

# DISCIPLINARY BOARD REPORTER

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**VOLUME 23**

*January 1, 2009, to December 31, 2009*

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Report of Lawyer Discipline Cases  
Decided by the Disciplinary Board  
and by the  
Oregon Supreme Court  
for 2009

Oregon  Bar

16037 S.W. Upper Boones Ferry Rd.  
Tigard, OR 97224  
503-620-0222 *or*  
800-452-8260 (toll-free in Oregon), ext. 394



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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 2009 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 23 DB Rptr \_\_\_\_ (2009).

In 2009, 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 2009 Membership Directory or [www.osbar.org](http://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, 2010, are also available at the Oregon State Bar Web site, [www.osbar.org](http://www.osbar.org). Please note that the statutes, disciplinary rules, and rules of procedure cited in the opinions are those in existence when the opinions were issued. Care should be taken to locate the current language of a statute or rule sought to be relied on concerning a new matter.

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

JEFFREY D. SAPIRO  
*Disciplinary Counsel*  
*Oregon State Bar*

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IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case Nos. 08-12, 08-13, and 08-14
	)	
VINCENT J. BERNABEL,	)	
	)	
Accused.	)	

Counsel for the Bar:	James M. Finn, Martha M. Hicks
Counsel for the Accused:	Wayne Mackeson
Disciplinary Board:	Pamela E. Yee, Chair William G. Blair Loni J. Bramson, Public Member
Disposition:	Violation of ORS 9.527(2). Trial Panel Opinion. Public reprimand.
Effective Date of Opinion:	January 5, 2009

**DISCIPLINARY OPINION**  
**SECTION ONE: INTRODUCTION**

**Date and Nature of Charge.** By Formal Complaint dated February 15, 2008, the Oregon State Bar (hereinafter “the Bar”) has charged the Accused with violation of RPC 8.4(a)(2) of the Oregon Rules of Professional Conduct and ORS 9.527(2).

RPC 8.4 provides, in relevant part, as follows:

- (a) It is professional misconduct for a lawyer to:
  - \* \* \*
  - (2) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects:

ORS 9.527(2) provides, in relevant part, as follows:

Grounds for Disbarment, Suspension, or Reprimand. The Supreme Court may disbar, suspend, or reprimand a member of the Bar whenever, upon proper proceedings for that purpose, it appears to the court that:

\* \* \*

- (2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence.

**The Accused.** The Accused is Vincent J. Bernabei, OSB No. 844161, having an office and place of business in Washington County, Oregon. He is a sole practitioner, shares space with one or more attorneys, and primarily handles family law matters.

**Summary of Complaint.** On October 18, 2007, the Accused was convicted of public indecency in violation of ORS 163.465, a Class A misdemeanor. The conviction for public indecency arose from an incident on August 3, 2007, where the Accused drove his car around the parking lot at Washington Square Shopping Mall while masturbating. This conduct was viewed by CL<sup>1</sup>, a young woman who worked at a store in Washington Square Mall and was outside the mall on a break. She reported the incident to mall security, who then tracked the Accused on the security cameras as he drove around the parking lot at Washington Square Mall, as well as contacted the Tigard Police Department. The Tigard Police arrived approximately a half-hour later, made contact with the Accused, and cited him for public indecency.

**Date of Hearing and Attorneys for Parties.** The hearing on this matter was heard on October 1 and 2, 2008. The attorneys for the parties are as follows:

Counsel for the Bar: James M. Finn and Martha M. Hicks

Counsel for the Accused: Wayne Mackeson

**Witnesses and Exhibits Admitted.** The witnesses were as follows:

1. CL (the victim);
2. Dr. Eric Johnson (a forensic psychologist called by the Bar);
3. Josh Kristof (Washington Square Mall security officer);
4. Vincent J. Bernabei (the Accused);
5. Dr. Thomas Brewer (a clinical psychologist who is treating the Accused);
6. Thomas J. Elliott, attorney at law (character witness);
7. Ken Rolfe (the Accused's Washington County probation officer);
8. Hon. Ted Grove, Columbia County Circuit Court Judge (SLAC Chair);
9. Hon. Keith R. Raines, Washington County Circuit Court Judge;
10. Hon. Kirsten E. Thompson, Washington County Circuit Court Judge;

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<sup>1</sup> We use the victim's initials in deference to her privacy.

11. Hon. Donald R. Letourneau, Washington County Circuit Court Judge;  
and

12. Elizabeth Bernabei (wife of the Accused).

All exhibits offered by the parties were admitted without objection and include Bar Exhibits numbered 1–10 (including deposition Exhibits 1–15 contained in Bar Exhibit number 5), and defense Exhibits numbered 101–103.

**Prehearing Rulings.** There were no prehearing rulings or motions made by either party.

## SECTION TWO: FINDINGS OF FACT

**Summary of Relevant Background.** The underlying facts of the case are not disputed. On August 2, 2007, at approximately 1:00 p.m., the Accused, after viewing pornography on his office computer, drove around the parking lot of Washington Square Shopping Mall while masturbating. He was observed by CL, an employee of JC Penny, while standing outside the building on a break. CL reported the activity to mall security. Mall security contacted Tigard Police and also tracked the Accused with the security cameras for approximately 25 minutes. The Accused was arrested by the Tigard Police Department and cited for public indecency, a Class A misdemeanor (ORS 163.465).

On October 16, 2007, the Accused pled guilty to the charge, and on October 18, 2007, the judgment of conviction was entered against him. The court suspended the deposition of a sentence and placed the Accused on formal probation for two years (which would end October 17, 2009), subject to the usual conditions of probation and a payment of \$467 for fines and assessments.

As additional conditions of probation, the Accused was ordered to undergo a mental health evaluation and sex offender treatment at the direction of his probation officer, Ken Rolfe. The Accused’s diagnosis at intake was “paraphilia NOS, depressive disorder, sex abuse of an adult.”<sup>2</sup> As stated by Dr. Eric Johnson, *NOS* is typically used while gathering more information. It is typically a provisional diagnosis given while the assessment is still underway. Based upon further review and data, the Accused’s diagnosis was adjusted to paraphilia, exhibitionism type. That upgraded diagnosis is subject to further adjustment after a full-disclosure polygraph examination.

The Accused is currently being treated by Dr. Thomas Brewer at Sunset Psychological Counseling Services, as directed by his probation officer. As part of his treatment, the Accused provided a detailed autobiography, which was part of the Bar’s Exhibit number 9. At the time of the hearing, the Accused had not yet taken

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<sup>2</sup> Diagnosis under DSM-IV, the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Ed.*, published by the American Psychiatric Association. References to DSM-IV codes omitted. “NOS” stands for “not otherwise specified.”

a full-disclosure polygraph, although one had been scheduled for October 30, 2008. He had completed a maintenance polygraph successfully on April 17, 2008. Drs. Brewer and Johnson explained that the full-disclosure polygraph is typically not given until the treating psychologist has established sufficient rapport and has confidence that the patient is motivated to be candid and complete in disclosing past sexual history; otherwise, the patient is simply set up to fail the exam.

As part of the Accused's probation, a number of assessments were conducted, including re-offense risk assessments. The Accused's probation officer testified that the Accused was a very low risk of reoffending in the community. Further, he would be a candidate for low-level supervision if he successfully completes the full-disclosure polygraph. Both Dr. Johnson and Dr. Brewer found the risk of recidivism as moderate. Both testified that paraphilia cannot be "cured," but it can be managed. Both doctors indicated that the goal of treatment is to help the patient gain insight into the causes and situations that can lead to aberrant behavior, and give the patient tools to manage that behavior, thereby lessening the risk of future inappropriate conduct. This approach is known as cognitive behavioral therapy.

The Accused does admit that the incident on August 3, 2007, was not the first time he had done this same activity. Both Dr. Johnson and Dr. Brewer, as well as the Accused, recognized that the Accused had family problems, losses, depression, and loneliness. Dr. Johnson testified that the autobiography prepared by the Accused as part of his treatment showed great insight into what he had gone through and how that history impacts his present disorder.

Testimony was received by a number of judges before whom the Accused has appeared representing clients on various legal matters. All the judges indicated that the Accused was always well-prepared, easy to work with, timely, effective, and represents his clients diligently. Judge Grove, Chair of the State Lawyers Assistance Committee (hereinafter "SLAC") (before whom the Accused has not appeared), testified that the SLAC is willing to undertake supervision of probation should the Panel so order.

**Relevant Witness Demeanor.** The Panel was most impressed with the apparent sincerity and remorse displayed by the Accused, both in his direct testimony and in his nonverbal reactions to the testimony of CL, the psychologists, and his wife. He never displayed the slightest sign of denial when confronted in examination, cross-examination, and others' testimony, with the stark realities of his conduct and its consequences. Instead, he displayed visible grief, shame, and remorse. He testified with genuine emotion that he recognizes the harm he has caused to CL, his wife, and his family, and that rebuilding his family relationships are fundamentally important to him. He explained his dedication to the practice of law as an opportunity to help others solve problems, and did so in terms and in a manner that singularly impressed the Panel with the sincerity of his motivation and with his recognition of how his conduct has put those professional aspirations in jeopardy.



The Panel noted that the judges appeared to testify willingly and openly as to the Accused's professional conduct when appearing on matters in their courts, but the Panel noted that they were surprised that the Accused would have been involved in an act of this nature and that they all found such conduct offensive. The testimony was mostly limited to the conduct of the Accused in their court and the Accused's professionalism.

**Burden of Proof.** The Bar has the burden of establishing misconduct warranting discipline by clear and convincing evidence. BR 5.2. Following the filing of the formal complaint by the Bar, the Accused filed an answer pro se. He later retained counsel, who filed an Amended Answer on the Accused's behalf. The Amended Answer admits the conduct in question but denies that the conduct in question is a violation of either RPC 8.4(a)(2) of the Oregon Rules of Professional Conduct or ORS 9.527(2).

In a single cause of complaint, the Bar alleges that the Accused's conviction of the Class A misdemeanor of public indecency in violation of ORS 163.465 is a conviction for a misdemeanor involving moral turpitude in violation of ORS 9.527(2). Additionally, the Bar alleges the Accused's conduct leading to that conviction amounted to a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects, and as such, is a violation of RPC 8.4(a)(2).

The allegations put in issue by the Accused's Amended Answer are essentially issues of law and are not based on a dispute as to the objective facts on which they depend. The material facts are both admitted and well documented in the Bar exhibits, received without objection.

The Accused objected to the testimony of Dr. Eric Johnson due to lack of relevance. The Oregon Evidence Code does not apply to Bar disciplinary proceedings and rather the standard for admissibility of evidence is found in BR 5.1(a), which allows the trial panel to admit and give effect to evidence which possessed probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. The testimony of Dr. Johnson was based on his review of the record and not a diagnosis, as he was very careful to point out in his testimony. The case law cited by the accused (*Tush v. Palmateer*, 179 Or App 434, 39 P3d 943 (2002); *State v. Ogden*, 168 Or App 249, 6 P3d 1110 (2000); and *Short v. Hill*, 195 Or App 723, 99 P3d 311 (2004)) was reviewed by the panel and found to be unpersuasive. After reviewing the cases, Dr. Johnson's testimony, and BR 5.1(a), the Panel determined that the expert testimony of Dr. Johnson would assist in understanding the psychological issues, and give a background and context to aid in assessing exhibits offered without objection; therefore, the Panel overruled the objection to his expert testimony.

### SECTION THREE: CONCLUSION OF LAW

**RPC 8.4(a)(2).** See Section One for quotation of the rule in relevant part. The findings of fact must address each of the elements of the disciplinary offense. The Accused committed a criminal act; however, there is nothing inherent in the definition of the crime of public indecency that involves honesty, trustworthiness, or fitness as a lawyer, per se. The case law is quite clear that there must be a connection other than the criminality of the act itself between the conduct and the actor's fitness to practice. *In re Hassenstab*, 325 Or 166, 934 P2d 1110 (1997); *In re White*, 311 Or 573, 589, 815 P2d 1257 (1991). The court in *White* emphasized that "each case must be decided on its own facts," and there must be a rational nexus between the act and the Accused's fitness to be a lawyer beyond the criminality of the act itself. *White*, 311 Or at 589.

We are instructed in *White* that certain factors should be taken into consideration when analyzing a possible nexus between particular criminal conduct and fitness to practice law:

- The lawyer's mental state;
- Act demonstrates disrespect for the law;
- The presence of a particular victim;
- Actual or potential injury to the victim;
- Presence of a pattern; and
- Conduct done intentionally for personal gain.

We have reviewed the *White* factors in light of the fitness as a lawyer standard (as there is nothing in the act that causes us to have substantial doubts about the Accused's honesty or trustworthiness).

1. **Mental state.** The Accused's undiagnosed paraphilia was characterized by a strong compulsion to act out, even though he knew that his actions were criminal and socially repugnant. Compulsion does not excuse criminality, and his mental state was certainly "knowing."

2. **Disrespect for the law.** Nevertheless, neither his conduct nor his mental state was characterized by affirmative disrespect for the law. He disregarded a legal prohibition against publicly exposing his private parts, but in doing so, he did not act to defy the rule of law or display contempt for the law. The Accused disobeyed the law, but failing to heed the law does not rise to the level or attitude of disrespect.

3. **Presence or absence of a victim.** We find that CL was a victim in this case. However, we believe the reason for including the presence of a victim as a consideration in the *White* factors suggests something about the victim or the victim's relationship to the Accused's profession warrants consideration as a factor indicating a nexus between the conduct and fitness to practice. We find nothing about this

victim warranting such consideration, and there was no relationship between the Accused and CL.

4. **Actual injury to a victim.** We find that CL suffered actual injury despite the absence of any physical contact. See discussion of the component of victimization resulting from similar conduct in *In re Fehlman*, 21 DB Rptr 177, 180 (2007).

5. **Pattern of conduct.** Although the Bar did not plead the presence of any pattern of conduct, the evidence received without objection demonstrates pattern.

6. **Personal gain.** The act was done intentionally but not for personal gain. Personal gain does not equate to personal gratification. As discussed *In re Fehlman*, 21 DB Rptr 117, “personal gain” connotes something to which the actor is not otherwise entitled.

