(a), which provides in relevant part:

> A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses * * * shall be kept in a separate "Lawyer Trust Account" * * * . Complete records of such account funds * * * shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

The Accused's handling of client deposits and system for tracking deposits and checks for a particular client, as discussed in our Findings of Fact, demonstrate to the Trial Panel, by clear and convincing evidence, that the Accused did not maintain "complete records" as required by RPC 1.15-1(a). He relied on a procedure of writing client names on deposit slips and making notations in the client file as to deposits received and checks written. The use of Quickbooks was primarily to provide a "trailing" report, *after* he received his bank statements, and in which he might be writing checks to pay client costs without having received and placed into the lawyer trust account sufficient money from the client. The entire system appeared to flounder when the Accused's client caseload increased in 2005 in anticipation of the change in the bankruptcy law.

The Accused's system of handling client deposits and tracking deposits and checks was inadequate at the best of times (when the Accused would try to enter information on a current basis and reconcile after the fact) and grossly inadequate at other times in 2005 (when the Accused's caseload increased or other factors interfered with current record keeping). The Accused violated RPC 1.15-1(a) by not following procedures that had safeguards that a client's monies would not be used to pay the costs of other clients, by continuing to write checks without verifying what monies were available from that client that were being held in his lawyer trust account, and by the overall inadequacy to keep track of clients' balances. *See Skagen I*, 342 Or at 200 (keeping track of clients' account balances in attorney's head is insufficient to comply with former rule); *In re Martin*, 328 Or 177, 970 P2d 638 (1998); *In re Gildea*, 325 Or 281, 936 P2d 975 (1997).

In addition to the overall failure of the Accused to maintain complete records, the Accused in specific cases failed to keep funds in a separate lawyer trust account. In the case of Chalk, the Accused received funds from Chalk for filing fees associated with her bankruptcy petition (Ex. 16) but the funds were not put into the lawyer trust account. (Tr. at 100.) In the case of John Does 1 and 2, the client deposits were not put into his lawyer trust account. Those funds were deposited into the Accused's personal account and commingled with his own funds. (Tr. at 121.) Although the Accused may not have been the person making the deposit (based on the handwriting on the deposit slip), the matter was not corrected for several weeks, until the Accused became aware of a problem because of the overdraw on his lawyer trust account that occurred on November 1, 2005, with the McKnight check.

In the McKnight matter, the Accused received $1,500 from McKnight to pay costs. However, because the Accused was not keeping accurate track of clients' balances, the Accused did not realize that some of McKnight's advance had already been used to pay filing fees or costs of other clients.

C. The Accused Did Not Violate RPC 8.1(a)(2) by Failing to Timely or Substantively Respond to DCO's and LPRC's Lawful Demands for Information.

The Bar alleged that the Accused failed to respond to lawful demands for information by the DCO and by the LPRC in connection with this disciplinary matter, thereby violating RPC 8.1(a)(2), which provides: "[A] lawyer * * * in connection with a disciplinary matter, shall not knowingly fail to respond to a lawful demand for information from [a] * * * disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 [attorney-client privilege]."

The Trial Panel weighed the evidence of delays or requests for extensions in responding to requests by DCO and the LPRC. Knowing failure to respond is a violation of the rule. *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996). A lawyer is not excused from the duty to respond by instituting a series of requests for extension or because the lawyer has a high caseload. *In re Dugger*, 299 Or 21, 697 P2d 973 (1985).

During the Bar investigation, the Accused frequently waited until the end of the time period given to him to respond to the Bar. The Accused frequently asked for extensions of time to review or gather information in response to the Bar requests. On February 28, 2006, the Accused asserted that he had already provided the requested information, except for information that was privileged (Ex. 39 at 614), leading ultimately to DCO referring the matter to the LPRC, the LPRC issuing a records subpoena, and the Accused being ordered by the Multnomah County Circuit Court to comply with the subpoena in response to his motion to quash.

At the same time, there were reasons other than the Accused's knowing failure to respond that cast a somewhat different light on the Accused's actions. Speed of response in some cases was affected by health matters. The Accused's health was suffering, and he was incapacitated for medical reasons during March 2006. The Accused believed that some records sought by the Bar were privileged or confidential. (Ex. 39 at 614.) Although the Accused made comparable claims that his billing records were privileged or confidential in *Skagen I*, the hearing before the Oregon Supreme Court did not occur until September 2006, and the decision of the Oregon Supreme Court in *Skagen I* was not filed until December 2006.

On May 11, 2006, the Accused appeared for a statement under oath and provided answers to questions of the investigators and copies of records in response to the subpoena. (Ex. 3.) Almost immediately after the May 11 appearance, the Accused was hospitalized for significant medical problems. (Exs. 103 at 568 and 104 at 1015–1016.)

There is also evidence through this time period that the Accused cooperated with the Bar investigation and the LPRC to the extent that he was able. Weddell testified that the Accused's demeanor at the May 11, 2006, appearance to provide a

statement under oath was cooperative. (Tr. 170.) Parsons reported after the appearance that the Accused was "quite forthcoming." (Ex. 102 at 579.)

Ultimately, the investigators believed that the Accused did not respond adequately to their requests for documents related to the following items that were in the records subpoena: items No. 3 (efforts to reconcile the Bank account holding the lawyer trust account monies), No. 4 (documents related to correction of the deficiency in the Bank account), No. 5 (documents regarding four missing deposits), No. 8 (documents related to funds received from clients), and No. 10 (documents related to two November 2005 deposits made in connection with the McKnight matter and the overdrawn account). (Tr. 157.)

The Accused in June and July 2006 provided additional information to the investigators. (Exs. 47 and 48.) Generally, the Accused was responsive but slow in responding to the Bar, the investigators, and DCO. Throughout this period, the Accused was attempting to piece together and reconcile the records of deposits and checks and figure out the cause of the discrepancies that resulted in the overdraft.

On balance, the Trial Panel concluded that the Accused did not fail to turn over written records that were actually available to him, although he delayed turning over some records in an attempt to figure out the discrepancies. The Accused's records were in disarray. The information that the Accused gathered was incomplete or pieced together after the fact. If his records had been "complete," the Accused would have been able to respond differently, and the Trial Panel's view of whether the Accused violated RPC 8.1(a)(2) by failing to timely or substantively respond may well have been different.

The Trial Panel looked at each individual action alleged by the Bar to be evidence of violation of RPC 8.1(a)(2) and did not find the matters to be sufficient to establish a violation. The Trial Panel looked at the overall pattern and series of actions of the Accused, to see if there was a pattern that would establish a violation. The Trial Panel concluded that most of the Accused's delays or failures to respond were caused by the Accused's failure to maintain complete records and to handle his lawyer trust account as required by RPC 1.15-1(a) and RPC 1.15-1(c). A secondary factor was the Accused's health through this time period. A third factor, which applied primarily before May 11, 2006, was the Accused's belief (whether or not correct) that some records that the Bar sought were confidential or secret. It may have been reasonable for the Bar to believe that the Accused was holding back written records that could have been promptly provided in response to the Bar's requests, but the reality was that the Accused's records were incomplete and in disarray. The Accused in many cases did not have written records to provide, or the information was incomplete. While the Accused could have provided incomplete records at earlier dates, the Trial Panel concluded that the delays involved here were not such that the Accused should be held in violation of RPC 8.1(a)(2).

As to the claim of violation of RPC 8.1(a)(2) relating to the service of the formal complaint, the Trial Panel considered the evidence concerning the Accused's

offer to accept service by mail and subsequent failure to return the acceptance of service. The Accused's actions in this regard have weight primarily as part of an alleged pattern of behavior by the Accused, but are not grounds for finding that the Accused did not timely or substantively respond to DCO's and the LPRC's lawful demands for information or documents.

The Accused's conduct in responding through this period is troubling, at times. However, in the individual cases and overall, the Trial Panel did not find that there was clear and convincing evidence that the actions taken by the Accused during the Bar investigation and in connection with the service of the formal complaint were sufficient to constitute a violation of RPC 8.1(a)(2).

D. To the Extent Relevant to the Evidence of Violations of RPC 1.15-1(a) and RPC 1.15-1(c), the Trial Panel Determined That the Records of Billings and Handling of Lawyer Trust Account Monies That Were Submitted in This Case Were Not Confidential or Secret.

RPC 1.6 provides, in relevant part, "(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph."

RPC 1.0(f) defines "information relating to the representation of a client" as "both information protected by the attorney-client privilege under applicable law, and other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

This definition of "information relating to the representation of a client" is the same as the former definition of what constitutes "confidences" and "secrets" under DR 4-101(A). The records of billings and handling of lawyer trust account monies that were submitted in this case did not include any "confidential communications" protected by the attorney-client privilege. As in *Skagen I*, the Accused did not explain why the lawyer trust account records were "in furtherance of the rendition of professional legal services," such that they were subject to the attorney-client privilege protected under Oregon Evidence Code ("OEC") 503. *Skagen I*, 342 Or at 212.

The fact that the Accused represented these clients in connection with lawsuits or bankruptcies is a matter of public record in connection with filings that the Accused did for the clients. The records of billings and handling of monies must be subject to discovery by the Bar, with appropriate safeguards that attorney-client communications not be included in connection with lawful inquiries that started after the lawyer trust account was overdrawn.

SANCTION

In fashioning a sanction, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law are considered. *In re Eakin,* 334 Or 238, 257, 48 P3d 147 (2002). 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. *Duties violated.*

The Accused's mishandling of his lawyer trust account violated his duty to his clients to preserve client property. *Standards,* § 4.1. The *Standards* provide that the most important ethical duties are those obligations that a lawyer owes to clients. *Standards,* at 5.

B. *Mental state.*

The *Standards* recognize three mental states: intentional, knowing, and negligent. A lawyer acts intentionally by acting with the conscious objective or purpose of accomplishing a particular result. A lawyer acts knowingly by being consciously aware of the nature or circumstances but without having a conscious objective to accomplishing a particular result. A lawyer acts negligently by failing to heed a substantial risk that circumstances exist or a result will follow, in circumstances in which the failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* at 7; *Skagen I,* 342 Or at 218.

The Accused presented credible evidence that medical conditions affected his mental capacity or ability to respond, and the medical conditions were a factor in the delays that the Bar perceived to be violations of RPC 8.1(a)(2). However, the sanction in this case is not for a violation of that Rule but of RPC 1.15-1(a) and RPC 1.15-1(c). The Trial Panel found that the Accused acted negligently in his actions such that he violated these two Rules, and that his medical condition was not relevant to that finding.

C. *Extent of actual or potential injury.*

Under the *Standards,* the injuries caused by a lawyer's professional misconduct may be either actual or potential. *See In re Williams,* 314 Or 530, 547, 840 P2d 1280 (1992) ("[A]n injury need not be actual, but only potential, in order to support the imposition of a sanction."). The lawyer's misconduct may involve a violation of a duty owed to "a client, the public, the legal system or the profession." *Standards,* § 3.0 at 25. The protection of the public requires examination of the potential for injury caused by the lawyer's misconduct, whether or not actual injury occurred.

The Accused caused potential injury to his clients, because client funds were not tracked sufficiently by the Accused before checks were written on the lawyer trust

account, and client funds were not safeguarded for them but used to pay costs related to other clients. He caused actual injury to McKnight, in that his funds were not available to pay an actual expense associated with his case.

D. *Preliminary sanction.*

Drawing together the factors of duty, mental state, and injury, the *Standards* provide the following:

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

Standards, § 4.12.

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

Standards, § 7.2.

> Disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Standards, § 8.1(b).

E. *Aggravating and mitigating circumstances.*

"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. The Trial Panel considered the following factors that the Bar argued were aggravating under the *Standards* in this case:

1. A prior record of discipline. The Bar argued that the Accused's record of prior discipline is an aggravating factor, under *Standards*, § 9.22(a). This factor refers to offenses that have been adjudicated before imposition of the sanction in the current case. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused's prior discipline is his one-year suspension in February 2007 for violations of DR 9-101(A) (failure to deposit and maintain client funds in trust), DR 9-101(C)(3) (failure to account for client funds or property), DR 9-l01(D)(1) (failure to have interest-bearing trust account), DR 1-103(C) (failure to cooperate with Bar), and DR 1-102(A)(4) (conduct prejudicial to administration of justice). *Skagen I*, 342 Or at 184.

   In determining what weight to place on this aggravating factor in this case, the Trial Panel considered, consistent with the *Jones* decision, the following criteria: (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. These considerations can serve to heighten or diminish the significance of earlier misconduct.

The Supreme Court opinion in *Skagen I* was not issued until after the violations occurred in this case, so the weight to be placed on the prior offense is lessened. *See In re Kluge II*, 335 Or 326, 351, 66 P3d 492 (2003) (fact that accused lawyer not sanctioned for offenses before committing offenses at issue in current case diminishes weight of prior offense); *In re Huffman*, 331 Or 209, 227–228, 13 P3d 994 (2000) (relevant timing of current offense in relation to prior offense is pertinent to significance as aggravating factor). Nevertheless, the Accused should have known that there were serious issues about the adequacy of his records, handling of client trust accounts, and maintenance of his lawyer trust account, in connection with the Bar's investigation of matters, the filing of a formal complaint, and the subsequent Trial Panel hearing for *Skagen I.* The formal complaint for *Skagen I* was in September 2003. (Ex. 6.) The Trial Panel hearing was on November 29–30, 2004, and January 5–6, 2005, and the decision of the trial panel was filed on August 1, 2005. (Ex. 6.) The Trial Panel concluded that some weight should be given to the Accused's prior record of discipline.

2. A dishonest or selfish motive. Under *Standards*, § 9.22(b), a dishonest or selfish motive is an aggravating factor. The Bar argued that the Accused behaved selfishly in connection with the Bar's and the LPRC's investigation and in this formal proceeding in order to avoid or delay facing the consequences of his misconduct. The Trial Panel did not find a dishonest or selfish motive for the violations of RPC 1.15-1(a) and RPC 1.15-1(c).

3. A pattern of misconduct. Under *Standards*, § 9.22(c), a pattern of misconduct is an aggravating factor. The Bar argued that the Accused mishandled his trust account for nearly a year in this proceeding, and for approximately five years when coupled with his similar misconduct in *Skagen I*. *Standards*, § 9.22(c). *See Schaffner*, 323 Or at 480. The Trial Panel found that there was a pattern of misconduct.

4. Multiple offenses. Under *Standards*, § 9.22(d), multiple offenses constitute an aggravating factor. The Bar argued that there were multiple offenses. The Trial Panel found that there were multiple offenses.

5. Bad faith obstruction of disciplinary proceeding. Under *Standards*, § 9.22(e), bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency is an aggravating factor. The Bar argued that this aggravating factor applied because of the Accused's failure to accept service by mail after saying he would do so. The Trial Panel found that this conduct does not constitute a failure to comply with rules or orders of the Bar, in that the Accused was not required to accept service by mail, and changing his mind about doing so did not constitute a failure of compliance with rules or orders.

6. Refusal to acknowledge wrongful nature of conduct. Under *Standards*, § 9.22(g), a refusal to acknowledge the wrongful nature of one's conduct is an aggravating factor. The Bar argued that this aggravating factor applied because of (1) the Accused's failure to acknowledge the wrongful nature of his conduct after not denying the factual accuracy of the Bar's complaint, and (2) the denial of violation of disciplinary rules in the Answer of the Accused. The Trial Panel did not find that these actions were sufficient to constitute a refusal to acknowledge the wrongful nature of his conduct.

7. Substantial experience in the practice of law. Under *Standards*, § 9.22(i), substantial experience in the practice of law is an aggravating factor. The Bar argued that this factor applies because the Accused has been admitted in Oregon since 1991 and has practiced law in firm practice and solo practice. (Tr. at 46.) The Trial Panel concluded that some (but not a lot of) weight should be given to this as an aggravating factor.

8. Mitigating factors. Under *Standards,* § 9.32, there are factors that may be considered as mitigating factors in considering what sanction is appropriate. The Bar felt that there were no mitigating factors. The Accused did not clearly articulate which mitigating factors the Accused believed applied, but from testimony and arguments in the case, the Trial Panel looked at the following: (1) absence of a dishonest or selfish motive, (2) personal or emotional problems, (3) timely good faith effort to rectify the consequences of misconduct, (4) physical or mental disability or impairment, (5) interim rehabilitation, (6) imposition of other penalties or sanctions, and (7) remorse.

The Trial Panel looked in particular to the specific mitigating factors listed above in light of the evidence and testimony in this case. As noted above, the Trial Panel did not find a dishonest or selfish motive in the actions that lead to the violations it found by the Accused. To some extent, the Accused did rectify the consequences of his misconduct related to McKnight and others by putting money into his lawyer trust account so that bills could be paid. There were medical reasons

that affected his ability to respond to the Bar, but we did not find that to be a violation. The medical conditions were not the cause of the Accused's having an inadequate system for handling client trust monies or of handling deposits and checks. The Trial Panel did not find that the evidence showed interim rehabilitation. As to imposition of other penalties or sanctions, the Accused presented evidence of other penalties and sanctions in New Zealand that were imposed on him because of *Skagen I*, but those are not relevant to whether there are mitigating factors related to the misconduct in this case. The possibility or likelihood of additional penalties or sanctions in New Zealand is also not a mitigating factor in this case.

In conclusion, the Trial Panel found that only minimal weight should be given as a mitigating factor to the absence of a dishonest or selfish motive.

F. *Oregon case law.*

Considering the Accused's conduct, and the aggravating and mitigating factors, the Trial Panel concluded that some period of suspension is appropriate.

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). Appropriate discipline deters unethical conduct. *In re Kirkman*, 313 Or 181, 188, 830 P2d 206 (1992). The Oregon Supreme Court has held that a single instance of improperly dealing with client funds merits a suspension. *See In re Balocca*, 342 Or 279, 151 P3d 154 (2007) (attorney was suspended by court for 90 days, in large part for failing to deposit and maintain client funds in trust or thereafter account for or return them); *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (court suspended lawyer for 30 days when he treated funds received pursuant to oral fee agreement as his own and failed to deposit them in trust); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (attorney received 60-day suspension, despite her absence of prior discipline, for her mistaken removal of client's money from her lawyer trust account, her failure to maintain adequate lawyer trust account records, and her failure to return property to client).

In this matter, the Accused improperly dealt with client funds on approximately 22 occasions over a period of one year. (Exs. 7, 10–29, and 47.) A greater sanction is appropriate to reflect the magnitude of his misconduct and to deter future similar misconduct. *See, e.g.*, *In re Kent*, 20 DB Rptr 136 (2006) (court approved two-year stipulated suspension, in part for attorney's failure to maintain complete records of his lawyer trust account, resulting in his inability to account for funds of two individual clients); *In re Morrison*, 14 DB Rptr 234 (2000) (court approved 15-month stipulated suspension when attorney failed to maintain funds of five clients in trust and at other times failed to withdraw timely his own funds from trust account).