The *White* factors are neither exclusive nor exhaustive, but are factors that may be helpful in focusing on whether particular criminal conduct involves sufficient nexus between that conduct and the Accused’s status as a lawyer to warrant a finding of “adverse effect” on fitness to practice. We have, therefore, examined the record for clear and convincing evidence of any other factors that would show a nexus between his conduct and his fitness to practice law. We find no such clear and convincing evidence.

The Bar argues that prior to going to Washington Square to masturbate while driving around the parking lot, the Accused viewed pornography on his office computer and that viewing pornography in his office somehow contaminates his practice. Dr. Johnson testified that the stimulation of viewing pornography can sometimes be a step in a cycle that ultimately leads someone with an exhibitionist paraphilia to act out his disorder; however, Dr. Johnson also testified that there is no way to know how significant a factor this has been in the Accused’s history of public indecency. Dr. Brewer testified affirmatively that the Accused’s ability to represent his clients has not been impacted.

We disagree with the Bar’s position that a side-by-side comparison of the facts in *Fehlman* and the instant case shows the two cases to be more similar than different. Mr. Fehlman was not forthcoming about the nature and extent of his conduct. He did not go to his treatment sessions on a regular basis, he lied to the police on more than one occasion, he removed his marked license plates, there were continually problems up to the day of the disciplinary hearing in getting his records from his treating doctor, he failed to recognize the gravity of his problem, and the extent of his problem was only revealed in his full-disclosure polygraph.

Also, Mr. Fehlman claimed he had a mental disorder of obsessive compulsive disorder (OCD) and that his behavior was a product of that disorder, when the evidence clearly ruled out that diagnosis. To the contrary, in the instant case, the Accused has displayed clear insight into the nature of his condition. The Bar’s expert,

Dr. Johnson, testified that the Accused's critical self-examination in his autobiography was a thoughtful analysis.

Many crimes would fit the *White* factors but would still fail in the fundamental requirement for a connection to the practice of law. Based on the evidence before us, we find no violation of RPC 8.4(a)(2).

**ORS 9.527(2).** See Section One for quotation of the statute in relevant part. The issue is whether the crime of public indecency necessarily involves moral turpitude and thus would be a conviction that allows disbarment, suspension, or reprimand under ORS 9.527(2). The Oregon Supreme Court has addressed whether criminal acts of a sexual nature are criminal acts that involve moral turpitude in two cases, *In re Chase*, 299 Or 391, 702 P2d 1082 (1985), and *In re Nuss*, 335 Or 368, 67 P3d 386 (2003). *Chase* said we look to the crime and its elements. *Nuss* said the test is threefold:

1. Intentional and knowing;
2. Fraud, deceit, dishonesty, illegal activity for personal gain or an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or society in general; and
3. Harm to a specific victim.

*Nuss*, 335 Or at 376.

Public indecency is an intentional crime that involves actions which are vile, base, or show depravity in duties owed to society in general, and there was a specific victim in this case. As stated in *Chase*, some crimes by their very nature announce that they involve moral turpitude (*Chase*, 299 Or at 400), but they must be crimes that are intentional or knowing. Violation of ORS 163.465(1)(c) requires knowing and intentional conduct by its very definition.

Public indecency is a crime involving moral turpitude when the crime is analyzed under *Nuss*. *In re Fehlman*, 21 DB Rptr 117. Under both *Chase* and *Nuss*, we find the crime of public indecency to be one involving moral turpitude, and therefore, we find the Accused is subject to discipline per ORS 9.527(2).

**Findings as to Guilt.** The Trial Panel finds by clear and convincing evidence that the August 3, 2007, offense resulting in the October 18, 2007, conviction was a crime involving moral turpitude and as such, the Accused is subject to discipline. The Trial Panel does not find by clear and convincing evidence that the Accused violated RPC 8.4(a)(2) and dismisses that charge.

#### **SECTION FOUR: SANCTIONS**

In determining sanctions, the Oregon Supreme Court first refers us to the ABA *Standards for Imposing Lawyer Sanctions* (1991) (amended 1992) (hereinafter "*Standards*"). Under the *Standards*, we consider (1) the duty violated, (2) the Accused's mental state, and (3) the actual or potential injury that the misconduct caused. From that analysis, we arrive at a preliminary or baseline sanction. We then

examine aggravating and mitigating circumstances to determine if upward or downward adjustments are indicated to the preliminary sanction. Finally, prior Oregon case law is reviewed for guidance in determining whether precedent warrants further modification to arrive at an appropriate sanction. *In re Carpenter*, 337 Or 226, 95 P3d 203 (2004); *In re McDonough*, 336 Or 36, 77 P3d 306 (2003).

**Duty Violated.** The underlying purpose of lawyer discipline proceedings is the protection of the public. *Standards*, § 1.1; *In re Carpenter*, 337 Or at 232. By engaging in conduct that is a crime involving moral turpitude, the Accused has breached his duty owed to the public. *Standards*, § 5.0.

**Mental State.** The *Standards* define “intent” as the “conscious objective or purpose to accomplish a particular result.” “Knowing” is defined as the “conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” *Standards*, at 17. The Accused’s mental state was certainly knowing and intentional, as both are elements of the crime public indecency. The Accused violated his duty to the public to maintain his personal integrity when he engaged in the unlawful conduct. *In re McDonough*, 336 Or at 36. We find knowing to be the mental state of the Accused.

**Injury.** The *Standards* state that the potential injury is the harm to a client, the public, the legal system, or the profession that is reasonably foreseeable which results from the lawyer’s misconduct. The purpose of lawyer discipline is to protect the public, potential injury is sufficient. *Standards*, § 3, p. 25.

The Accused’s misconduct was not committed in the course of his practice of law. There was an injury to the victim, CL. There was also harm to the legal system due to the time and expense to process and prosecute the Accused’s case even though he pled guilty. *In re Hassenstab*, 325 Or at 180.

**Appropriate Preliminary Sanctions.** *Standards*, § 5.12, states that suspension is generally appropriate when a lawyer knowingly engages in criminal conduct that does not contain the elements listed in § 5.11 for disbarment and that seriously adversely reflects on the lawyer’s fitness to practice. *Standards*, § 5.13, states that a reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer’s fitness to practice law. *Standards*, § 5.14, relates to “admonition,” which is a form of discipline not recognized under Oregon law. ORS 9.527 and BR 6.1 authorize only public reprimand, suspension (with or without probation), and disbarment.

The Trial Panel does not find any evidence that the Accused’s criminal conduct seriously adversely reflects on the Accused’s fitness to practice. The uncontradicted evidence is that the Accused has made good progress in his therapy, has passed at least one maintenance polygraph, and displays sincere remorse to his family and professional colleagues. Discipline is warranted, and “admonition” is not available sanction, thus we find that absent aggravating or mitigating factors warranting

adjustment in the baseline sanction, the Accused is subject to the sanctions of public reprimand. *In re Carpenter*, 337 Or at 241.

**Aggravating and Mitigating Factors.** The *Standards*, § 9.22, list aggravating factors that may be considered to justly increase the degree of discipline to be imposed. The factors that are applicable to the Accused are as follows:

- Selfish motive;
- Pattern of misconduct;
- Vulnerability of the victim; and
- Substantial experience in the practice of law.

Factors which may be considered in mitigation are stated in *Standards*, § 9.32. The applicable mitigating factors here are:

- Personal or emotional problems;
- Timely good faith effort to make restitution;
- Full and free disclosure;
- Remorse; and
- No prior disciplinary offense.

In reviewing the aggravating and mitigating factors, we noted that although this involved one criminal offense, there was a pattern of misconduct which was revealed in the Accused's autobiography. However, the Accused's remorse, cooperation during the disciplinary and criminal proceedings, and commitment to treatment diminished this aggravating factor. *In re McDonough*, 336 Or at 45–46. *Standards*, § 9.32(c)(1). Additionally, although the conduct was one of selfish motive, the Accused did not place his need for exhibition or sexual gratification above the needs of his clients. He has acknowledged the wrongful nature of his conduct and has undertaken timely good faith efforts to seek professional treatment, acknowledge his conduct, and find ways to control his impulses. While this does not constitute true "restitution," we regard these efforts by the Accused as, under these circumstances, their equivalent. *Standards*, § 9.32(d). *In re Carpenter*, 337 Or at 244.

Although both Dr. Johnson and Dr. Brewer indicated the Accused had a moderate risk of recidivism, we did not use the possibility of recidivism as an aggravating factor. Both doctors emphasized that inappropriate acting out for an exhibitionist paradoxically thrives on secrecy. He must be anonymous to his victims, and his behavior must be kept secret from those who know him. Clearly, the Accused has recognized continuing candor within his circle of family and supporters is an important check against future misconduct. His insight, candor, and focused efforts to maintain control and continue treatment suggest reason for optimism.

We conclude that the mitigating circumstances outweigh the aggravating circumstances in this case. Suspension is not warranted under the *Standards*, and,

after considering aggravation and mitigation, we remain at the level of public reprimand.

**Case Law.** The Bar argues that although the conduct in *In re Hassenstab*, 325 Or 166, and *In re Wolf*, 312 Or 655, 826 P2d 628 (1992), are dissimilar, these cases at least show the Oregon Supreme Court has imposed significant sanctions for sexual misconduct by lawyers. Also, the Bar argues that the case is similar to *In re Fehlman*, 21 DB Rptr 117. As noted above, we find this case dissimilar to *Fehlman* in many important respects, and find the dissimilarity especially pronounced when considering sanctions. Recognizing that the Supreme Court has imposed significant sanctions on lawyers for sexual misconduct, the nature and severity of the three cases mentioned above are distinguishable from the instant case.

The Bar has asked us to sanction the Accused based on his moral character. Based on the charges brought by the Bar, we do not see that moral character is a part of this case. The Accused was charged with ORS 9.527(2), not 9.527(1), which would have arguably put moral character at issue. Although we find the Accused was convicted of a misdemeanor that involved moral turpitude, that is not the same as having bad moral character. It is not his character but rather the elements of the crime itself that make it a crime of moral turpitude. The Bar agreed with this position in closing argument.

A review of the case law does not disclose any cases with similar fact patterns, but does afford analytical similarities based on general characteristics. In a review of *In re Kumley*, 335 Or 639, 75 P3d 432 (2003), and *In re Flannery*, 334 Or 224, 47 P3d 891 (2002), the circumstances are analogous as both cases involved criminal conduct but the conduct did not arise directly from the practice of law. The accused in those cases acted intentionally or knowingly, caused some degree of injury, but the conduct did not seriously adversely reflect on their fitness to practice law as required for suspension under *Standards*, § 5.12.

The same is true of the case of *In re Carpenter*, 337 Or 226, which dealt with an intentional act that caused some degree of injury, but the conduct did not arise out of the accused's practice of law and the conduct did not seriously adversely reflect on the lawyer's fitness to practice law. These cases all imposed a sanction of public reprimand.

It is the role of the criminal justice system to keep the Accused from reoffending. It is the Trial Panel's function not to punish the crime, but impose sanctions that, by clear and convincing evidence, are appropriate to uphold the dignity and respect of the profession, protect courts, preserve the administration of justice, and protect clients. *In re Carstens*, 297 Or 155, 166, 683 P2d 992 (1984).

## **SECTION FIVE: PUBLIC REPRIMAND**

The conduct of the Accused need not be again described here. We need only emphasize the obvious: It was shameful, selfish, contemptible, and hurtful. A young woman in a very public place became the random victim of the Accused's shocking

behavior. We do not know whether other women or children noticed the Accused's disgusting behavior as he drove around the parking lot of a major urban shopping center at midday. We do know that his behavior has caused needless hurt and humiliation to his family, shocked his friends, and saddened his colleagues. It is behavior offensive to social values and expectations, not just of lawyers but of responsible and upright citizens generally.

Despite the fact that this Trial Panel has conscientiously applied the ABA *Standards* in light of Oregon case law, we know there are many in the general public who will be outraged that the only sanction the Accused receives from the Bar is a public reprimand. In this, too, the Accused's conduct has brought disrespect on his profession.

Let no one mistake a public reprimand as condoning such behavior. Far from it, we have faith that any repetition by the Accused will be regarded as intentional and willful disrespect for the law and contempt for his profession, warranting sanctions at least as heavy as those imposed in *Fehlman* and even *Hassenstab*.

#### **SECTION SIX: DISPOSITION**

It is the decision of the Trial Panel that this Opinion and Order shall constitute a public reprimand based on a finding of guilt under ORS 9.527(2), and that the charge of violation of RPC 8.4(a)(2) be dismissed.

IT IS SO ORDERED.

DATED this 4th day of November 2008.

/s/ Pamela E. Yee

Pamela E. Yee

OSB No. 87372

Trial Panel Chair

/s/ William G. Blair

William G. Blair

OSB No. 69021

Trial Panel Member

/s/ Loni J. Bramson

Loni J. Bramson, Ph.D.

Public Member



IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 06-52  
)  
M. CHRISTIAN BOTTOMS, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Allison D. Rhodes  
Disciplinary Board: None  
Disposition: Violations of RPC 1.4(a), RPC 1.4(b), and RPC  
1.16(a)(2). Stipulation for Discipline. Public  
reprimand.  
Effective Date of Order: January 16, 2009

**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 1.4(a) and (b), and RPC 1.16(a)(2) of the Rules of Professional Conduct.

DATED this 16th day of January 2009.

/s/ Gregory E. Skillman

Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ William B. Crow

William B. Crow, Region 5  
Disciplinary Board Chairperson

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law on September 20, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, 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 20, 2006, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.4(a), (b), and RPC 1.16(a)(2). From January 10, 2007, through July 12, 2008, the proceeding was abated for reasons not relevant to this stipulation. 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 August 10, 2005, Willie Banks (hereinafter “Banks”) was indicted for the crime of unauthorized use of a vehicle, in violation of ORS 164.135, in the Circuit Court of the State of Oregon for the County of Washington, *State of Oregon v. Willie Banks*, Case No. C053924CR (hereinafter “Criminal Case”). On August 30, 2005, Banks was arraigned on the indictment. Thereafter, Banks retained the Accused to represent his interests in the Criminal Case. On or about December 14, 2005, the court granted the Accused’s motion to reschedule the December 16, 2005, trial date. The court notified the parties’ counsel that the Criminal Case was scheduled for trial on January 26, 2006.

6.

On January 26, 2006, Banks and the deputy district attorney appeared for trial in the Criminal Case. The Accused did not appear and did not notify Banks or the court in advance that he did not intend to appear or was not able to appear for trial. The Accused's assistant left a telephone message for the court that the Accused would not be appearing.

7.

Prior to January 26, 2006, the deputy district attorney assigned to the Criminal Case conveyed a settlement offer to the Accused to resolve the Criminal Case without trial. The Accused failed to fully explain and communicate the offer to Banks. On or about January 26, 2006, the court scheduled a hearing for the Accused to appear on February 1, 2006, before the presiding judge in the Washington County Circuit Court, to answer for his failure to appear and failure to timely notify the court and Banks that he did not intend to appear or was not able to appear for trial on January 26, 2006. The court provided notice to the Accused and Banks of the date and time for the scheduled hearing.

8.

After January 26, 2006, and through February 1, 2006, the Accused did not communicate with Banks or the court concerning the Criminal Case. On February 1, 2006, Banks and the deputy district attorney assigned to the Criminal Case appeared before the presiding judge for hearing as scheduled by the court. The Accused did not appear. The Accused did not notify Banks or the court that he did not intend to appear or was not able to appear for the hearing, and did not otherwise communicate with the court or Banks.

9.

In late January 2006, the Accused hired attorney Clay McCaslin (hereinafter "McCaslin") to assist him with various matters. On February 1, 2006, McCaslin appeared before the court in the place of the Accused. McCaslin was not familiar with the Criminal Case or Banks. On February 1, 2006, the court entered an order removing the Accused as Bank's counsel.

10.

After February 1, 2006, the Accused did not communicate with Banks or the court concerning the Criminal Case, his failure to appear or intention not to appear for trial on January 26, 2006, or his failure or intention not to appear for the February 1, 2006, hearing before the presiding judge. During the representation, the Accused did not keep Banks reasonably informed about the Criminal Case and did not provide explanations reasonably necessary to permit Banks to make informed decisions regarding the representation.

11.

During the representation, the Accused had a chemical dependency problem. The Accused continued his employment as Banks' lawyer and failed to withdraw from the representation when the Accused's mental or physical condition rendered it unreasonably difficult for the Accused to carry out the employment effectively.

12.

The Accused admits that the aforesaid conduct constituted violation of RPC 1.4(a) (failure to keep a client reasonably informed about the status of the client's case), RPC 1.4(b) (failure to provide explanations reasonably necessary to permit a client to make informed decisions regarding the representation), and RPC 1.16(a)(2) (failure to withdraw when mental or physical condition rendered it unreasonably difficult for the Accused to carry out the employment effectively).

### SANCTION

13.

The Accused and the Bar agree that in fashioning an appropriate sanction, the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*") are considered. The *Standards* require that the Accused's conduct be analyzed by the following factors: (1) the ethical duty violated, (2) the 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 1.4(a) and RPC 1.16(a), the Accused violated duties to his client and the profession. *Standards*, §§ 4.4 and 7.0.
- b. **Mental state.** "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, p. 7. The Accused knew that his use of controlled substances was interfering with his handling of clients' cases. He was negligent in failing to attend to the client's case and in failing to communicate with and to take action to address the court's and the client's concerns.
- c. **Injury.** The *Standards* define "injury" as harm to the client, the public, the legal system or the profession that results from a lawyer's conduct. "Potential injury" is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer's conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards*, p. 7.

The Accused caused actual and potential injury to his client and the court. The client's case was delayed and the client was frustrated by the Accused's failure to communicate with him. The court was required to take additional time to address the Accused's conduct and the client's case, which could have been used for other matters.

- d. **Aggravating factors.** Aggravating factors are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are multiple offenses. *Standards*, § 9.22(d). The Accused was admitted to practice law in 1996 and has substantial experience in the practice of law. *Standards*, § 9.22(i).
- e. **Mitigating factors.** Mitigating factors are considerations that may decrease the degree of discipline to be imposed. *Standards*, § 9.32. The Accused has no prior record of discipline. *Standards*, § 9.32(a). He is remorseful and has acknowledged his misconduct. *Standards*, § 9.32(l). There is some evidence of chemical dependency and interim rehabilitation. *Standards*, § 9.32(h), (j).

14.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, § 4.43. Oregon case law is in accord. See, e.g., *In re Rose*, 20 DB Rptr 237 (2006) (reprimand for violation of DR 6-101(B), RPC 1.3, RPC 1.16(d)); *In re Koch*, 18 DB Rptr 92 (2004) (reprimand for violation of DR 2-110(A) and (B), DR 6-101(B), DR 9-101(C)(4)); *In re Russell*, 18 DB Rptr 98 (2004) (reprimand for violation of DR 6-101(B)); *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for violation of DR 6-101(B) when lawyer had prior record of neglect and significant mitigating factors present).

15.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violations of RPC 1.4(a) and (b), and RPC 1.16(a)(2) of the Rules of Professional Conduct.

16.

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

Cite as *In re Bottoms*, 23 DB Rptr 13 (2009)

DATED this 5th day of January 2009.

/s/ M. Christian Bottoms

M. Christian Bottoms

OSB No. 962270

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. 08-28  
)  
COLETTE BOEHMER, )  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of RPC 1.15-1(a), RPC 8.1(a)(1), and  
RPC 8.1(a)(2). Stipulation for Discipline. 60-day  
suspension.  
Effective Date of Order: March 1, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 60 days, effective March 1, 2009, for violation of RPC 1.15-1(a), RPC 8.1(a)(1), and RPC 8.1(a)(2).

DATED this 28th day of January 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on November 26, 1982, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Jackson County, Oregon.

3.

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

4.

On July 16, 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 1.15-1(a), RPC 8.1(a)(1), and RPC 8.1(a)(2). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

On August 20, 2007, the Accused wrote a check on her lawyer trust account made payable to herself in the amount of \$2,200.00 for payment of earned attorney fees. At the time the Accused wrote this check, her lawyer trust account did not contain sufficient funds to cover it. The Accused was unaware that the account contained insufficient funds because she did not maintain adequate or accurate records.

6.

Beginning in 2007, the Accused represented a client in a matter. On December 31, 2007, the Accused withdrew \$500.00 from her lawyer trust account for attorney fees incurred by that client. On January 4, 2008, the Accused withdrew \$457.00 from her lawyer trust account for attorney fees incurred by that client. The funds on



deposit for that client on December 31, 2007, and January 4, 2008, were insufficient to cover the withdrawals made by the Accused. The Accused was unaware that the account contained insufficient funds because she did not maintain adequate or accurate records.

7.

On August 27, 2007, the Accused's bank notified the Bar that there were insufficient funds in the Accused's lawyer trust account to cover a check she had written on that account. Thereafter, the Bar undertook an investigation of the Accused's conduct.

8.

On November 5, 2007, the Disciplinary Counsel's Office of the Bar (hereinafter "DCO") requested the Accused to respond to a number of inquiries on or before November 15, 2007. The Accused knowingly failed to respond to that letter and to subsequent letters reminding her of her duty to respond.

9.

In the November 5, 2007, letter the DCO requested the Accused to provide copies of certain client ledger cards. Beginning on December 13, 2007, the Accused repeatedly represented to DCO that she had mailed the requested client ledger cards. At the time the Accused made those representations, she knew they were false and material.

### **Violations**

10.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 9, she violated RPC 1.15-1(a), RPC 8.1(a)(1), and RPC 8.1(a)(2).

### **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 clients to maintain accurate and complete lawyer trust account records, and duties she owed to the profession to be truthful and cooperate in Bar investigations. *Standards*, §§ 4.1 and 7.0.

- b. **Mental state.** The Accused acted negligently in the manner in which she maintained her trust accounting records. The Accused acted knowingly when she failed to respond and when she made misrepresentations to the Bar.
- c. **Injury.** It does not appear that any client sustained actual injury as a result of the Accused's inadequate and incomplete recordkeeping. However, there is always the potential for injury to clients when a lawyer fails to properly maintain financial records. The Bar sustained actual injury as a result of the Accused's misrepresentations and failure to cooperate. DCO expended additional time and resources pursuing the matter and ultimately referred it to the Local Professional Responsibility Committee in order to obtain the client ledger cards from the Accused. Completion of the investigation was delayed because of the Accused's misconduct.
- d. **Aggravating circumstances.** The following aggravating circumstances exist:
  1. Selfish motive. The Accused knew that she had not been keeping adequate and accurate trust records and sought to avoid the consequences of her misconduct by making false representations and failing to cooperate. *Standards*, § 9.22(b).
  2. Pattern of misconduct. The Accused failed to maintain adequate and accurate trust records for over a year. *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 1982. *Standards*, § 9.22(i).
- e. **Mitigating circumstances.** The following mitigating circumstances exist:
  1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
  2. Personal or emotional problems. The Accused has provided evidence suggesting that she was experiencing emotional problems during the relevant period of time. *Standards*, § 9.32(c).
  3. Remorse. The Accused has expressed remorse for her misconduct. *Standards*, § 9.32(m).

12.

Suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is also generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the

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

13.

Lawyers who have failed to determine the truth or falsity of a representation before they made the representation to the Bar have been suspended for 30 days. *In re Nester*, 19 DB Rptr 134 (2005); *In re Mendez*, 10 DB Rptr 129 (1996). In the present case, the Accused knew the representations she made to the Bar were false at the time she made them.

In *In re Worth*, 336 Or 256, 82 P3d 605 (2003), the court imposed a 90-day suspension on a lawyer who violated a number of rules in three separate matters, including one matter in which he made a misrepresentation to the Bar. In *In re Eakin*, 334 Or 238, 48 P3d 147 (2002), the court imposed a 60-day suspension on a lawyer who failed to maintain adequate and accurate trust account records.

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 60 days for violation of RPC 1.15-1(a), RPC 8.1(a)(1), and RPC 8.1(a)(2), the sanction to be effective March 1, 2009.

15.

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. In this regard, the Accused has arranged for James A. Wickre, 201 W. Main Street, Ste. B, Medford, Oregon, 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 Mr. Wickre has agreed to accept this responsibility.

16.

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.

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.

Cite as *In re Boehmer*, 23 DB Rptr 19 (2009)

EXECUTED this 16th day of January 2009.

/s/ Colette Boehmer

Colette Boehmer

OSB No. 824924

EXECUTED this 22nd day of January 2009.

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. 07-44 and 07-45  
)  
JOHN H. OH, )  
)  
Accused. )

Counsel for the Bar: Linn D. Davis  
Counsel for the Accused: None  
Disciplinary Board: Craig A. Crispin, Chair  
Colin D. Lamb  
Allen M. Gabel, Public Member  
Disposition: Violation of DR 9-101(A), RPC 1.3, RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.16(d), and RPC 8.1(a)(2). Trial Panel Opinion. Eight-month suspension.  
Effective Date of Opinion: February 3, 2009

**OPINION OF THE TRIAL PANEL**

**Nature of the Case**

The Accused, admitted to the practice of law in Oregon since 2000, is charged by Amended Formal Complaint dated August 20, 2008, with the following:

- A. First Cause of Complaint: “Kabasakal Matter”—Violation of DR 9-101(A) of the Code of Professional Responsibility (failure to deposit unearned funds into a lawyer trust account), RPC 1.3 of the Rules of Professional Conduct (neglect of a legal matter), and RPC 1.16(d) of the Rules of Professional Conduct (failure to promptly refund unearned fees and expenses upon termination of representation);
- B. Second Cause of Complaint: “Lee Matter”—Violation of RPC 1.3 of the Rules of Professional Conduct (neglect of a legal matter), RPC 1.15-1(a) of the Rules of Professional Conduct (failure to properly maintain client funds separate from his own funds in lawyer trust account), and RPC 1.15-1(c) of the Rules of Professional Conduct (failure to deposit into lawyer trust account legal fees and expenses paid in advance); and

- C. Third Cause of Complaint: “Oregon State Bar Matter”—Violation of RPC 8.1(a)(2) of the Rules of Professional Conduct (failure to respond to a lawful demand for information from a disciplinary authority).

On January 18, 2008, the Accused filed an Answer to the Bar’s Formal Complaint dated October 23, 2007. Upon motion by the Accused, the Answer to the Bar’s Formal Complaint was deemed responsive to the Amended Formal Complaint.

The matter proceeded to hearing before the trial panel on September 17, 2008. The Bar presented the testimony of Nan Soon Lee (through interpreter Sangh Ju Peters) and the Accused and offered documentary evidence. Without objection, Exhibits 6–14, 16–28, 30–46, 50, 51, 55–70, and 73–75 offered by the Bar were received. The Accused offered Exhibits 47–49 and 53–54, which were received without objection. Exhibit 1 (Formal Complaint dated October 23, 2007), Exhibit 2 (Answer dated January 18, 2008), and Exhibit 34 (Amended Formal Complaint dated August 20, 2008) were noted to be part of the formal file. All remaining marked exhibits were withdrawn. The Accused testified on his own behalf, but offered no additional witnesses.

At the close of the testimonial evidence, the parties offered closing argument. The Accused requested to present his own testimony as part of his closing argument, and without objection by the Bar, the request was granted and the Accused reminded that he remained under oath for any factual assertions contained in his closing argument. The hearing concluded on September 17, 2008.

### **Description of the Charges**

The Bar alleges that it is duly organized and authorized to administer Oregon laws relating to the discipline of Oregon attorneys and that the Accused is, and at times relevant to the instant proceedings was, an attorney admitted to the practice of law in the State of Oregon with his office and place of business in Washington County, Oregon. The Accused’s Answer admits<sup>1</sup> the foregoing allegations.<sup>2</sup>

The Accused is charged with violations allegedly arising in connection with his representation of two former clients, Leyla Kabasakal and Nan Soon Lee, in immigration matters.

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<sup>1</sup> The Accused’s Answer admits certain allegations of the Bar and denies others. The Accused responds to the remaining allegations by paragraphs commencing with the word “Explain.” Such *explanations* are treated as admitting corresponding allegations of the Bar except to the extent the Trial Panel can identify specific allegations contradicted by the Accused’s explanations.

<sup>2</sup> At the time of hearing, the Accused was engaged in the practice of law, not associated with any law firm, in Los Angeles, California.