The conduct of the Accused in this case is certainly not identical to the conduct that was the basis of discipline in *Skagen I*, but the Accused should have been amply alerted to the need to have a complete record with respect to his lawyer trust account. When the Accused's prior discipline is taken into account, and other

aggravating and mitigating factors are considered, we believe that the case law and facts in this case support a suspension of 18 months.

DISPOSITION

The Accused shall be suspended from the practice of law for a period of 18 months.

IT IS SO ORDERED.

DATED this 20th day of August 2008.

/s/ David W. Green
David W. Green
Trial Panel Chair

/s/ Howard Freedman
Howard Freedman
Public Member

/s/ Lee Wyatt
Lee Wyatt
Trial Panel Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 08-87
	)	
PATRICK T. HUGHES,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 1.3 and RPC 8.4(a)(4). Stipulation for Discipline. 120-day suspension.
Effective Date of Order:	November 12, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for 120 days, effective three days from the date of this order, for violation of RPC 1.3 and RPC 8.4(a)(4).

DATED this 9th day of November 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
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 "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, 1999, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On July 12, 2008, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.3 (neglect of a legal matter) and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

Cropp Estate

Facts

5.

Prior to July 2006, the Accused was appointed as the personal representative of and attorney for the estate of Linda Cropp, who had been murdered by her son and only heir.

6.

The second annual accounting was due for the Cropp estate on July 19, 2006. The Accused did not file the accounting, despite three subsequent court notices and a voicemail message instructing him that the accounting was overdue. When the Accused did not respond or file the accounting, the court set a status hearing for March 8, 2007.

7.

On November 30, 2006, the Accused decided to accept a nonlawyer position of employment and closed his law office. He did not give the court written notice of his change of address as required by UTCR 9.030(3), nor did he withdraw as attorney of record for the Cropp estate.

8.

On March 3, 2007, the Accused began a 60-day disciplinary suspension from the practice of law on unrelated matters. The Accused did not notify the probate court of the need to postpone matters related to the Cropp estate or withdraw as attorney of record for the Cropp estate.

9.

On March 8, 2007, the Accused did not appear for the status hearing. The Accused did not notify the court that he would not be appearing, or that he was not able to appear due to his disciplinary suspension. On July 23, 2007, the Accused was reinstated to active Bar membership. No substitution of attorney for the Accused was filed in the Cropp estate until August 8, 2007.

Lanning Estate

Facts

10.

The Accused was the attorney for the personal representative of the estate of Helen Lanning (hereinafter "Lanning"). The Accused opened the Lanning estate in August 2004, in order to allow his client to pursue a personal injury suit (wrongful death claim) against the decedent if, after further investigation, litigation appeared to be warranted. In April 2005, the Accused determined that the personal injury action was without merit and withdrew from that litigation. However, the Accused did not thereafter close the Lanning estate, even after the personal injury action was formally dismissed in May 2005.

11.

On November 30, 2006, the Accused decided to accept a nonlawyer position of employment and closed his law office. He did not give the court written notice of his change of address as required by UTCR 9.030(3), nor did he withdraw as attorney of record for the Lanning estate.

12.

On January 5, 2007, the court made a courtesy call to the Accused and left a message on his answering machine requesting to know whether the Lanning estate could be closed. The Accused did not return the clerk's call.

13.

On March 2, 2007, the court notified the Accused of a status hearing scheduled for March 22, 2007.

14.

On March 3, 2007, the Accused began a 60-day disciplinary suspension from the practice of law on unrelated matters. The Accused did not notify the probate court of the need to postpone matters related to the Lanning estate or withdraw as attorney of record for the Lanning estate.

15.

The Accused did not appear for the status hearing on March 22, 2007, and the court reset the hearing for May 7, 2007, with notice to the Accused. When the Accused did not appear for the status hearing on May 7, 2007, the court contacted the Bar and learned of the Accused's suspension.

16.

The Accused was reinstated on July 23, 2007, but did not move to dismiss the Lanning estate until October 11, 2007.

Violations

17.

The Accused admits that by failing to take more timely action in the Cropp and Lanning estates, he neglected two legal matters entrusted to him, in violation of RPC 1.3. The Accused further admits that his collective conduct in the Cropp and Lanning estate matters, including his failures to comply with the court's notices and instructions, amounted to conduct prejudicial to the administration of justice, in violation of RPC 8.4(a)(4).

Sanction

18.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated, (2) the 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 of diligence to his clients. *Standards,* § 4.4. The *Standards* presume that the most important ethical duties are those obligations which a lawyer owes to his clients. *Standards,* at 5. The Accused also violated his duty to the legal system to avoid abuse to the legal process. *Standards,* § 6.2.

b. *Mental state.* The Accused acted knowingly and negligently. 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 9. Negligence is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* The Accused was aware of his responsibilities to the Cropp and Lanning estates, yet knowingly failed to follow up on them. However, the Accused was negligent to the extent that the reason he failed to respond to some of the court's written notices was his mistaken belief that a change of address form he submitted to the Bar in 2007 was sufficient to inform all departments of the Bar and the court of his new contact information.

c. *Injury.* Injury can be actual or potential. The Accused caused actual and potential injury to his clients, whose matters were delayed by his inaction and at the peril of being dismissed for the same reason. The Accused also caused actual injury to the court, whose ability to supervise and administer the estates was impeded and delayed while the court expended unnecessary time and resources in repeated attempts to locate and coax cooperation from the Accused through the issuance of notices and the scheduling of status hearings that he failed to attend.

d. *Aggravating circumstances.* Aggravating circumstances include:

1. The Accused has a prior record of discipline. *Standards,* § 9.22(a). The Accused was suspended for 60 days in 2007 for violation of RPC 1.3 (neglect) and RPC 1.4(a) (failure to adequately communicate) in his representation of insurance companies in four subrogation matters from 2002 to 2004. *In re Hughes,* 21 DB Rptr 1 (2007).

2. There is a pattern of misconduct. *Standards,* § 9.22(c). The Accused failed to act over a substantial period of time. This is especially true when the Accused's conduct is viewed in conjunction with his prior similar discipline.

3. There are multiple offenses, both in terms of the number of violations and the fact that more than one client and client matter was affected. *Standards,* § 9.22(d).

e. *Mitigating circumstances.* Mitigating circumstances include:

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

2. The Accused was experiencing personal problems at the time of some of the conduct at issue in this case, coping with his minor daughter's medical issues. *Standards,* § 9.32(c).

3. The Accused has shown a cooperative attitude toward the Bar proceedings. *Standards,* § 9.32(e).

4. The Accused has expressed remorse for any inconvenience caused to his clients or the courts. *Standards,* § 9.32(*l*).

19.

Under the *Standards,* a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. *Standards,* § 4.42. A reprimand is generally appropriate for a lawyer's failure to comply with a court order or rule which causes interference or potential interference with a legal proceeding. *Standards,* § 6.23.

20.

Prolonged neglects generally receive 60-day suspensions. *See, e.g., In re Redden,* 342 Or 393, 153 P3d 113 (2007) (attorney's failure to complete a child support arrearage matter for nearly two years was serious neglect warranting a 60-day suspension); *In re LaBahn,* 335 Or 357, 67 P3d 381 (2003) (where aggravating and mitigating factors were in equipoise, a 60-day suspension was imposed on a lawyer who knowing failed to serve the defendants or file the proof of service within the time permitted); *In re Schaffner,* 323 Or 472, 918 P2d 803 (1996) (120-day suspension: 60 each for neglect and failing to respond to the Bar).

The term of suspension tends to be beyond 60 days when, as here, the lawyer has been previously formally disciplined for neglect. *See, e.g., In re Coyner,* 342 Or 104, 149 P3d 1118 (2006) (three-month suspension and BR 8.1 reinstatement where attorney, who had previously been reprimanded for neglect, neglected court-appointed appeal for nearly a year and allowed it to be dismissed, and then failed to notify his client); *In re Worth,* 337 Or 167, 92 P3d 721 (2004) (120-day suspension where attorney failed to move client's case forward, despite several warnings from the court, resulting in a dismissal of the case; attorney had been previously suspended for 30 days for neglect of other client matters); *In re Meyer,* 328 Or 220, 970 P2d 647 (1999) (one-year suspension for lawyer's delay in protecting or advancing his client's legal position in a domestic relations matter—over only a two-month period where lawyer had been previously reprimanded for the same type of misconduct).

Conduct prejudicial to the administration of justice that does not involve misrepresentations or dishonesty generally receives a reprimand or relatively short suspension. *See, e.g., In re Worth,* 337 Or at 167 (120-day suspension for violations including conduct prejudicial to the administration of justice in failing to advance client's case); *In re Roberts,* 335 Or 476, 71 P3d 71 (2003) (60-day suspension for incompetent representation and conduct prejudicial to the administration of justice for lawyer's representation of the conservator of an estate).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 120 days for his violation of RPC 1.3 and RPC 8.4(a)(4), the sanction to be effective October 15, 2008, or three days after approval by the Disciplinary Board, whichever is later.

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 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 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 2008.

/s/ Patrick T. Hughes
Patrick T. Hughes
OSB No. 990614

EXECUTED this 31st day of October 2008.