### **The Kabasakal Matter**

In the Kabasakal matter, the Accused is alleged to have undertaken representation of Ms. Kabasakal on September 11, 2003, for purposes of filing on her behalf a petition for H-1B status as a nonimmigrant worker (work visa), and in July 2004 for purposes of assisting her with a petition for permanent resident status, also known as a green card. The Accused is alleged to have failed to maintain an advance payment from Kabasakal in the amount of \$1,800 in a lawyer trust account, as required by the parties' written fee agreement, but rather to have deposited such amount into his own account.

The Accused is also alleged to have agreed to perform three steps toward acquisition of permanent resident status for Kabasakal in exchange for payment of \$4,000, with a \$2,000 flat fee before step one and a second payment of \$2,000 due before undertaking the second and third steps. The process required applying for a work visa associated with Kabasakal's employment with BMCI, an export firm, and later with Pear Bureau Northwest, Kabasakal's new employer. The Accused petitioned for a work visa, and the Bar alleges that the Accused thereafter proceeded to assist Kabasakal and her employer to perform the first step, the advertisement for U.S. applicants and evaluation of résumés received as required for a labor certification showing the absence of a qualified American resident for the job.

Although Kabasakal and her employer performed the recruitment process, the Bar alleges that the Accused took no further substantive action to secure the labor certification or, despite repeated requests to do so from Kabasakal, toward the second and third steps—a petition for alien worker status for the job and adjustment of immigration status to permanent residency, respectively. The Bar alleges that Kabasakal met with the Accused in September 2006, at which time the Accused reasserted his intention of completing the application for a labor certification, but thereafter failed to complete the application, causing the time during which the employer's recruitment efforts could be utilized to expire.

The Bar alleges that on October 30, 2006, Kabasakal terminated the Accused's representation and demanded return of her property, including attorney fees and papers. Kabasakal complained to the Client Assistance Office of the Oregon State Bar on November 30, 2006, after which in April 2007, the Accused refunded Kabasakal's fees.

The Bar alleges the Accused engaged in violations of DR 9-101(A) of the Code of Professional Responsibility by failing to deposit unearned funds into a lawyer trust account, of RPC 1.3 of the Rules of Professional Conduct by neglect of a legal matter, and of RPC 1.16(d) of the Rules of Professional Conduct by failing to promptly refund unearned fees and expenses upon termination of representation.

The Accused's Answer admits that the Accused undertook to represent Leyla Kabasakal in an immigration matter in exchange for which Kabasakal paid him \$1,800 and that the Accused did not deposit Kabasakal's \$1,800 payment into a lawyer trust account. The Accused does not deny that the written fee agreement fails

to provide that the \$1,800 fee is earned upon receipt. He alleges that Kabasakal's payment of \$1,800 payment was earned upon receipt and that his failure to deposit such funds into a lawyer trust account was due to his mistaken use of a "template engagement letter from [his] prior firm."

The Accused's Answer denies that he failed to diligently pursue the immigration matter or failed to promptly refund unearned expenses and fees. It further denies that the Accused's conduct constituted violations of the ethical provisions alleged by the Bar.

### **The Lee Matter**

In the Lee matter, the Accused is alleged to have undertaken, on November 15, 2005, to represent Lee in an immigration matter to obtain special immigrant status as a religious worker for Lee, followed by a petition for permanent residency for herself, her husband, and her minor child. In exchange, a flat fee of \$4,500 was to be paid, with \$2,250 as earned upon receipt before the Accused began work. Lee paid the Accused \$2,250 and provided necessary documents and information for filing the petition.

The Bar alleges the Accused failed to file the petition and that on March 28, 2006, the Accused met with Lee, set a new timetable for filing the petition, asked Lee for additional documents, and requested Lee to pay the balance of the flat fee, though reducing the balance to \$2,000. The Bar alleges that on April 7, 2006, Lee provided the additional documents the Accused requested and provided a check for \$2,000 plus \$190 for filing fees. The Bar alleges that the written fee agreement between the Accused and Lee did not provide that the \$2,000 paid by Lee on April 7, 2006, would be earned upon receipt and could not provide that costs advanced were earned, and that the Accused deposited both payments into his own account rather than into a lawyer trust account.

The Bar alleges that the Accused failed to take action to complete the petition for religious-worker status or the petitions for permanent resident status and that Lee terminated the Accused's representation and demanded a refund of fees, which the Accused eventually refunded to Lee.

The Bar alleges that the Accused engaged in violations of RPC 1.3 of the Rules of Professional Conduct by neglect of a legal matter, of RPC 1.15-1(a) of the Rules of Professional Conduct by failing to properly maintain client funds separate from his own funds in a lawyer trust account, and of RPC 1.15-1(c) of the Rules of Professional Conduct by failing to deposit into lawyer trust account legal fees and expenses paid in advance.

The Accused's Answer admits that the accused undertook representation of Nan Soon Lee to obtain religious-worker status for her and permanent residence status for Lee's family members at a flat fee of \$4,500, payable by \$2,250 earned upon receipt for work on the religious-worker status petition and the remaining \$2,250 payable before commencing work on the permanent residence status petition;



that \$2,250 was paid by Lee on November 15, 2005, that \$2,000 (reduced by agreement between the Accused and Lee) was paid by Lee on April 7, 2007, and that Lee paid \$190 to the Accused for a filing fee on April 7, 2007.

The Accused's Answer alleges that the \$2,000 payment received on April 7, 2007, was earned upon receipt and further denies that the Accused's conduct constituted violations of the ethical provisions alleged by the Bar.

### **The Oregon State Bar Matter**

The Bar also alleges that Oregon State Bar Disciplinary Counsel on February 5, 2007, mailed notices of complaints by Kabasakal and Lee to the Accused, each notice demanding the Accused's responses to the allegations contained in the two complaints and requesting additional information, including copies of files, fee agreements, and billing records by February 26, 2007. The Bar alleges the Accused failed to respond by February 26, 2007, but upon inquiries by Bar staff requested additional time in which to respond by March 29, 2007. Despite such requests, the Accused thereafter failed to respond to Disciplinary Counsel or to request additional time.

The Bar alleges the Accused violated RPC 8.1(a)(2) of the Rules of Professional Conduct by his failure to respond to a lawful demand for information from a disciplinary authority. The Accused's Answer admits that the Accused did not respond as requested by the Bar to its demands for information. The Answer admits the Accused violated RPC 8.1(a)(2) of the Rules of Professional Conduct, but alleges personal extenuating circumstances.<sup>3</sup>

### **Issues for Resolution by the Trial Panel**

After accounting for the admissions and denials contained in the Accused's Answer, the factual issues for resolution by the Trial Panel, for purposes of determining whether violations have occurred, consist primarily of the following:

#### **A. The Kabasakal Matter**

(1) Whether the Bar has proved by clear and convincing evidence that the Accused's receipt of an \$1,800 payment from Ms. Kabasakal was required to be deposited into a lawyer trust account and was improperly treated by the Accused as earned upon receipt.

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<sup>3</sup> The Amended Formal Complaint further alleges that the Kabasakal and Lee complaints were forwarded to a Local Professional Responsibility Committee ("LPRC") and that the Accused and LPRC investigators agreed that the Accused would produce requested documents to the investigators on April 24, 2007. The Amended Formal Complaint does not allege that the Accused failed to comply with this agreement, and the Accused's Answer alleges he produced documents relating to the Kabasakal complaint as agreed and that he produced documents relating to the Lee complaint pursuant to later agreement with the LPRC investigators.

(2) Whether the Bar has proved by clear and convincing evidence that the Accused neglected a legal matter by failing to take action to secure a labor certification on behalf of Kabasakal or to complete a petition for alien worker status and a petition for adjustment of immigration status to permanent residency.

(3) Whether the Bar has proved by clear and convincing evidence that the Accused failed to promptly refund unearned fees and expenses.

### **B. The Lee Matter**

(1) Whether the Bar has proved by clear and convincing evidence that the Accused neglected a legal matter by failing to petition for permanent resident status for Lee and her qualified family members.

(2) Whether the Bar has proved by clear and convincing evidence that the Accused was obligated but failed to deposit Lee's payment of \$2,000 in fees and \$190 for filing fees (costs advanced) into a lawyer trust account.

### **C. The Oregon State Bar Matter**

Because the Accused has admitted the violations as alleged by the Bar, no factual issues remain regarding plaintiff's violation of RPC 8.1(a)(2) of the Rules of Professional Conduct by his failure to respond to a lawful demand for information from a disciplinary authority.

## **Discussion**

The Trial Panel, upon consideration of the evidence presented at hearing, finds the following facts proved by clear and convincing evidence.<sup>4</sup>

The Accused, John H. Oh, has been a member of the Oregon State Bar since 2000. He has practiced in the area of immigration law throughout his membership in the Bar, first as an employee of a Portland immigration law firm through December 2003, and thereafter as a sole practitioner. The Bar presented evidence that the Accused was substantially experienced in the practice of immigration law, but the Accused explained that the area of immigration law is constantly changing, that he did not receive extensive training over the course of his career, that he attended a couple of annual AILA (American Immigration Lawyers of America) conferences in immigration law, and that he had a limited number of years of experience in the practice of immigration law in a law firm setting where he had access to more experienced immigration law attorneys.

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<sup>4</sup> Where a fact has been merely alleged, but not proved by clear and convincing evidence, the evidence in support of and in opposition to such allegation is described, but not credited in determining whether a violation has occurred or in support of any proposed sanction.

**A. The Kabasakal Matter**

The Accused first met with Ms. Kabasakal on August 20, 2003, at which time the Accused and Kabasakal discussed application for a H-1B work status, allowing a nonimmigrant to work for a specified company for a three-year period.<sup>5</sup> On September 11, 2003, the Accused and Kabasakal entered into a representation agreement, which provided that the estimate of fees for filing a Petition for a Nonimmigrant Worker (H-1B) status was \$1,800, that Kabasakal was requested to submit a “retainer fee” of \$1,800, and that such “retainer fee” would be held in “our client trust account” and “bill[ed] against.” The Accused testified that he made a mistake in connection with the representation agreement and that the agreement should have provided for “paid upon receipt instead of a trust account.” (It is assumed the Accused intended to allege the agreement should have provided for a fee *earned upon receipt*.) The Accused did not deny, however, that the written terms of the fee agreement provided for an \$1,800 fee that would be earned on an hourly basis, that an advance deposit of \$1,800 would be deposited into a lawyer trust account, and that fees would be billed and taken from the trust account balance as earned. Nor did he offer testimony that he in fact reached agreement with Kabasakal that any fee would be earned upon receipt. The Bar has proved by clear and convincing evidence that the Accused entered into a fee agreement with Kabasakal that did not provide for a fee earned upon receipt.

The Accused testified that he deposited the \$1,800 payment made by Kabasakal into his business account, not a lawyer trust account. The Bar presented evidence that the Accused did not have a business account as of the date of Kabasakal’s payment, and the Accused responded that he opened such an account in the fall or winter of 2006. Although the Bar has not proved the date the Accused deposited Kabasakal’s payment, the Bar has proved by clear and convincing evidence that the Accused did not deposit Kabasakal’s \$1,800 payment into a lawyer trust account.

The Accused secured H-1B status as a nonimmigrant worker for Kabasakal by January 27, 2004. He thereupon proceeded to address permanent resident status (a green card) for Kabasakal with her employer BMCI. Soon thereafter, BMCI went out of business, and the Accused entered into a fee agreement with Kabasakal for obtaining her permanent residence status on July 6, 2004, which provided for a \$2,000 payment, earned upon receipt, for the first step of a multistep process. Kabasakal paid the Accused the \$2,000 fee, and the payment was deposited into the Accused’s business account by July 28, 2004. The Accused began a new permanent

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<sup>5</sup> The Bar presented evidence that the Accused undertook representation of Ms. Kabasakal while still employed with his former firm, but because the Bar failed to file any complaint to which such evidence was relevant, such evidence has been disregarded.

resident status application in connection with Kabasakal's new employer, Pear Bureau Northwest.

The Accused and Kabasakal agreed to and set out a time line for accomplishing a three-step immigration process, comprising: (1) a permanent status labor certification with the Department of Labor, (2) an employer petition for alien worker authorization, and (3) application for a green card.

Beginning in August 2004, the Accused began working with Kabasakal on securing a second H-1B status due to Kabasakal's change of employers, and by March 2005 the second H-1B status was approved. In June 2005, the Accused and Kabasakal, with Pear Bureau Northwest, returned to the labor certification process, which required recruitment (including advertising) of U.S. workers and evaluation of responding résumés. The Accused explained to Kabasakal on June 22, 2005, that the labor certification was required to be completed within six months of the date of the recruitment advertising. Throughout June, July, and August, Kabasakal made inquiries to the Accused concerning the status of the labor certification process. The Accused did not respond until sometime after September 18, 2005, when he informed Kabasakal he would be updating her soon.

On January 23, 2006, the Accused and Kabasakal met to discuss the three-step permanent resident status application, and the Accused set out a new time line. As of the date of this meeting, the Accused had not accomplished any meaningful work on any of the steps. In March 2006, the Accused prepared a job description and proposed recruitment advertisement as required for the labor certification step and informed Kabasakal that her employer needed to register with the Department of Labor ("DOL") Web site allowing the Accused to proceed electronically with Kabasakal's Permanent Employment Certification application. Kabasakal's employer completed the registration by March 29, 2006.

The Accused prepared a 5-line classified ad, which he caused to be printed by The Oregonian on April 16 and April 23, 2006. The Accused explained that an employer can use a recruitment ad (and resulting 30-day period for evaluation of applicants) for a labor certification for only a six-month period after the date of the ad, although a new ad and recruitment process could be done for a new six-month period. (Kabasakal could apply for a green card regardless of expiration of the six-month period.) By June 23, 2006, Kabasakal provided the Accused with selected résumés for evaluation and a chart evaluating the candidates who responded to the ad and reasons for such candidates' rejections.

In early and mid-July 2006, Kabasakal inquired of the Accused about the status of the Accused's review of the materials provided in June. The Accused did not respond. Kabasakal requested a meeting with the Accused, which took place on September 11, 2006. At that meeting, the Accused advised Kabasakal he would refund the fees paid if the services for which he was retained were not performed by the end of 2006. The Accused testified that nothing more was required by Kabasakal or her employer for completion of his services and that he knew the six-month limit

on using the recruitment undertaken by Kabasakal's employer would expire in October 2006.