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. 08-57
	)	
KATHRYN H. CLARKE,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	Bradley F. Tellam
Disciplinary Board:	None
Disposition:	Violations of DR 1-102(A)(3), DR 2-110(B)(2), DR 7-101(A)(2), DR 9-101(C)(3), RPC 1.7(a)(2), and RPC 1.16(a)(1). Stipulation for Discipline. 60-day suspension.
Effective Date of Order:	December 13, 2008

ORDER APPROVING STIPULATION FOR DISCIPLINE

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused shall be suspended for sixty (60) days for violations of DR 1-102(A)(3), DR 2-110(B)(2), DR 7-101(A)(2), and DR 9-101(C)(3) of the Code of Professional Responsibility, and RPC 1.7(a)(2) and RPC 1.16(a)(1) of the Rules of Professional Conduct. The effective date of the suspension shall be December 13, 2008, or three (3) days after the stipulation is approved by the Disciplinary Board, whichever is later.

DATED this 7th day of December 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1979, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On April 18, 2008, the State Professional Responsibility Board of the Oregon State Bar directed that a formal disciplinary proceeding be instituted against the Accused for alleged violations of DR 1-102(A)(3), DR 2-110(B)(2) and RPC 1.16(a)(1), DR 7-101(A)(2), DR 9-101(A), DR 9-101(C)(3), and RPC 1.7(a)(2). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

FACTS AND VIOLATION

5.

About June 2003, pursuant to an oral agreement, George P. Livesley (hereinafter "Livesley") retained the Accused to represent him in the appeal of an adverse decision by the Employment Relations Board (hereinafter "ERB") concerning the termination of his employment. At the time the Accused undertook to represent Livesley, Livesley had timely filed a notice of appeal.

6.

On June 12, 2003, Livesley paid the Accused $1,000 as a retainer for her services concerning the appeal. Thereafter, the Accused failed to prepare and maintain complete records of or account to Livesley for the funds.

7.

Between about June 12, 2003, and March 2004, the Accused filed motions for extension of time to file the opening brief in Livesley's appeal. In or about January 2004, the Accused decided that Livesley did not have a basis to appeal and did not file a brief on Livesley's behalf. The Accused failed to disclose this decision to Livesley and did not withdraw from representing him. The Accused knew her decision was material to Livesley when she failed to disclose it.

8.

Between about June 2003 and February 2005, in order to avoid a confrontation, the Accused failed to communicate with Livesley or timely respond to his attempts to communicate with her.

9.

On April 1, 2004, the Court of Appeals dismissed Livesley's appeal. Thereafter, the Accused failed to disclose the court's dismissal of the appeal to Livesley or take action on Livesley's behalf. The Accused knew that the dismissal of the appeal was material to Livesley when she failed to disclose it.

10.

On February 28, 2005, Livesley discovered that his appeal had been dismissed. Thereafter, the Accused did not withdraw from representing Livesley. Rather, about May 15, 2005, without obtaining Livesley's informed consent, confirmed in writing, the Accused agreed to reevaluate the merits of the appeal at a time when her potential liability to Livesley resulting from her inaction on his appeal had affected and reasonably would continue to affect her judgment on his behalf.

11.

Based on the foregoing, the Accused admits that her conduct constituted violations of DR 1-102(A)(3) (misrepresentation); DR 2-110(B)(2) and RPC 1.16(a)(1) (failure to withdraw from employment when she knew or it was obvious that continued employment would result in violation of a disciplinary rule); DR 7-101(A)(2) (intentional failure to carry out a contract of employment); DR 9-101(C)(3) (failure to prepare and maintain complete records of client funds or render appropriate accounts regarding them); and RPC 1.7(a)(2) (lawyer self-interest/ client conflict).

OTHER ALLEGATIONS

12.

On further factual inquiry, the parties agree that the alleged violation of DR 9-101(A) shall, upon approval of this stipulation, be dismissed.

SANCTION

13.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by 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 her duties to her client and profession. *Standards*, §§ 4.1, 4.4, 4.6, and 7.0.

b. *Mental state.* The Accused acted with knowledge and intent. *Standards,* p. 7. She acted knowingly and intentionally in not filing an appellate brief, and knowingly in not telling the client that she had not filed a brief and that the appeal had been dismissed. The Accused was negligent in failing to prepare complete records concerning the funds the client delivered to her for the legal services to be performed and in failing to obtain Livesley's informed consent to her continued representation.

c. *Injury*. The Accused caused actual injury to her client. The client was denied the opportunity for appellate review and decision of his claim. The client pursued a malpractice claim against the Accused. The claim was settled by payment of a sum of money to the client.

d. *Aggravating factors.* Aggravating factors are considerations that increase the degree of discipline to be imposed. *Standards,* § 9.22. The Accused's conduct demonstrates selfish motives because she did not want to confront the client with her assessment of his case. *Standards*, § 9.22(b). There are multiple offenses. *Standards,* § 9.22(d). Also, the Accused was admitted to practice in 1979 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. The Accused has no prior record of discipline. *Standards,* § 9.32(a). She cooperated with the Bar during the investigation of her conduct and in resolving this proceeding. *Standards,* § 9.32(e). The Accused has a good reputation as an appellate lawyer. *Standards*, § 9.22(g). She has also acknowledged the wrongful nature of the conduct and is remorseful. *Standards,* § 9.22(*l*).

14.

The *Standards* provide that a suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and

causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards*, § 4.42. Suspension is also appropriate when a lawyer knowingly fails to disclose material information to a client and causes injury or potential injury to a client. *Standards*, § 4.62. Oregon case law is in accord. *See, e.g., In re Obert*, 336 Or 640, 89 P3d 1173 (2004); *In re Rudie*, 294 Or 740, 662 P2d 321 (1983); *In re Butler*, 324 Or 69, 921 P2d 401 (1996); *In re Vanagas*, 14 DB Rptr 16 (2000); *In re Eakin*, 334 Or 238, 259, 48 P3d 147 (2002).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for sixty (60) days for violations of DR 1-102(A)(3), DR 2-110(B)(2), DR 7-101(A)(2), and DR 9-101(C)(3) of the Code of Professional Responsibility, and RPC 1.7(a)(2) and RPC 1.16(a)(1) of the Rules of Professional Conduct. The effective date of the suspension shall be December 13, 2008, or three (3) days after the stipulation is approved by the Disciplinary Board, whichever is later.

16.

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

DATED this 26th day of November 2008.

/s/ Kathryn H. Clarke
Kathryn H. Clarke
OSB No. 791890

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. 08-61
	)	
SUSAN FORD BURNS,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.3, RPC 1.4(a), and RPC 1.16(d). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	December 7, 2008

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 1.16(d).

DATED this 7th day of December 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Susan Ford Burns, 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 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 July 3, 2008, 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 1.16(d). 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 November 2005, the Accused undertook to assist Charlotte Cyphers (hereinafter "Cyphers") who was facing the foreclosure of her home by GMAC Mortgage (hereinafter "GMAC") and who believed that GMAC had improperly accounted for her mortgage payments. Cyphers paid the Accused a $1,000 retainer.

6.

The Accused performed some work in December 2005 toward filing a civil complaint against GMAC before Cyphers obtained alternative financing and avoided foreclosure. The Accused collected $262.50 in fees for that work. Thereafter, the Accused:

(a) failed to take any further action to pursue Cyphers's legal matter such as seeking an accounting by GMAC; and

(b) failed to respond to Cyphers's repeated requests for information about the status of her legal matter.

7.

In or about January 2007, Cyphers spoke to the Accused. The Accused informed Cyphers, in substance, that the Accused would take no further action in Cyphers's legal matter. Cyphers requested the return of the unearned portion of her retainer. The Accused failed, until November 2007, to refund the unearned funds, despite repeated requests from Cyphers.

Violations

8.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 7, she violated RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to promptly reply to a client's reasonable requests for information), and RPC 1.16(d) (failure to take reasonably practicable steps to protect a client upon termination of employment).

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. *Duties violated.* The Accused violated her duty to her client to act diligently. *Standards,* § 4.4. The Accused also violated the duty she owed as a professional to take proper steps upon the termination of her employment. *Standards,* § 7.0.

b. *Mental state.* "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a substantial deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards,* p. 7. The Accused negligently failed to recognize that she had not completed her client's matter or adequately communicated with her client. The Accused negligently failed to recognize that she continued to hold unearned funds that should have been returned to her client in a more timely fashion.

c. *Injury.* The Accused's client suffered anxiety and delay regarding the status of her matter and the return of her funds.

d. *Aggravating circumstances.* Aggravating circumstances include:

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

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

e. *Mitigating circumstances.* Mitigating circumstances include:

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

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

3. Personal or emotional problems. *Standards,* § 9.32(c) The Accused's spouse was employed as the Accused's office assistant and he suffered significant health problems that affected the Accused's practice and also required extra attention on the part of the Accused.

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

10.

Under the *Standards,* reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client or engages in other conduct that is a violation of a duty as a professional, and causes injury or potential injury. *Standards,* § 4.43 and 7.3.

11.

Oregon case law is in accord. Where there was little actual or potential injury, the mitigating factors outweighed aggravating factors, and the lawyer did not act knowingly, a reprimand has been imposed in similar cases. *See In re Rose*, 20 DB Rptr 237 (2006) (reprimand imposed for violations of rules pertaining to neglect of a legal matter, failure to communicate, and failure to comply with obligations upon withdrawal, including the duty to promptly return funds the client was entitled to receive); *In re Koch,* 18 DB Rptr 92 (2004) (reprimand imposed for violations of rules pertaining to neglect of a legal matter, failure to withdraw when required to do so, and failure to comply with obligations upon withdrawal, including the duty to promptly return funds client was entitled to receive).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.3, RPC 1.4(a), and RPC 1.16(d), the sanction to be effective upon approval of this stipulation.

13.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the SPRB. If approved by the SPRB, the

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

EXECUTED this 17th day of November 2008.

/s/ Susan Ford Burns
Susan Ford Burns
OSB No. 912258

EXECUTED this 1st day of December 2008.

OREGON STATE BAR

By: /s/ Linn D. Davis
Linn D. Davis
OSB No. 032221
Assistant Disciplinary Counsel

Cite as 345 Or 444 (2008)

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)
	)
Complaint as to the Conduct of	)
	)
JACQUELINE L. KOCH,	)
	)
Accused.	)

(OSB 06-116, 06-117; SC S055631)

En Banc

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

Submitted on the record October 10, 2008. Decided on December 11, 2008.

Jane E. Angus, Assistant Disciplinary Counsel, Oregon State Bar, Tigard, filed the brief for the Oregon State Bar.

No appearance by the Accused.

PER CURIAM

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

SUMMARY OF THE SUPREME COURT OPINION

The Oregon State Bar alleged that in the course of representing two clients, the Accused violated Rule of Professional Conduct (RPC) 1.3 (neglect of a client matter); RPC 1.4(a) (failure to keep clients reasonably informed and to respond promptly to reasonable requests for information) (two counts); RPC 1.4(b) (failure to explain matters sufficiently to permit the client to make informed legal decisions); RPC 1.15-1(d) and Code of Professional Responsibility Disciplinary Rule (DR) 9-101(C)(3) (failure to account for client funds and return funds when due) (four counts); RPC 1.16(d) (withdrawing from representation without taking steps to protect the client); and RPC 8.1(a)(2) (failure to comply with demands from the Bar during a disciplinary proceeding) (four counts). We find that the Accused did not violate RPC 1.4(b), RPC 1.16(d), and RPC 1.15-1(d) regarding one of her clients. We find that she committed the remainder of the charged violations and suspend her for 120 days from the practice of law.

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 07-111
	)	
JAMES ARNESON,	)	
	)	
Accused.	)	

Counsel for the Bar:	Joan-Marie Michelsen, Linn D. Davis
Counsel for the Accused:	John Kilcullen
Disciplinary Board:	Megan B. Annand, Chair Deayne R. Murray Thomas W. Pyle, Public Member
Disposition:	Violation of RPC 1.15-1(d) and RPC 1.15-1(e). Trial Panel Opinion. Public reprimand, plus restitution.
Effective Date of Opinion:	December 16, 2008

CORRECTING ORDER AS TO THE TRIAL PANEL OPINION DATED OCTOBER 15, 2008

This order shall amend our Opinion of October 15, 2008, in the following ways:

At page 1, "admonished" is deleted and should be replaced with "reprimanded."

At page 10, under the Conclusion and Order, "The Trial Panel hereby admonishes the Accused" is deleted and the following language shall be placed at the beginning of that paragraph:

"It is the opinion of the Trial Panel that the Accused did nothing dishonest. The Trial Panel wanted to order an admonishment and in our original order that was the sanction we unanimously agreed upon. However, the disciplinary rules do not allow for that sanction. Because the rules do not allow that penalty, the Trial Panel is forced to either dismiss the charges against the Accused or give the Accused a public sanction. Because we found that the Accused violated two technical rules we cannot dismiss the charges. The least punitive sanction the rules allow short of dismissal is reprimand and that is the penalty we order."

DATED this 11th day of December 2008.

/s/ Megan B. Annand
Megan B. Annand, Chair

/s/ Dwayne R. Murray
Dwayne R. Murray

/s/ Thomas Pyle
Thomas Pyle, Public Member

TRIAL PANEL OPINION

Accused stipulated to violation of RPC 1.15-1(d) and RPC 1.15-1(e). (TR 258.)

Accused **not found** in violation of RPC 8.4(a)(3).

The Accused is admonished, required to place $9,055.20 into his trust account within 30 days, and required to pay Dean Marek $500 in restitution for incurred attorney fees. The $9,055.20 ("the funds") shall be held in the trust account until an appropriate final court or equivalent order is made with respect to the proper disposition of the funds on the Child Attending School issue.

I. Nature of the Charges

The Accused is charged with failing to notify a third person of the receipt of property in which the third person has an interest, with failing to keep disputed property in trust until the dispute is resolved, and with engaging in misrepresentation that reflects adversely on his fitness to practice law in violation of RPC 1.15-1(d), RPC 1.15-1(e), and RPC 8.4(a)(3).

> **A. RPC 1.15-1(d):** Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. 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 and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

The Accused stipulated that he violated this rule. (TR 258.)

> **B. RPC 1.15(e)**: When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

The Accused stipulated that he violated this rule. (TR 258.)

> **C. RPC 8.4(a)(3):** (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 . . .

The Bar contends that the Accused violated this rule when he distributed the funds to his client without notifying the other side to the dispute. See Bar's Trial Memorandum, 13–14. The Accused contends that his distribution of the funds was an error on his part because he was never aware of a holdback agreement between his client and the other side. The Trial Panel found the Accused's and his staff's testimony credible on this issue and therefore does not find that the Accused engaged in any dishonesty or misrepresentation.

II. Facts

A. Practice

James Arneson ("the Accused") was admitted to practice in Oregon State Bar in 1977. His principal practice for the past 30 years has been criminal defense. In 2004, the Accused was doing some domestic relations work.

B. Marek v. Farris Case

1. Farris/Marek Dissolution

In December 2001, Nancy Farris ("Farris") and Dean Marek ("Marek") entered into a stipulated judgment dissolving their marriage, Douglas County Case No. 01DO0943DS. The Accused did not represent either party at that point. The stipulated judgment provided that Marek pay monthly child support for his daughter [redacted] until age 21 as long as she qualified as a "child attending school" per ORS 107.108. The judgment also provided "[t]his support shall be subject to collection, accounting, distribution, and enforcement services by the Department of Justice, Division of Child Support." (Ex. 5.) Although subsequent orders modified the amount of child support, no subsequent order changed the support provisions in other respects. (Exs. 3, 6–9.)

2. Marek Sues Farris

In 2003, Marek sued Farris for fraud. Farris retained the Accused. The Accused obtained judgments for contempt and attorney fees against Marek in the original matter and for costs in another matter, Douglas County Case No. 03CV2034CC. (Exs. 3 and 54.) The Accused's office had liens filed against Marek's property in Washington County for each of the judgments and orders.

3. Child Support Issue

In August 2004, Marek's daughter [redacted] turned 18. Although [redacted] enrolled in college, child support for her was terminated when she failed to file

written notice per ORS 107.108. Marek stopped paying support in October 2004. (Exs. 10–12.) Both parties researched whether support could be reinstated.

4. Marek Contacts the Accused for Payoff Amounts

To pay off the judgments, Marek began making arrangements to sell a property in Banks, Oregon. Marek was assisted in clearing the title to the property by Narda Ward ("Ward") of Stewart Title Company. The Accused's office advised Ward of the outstanding judgments and sent her satisfactions for the judgments.

5. Farris and Marek Dispute the Amount of Child Support

A title search revealed a lien for child support that predated the termination of support. (Ex. 51.) On December 5, 2005, Ward sent an e-mail to the Accused's office asking for an additional satisfaction covering Marek's child support obligations. (Ex. 18.) Farris contacted the Family Support Division ("FSD") about [redacted]'s support. The FSD responded that [redacted] needed to complete an application to be reinstated under the new laws. (Ex. 20.) Farris and [redacted] got support reinstated in December 2005. (Ex. 21.)

FSD notified the Accused that his client could file to establish an arrearage from September 2005. (Ex. 22.) Farris apparently determined that she would not sign a satisfaction as to the child support as she continued to believe Marek owed support since October 2004. (Ex. 23.) Marek disagreed that he could be held liable for support from October 2004 when [redacted]'s child support was terminated until its reinstatement in December 2005.

6. Holdback Agreement

Prior to the close of escrow on the sale of the property, it was clear that the parties would not reach an agreement, which was necessary to close the sale. Someone proposed the parties enter into a holdback agreement, whereby Farris and Marek agreed that if they could not agree on a final disposition of the funds before the close of escrow, the funds would be held in the Accused's trust account until their dispute was concluded ("the holdback agreement").

7. The Accused Was Not Aware of the Holdback Agreement

Here is where the factual dispute between the Bar and the Accused lies. The Bar argues that the Accused must have been aware of the holdback agreement. The Accused says he was not aware of the holdback agreement. The Trial Panel found the Accused's testimony credible that he was not aware of the holdback agreement. First, the Accused testified that he would not have agreed to hold disputed funds in his trust account. (TR 169–170.) Second, the Accused's signature is not on the holdback agreement. Third, the Accused testified that he did not talk to Ward about the holdback agreement. (TR 170, 226–227.) Fourth, Ward, too, testified that she had not talked to the Accused about the holdback agreement. (TR 85.) Fifth, Marek testified that he had no recollection of discussing the holdback agreement with the Accused

before entering into the agreement. (TR 58, 75.) Sixth, Marek's then-attorney did not recall speaking with the Accused. (TR 106–107.) Seventh, the Accused did not recall discussing either the escrow instruction or the holdback agreement with his client. (TR 177.) Thus, the uncontroverted evidence is that no one who was involved in the drafting of the holdback agreement recalls the Accused being involved.