The Accused testified that after his meeting with Ms. Kabasakal on September 11, 2006, he was trying to finalize the labor certification application by "maybe fill[ing] in a draft of the application before submitting it," but admitted that he was able to produce no drafts and that he was "not positive" whether he, in fact, did any work on the application.

On September 20, 2006, Kabasakal inquired of the Accused to determine if the application had been submitted. The Accused replied on September 22, 2006, advising of a "slight delay," and explaining that "[l]ast week when I tried to file the application, the Labor Department's LCA system was down." The Accused admitted that he could not say whether he had completed the application by September 22, 2006, or whether his claim to have made an attempt to file the application was truthful or not. He further admitted that it "may be true" that he gave Kabasakal a false excuse about attempting to file her application.

The Accused's testimony concerning his efforts to file an application for Kabasakal through the DOL's LCA system, his representations to Kabasakal concerning those efforts, and any progress he made toward completing the labor certification application was evasive and not credible. He eventually admitted he tried to use the AILA notice that the LCA system was down as "an excuse for my delay." As such, the Trial Panel concludes the Bar has proved by clear and convincing evidence that the Accused gave Kabasakal false information about the status of his services for her.

On September 27, 2006, Kabasakal advised the Accused that the DOL Web site appeared operational and requested that he attempt to file the application. The Accused was unable to identify any action he took from September 27, 2006, through October 30, 2006, in furtherance of the labor certification application. He admitted he knew the labor certification application had to be submitted within six months of the recruitment advertising. On October 30, 2006, Kabasakal notified the Accused that she was terminating his representation and demanded return of fees and papers related to the services the Accused was retained to provide.

The Accused testified he talked by phone with Kabasakal about returning fees and asked for time to make an accounting of the work done for deduction from the \$2,000 fee previously paid. He testified he thought he had earned at least half of the flat fee paid by Kabasakal, but admitted he never undertook an accounting to determine the amount, if any, he had earned. The Accused had funds in his account sufficient to refund at least \$1,000 of the previously paid flat fee in October 2006.

On November 30, 2006, Ms. Kabasakal filed a complaint with the Bar, and the Accused was notified of that complaint by letter dated December 13, 2006, from the Bar's Client Assistance Office ("CAO"). The CAO requested the Accused's response to Kabasakal's complaint by December 27, 2006. By letter to the CAO of that date, the Accused requested additional time, to January 5, 2007, in which to respond.

On January 5, 2007, the Accused talked with Kabasakal and arranged to send her a check refunding \$2,000 in fees and \$1,033.91 in compensation for costs incurred in the advertising and recruiting process required to be redone by Kabasakal's new attorney in furtherance of the labor certification matter. On January 5, 2007, the Accused mailed checks in the above amounts respectively dated January 10, 2007, and February 10, 2007.<sup>6</sup>

Also on January 5, 2007, the Accused wrote the CAO advising that he and Ms. Kabasakal had "come to an amicable settlement" and that "Ms. Kabasakal has agreed that this [refund of fees and advertising costs] would resolve all issues and claims concerning this matter." The Accused at hearing acknowledged that any settlement over the return of fees or reimbursement for additional advertising costs had no effect on Kabasakal's complaint to the Bar and denied that he offered money in an effort to stop either Bar complaint. The Bar has failed to prove by clear and convincing evidence that the Accused made such an effort.

## **B. The Lee Matter**

Nan Soon Lee retained the Accused in November 2005 for the purposes of applying for permanent residence status. She executed a written fee agreement on November 15, 2005, which provided an estimate for filing and obtaining a Special Immigrant—Religious Worker (EB-4) and an Adjustment of Status (green card) for Lee and her family of \$4,500 in legal fees and an agreement to cap such legal fees at \$4,500. The written agreement provided that an initial payment of \$2,250 was due before preparation of the immigrant petition, which payment the agreement specified was a nonrefundable fee earned upon receipt. The written agreement also provided that the remaining \$2,250 was due and payable before preparation of the Adjustment of Status applications, but unlike the initial payment was not designated as earned upon receipt.

The Accused testified that the written fee agreement with Lee was intended to provide for the entire \$4,500 quoted for completion of the designated tasks to be earned upon receipt, but could not identify any specific portion of the agreement advising Lee that her second payment, as opposed to the first payment, was earned upon receipt. He testified that he understood it was not necessary to place client funds into a lawyer trust account if the amount was a predetermined flat fee. He further admitted that he understood that client money was not earned without a written agreement clearly stating otherwise. The Bar has proved by clear and convincing evidence that the Accused did not have a written fee agreement clearly providing that Lee's payment of \$2,000 (a discounted payment in satisfaction of the amount due for the Adjustment of Status applications) on April 9, 2006, was earned upon receipt.

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<sup>6</sup> The Accused's checks dated January 10 and February 10, 2007, were dishonored for insufficient funds. The Accused later made payment to Kabasakal of the amounts involved.

The Accused undertook to prepare and submit an application for special religious worker status, a two-step process comprising (1) a petition for special religious worker status (establishing a bona fide employment opportunity) and (2) a petition for permanent residence status (green card petition). Lee paid half the flat fee quoted by the Accused for step one. Thereafter, the Accused met with Lee on several occasions, requested documentation, and met with the employer petitioner. He explained to Lee that the petition for special religious worker status was a difficult process and would take considerable time.

The Accused asked Lee to submit the \$2,000 called for under the fee agreement for the permanent residence status petition as well as payment for a \$190 filing fee for the special religious worker status petition. On April 7, 2006, the Accused showed Lee a draft petition for special religious worker status, and Lee provided a check for \$2,000 and a second check for \$190. The Accused deposited both checks into his business account. Although by this time the Accused had opened a lawyer trust account, bank statements show it was never used for any client funds. The Accused admitted that he should have deposited the check for \$190 into the lawyer trust account, but failed to do so.

After Lee paid the \$2,000 fee for the green card petition, the Accused informed Lee he would submit the green card application and would receive a receipt for the submission within about a month. After a month passed, Lee began periodically calling the Accused to inquire about the status of the green card application. The Accused informed Lee that it would take more time to receive the receipt for the filing because of a backlog at the immigration office. About seven months later, Lee went to the Accused's office demanding a copy of the receipt of filing, at which time the Accused admitted he had not in fact filed the petition. In response, Lee terminated the Accused's representation and demanded return of her fee and papers.

On January 23, 2007, the Accused issued a check in refund of Lee's payment of \$2,000 for the green card application. The Accused's check did not clear. He later provided a cashier's check dated April 2, 2007, to Lee in the amount of \$4,440.

The Accused admitted at hearing that he never filed anything for Lee. He testified that he was concerned about potential fraud and that some of the information provided to him caused him to hesitate out of a desire to file the "perfect case." The Bar asserted that the Accused's neglect to file Lee's green card application prejudiced Lee's ability to apply for residence status for her son, which was required before he turned 21 years old. The Accused explained that he had doubts the son would qualify in any event, but that he and Lee were hoping to complete the process in time for the son to qualify. The Accused testified that after receiving Lee's \$2,000 payment for completing the petition for special religious worker status he revised and edited the draft he had shown Lee in April, but admits he was unable to produce any revised or edited draft.

The Bar has proved by clear and convincing evidence that the Accused did not complete the services promised to Lee and that he provided false information to Lee about the status of his work.

### **C. The Oregon State Bar Matter**

On February 5, 2007, Bar Disciplinary Counsel issued the Accused letters requesting his response to the Kabasakal and Lee complaints and copies of the relevant fee agreements, records of communications, and documents relating to the Accused's representation of each. Such letters advised the Accused his response was due by February 26, 2007, and that he could request an extension of time if necessary. The Accused did not respond or provide the requested documents by the date requested, nor did he request an extension of time.

On March 2, 2007, the Accused talked with Bar Counsel, and agreed to provide responses to the February 5, 2007, requests by March 9, 2007. The Accused admitted he did nothing between March 2, 2007, and March 9, 2007, to prepare a response. On March 12, 2007, the Accused again requested additional time to March 23, 2007, in which to provide the requested responses. The Accused failed to respond by the March 23, 2007, date, but on March 27, 2007, called Bar Counsel to advise responses would be hand-delivered by March 29, 2007. The Accused failed to provide responses by March 29, 2007.

The Bar referred the matter to the LPRC, and the Accused provided the LPRC representatives his bank records. The Accused admits he never provided a written response to the complaints filed by Kabasakal or Lee, but orally explained his account of the circumstances involving each complaint.

### **Findings of Fact**

The Trial Panel makes the following findings of fact with regard to the issues for resolution by the Trial Panel identified in the section similarly titled above.

The Bar has proved by clear and convincing evidence that the Accused's receipt of an \$1,800 payment from Ms. Kabasakal was required by the terms of the written fee agreement to be deposited into a lawyer trust account and was improperly treated by the Accused as earned upon receipt.

The Bar has proved by clear and convincing evidence that the Accused failed to take necessary action to secure a labor certification on behalf of Kabasakal following her employer's completion of the recruiting process, to complete a petition for alien worker status for a period beyond which the completed recruitment activities could be used, or to petition for adjustment of immigration status to permanent residency despite repeated inquiries from his client.

The Bar has proved by clear and convincing evidence that the Accused failed to refund unearned fees and expenses to Kabasakal following termination of the Accused's representation within a reasonable time, refunding them three months following Kabasakal's Bar Complaint.



The Bar has proved by clear and convincing evidence that the Accused failed to petition for permanent resident status for Lee and her qualified family members for a period that under the circumstances was unreasonable.

The Bar has proved by clear and convincing evidence that the Accused was obligated by the terms of the written fee agreement to deposit Lee's payment of \$2,000 in fees and \$190 for filing fees (costs advanced) into a lawyer trust account, but that the Accused failed to do so.

### **Conclusions of Law**

The Bar has proved by clear and convincing evidence that in the Kabasakal matter the Accused violated DR 9-101(A) of the Code of Professional Responsibility by failing to deposit unearned funds into a lawyer trust account.

The Bar has proved by clear and convincing evidence that in the Kabasakal matter the Accused violated RPC 1.3 of the Rules of Professional Conduct by neglecting a legal matter.

The Bar has proved by clear and convincing evidence that in the Kabasakal matter the Accused violated RPC 1.16(d) of the Rules of Professional Conduct by failing to promptly refund unearned fees and expenses upon termination of representation.

The Bar has proved by clear and convincing evidence that in the Lee matter the Accused violated RPC 1.3 of the Rules of Professional Conduct by neglecting a legal matter.

The Bar has proved by clear and convincing evidence that in the Lee matter the Accused violated RPC 1.15-1(a) of the Rules of Professional Conduct by failing to properly maintain client funds separate from his own funds in a lawyer trust account.

The Bar has proved by clear and convincing evidence that in the Lee matter the Accused violated RPC 1.15-1(c) of the Rules of Professional Conduct by failing to deposit into a lawyer trust account legal fees and expenses paid in advance.

The Bar has proved by clear and convincing evidence that in the Oregon State Bar matter the Accused violated RPC 8.1(a)(2) of the Rules of Professional Conduct by failing to respond to a lawful demand for information from a disciplinary authority.

### **Sanctions**

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 properly to discharge their professional duties to clients, the public, the legal system, and the legal profession." *ABA Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The Trial Panel is required to consider four factors in determining appropriate sanctions for violations of rules of conduct for

Oregon lawyers, including (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. *Id.*; *In re Biggs*, 318 Or 281, 864 P2d 1310 (1994); *In re Spies*, 316 Or 530, 852 P2d 831 (1993). In considering such factors, the panel is guided by Oregon case law interpreting and supplementing the *Standards*. See generally *In re McDonough*, 336 Or 36, 43, 77 P3d 306 (2003); *In re Kimmell*, 332 Or 480, 487–488, 31 P3d 414 (2001).

### **Nature of the Duty Violated**

The most important ethical duties are those obligations a lawyer owes to clients. *Standards*, at 9. Given the importance of the duty owed by a lawyer to his or her client, actual injury resulting from breach of this duty is not required. Here, actual injury occurred, as described below.

Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. *Standards*, § 4.42(a). Suspension is also generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client, or when the lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury to the client, the public or the legal system. *Standards*, §§ 4.42(b), 4.62, 7.2.

### **Mental State of the Accused**

The Accused has not taken responsibility for his failures with regard to Lee and Kabasakal, or with regard to his obligations to the Bar in responding to lawful demands for information. The Bar proved by clear and convincing evidence that the Accused was untruthful with both Lee and Kabasakal in response to inquiries about the status of their matters. The Accused's giving Lee and Kabasakal false excuses for his failures to act and thereafter allowing Kabasakal to be prejudiced by his failure to act by a known deadline establishes a knowing neglect of a legal matter and a lack of candor. *Standards*, §§ 4.42(a)–(b), 4.62.

The Accused admitted he failed to deposit the first \$1,800 payment from Kabasakal or the second payment from Lee, in the amount of \$2,000, into a trust account, but testified he “honestly believed” the fees were earned upon receipt. Despite written fee agreements clearly providing otherwise, the Accused persisted in claiming all fees paid to him were earned upon receipt. The Accused admits the \$190 filing fee payment was required to be placed into a lawyer trust account and offers only that he did not understand his obligations regarding that payment at the time. The failure of the Accused to acknowledge his misconduct with regard to his failure to properly treat these payments as not yet earned shows at least a lack of understanding of his obligations with regard to client funds and likely a deliberate effort to avoid the consequences of his actions. See *Standards*, § 9.22(g).

The Accused disputes that he took no substantive action regarding Lee's religious-worker application, claiming he prepared a draft and "it was just short of filing." Nonetheless, the Accused admits he did not finish either matter as promised to his clients. He attributes his failures to complete work as promised to Kabasakal and Lee to a bad decision to open a sole practice where "everything was just spiraling downward." The Accused argued that neither the delays or failures in the Kabasakal and Lee matters were irremediable, but could possibly be completed with Kabasakal's and Lee's new attorneys, which indicates a lack of awareness of the impact of his neglect of his clients' legal matters. *See Standards*, § 9.22(g).

On the other hand, both Kabasakal and Lee testified that the Accused showed genuine regret and sorrow over his failures to accomplish the promised tasks, and the Accused made efforts to refund the fees paid for services he did not complete, although in both Kabasakal's and Lee's cases, his initial efforts resulted in return of his checks for insufficient funds, which he later remedied. *Standards*, §§ 9.32(d), (l).