It is unclear who came up with the idea for the holdback agreement, but it is clear that it was not the Accused. The attorney then representing Marek believed he may have come up with the idea of the holdback (TR 114), whereas Ward thought that Farris or someone from the Accused's office proposed the holdback agreement (TR 84).

Ward testified that there had only been one draft of the holdback agreement. (TR 85.) Marek first saw the holdback agreement on December 29, 2005, when he signed the agreement. (TR 65–66.) Ward's office sent the holdback agreement and escrow instructions to the Accused's office that same day. (Exs. 25 and 26; TR 87, 98.) The Accused was not in the office when the holdback agreement became part of the deal; he was out of the office between Christmas 2005 and New Year's Day 2006. The Accused's assistant, Theresa Strunk, testified that between Christmas 2005 and New Year's 2006, she also was out of the office for the holidays and for the funeral of her grandmother. Ward's office sent the holdback agreement to the Accused's receptionist, Angela Havens, on December 29, 2005. (TR 204–205.) Havens confirmed that she worked on December 29, 2005. (TR 213.) Havens received the fax and escrow instructions from Ward. The documents were addressed to Strunk and Havens put them in Strunk's box. (TR 214–215.) While the testimony regarding the proposal and draft of the holdback agreement is a murky, there is no evidence that the Accused was involved in any way in the proposal or draft of the holdback agreement. Further, there is no evidence that the Accused was present when the draft of the holdback agreement was forwarded to his office.

Moreover, Strunk testified that she had seen earlier versions of the escrow instructions but did not recall seeing the instructions which included the holdback agreement sent to Angela and signed by Farris in early January 2006. (TR 205–206.) Strunk never discussed a holdback agreement with the Accused (TR 206), nor did she discuss the holdback agreement with Ward (TR 206–207). The Trial Panel found Strunk credible based upon her demeanor and the facts supporting her being out of the office and the principal person in contact with Ward's office.

The combined testimony of all witnesses was that the holdback agreement was a late add-on; neither the Accused nor his assistant were in the office when the only draft of that document came in. There is no evidence that the Accused was aware of the holdback or that he recommended that his client enter into the deal. Obviously, there was a substantial crack in the Accused's office procedure which should have protected the Accused and his client from entering into a deal which the Accused says he would not have recommended to his client. The issue for us regarding the allegation of dishonesty, though, is not whether the Accused was negligent but

whether the Accused was dishonest in dispersing the funds to Farris and not retaining the funds in his trust account.

8. The Accused Disperses the Funds

By December 2005, the Accused believed that his client was entitled to the funds. (TR 223–224; Ex. 101.) When the check and escrow instructions were sent to his office in March 2006, the Accused was in Mexico on vacation. (TR 181.) When the Accused reviewed the materials from the title company on April 11, 2006, he believed he had received the money because he had persuaded the title company that his client was entitled to the funds. (TR 228–229.) The Accused released the funds to his client on April 12. (TR 185.) The Accused's version of what happened is believable. The Bar did not sustain its burden of proving by clear and convincing evidence that it was highly probable that the Accused was aware of the holdback agreement. We find that the Accused was neither dishonest nor made misrepresentations with respect to the funds.

9. The Accused Tells Marek that He Has Released the Funds

Marek called the Accused on June 21, 2006, to ask about the funds. (TR 188–189.) The Accused told Marek that he had released the funds. (TR 231; 67.) In November 2006, Nancy Howe, an attorney representing Marek, sent the Accused a letter regarding the dispersed funds. The Accused asked that Howe send him any documentation requiring him to hold the funds. She faxed him the holdback agreement. (TR 194.) When the Accused reviewed the document Howe had sent, he realized for the first time that there was a holdback agreement in the escrow instructions. (TR 227.)

The Trial Panel found the Accused's testimony credible that he was not aware of the holdback agreement. His failure to know the contents of an agreement for which he held funds was a dereliction of his duty to his client and under these circumstances to Marek. However, because the Trial Panel found the Accused's testimony credible—that he was not aware of the holdback agreement—we do not find that he dispersed the funds with the requisite intent or knowledge to be dishonest. There are a number of facts that point to an honest mistake in dispersing the funds. First, he had on other occasions returned money to Marek which were overpayments. (TR 69.) Second, no one testified that they had spoken with the Accused about the holdback agreement despite four witnesses being involved in the transaction: Ward, Eblen, Marek, and Strunk. Third, the Accused made no attempt to hide the disbursement when Marek called about it. Fourth, the Accused asked Attorney Howe to show him proof that the Accused was to retain the funds in his account and was surprised to receive a copy of the holdback agreement. Based upon all the facts of this case, we find no dishonesty on the part of the Accused.

IV. SANCTION

In fashioning a sanction, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") and Oregon case law are considered. *In re Eakin,* 334 Or 238, 257, 48 P3d 147 (2002).

ABA *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.

1. Duties Violated

The Accused violated his duty to notify Marek that the Accused had received the funds and violated his duty to retain the funds until the dispute was resolved. Both were new rules at the time of the violation.

2. Mental State

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

3. The Actual or Potential Injury

"Injury" is defined as "harm to a client, the public, the legal system or the profession which results from the lawyer's misconduct." *Standards,* at 7. Because the purpose of attorney discipline is to protect the public, the Bar need not prove actual injury. Potential injury is sufficient. *Standards,* § 3.0.

We view the stipulated violations separately. Marek received notice from the title company that the check had been sent to the Accused; therefore, the first violation—the failure to notify Marek of the check's arrival—did not cause injury. The second violation—failure to retain the funds in his account—harmed Marek in that Marek had a right to rely upon the holdback agreement that the funds would be held in the Accused's account until the controversy was resolved. Based upon the acrimonious relations between Farris and Marek, the litigation between them, and their failure to reach an agreement while the funds were in escrow, it is the opinion of the Trial Panel that the controversy between Marek and his ex-wife was not going to be settled by the parties, but would require a court order. For that reason, we think Marek would have incurred fees in trying to establish his claim to the funds. He, however, would not have incurred fees regarding the availability of the funds. The only evidence we have is that Marek initially gave Howe $500 to assist him in contacting the Accused about the funds. Marek later sent Howe an additional $500. There was no breakdown of what Howe did to earn the $1,000, or if, in fact, $1,000 was ultimately earned by Howe. We believe that the Accused should reimburse

Marek for fees incurred when Marek retained Howe to contact the Accused. The amount of the fees attributable to the contact is unclear; however, based upon the evidence we believe $500 is appropriate. (TR 59.) In addition, the second violation harms the reputation of the Bar in general. Marek testified that he believed placing the funds in the Accused's account, because the Accused is a lawyer, would protect Marek's interest. The Panel also believes that Marek may have suffered some emotional distress due to the Accused's failure to retain the funds. The Trial Panel, however, does not believe that the funds would ever have been dispersed to Marek *or* Farris without a court order and without Marek incurring attorney fees to litigate his right to the funds.

4. Extenuating or Aggravating Circumstances

The Accused had 31 years of experience without a single complaint. The Panel is troubled that the Accused did not request that the funds be returned by his client and, barring that, that he did not replace the funds himself.

In the Accused's favor, we found him forthcoming and honest in his testimony. We also found that the Accused did not gain personally by his mistake. The Trial Panel found compelling the quality and number of witnesses who came forward to vouch for the Accused. Six lawyers who had many years experience with the Accused came to testify about his propensity for honesty. The Honorable Ronald Poole, who has been on the bench since 1979 and known the Accused that entire time, testified that the Accused's reputation for truthfulness was very good and that when the Accused made a representation in Judge Poole's courtroom, Judge Poole accepted it as the truth. (TR 132.) Judge Poole pointed out that he does not have a social relationship with the Accused. (TR 132.) Douglas County Circuit Judge Randolph Garrison similarly testified to his opinion about the Accused's reputation for truthfulness. (TR 138–139.) Judge Pro Tem William Marshall, a juvenile referee and former Douglas County Chief Deputy District Attorney, testified similarly. (TR 158–160.) In addition, two lawyers who have been adversaries of the Accused testified as to his good reputation for truthfulness. Jeffrey Sweet, a former Douglas County Deputy District Attorney and current Assistant United States Attorney, who handled cases which the Accused defended, testified: "I think Jim Arneson is a truthful individual and of the highest integrity." (TR 155.) The Accused disclosed to Mr. Sweet that he, Arneson, had made a mistake. (TR 157.) In fact, the Accused disclosed to each of his character witnesses the nature of his mistake. Alexander Gardner, the current District Attorney of Lane County, formerly Chief Deputy of the Lane County District Attorney's office and former Deputy in the Douglas County District Attorney's office, said regarding the Accused: "I would take him at his word under any circumstance." (TR 164.) Finally, Dan Clark, a Roseburg business lawyer, who has known the Accused since 1980, testified that the Accused has a "sterling reputation for truthfulness." (TR 198.)

We find under all the circumstances of this case that an admonition is the appropriate and fair sanction.

CONCLUSION AND ORDER

The Trial Panel hereby admonishes the Accused and requires him, within 30 days of the date of this Order, to cause the dispersed funds in the amount of $9,055.20 to be redeposited in his trust account until there is a final order as to the disposition of the funds, and orders that within 30 days the Accused pay to Marek $500 for attorney fees incurred.

DATED this 15th day of October 2008.

/s/ Megan B. Annand
Megan B. Annand, Chair

/s/ Dwayne R. Murray
Dwayne R. Murray

/s/ Thomas Pyle
Thomas Pyle, Public Member

IN THE SUPREME COURT
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 08-97
	)	
WILLIAM N. LATER,	)	
	)	
Accused.	)	

Counsel for the Bar:	Jane E. Angus
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violations of RPC 1.1 and RPC 1.4(a). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	December 28, 2008

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 publicly reprimanded for violations of RPC 1.1 and RPC 1.4(a) of the Rules of Professional Conduct.

DATED this 28th day of December 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

William N. Later, 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 15, 1989, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On August 15, 2008, the State Professional Responsibility Board directed that a formal disciplinary proceeding be instituted against the Accused for alleged violations of RPC 1.1 and RPC 1.4(a). The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

FACTS AND VIOLATION

5.

Willie Brown (hereinafter "Brown") was employed by Multnomah County (hereinafter "County"). Multnomah County Employees Union Local 88, AFSCME, ALF-CIO (hereinafter "Union") was the collective bargaining representative for bargaining units of County employees. Brown was a Union member and subject to its contracts with the County.

6.

Brown worked as a Juvenile Group Worker (hereinafter "JGW") with the County in and between 1985 and September 22, 2000. During the spring of 2000, the County announced a reduction in workforce that would eliminate the JGW positions effective July 1, 2000. As a result, Brown and other JGW employees were reassigned to available Juvenile Custody Services Specialist (hereinafter "JCSS") positions.

Between about October 1, 2000, and November 23, 2003, Brown avoided subsequent reductions in the County's workforce by transferring to open Juvenile Counseling Assistant (hereinafter "JCA") and JCSS classifications. Brown was laid off on June 30, 2003. He was not offered an opportunity to transfer to another classification because there were no open positions available to him.

7.

JCSS employees and JCA employees were represented by different Union bargaining units and covered by different contracts. Transferring between bargaining units did not affect Brown's seniority until June 27, 2002, when the JCSS bargaining unit signed a new contract that included a break in service provision. The new contract provided that seniority would be forfeited by transfer or promotion out of the JCSS unit.

8.

About June 12, 2003, Brown retained the Accused to pursue employment-related claims against the Union and the County. On December 29, 2003, the Accused, on behalf of Brown, filed a lawsuit against the County and the Union for alleged employment-related claims, *Willie Brown v. Multnomah County and Multnomah County Employees Union Local 88, AFSCME, AFL-CIO,* Multnomah County Case No. 03-12-13842 (hereinafter "Court Action I"). The County and the Union denied Brown's claims.

9.

About October 1, 2004, the parties settled Court Action I. Among other terms, the parties agreed that if Brown demonstrated within 14 days that he had an open and accepted workers' compensation claim for a compensable injury on June 27, 2002, while working in a JCSS position, the Union would recalculate Brown's seniority under the 2001–2004 JCSS contract without a break in service, the County would recognize the recalculation and reflect those changes on the JCSS recall list, and the County and the Union would recognize Brown as the number two candidate on the JCSS recall list. Pursuant to the agreement, Brown released the County and Union of any and all claims arising out of his employment relationship with the County.

10.

On October 1, 2004, the Accused inquired with Sedgwick Claims Management Services, Inc. (hereinafter "Sedgwick"), to determine the date of the last payment for medical services for Brown's workers' compensation claim. The Accused did not obtain or request other information concerning the claim. Brown did not have an open workers' compensation claim as of June 27, 2002. On October 14, 2004, the Union's counsel notified the Accused that Brown did not have an open workers' compensation claim as of June 27, 2002, and did not satisfy the condition to trigger recalculation of Brown's seniority. The Accused failed to challenge or investigate the Union's

information. After October 2004, the Accused did not correct Brown's belief that he had satisfied the condition to trigger recalculation of his seniority for recall to active employment.

11.

On July 29, 2005, the Accused notified the County and the Union that Brown intended to file a second lawsuit against them. The Accused alleged that they had breached the settlement agreement because Brown had not been recalled to active employment. Thereafter, the County and the Union provided information to the Accused that demonstrated that Brown's allegations were not correct. On November 29, 2005, Brown signed a Retainer Agreement with the Accused to pursue alleged employment-related claims against the County and the Union arising since the October 1, 2004, settlement.

12.

On June 23, 2006, the Accused, on Brown's behalf, filed a lawsuit against the County and the Union for alleged employment-related claims, *Willie Brown v. Multnomah County and Multnomah County Employees Union Local 88, AFSCME, AFL-CIO*, Multnomah County Case No. 06-06-06609 (hereinafter "Court Action II"). The County and the Union denied Brown's claims. The Accused did not assert a claim against the County and the Union for breach of the October 2004 settlement agreement.

13.

On January 30, 2007, the County, and on January 31, 2007, the Union filed motions for summary judgment concerning Brown's claims in Court Action II. On March 20, 2007, the court filed an order on defendants' motions for summary judgment dismissing Brown's claims with prejudice. Brown's alleged claims occurring before October 2004 were dismissed because they had been released under the parties' October 2004 settlement agreement, and alleged claims occurring after October 2004 were dismissed because the Accused presented no evidence that Brown was denied reinstatement to any position to which he was entitled.

14.

During the representation, the Accused failed to provide the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation; failed to adequately investigate, review, and evaluate Brown's alleged claims; failed to adequately understand applicable workers' compensation and employment law; failed to consult or associate experienced counsel for review of and advice regarding Brown's alleged claims; and asserted claims in Court Action II that Brown had released in the Settlement Agreement in Court Action I. The Accused failed to make reasonable inquiry to determine if Brown had an open workers' compensation claim on June 27, 2002, before advising Brown concerning the terms of the proposed

settlement in Court Action I; failed to keep Brown reasonably informed about the status of the Court Actions; and failed to timely respond to opposing counsel's communications and requests for communication from the Accused.

15.

Based on the foregoing, the Accused admits that he violated RPC 1.1 and RPC 1.4(a) of the Rules of Professional Conduct.

SANCTION

16.

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

a. *Duties violated.* In violating RPC 1.1 and RPC 1.4(a), the Accused violated duties to his client. *Standards,* §§ 4.4 and 4.5.

b. *Mental state.* The Accused's conduct demonstrates negligence, 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 failing to adequately investigate, review, and evaluate the merits of his client's assertions and claims, and in failing to assure adequate communication with his client.

c. *Injury.* For the purpose of determining sanction in a disciplinary case, consideration is given to actual and potential injury. *In re Williams,* 314 Or 530, 840 P2d 1280 (1992). The Accused caused actual injury and potential injury to his client. The client was frustrated because the Accused failed to adequately communicate with him.

d. *Aggravating factors.* "Aggravating factors" are considerations that increase the degree of discipline to be imposed. *Standards,* § 9.22. The Accused was admitted to practice in 1989 and has substantial experience in the practice of law. *Standards,* § 9.22(i). There are multiple offenses. *Standards,* § 9.22(d).

e. *Mitigating factors.* The Accused has no prior record of discipline. *Standards,* § 9.32(a). There is an absence of dishonest and selfish motives. *Standards,* § 9.32(b). The Accused is remorseful. *Standards,* § 9.32(*l*). Also, he cooperated in the investigation of his conduct. *Standards,* § 9.22(e).

17.

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 demonstrates a failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or is negligent in determining whether he is competent to handle a legal matter and causes injury or potential injury to a client. *Standards*, § 4.53. Oregon case law is in accord. Case law supports the imposition of a reprimand for the misconduct. *See, e.g., In re Odman*, 297 Or 744, 687 P2d 153 (1984) (reprimand for failure to provide competent representation and neglect); *In re Magar*, 296 Or 799, 681 P2d 93 (1984) (reprimand for failure to provide competent representation and failing to obtain sufficient information from client).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of RPC 1.1 and RPC 1.4(a). In addition, the Accused shall pay the Bar's deposition costs in the amount of $101.25. The amount shall be due immediately. 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.

19.

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

DATED this 1st day of December 2008.

/s/ William N. Later
William N. Later
OSB No. 892835

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. 08-152
	)	
BENJAMIN M. KARLIN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 3.4(c). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	December 29, 2008

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 3.4(c).

DATED this 29th day of December 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
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 "Accused"), and the Oregon State Bar (hereinafter "Bar") hereby stipulate to the following matters pursuant to Oregon State Bar Rule of Procedure 3.6(c).

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 24, 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 November 22, 2008, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violation of RPC 3.4(c) (knowingly disobey an obligation under the rules of a tribunal) 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 May 7, 2004, a General Judgment of Dissolution of Marriage was entered in Clackamas County Circuit Court which required the Accused to pay one-half of the uninsured medical and dental expenses of his minor children. *In the Matter of the Marriage of Karlin and Karlin,* No. DR03-01-103. The judgment also required the Accused to provide proof of a life insurance policy in which the children were named as beneficiaries.

6.

On July 30, 2008, the court entered an Order of Contempt finding the Accused in willful contempt for failing to pay anything toward the unreimbursed medical expenses of his children and for failing to sign appropriate releases to allow the

Accused's former wife to verify that the children were appropriately listed as beneficiaries under the Accused's life insurance policy.

Violations

7.