### **Actual and Potential Injury**

The neglect of duty proved by the Bar caused actual injury consisting of delay in the approval of Kabasakal's labor certification application, her need to seek and secure new counsel to reinitiate the application process, and the prejudicial impact of the Accused's actions. An e-mail from Kabasakal, Ex. 37, was admitted without objection, which contained Kabasakal's description of pain ("sick to my stomach"), uncertainty, distress over having to ask her employer to go through the recruitment process over again, and the time lost in gaining her permanent residence status. Lee's injury consists of delay, a prejudiced ability to apply for residence status for her son, which was required before he turns 21, and the need to pay another lawyer for the services the Accused failed to perform.

The Accused admitted that immigration matters, such as those at issue here, represent high stakes for the clients involved because these matters affect people's lives and futures. The Trial Panel considers immigrants to be a generally vulnerable population. *Standards*, § 9.22(h).

### **Aggravating and Mitigating Factors**

The Accused blames his failures to complete the tasks forming the basis of Lee's and Kabasakal's complaints and his management of client funds on his perfectionism, having too many cases with little income, gambling, and difficulty managing a sole practice. He testified that he attended some brown-bag CLE sessions and bought some self-help books on perfectionism, that he began looking for employment in a law firm to relieve him of the burden of managing a practice, and that he is attempting to stabilize his income.

The Accused testified that he attended, for a short time, Gamblers Anonymous meetings, which he found helpful, but that he believed stabilizing his income to be more effective in avoiding the impact of his gambling. He admitted that gambling

was a factor in taking on more cases than he should have, but does not recognize the gambling as a major problem. The Accused is no longer participating in Gamblers Anonymous or a similar process, but rather focusing on attempting to find employment in a law firm.

Mitigating factors include the fact that the Accused has no prior disciplinary offenses, that he does not have substantial experience in the practice of law, that he was under financial stress at the time of the violations found herein, and that he made a timely good faith effort to rectify the consequences of his failure to cooperate with the Bar by cooperating with the LPRC. The Accused expressed remorse to Kabasakal and Lee upon acknowledging his failure to complete the tasks he had undertaken for them. He also expressed remorse at the time of hearing. *See generally Standards*, § 9.32(a), (b), (c), (d), (l).

An aggravating factor is the Accused's pattern of misconduct and multiple similar offenses. *Standards*, § 9.22(c), (d). The Accused repeated similar violations of his ethical obligations for both Kabasakal and Lee, and continued a pattern of disregard for the Bar's lawful demands for information.

The Bar demonstrated that during the time surrounding the allegations forming the basis of the violations found in this matter, the Accused was engaged in significant gambling activities. The Accused refused to acknowledge a gambling problem, but claimed his gambling was recreational. The bank records of the Accused reveal significant sums spent at gambling establishments, which the Accused admitted. Although the Trial Panel will not consider evidence of the Accused's gambling as an aggravating factor, it is considered likely that the Accused's gambling practices interfered with his ability to manage his practice and complete the services for which he was retained by Lee and Kabasakal, and most particularly to make prompt refund of unearned fees and payments for unexpended costs.

The Trial Panel considers the Accused's recognition of his gambling habits, his difficulties managing his sole practice, and his claims to perfectionist tendencies to constitute some evidence of mitigating factors. Nonetheless, the Accused does not appear to have yet come to grips with these problems or to have regained the ability, through treatment or other remedial efforts, to focus on the needs of his clients and the deadlines associated with his immigration practice. Indeed, the Accused appears as yet unable or unwilling to recognize the need to rectify these personal problems.

### **Sanction Imposed by the Trial Panel**

Under all the circumstances, taking into account the mitigating and aggravating factors identified above and the nature of the violations proved by the Bar, the Trial Panel concludes that a period of suspension is appropriate, and that the appropriate period of suspension is eight months.

**ORDER**

For the foregoing reasons, IT IS HEREBY ORDERED that the Accused, John H. Oh, is suspended from the practice of law in the State of Oregon for a period of eight months.

Dated: December 4, 2008.

/s/ Craig A. Crispin

Craig A. Crispin  
OSB No. 82485  
Chair, Trial Panel

/s/ Colin D. Lamb

Colin D. Lamb  
OSB No. 69100  
Member, Trial Panel

/s/ Allen M. Gabel

Allen M. Gabel  
Public Member, Trial Panel

**Cite as 345 Or 670 (2009)**  
**IN THE SUPREME COURT**  
**OF THE STATE OF OREGON**

In re: )  
 )  
Complaint as to the Conduct of )  
 )  
G. JEFFERSON CAMPBELL JR., )  
 )  
Accused. )

(OSB 06-14, 06-127; SC S055577)

En Banc

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

Argued and submitted December 10, 2008. Decided on February 5, 2009.

G. Jefferson Campbell Jr., in propria persona, argued the cause. Douglas J. Richmond, Kellington, Krack, Richmond, Blackhurst & Glatte, LLP, Medford, filed the briefs for the Accused.

Stacy J. Hankin, Assistant Disciplinary Counsel, Tigard, filed the brief for the Oregon State Bar.

PER CURIAM

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

**SUMMARY OF THE SUPREME COURT OPINION**

In this lawyer disciplinary matter, the Oregon State Bar (hereinafter “the Bar”) charged the Accused with ethical violations in two separate matters. In the first matter, the Bar charged that the Accused violated conflict-of-interest rules in a bankruptcy case. The trial panel concluded (1) that the Accused did not violate DR 5-101(A)(1) when, although he had represented the debtor in a Chapter 13 bankruptcy proceeding, and was therefore an administrative creditor of the estate, he agreed to serve as special counsel to the estate when the bankruptcy was converted to a Chapter 7 proceeding; but (2) that the Accused did violate DR 5-105(C) when, after the trustee in the Chapter 7 case reached a settlement that was contrary to the Accused’s interest in collecting his fees, he resigned as special counsel and represented new clients in an appeal that challenged the settlement. In the second matter, the trial panel concluded that the accused violated DR 2-106(A) when he charged his client, Burch, for late fees in excess of the legal rate of interest, although no written agreement required payment of such fees, and when he charged Burch hourly fees for

a trespass case, although a written agreement provided for a contingency fee. In part because the Accused had been disciplined previously, the trial panel recommended that he be suspended from the practice of law for 90 days.

As to the bankruptcy matter, we conclude, as did the trial panel, that the Accused did not violate DR 5-101(A)(1), but did violate DR 5-105(C). As to the Burch matter, we conclude that the Accused violated DR 2-106(A) in charging Burch late fees not provided for by prior written agreement, but that the Bar failed to prove that the Accused had charged Burch excessive fees in violation of DR 2-106(A), when he billed Burch for his services on an hourly fee basis. We impose a suspension of 60 days.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 08-80  
)  
BRUCE MATSUO NISHIOKA, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violations of RPC 1.5(a), RPC 5.3(a), and RPC 5.5(a). Stipulation for Discipline. Public reprimand.  
Effective Date of Order: February 23, 2009

**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 1.5(a), RPC 5.3(a), and RPC 5.5(a) of the Rules of Professional Conduct.

DATED this 23rd day of February 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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



## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law on May 2, 2001, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Curry County, Oregon.

3.

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

4.

On June 13, 2008, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.5(a), RPC 5.3(a), and RPC 5.5(a) of the Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

## **FACTS AND VIOLATIONS**

5.

James Henry Wilsdon died testate on August 5, 2005 (hereinafter “Deceased”). The Deceased named his son, John Wilsdon (hereinafter “Wilsdon”), to serve as his personal representative. Wilsdon, his sister, and the Deceased’s wife were the beneficiaries of the Deceased’s estate. About late September 2005, Wilsdon retained the Accused to probate the Deceased’s estate and represent him as the Deceased’s personal representative. Pursuant to the Accused’s written fee agreement with Wilsdon, the Accused’s time would be billed at the rate of \$180 per hour and legal assistant time would be billed at the rate of \$65 per hour.

6.

At all material times, the Accused used the services of Donald Tilton (hereinafter “Tilton”), a nonlawyer legal assistant or law clerk concerning the Wilsdon probate matter. About November 15, 2005, Tilton prepared and filed a

probate petition, signed by Wilsdon, which identified the Accused as Wilsdon's attorney, *In the Matter of the Estate of James Henry Wilsdon*, Curry County Circuit Court Case No. 05PR087 (hereinafter "Probate Case").

7.

On December 13, 2005, the court appointed Wilsdon to serve as the Deceased's personal representative, and on December 14, 2005, issued letters testamentary. On January 5, 2006, Tilton prepared and sent notice of the probate and Wilsdon's appointment to the Deceased's heirs. Tilton thereafter prepared, and Wilsdon signed, a final accounting and petition for general judgment of final distribution, which was filed with the court on March 10, 2006. The petition stated that there were no assets to probate because they had all been designated "pay on death" by the Deceased and therefore passed to the heirs outside of the estate.

8.

About March 13, 2006, the Accused filed a motion to extend the time to file the inventory or to file a motion to close the probate. The Accused represented to the court that additional assets had been discovered and investigation was required. The motion was accompanied with an affidavit signed by Tilton stating that he was investigating the Deceased's assets. The court granted the motion and extended the time for filing of the inventory to March 27, 2006. Thereafter, the Accused submitted a proposed order approving final accounting in the Probate Case, which stated that no additional assets had been found. The court signed the order on May 22, 2006, and closed the Probate Case.

9.

In April 2007, Tilton prepared, and on May 21, 2007, filed a petition to reopen estate. The petition, signed by Wilsdon, stated that further administration of the estate was necessary because he had learned of an unprobated asset—an account held by Franklin Templeton in the name of the Deceased alone—and that claims and expenses had been presented to the personal representative during the original probate, but they had not been paid from estate assets because there were no assets to pay them. The claims and expenses consisted of the Deceased's funeral expenses that had been paid by the Deceased's wife, and the Accused's attorney fees and costs that were paid by the Deceased's daughter.

10.

On July 18, 2007, the court signed a limited judgment reopening estate and appointing personal representative. The court again appointed Wilsdon to serve as the Deceased's personal representative.

11.

On October 8, 2007, Tilton prepared, signed, and filed an inventory in the Probate Case. Tilton represented that he held a power of attorney for the personal representative, that he had read the inventory, and verily believed it to be true. The inventory identified the Franklin Templeton account and stated its value as of the date of the Deceased's death to be \$13,754.43.

12.

About December 20, 2007, Tilton, again purporting to act for Wilsdon pursuant to a power of attorney, prepared, signed, and thereafter filed a final accounting and petition for general judgment of final distribution. The final accounting was supported by an affidavit signed by the Accused in which he represented to the court that the estate had received \$16,463.21 from the Franklin Templeton investment, reimbursed the Deceased's daughter \$4,268.21 for her payment of the Accused's attorney fees and costs incurred in connection with the Probate Case, and reimbursed the Deceased's wife \$4,446.50 for the Deceased's funeral expenses. The Accused did not obtain or seek the court's approval of the attorney fees as required by ORS 116.183(1) before reimbursing the deceased's daughter from estate funds.

13.

About January 3, 2008, the court advised the Accused of its concerns and questions regarding the final accounting and petition for general judgment of final distribution, including the payment of attorneys fees for the original probate without court approval, the reasonableness of fees paid or claimed in the Probate Case, Tilton's representations concerning his status as an attorney, and Tilton's actions in the Probate Case.

14.

About March 17, 2008, the Accused withdrew from the representation. The court thereafter determined that the work performed for the Probate Case was below local standards, and on May 2, 2008, approved only \$1,500 as reasonable attorney fees and costs for all work performed in the original Probate Case and after the Probate Case was reopened.

15.

During the Accused's representation, Tilton had access to the Accused's letterhead and pleading forms and the Accused permitted Tilton to have them on Tilton's computer. Tilton provided legal advice and services to Wilsdon and engaged in the unauthorized practice of law. The Accused did not adequately supervise Tilton and failed to ensure that Tilton's work was compatible with the Accused's professional obligations. The Accused did not approve or know of all of Tilton's actions or review all of Tilton's work concerning the Probate Case, and did not adequately communicate with Wilsdon.

16.

During the Accused's representation of Wilsdon, Tilton's time was billed to the client at the rate of \$180 per hour for the initial probate, and \$100 per hour for work performed after the Probate Case was reopened, which amounts exceeded the \$65 per hour authorized in the Accused's fee agreement. As a result of these charges and the failure to obtain court approval of the fees before they were paid, the Accused charged and collected illegal and excessive attorney fees for work performed in the Probate Case.

17.

The Accused admits that the aforesaid conduct constituted violations of RPC 1.5(a), RPC 5.3(a), and RPC 5.5(a) of the Rules of Professional Conduct.

### SANCTION

18.

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 1.5(a), RPC 5.3(a), and RPC 5.5(a), the Accused violated duties to his client, the legal system, and the profession. *Standards*, §§ 4.1, 6.2, 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 understand the limitations of what Tilton could do and failing to adequately supervise him. The Accused failed to adequately monitor the Probate Case. He was negligent in failing to review his fee agreement to ensure that billing statements were consistent with its terms, in failing to understand that he could not charge more than he was authorized to charge by the terms of the fee agreement, and failing to comply with court rules to obtain approval of his fees before they were paid from estate assets. The Accused incorrectly assumed that Tilton would seek his direction and obtain his approval of all documents submitted to the court concerning the Probate Case.
- 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. *Standards*, p. 7. The Accused caused actual injury to the client in that

the client was charged and the Accused collected more for attorney fees than the Accused was entitled to receive for the legal services. The Deceased's daughter was reimbursed for her payment of the Accused's fees, and the Accused voluntarily reimbursed the estate for funds that were paid without court approval. Also, the court was required to devote additional time to the case because of questions raised by Tilton's and 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 multiple offenses. *Standards*, § 9.22(d). The client was vulnerable. He resided out of state and was distraught over family circumstances. Also, he erroneously believed that Tilton was a lawyer because of statements Tilton made. *Standards*, § 9.22(h).
- 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 discipline. *Standards*, § 9.32(a). He did not act with dishonest or selfish motives. *Standards*, § 9.32(b). The Accused voluntarily made restitution. He repaid to the estate all funds paid to him and has not been otherwise compensated for the services provided by his office. *Standards*, § 9.32(d), (k). The Accused is remorseful and has acknowledged his misconduct. *Standards*, § 9.32(l). He also cooperated fully in the investigation of his conduct and in resolving this proceeding. *Standards*, § 9.32(e).