The Accused admits that, by being found in contempt, he knowingly violated his obligations under the rules of a tribunal, in violation of RPC 3.4(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. *Duties violated.* The Accused violated his duty to the legal system to avoid abuse to the legal process. *Standards,* § 6.2.

b. *Mental state.* The court determined that the Accused was aware of his obligations under the original judgment and that his failure to comply with those obligations was willful. ORS 33.015. This is tantamount to at least knowing conduct. An act is done with "knowledge" if the actor has 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 9.

c. *Injury.* Injury can be actual or potential. The Accused's former wife was actually and potentially injured by not being reimbursed the agreed-upon percentage of uninsured medical expenses. She was also potentially injured by not having access to the Accused's life insurance information or benefits in the event something happened to him.

d. *Aggravating circumstances.* Aggravating circumstances include:

    1. A prior record of discipline. *Standards,* § 9.22(a). The Accused received a public reprimand in early 2007, for neglecting two client matters (RPC 1.3) and also failing to adequately communicate with one of the clients (RPC 1.4(a) and (b)). *In re Karlin*, 21 DB Rptr 75 (2007).

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

e. *Mitigating circumstances.* Mitigating circumstances include:

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

2. Personal or emotional problems. *Standards,* § 9.32(c). The Accused was engaged in a contentious postdissolution proceeding with his former wife and was also experiencing financial difficulties at the time he was obligated to pay toward the medical expenses that were among the subjects of the contempt.

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

4. The imposition of other penalties and sanctions. *Standards,* § 9.32(k). The Accused was found in contempt by the circuit court and ordered to pay a monthly sum until his obligation is fulfilled.

5. Remorse. *Standards,* § 9.32(*l*).

9.

Under the *Standards,* absent the consideration of aggravating and mitigating factors, a suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a party. *Standards,* § 6.22. However, because the mitigating circumstances outweigh the aggravating circumstances in this case, a public reprimand is the most appropriate sanction.

10.

Oregon case law supports the imposition of a public reprimand under these circumstances. *See In re Buchanan,* 17 DB Rptr 226 (2003) (reprimand for violation of court's restraining order in domestic relations proceeding); *In re Jones,* 13 DB Rptr 133 (1999) (reprimand for single violation of DUII probation).

11.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 3.4(c), the sanction to be effective upon approval by the Disciplinary Board.

12.

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

EXECUTED this 9th day of December 2008.

/s/ Benjamin M. Karlin
Benjamin M. Karlin
OSB No. 822965

EXECUTED this 12th day of December 2008.

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. 08-113
	)	
PATRICK D. ANGEL,	)	
	)	
Accused.	)	

Counsel for the Bar:	Susan Roedl Cournoyer
Counsel for the Accused:	Allison D. Rhodes
Disciplinary Board:	None
Disposition:	Violation of RPC 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	December 30, 2008

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 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d).

DATED this 30th day of December 2008.

/s/ Susan G. Bischoff
Susan G. Bischoff, Esq.
State Disciplinary Board Chairperson

/s/ William B. Crow
William B. Crow, Esq., Region 5
Disciplinary Board Chairperson

STIPULATION FOR DISCIPLINE

Patrick D. Angel, 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 19, 2003, 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 20, 2008, the State Professional Responsibility Board (hereinafter "SPRB") authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d) 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 July 27, 2006, Alan Westhaver (hereinafter "Westhaver") retained the Accused to represent him in a legal action. Westhaver and the Accused signed a Contingent Fee Agreement ("fee agreement") that contained separate sections for "Costs and Expenses" and "Attorney Fees." Under "Costs and Expenses," the Accused and Westhaver agreed that: Westhaver would be responsible for any costs or expenses the Accused incurred in representing him; Westhaver deposited a $1,000 initial retainer to be used as necessary at the discretion of the Accused; any funds remaining from this deposit at the end of the representation would be refunded, less any money owed by Westhaver for necessary expenses, fees, or costs. Under "Attorney Fees," the Accused and Westhaver agreed that Westhaver would pay a percentage of any recovery, from the proceeds of the recovery; if no recovery were

made on his behalf, Westhaver would not be liable for any attorney fees, but only for actual expenses incurred by the Accused.

6.

The Accused considered the $1,000 retainer Westhaver deposited pursuant to the fee agreement to be a flat fee earned upon receipt. However, the fee agreement did not contain any such provision.

7.

The Accused did not deposit Westhaver's $1,000 retainer into his lawyer trust account but instead deposited it directly into his general account upon receipt.

8.

During the next 16 months, the Accused performed legal work on Westhaver's case, including filing a complaint with the EEOC and obtaining a notice of right to sue. The Accused drafted and filed a complaint for Westhaver in U.S. District Court on November 11, 2007. That same month, the Accused informed Westhaver that he had accepted a new job and was required to withdraw from Westhaver's case.

9.

By letter dated December 27, 2007, Westhaver requested that the Accused account to him for the costs and expenses the Accused had incurred on his behalf and refund any unused portion of the $1,000 retainer. In response, the Accused informed Westhaver that there were no remaining funds. However, the Accused did not provide any accounting until after Westhaver made a complaint to the Oregon State Bar in February 2008. The Accused's accounting, dated February 27, 2008, summarized in narrative form that he had earned attorney fees at the rate of $175 per hour for legal work and had incurred miscellaneous costs for a lump sum total of $1,000. The Accused's accounting did not differentiate between legal fees earned and costs or expenses incurred and did not indicate his receipt, deposit, and disbursement of Westhaver's retainer.

10.

The Accused refunded Westhaver's $1,000 on June 6, 2008, approximately seven months after the Accused withdrew from representation.

Violations

11.

The Accused admits that:

By depositing Westhaver's $1,000 retainer directly into his general account upon receipt, the Accused collected a fee in excess of the contingency fee Westhaver

had agreed to pay and thereby collected a clearly excessive fee in violation of RPC 1.5(a);

By depositing Westhaver's $1,000 retainer directly into his general account upon receipt, the Accused failed to deposit into trust fees and expenses paid in advance, in violation of RPC 1.15-1(c);

By failing to provide promptly upon request an accounting of his receipt, deposit, and disbursement of Westhaver's $1,000 retainer, the Accused failed to promptly render a full accounting regarding client funds in his possession, in violation of RPC 1.15-1(d); and

By failing to refund to Westhaver any portion of the $1,000 retainer that had not been expended on costs when he withdrew from representation, the Accused failed to take all steps reasonably practicable to protect his client's interests upon withdrawal, including refunding any advance payment of fee or expense that had not been earned or incurred, in violation of RPC 1.16(d).

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. *Duties violated.* By failing to deposit Westhaver's retainer into trust, failing to promptly render an accounting upon Westhaver's request, and failing to refund Westhaver's unused portion of the retainer promptly upon withdrawal from representation, the Accused violated duties owed to his client. *Standards,* § 4.1. By collecting an excessive fee, the Accused violated a duty owed to the profession. *Standards,* § 7.

b. *Mental state.* The Accused's failures to deposit Westhaver's funds into trust upon receipt, to keep track of the costs he incurred, and refund the unearned portion upon withdrawal from representation arise from a single error in failing to realize that the $1,000 retainer constituted an advance of client property, rather than a nonrefundable fee earned upon receipt. The Accused therefore acted negligently, which 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.

c. *Injury.* Injury may be actual or potential. Although the Accused eventually refunded $1,000 to Westhaver, Westhaver was exposed to the risk of nonpayment and was, in fact, injured during the six-month

period between the Accused's withdrawal from representation and the June 2008 refund.

d. *Aggravating circumstances.* In aggravation, the Accused's misconduct resulted in multiple offenses. *Standards,* § 9.22(d). However, these multiple offenses stem from one failure to perceive that the retainer constituted client property that the Accused was required to treat as separate from his own.

e. *Mitigating circumstances.* Mitigating circumstances include absence of a prior disciplinary record (*Standards,* § 9.32(a)); absence of a dishonest or selfish motive (*Standards,* § 9.32(b)); timely good faith effort to make restitution or to rectify consequences of misconduct (*Standards,* § 9.32(d)); full and free disclosure and cooperative attitude in the investigation (*Standards,* § 9.32(e)); inexperience in the practice of law (*Standards,* § 9.32(f)); and remorse (*Standards,* § 9.32(*l*)).

13.

Under the *Standards,* a reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards,* § 4.13. Reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client. *Standards,* § 7.3.

14.

The Oregon Supreme Court has suspended attorneys who have engaged in conduct similar to that of the Accused, but those cases presented significant aggravating factors that are not present in this matter. *In re Fadeley,* 342 Or 403, 153 P3d 682 (2007) (30-day suspension for depositing $10,000 retainer directly into general account and thereafter refusing to provide an accounting or refund any unearned portion of retainer after client terminated the representation; aggravating factors included 50 years of experience in the practice of law and refusal to acknowledge misconduct); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension for mistakenly removing client funds from trust before earned, failing to maintain adequate trust account records, and failing to refund a $680 unearned portion of retainer; attorney's 20 years of experience "weigh[ed] heavily" as an aggravating factor).

Although case law indicates that lawyers who engage in this kind of misconduct often receive suspensions, the mitigating circumstances in this case far exceed the one aggravating factor. Under these circumstances, a public reprimand is the appropriate sanction.

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d). This sanction shall be effective upon the Disciplinary Board's approval of this stipulation for discipline.

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the SPRB. If approved by the SPRB, the parties agree 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 December 2008.

/s/ Patrick D. Angel
Patrick D. Angel
OSB No. 032672

EXECUTED this 16th day of December 2008.

OREGON STATE BAR

By: /s/ Susan R. Cournoyer
Susan Roedl Cournoyer
OSB No. 863381
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

Washington Rules of Professional Conduct

Oregon Revised Statutes

Bar Rules of Procedure

Oregon Rules of Civil Procedure

United States Code

Code of Federal Regulations

Uniform Trial Court Rules