19.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. *Standards*, § 4.13. Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. *Standards*, § 6.23. Reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

Oregon case law is in accord. *See, e.g., In re Edstrom*, 10 DB Rptr 115 (1996) (reprimand for violation of *former* DR 3-101(B)); *In re Dietz*, 11 DB Rptr 75 (1997) (reprimand for violation of DR 3-101(A)); *In re Skinner*, 14 DB Rptr 38 (2000) (reprimand for violation of DR 2-106(A)); *In re Gudger*, 21 DB Rptr 160 (2007) (reprimand for violation of DR 2-106(A) when charged more than authorized by fee agreement).

20.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violation of RPC 1.5(a), RPC 5.3(a), and RPC 5.5(a) of the Rules of Professional Conduct.

21.

In addition, on or before July 31, 2009, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs of \$893.70, which was incurred for depositions. Should the Accused fail to pay the \$893.70 in full by July 31, 2009, 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 9% per year to accrue from the date this stipulation is approved by the Disciplinary Board.

22.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, and the sanction 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 9th day of February 2009.

/s/ Bruce Matsuo Nishioka

Bruce Matsuo Nishioka  
OSB No. 011368

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. 08-103  
)  
DANIEL N. GORDON, )  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: John Fisher  
Disciplinary Board: None  
Disposition: Violation of RPC 8.4(a)(4). Stipulation for  
Discipline. Public reprimand.  
Effective Date of Order: February 23, 2009

**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)(4).  
DATED this 23rd day of February 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ Jack A. Gardner  
Jack A. Gardner, Region 2  
Disciplinary Board Chairperson

**STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1978, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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 16, 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 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Facts**

5.

On April 26, 2006, the Accused filed a lawsuit on behalf of his client, Capital One Bank (hereinafter "Capital One"), against Linda Houlihan (hereinafter "Houlihan") alleging that Houlihan owed Capital One \$580.30 plus interest, costs, disbursements, and reasonable attorney fees. On September 1, 2006, the Accused's office received a check from Houlihan made payable to Capital One for \$580.30. On September 13, 2006, the Accused's office notified Houlihan that she had a balance due of \$243.74. On or about September 19, 2006, the Accused's office received a check from Houlihan for \$243.74 made payable to the Accused's law firm.

6.

On or about October 5, 2006, the Accused filed with the court an affidavit in support of an ex parte motion for an order of default and general judgment. In the affidavit, the Accused represented that Houlihan still owed Capital One \$580.30 plus interest, reasonable attorney fees, and costs and disbursements incurred. That representation was false as Houlihan had previously satisfied her debt.



7.

At the time the Accused prepared the affidavit on September 14, 2006, signed it on September 30, 2006, and filed it with the court on or about October 5, 2006, he failed to check his records and determine that Houlihan had made payments and had satisfied her debt.

8.

On October 19, 2006, the court entered an Order of Default and General Judgment against Houlihan and in favor of Capital One. In April 2008, upon the Accused's motion, the court vacated the judgment.

### **Violation**

9.

The Accused admits that, by engaging in the conduct described in paragraphs 5 through 8, he violated RPC 8.4(a)(4).

### **Sanction**

10.

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

- a. **Duty violated.** The Accused violated a duty he owed to the legal system not to engage in conduct prejudicial to the administration of justice. *Standards*, § 6.1.
- b. **Mental state.** The Accused acted negligently in that he failed to review his records when he prepared and signed the affidavit before he filed it with the court.
- c. **Injury.** Houlihan sustained actual injury in that a judgment was improperly taken against her and was not vacated for a significant period of time. The court was led to believe that Houlihan still owed Capital One and the Accused when in fact she had paid her debt.
- d. **Aggravating circumstances.** The following aggravating circumstance exists:
  1. Substantial experience in the practice of law. The Accused has been licensed to practice law in Oregon since 1978. *Standards*, § 9.22(i).

- e. Mitigating circumstances. The following mitigating circumstance exists:
1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
  2. Cooperative attitude toward the proceeding. *Standards*, § 9.32(e).
  3. Remorse. The Accused apologized to Houlihan for the error. *Standards*, § 9.32(m).

11.

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

12.

Oregon case law is consistent with the imposition of a public reprimand under these circumstances. *In re Aylworth*, 22 DB Rptr 77 (2008); *In re Johnson*, 18 DB Rptr 181 (2004); *In re Slayton*, 18 DB Rptr 56 (2004).

13.

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

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 11th day of February 2009.

/s/ Daniel N. Gordon

Daniel N. Gordon

OSB No. 782255

EXECUTED this 18th day of February 2009.

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. 08-159  
)  
JOHN M. PETSHOW, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violations of RPC 1.3, RPC 1.4(a), and RPC  
1.7(a). Stipulation for Discipline. Public  
reprimand.  
Effective Date of Order: February 23, 2009

**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 1.3, RPC 1.4(a), and RPC 1.7(a) of the Rules of Professional Conduct.

DATED this 23rd day of February 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law on October 19, 1989, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, 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 19, 2008, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.3, RPC 1.4(a), and RPC 1.7(a) of the Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **FACTS AND VIOLATIONS**

5.

Cynthia Deming was married to Sean Deming. On October 24, 2004, Cynthia Deming died. Cynthia Deming did not have a will and her husband, Sean Deming, was her sole heir by intestate succession. About November 2004, Sean Deming (hereinafter “Deming”) retained attorney Brian Sunderland (hereinafter “Sunderland”) to handle the probate of Cynthia Deming’s estate.

6.

Cynthia Deming’s estate assets consisted of real property, some stock, cash, and other personal property, all of which was held only in her name. Cynthia Deming had no debts.

7.

About December 1, 2004, Sunderland filed a petition for the probate of Cynthia Deming's estate, *In the Matter of Cynthia Crivellone Deming*, Clackamas County Circuit Court Case No. P041202 (hereinafter "Probate Case"), and on December 10, 2004, the court appointed Deming to serve as the personal representative.

8.

Sunderland did not complete the Probate Case. About April 14, 2006, Sunderland filed a motion to withdraw as Deming's attorney in the Probate Case. About April 24, 2006, the court granted the motion.

9.

About June 30, 2006, the court issued and served a citation for Deming to appear on July 31, 2006, to show cause why he should not be removed as the personal representative. Deming was not able to appear, but arranged for a relative to appear on his behalf. Deming also sent an explanation to the court. The court did not remove Deming as the personal representative.

10.

The Accused was in the courtroom during the July 31, 2006, hearing and heard Sunderland's name. The Accused and Sunderland were colleagues in the same law firm. After the hearing, the Accused approached Deming's relative, and thereafter agreed to represent Deming to conclude the Probate Case.

11.

In and between about August 2006 and October 2008, the Accused failed to take timely action to conclude the Probate Case, failed to timely respond and comply with the court's notices, failed to prepare a personal representative's deed for transfer of Cynthia Deming's real property to Deming, failed to explain to Deming what needed to be done to transfer the real property to Deming, failed to keep Deming reasonably informed about the status of the Probate Case, and failed to provide Deming with copies of the court's notices and orders and the final judgment.

12.

Prior to and after November 2007, the Accused represented Sunderland concerning complaints filed with the Bar concerning Sunderland's conduct, *In re Conduct of Brian Sunderland*, Case Nos. 07-74, 07-42. In November 2007, Deming filed a complaint with the Bar concerning Sunderland's and the Accused's conduct in handling the Probate Case. On February 29, 2008, the Client Assistance Office of the Bar (hereinafter "CAO") referred Deming's complaint concerning Sunderland's

conduct to Disciplinary Counsel for further investigation. Sunderland disputed Deming's contentions.

13.

In July 2008, Disciplinary Counsel inquired of the Accused concerning his representation of Sunderland and Deming. Thereafter, the Accused continued to represent Sunderland concerning Deming's complaint and other disciplinary matters and continued to represent Deming concerning the Probate Case.

14.

On August 15, 2008, the SPRB directed that a formal disciplinary proceeding be instituted against Sunderland for alleged violations of the Rules of Professional Conduct, *In re Conduct of Brian J. Sunderland*, Case No. 08-98. Prior to and after August 15, 2008, the Accused continued to represent Deming concerning the Probate Case and Sunderland concerning Deming's complaint about Sunderland's conduct.

15.

In and between November 2007 and early October 2008, the Accused represented Sunderland concerning Deming's complaint about Sunderland's handling of the Probate Case and other disciplinary matters, and continued to represent Deming concerning the Probate Case, when Deming's and Sunderland's interests were adverse to one another, and when there was a significant risk that the Accused's representation of both of them would be materially limited by his responsibilities to each of them, and by his personal interests. The Accused failed to obtain Deming's and Sunderland's informed consent concerning his representation, confirmed in writing.

16.

The Accused admits that the aforesaid conduct constituted violations of RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to keep a client reasonably informed about the status of the client's case), and RPC 1.7(a) (current client conflict of interest).

### **SANCTION**

17.

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 1.3, RPC 1.4(a), and RPC 1.7(a), the Accused violated duties to his client and the profession. *Standards*, §§ 4.3, 4.4, 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 incorrectly assuming that the Probate Case had been concluded when it was not, and failing to adequately communicate with his client and the court. The Accused was also negligent in not considering the implications of his representation of Sunderland and Deming when their interests were adverse and failing to obtain the clients’ informed consent, confirmed in writing.
- 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. *Standards*, p. 7. The Accused caused actual injury to his client and the legal system. The client was frustrated by the delay in concluding the Probate Case, the Accused’s failure to keep him advised of the status of the case, and failure to advise him about how to transfer his deceased wife’s real property to his name. Also, the court was required to devote additional time to the case because the Accused failed to promptly conclude the case or respond to its inquiries. Because the real property was not transferred to Deming and the general judgment the Accused submitted to the court does not describe the property or its disposition, the Probate Case will have to be reopened and Deming again appointed personal representative to transfer the property.
- 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). Also, there are multiple offenses. *Standards*, § 9.22(d).
- e. **Mitigating factors.** Mitigating factors are considerations that may reduce the degree of discipline to be imposed. *Standards*, § 9.32. The Accused has no prior record of discipline. *Standards*, § 9.32(a). There is an absence of dishonest or selfish motives. *Standards*, § 9.32(b). The Accused is remorseful and has acknowledged his misconduct. *Standards*, § 9.32(l). Also, he cooperated with the disciplinary authority in the investigation of his conduct and in resolving this proceeding. *Standards*, § 9.32(e).

18.

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

19.

Oregon case law is in accord. *See, e.g., In re MacNair*, 21 DB Rptr 316 (2007) (reprimand for violation of RPC 1.3 and RPC 1.4(a)); *In re Bisaccio*, 21 DB Rptr 35 (2007) (reprimand for violation of DR 6-101(B), RPC 8.4(a)(4)); *In re McBride*, 21 DB Rptr 19 (2007) (reprimand for violation of RPC 1.3). *See also In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for lawyer with prior record of neglect but substantial mitigating factors); *In re Karlin*, 21 DB Rptr 75 (2007) (reprimand for neglect of 2 client matters). Reprimands have also been imposed where lawyers violated the conflicts and other rules. *See, e.g., In re Crawford*, 14 DB Rptr 60 (2000) (reprimand for violation of DR 1-102(A)(4), DR 5-105(E), and DR 6-101(B)); *In re Redden*, 15 DB Rptr 148 (2001) (reprimand for violations of DR 5-101(A) and DR 5-105(E)).

20.

Consistent with the *Standards* and case law, the Bar and the Accused agree that the Accused shall be reprimanded for violations of RPC 1.3, RPC 1.4(a), and RPC 1.7(a) of the Rules of Professional Conduct.

21.

This Stipulation for Discipline has been reviewed by the Disciplinary Counsel of the Oregon State Bar, the charges and sanction were 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 6th day of February 2009.

/s/ John M. Petshow

John M. Petshow  
OSB No. 894303

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. 07-01 and 08-98  
)  
BRIAN J. SUNDERLAND, ) SC S057211  
)  
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)(4), DR 2-106(A), DR 5-105(E), DR 6-101(A), DR 9-101(C)(3), RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.7(a), RPC 1.15-1(a), RPC 1.15-1(d), RPC 1.16(d), RPC 8.4(a)(3), and RPC 8.4(a)(4).  
Stipulation for Discipline. Three-year suspension.  
Effective Date of Order: July 8, 2009

**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 three years. The suspension shall be effective and consecutively to the nine-month suspension that the Accused is currently serving.

April 8, 2009                      /s/ W. Michael Gillette  
W. Michael Gillette  
Presiding Justice

**STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 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 violations of the former Disciplinary Rules, the current Rules of Professional Conduct, and a provision of ORS chapter 9. 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**

### **Cartwright Matter**

#### **Case No. 07-01**

5.

On January 24, 2001, Dwight Edgar Rossiter (hereinafter “Rossiter”) died. Rossiter’s estate had an estimated value in excess of \$2,500,000. About March 2001, a petition for probate of Rossiter’s Last Will and Testament (hereinafter “Rossiter’s Will”) was filed in the Superior Court for the State of Washington for Snohomish County (hereinafter “Rossiter Probate Case”). On March 6, 2001, the court appointed a Washington attorney to serve as Rossiter’s personal representative in the probate case.

6.

Vera Moreland (hereinafter “Vera”) was Rossiter’s half-sister and was among the beneficiaries named in Rossiter’s Will. Vera anticipated receiving a substantial distribution, consisting of one-fifth of Rossiter’s estate after payment of taxes, expenses, and costs of administration. As of February 2003, Rossiter’s personal

representative had not made distributions from Rossiter's estate to Vera and other beneficiaries.

7.

Valerie Moreland (hereinafter "Valerie") was married to Vera's son, Rodney Moreland. Valerie and Rodney Moreland divorced. In and after February 2003, Vera resided with Valerie and Valerie's then-husband Luciano Carvalho (hereinafter "Carvalho").

8.

In February 2003, Vera and Valerie retained the Accused to represent Vera's interests concerning the Rossiter estate. In February 2003, the Accused sent a written inquiry to the personal representative concerning his handling of the Rossiter Probate Case. On April 17, 2003, Rossiter's personal representative sent the Accused a check for \$50,000, payable to Vera, as a partial distribution from the Rossiter estate. In late April 2003, Vera and Valerie met with the Accused. The Accused obtained Vera's signature on a receipt for \$50,000 and her endorsement of the \$50,000 check. The Accused deposited the \$50,000 check in his lawyer trust account, delivered his trust account check for \$30,000 to Vera, and retained \$20,000 of Vera's \$50,000 Rossiter estate distribution.

9.

In late April 2003, the Accused told Valerie and Vera that it was necessary to file a conservatorship petition for the appointment of a conservator for Vera and undertook to represent them concerning the matter. The Accused prepared a Petition for the Appointment of Conservator, which he signed on April 29, 2003. The Accused represented that Vera was "unable to manage her financial resources effectively due to greatly diminished mental capacity," and that Dr. Michael Norris was a person with information that would support a finding that Vera was financially incapable. The Accused also represented that the total value of the assets to be protected with the conservatorship would be approximately \$750,000 to be received from an inheritance. About May 1, 2003, the Accused, as counsel for Vera and Valerie, filed the Petition for Appointment of Conservator with Circuit Court for the County of Clackamas, *In the Matter of the Conservatorship of Vera Ethel Moreland* (hereinafter "Conservatorship Case").

10.

In early May 2003, the Accused prepared and signed, and thereafter filed, an amended petition in the Conservatorship Case. The petition recited the same facts concerning Vera's mental capacity and Dr. Michael Norris, and also stated that the total amount of assets to be protected in connection with the conservatorship was \$50,000. Vera's physician did not agree with the Accused's representations concerning Vera's mental capacity. Before the Accused filed the petition or the

amended petition, he did not verify Vera's mental capacity with Vera's physician and did not have sufficient information to make the representations. Also, Vera's inheritance was expected to substantially exceed \$50,000.

11.

About May 22, 2003, Valerie delivered a letter to the Accused's office that challenged the Accused's representations concerning Vera's mental capacity, told the Accused that Vera did not have diminished mental capacity, and instructed him to stop the conservatorship. The Accused contends that he cannot locate such a letter, but he subsequently spoke with Valerie, who agreed to continue with the conservatorship.

12.

The court relied on the Accused's representations in the Conservatorship Case, and on June 18, 2003, appointed Valerie to serve as Vera's conservator. The court ordered that a bond in the amount of \$50,000 be filed with the court, and upon the court's approval of the bond, that letters of conservatorship issue. No bond was ever filed, no application for a bond was ever made, and no letters of conservatorship were issued by the court.

13.

About August 4, 2003, the Accused, on behalf of Vera and Valerie as Vera's conservator, filed a motion to remove the Washington attorney as Rossiter's personal representative in the Rossiter Probate Case and to appoint Valerie as Vera's conservator to serve as the successor personal representative, without bond or other undertaking.

14.

About August 7, 2003, the Accused prepared and Vera signed a Last Will and Testament (hereinafter "Vera's Will"), which named Valerie as Vera's personal representative and the primary beneficiary of Vera's estate.

15.

On August 21, 2003, the court signed and filed an order removing the Washington attorney as Rossiter's personal representative and appointing Valerie to serve without bond as Rossiter's successor personal representative. About August 28, 2003, Valerie, as Vera's conservator and successor personal representative in the Rossiter Probate Case, retained the Accused to represent her interests as successor personal representative in the Rossiter Probate Case.

16.

About October 3, 2003, the Accused prepared and on October 7, 2003, filed a petition for damages against the former personal representative in the Rossiter

Probate Case on theories of breach of fiduciary duties to the beneficiaries of the Rossiter estate and failure to provide the skill, judgment, and diligence that the ordinary, cautious, and prudent person would exercise in managing the affairs of the estate. Claims against the former personal representative were settled. On November 9, 2004, the court signed an order dismissing the claims against the former personal representative with prejudice.

17.

In and between 2003 and February 2005, the Accused distributed funds from Rossiter's estate to Rossiter's beneficiaries and to himself. About January 24, 2005, the Accused prepared and signed and on February 16, 2005, filed a declaration of completion of probate in the Rossiter Probate Case. Thereafter, the court closed the Rossiter Probate Case. No inventory or accounting for Rossiter's estate assets or their distribution was provided to all of the heirs of Rossiter's estate. The Accused's inventory and accounting to Vera and Valerie for Rossiter estate assets and their distribution was not complete.

18.

In and between 2003 and 2005, Vera maintained a joint checking account with Valerie at Wells Fargo Bank (hereinafter "Wells Fargo Account"). In and between 2003 and November 2005, all of the funds deposited in the Wells Fargo Account belonged to Vera, which included her Social Security, VA benefits, and funds distributed to her from the Rossiter estate. Valerie wrote checks and used funds in Vera's Wells Fargo Account for Valerie's and Valerie's husband's personal benefit, which included, among other disbursements, the purchase of real property and a mobile home, improvements to the real property, a US Bancorp "investment," and attorney fees for Valerie and her husband. In and between June 2003 and November 16, 2005, the Accused failed to file an inventory and annual accountings in Vera's Conservatorship Case as required by law.

19.

In and between June 2003 and September 2005, the Accused charged and collected attorney fees from Vera's funds for Vera's Conservatorship Case. On August 27, 2005, Vera died. On September 9, 2005, the Accused charged and collected \$5,000 from Vera's funds for the Accused's attorney fees for the probate of Vera's estate.

20.

On September 13, 2005, the Accused filed a Petition for Probate of Vera's Will and the Appointment of Personal Representative in the Circuit Court for the County of Clackamas, *In the Matter of Vera Moreland* (hereinafter "Vera's Probate Case"). The Accused failed to file an affidavit of attesting witnesses to Vera's Will as required by law. On October 5, 2005, the Accused filed an Affidavit of Witness

to Signature of Testator, signed by Valerie, a primary beneficiary, which stated that the signature appearing on Vera's Will was genuine. About October 26, 2005, the court notified the Accused that Valerie's Affidavit of Witness to Signature of Testator was not sufficient and that the Accused needed to file a notarized affidavit of two (2) attesting witnesses. Thereafter, the Accused filed an affidavit, dated November 7, 2005, of one (1) attesting witness.

21.

On November 15, 2005, the court filed an order appointing Valerie as Vera's personal representative, and on November 16, 2005, issued letters testamentary in Vera's Probate Case. On November 17, 2005, the Accused signed and filed a final accounting for the period June 11, 2003, through September 12, 2005, and motion to terminate Vera's Conservatorship Case. The accounting identified receipts/income of \$290,066.40, disbursements of \$274,342.73, and \$15,723.67 in the Wells Fargo Account as the only asset of Vera's estate. On November 17, 2005, the Accused filed an inventory in Vera's Probate Case, which identified the only asset of the estate as \$15,723.67 in the Wells Fargo Account.

22.

In January 2006, the court issued a citation in Vera's Conservatorship and Probate Cases directing the Accused to appear for a show cause hearing on February 6, 2006, because the Accused had failed to provide adequate accounting information and had accepted attorney fees without court approval. On February 8, 2006, the court filed an order and limited judgment removing Valerie as Vera's personal representative and appointing attorney James Cartwright (hereinafter "Cartwright") to serve as the successor personal representative in Vera's Probate Case. The Accused's representation of the personal representative was terminated.

23.

Cartwright requested files and records from the Accused concerning Vera's legal matters. The Accused delivered some, but not all, of the files and records to Cartwright. On March 30, 2006, Cartwright requested additional information, the Accused's explanation, and an accounting of the \$50,000 distribution from the Rossiter estate. The Accused represented to Cartwright that he delivered the \$50,000 to Vera, he did not know what Vera had done with the \$50,000 distribution, and that he did not retain any of those funds. The Accused's representations were not accurate and were misleading. At the time the Accused made the representations, the Accused knew he had not made sufficient inquiry to determine the truth or falsity of his representations. Subsequently, the Accused accounted for \$15,000 of the \$20,000 he retained from Vera's Rossiter estate distribution.

24.

Cartwright obtained a copy of the \$30,000 check that the Accused delivered to Vera in late April 2003 from Vera's Wells Fargo Account. The check was written on the Accused's lawyer trust account and signed by the Accused. Cartwright again asked the Accused to explain and account for Vera's funds. About April 21, 2006, the Accused represented to Cartwright that he had no idea why he deposited the \$50,000 Rossiter estate distribution in his lawyer trust account and that he was in the process of obtaining bank records that might jog some memory as to why the money was deposited and disbursed from his lawyer trust account. About May 5, 2006, the Accused delivered his check for \$5,000 to Cartwright. Of the funds that he received from the Rossiter estate for Vera's benefit, the Accused could not account for that amount.

25.

The Accused failed to prepare and maintain complete records concerning his receipt, deposit, and disbursement of funds he received for Vera's benefit, and failed to provide a complete accounting for those funds to Vera, Valerie, and Cartwright.

26.

In and between April 2003 and February 2006, the Accused: did not obtain or assist Valerie to obtain and file a bond in the Conservatorship Case; did not obtain or assist Valerie to obtain letters of conservatorship in the Conservatorship Case; assisted and permitted Valerie to purport to act as Vera's conservator when she was not authorized to act in that capacity; represented to the court in the Rossiter Probate Case that Valerie was authorized to act as Vera's conservator when she was not authorized to act in that capacity; did not adequately advise Valerie concerning the duties of a conservator; did not adequately advise Valerie concerning the handling of conservatorship funds and the records required to account for such funds; did not adequately monitor or review Valerie's handling and disbursements of Vera's funds; did not file an inventory in the Conservatorship Case as required by law; did not file annual accountings in the Conservatorship Case as required by law; did not take appropriate action when another person in his office raised substantial concerns about Valerie's accounting information and her handling of Vera's funds; did not adequately review the final accounting information and address questions raised by the accounting; did not submit the final accounting in a form required or submit all of the information required for the accounting; and did not obtain or seek the court's approval of his attorney fees charged and collected for Vera's Conservatorship Case and Probate Case.

27.

Based on the foregoing, the Accused failed to provide the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation of Vera, Valerie as Vera's conservator and personal representative, and Valerie as

personal representative of the Rossiter Probate Case, and engaged in conduct prejudicial to the administration of justice.

28.

In and between April 2003 and February 2006, the Accused accepted and continued employment as Vera's and Valerie's counsel when their interests were in actual or at least likely conflict. The Accused failed to make full disclosure and recommend that Vera and Valerie consult with independent counsel to determine whether they should consent to the representation, and failed to obtain their consent, confirmed in writing.

29.

Based on the foregoing, the Accused admits that his conduct constituted violation of DR 6-101(A)/RPC 1.1 (failure to provide competent representation), DR 2-106(A)/RPC 1.5(a) (charging and collecting an illegal or excessive fee), DR 5-105(E)/RPC 1.7(a) (current client conflict of interest), DR 9-101(C)(3)/RPC 1.15-1(a), (d) (failing to prepare and maintain complete records concerning client's funds and failing to account for client's funds), RPC 8.4(a)(3) (misrepresentation), and DR 1-102(A)(4)/RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

**Deming Matter**

**Case No. 08-98**

30.

About November 2004, Sean Deming (hereinafter "Deming") retained the Accused to handle the probate of the estate of Deming's deceased wife, Cynthia Deming. Cynthia Deming did not have a will. Deming was Cynthia Deming's sole heir. Deming paid a \$2,000 retainer to the Accused for services to be performed and billed at an hourly rate.

31.

About December 1, 2004, the Accused filed a petition in the Circuit Court for the County of Clackamas for the administration of Cynthia Deming's estate and for the appointment of Sean Deming as Cynthia Deming's personal representative (hereinafter "Probate Case"). Thereafter, the court appointed Deming to serve as Cynthia Deming's personal representative and issued letters of administration in the Probate Case.

32.

Between about January 2005 and April 2006, the Accused did not timely file an inventory in the Probate Case, did not timely file an annual accounting in the Probate Case, and did not adequately monitor the Probate Case.



33.

About April 14, 2006, the Accused filed a motion and on April 20, 2006, the court signed an order allowing the Accused to withdraw from the representation in the Probate Case. The Accused did not make reasonable effort to notify Deming that he had withdrawn. After April 2006, Deming attempted to communicate with the Accused concerning the Probate Case. On July 22, 2006, Deming reached the Accused. The Accused told Deming he did not remember the case and would have to review the file. Deming understood that the Accused would call him back. The Accused did not again communicate with Deming and failed to surrender all papers and property to which Deming was entitled, including the unearned portion of the retainer.

34.

Based on the foregoing, the Accused admits that his conduct constituted violation of RPC 1.3 (neglect), RPC 1.4(a) (failure to communicate), RPC 1.5(a) (collecting an excessive fee), and RPC 1.16(d) (failure to perform duties on termination of employment).

#### **OTHER ALLEGATIONS**

35.

On further factual inquiry, the parties agree that the alleged violations of DR 7-102(A)(5) in the Bar's First Cause of Complaint; RPC 1.15-1(a) and (c) alleged in the Bar's Second Cause of Complaint; RPC 8.1(a)(2) in the Bar's Third Cause of Complaint; and ORS 9.527(1), alleged in the Bar's Fourth Cause of Complaint, shall be dismissed upon approval of this stipulation.

#### **SANCTION**

36.

The Accused and the Bar agree that in fashioning an appropriate sanction, 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*, §§ 4.1, 4.3, 4.4, 4.5, 6.1, 6.2, and 7.0.
- b. **Mental state.** The Accused's conduct demonstrates 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. *Standards*, p. 7.

When the Accused made representations to Cartwright concerning the disposition of Vera's funds, he knowingly failed to confirm the accuracy of his statements before making them. The Accused also knew he lacked sufficient experience, knowledge, and understanding of the law and procedures concerning conservatorship and probate matters, but undertook representation of Vera and Valerie concerning such matters. The Accused also acted knowingly when he failed to prepare and maintain complete records concerning clients' funds. The Accused acted negligently when he failed to adequately attend to and monitor the Deming Probate Case; when he failed to maintain adequate and timely communication with Deming; and when he failed to promptly return or determine that he held unearned funds that belonged to Deming.

- 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.

The Deming Probate Case was delayed. Deming was frustrated with the delay and the Accused's failure to respond to his inquiries about the case. Deming was also injured when the Accused failed to make sufficient effort to notify Deming that he had withdrawn and failed to return promptly the unearned portion of the retainer. In July 2008, after the Bar inquired about the unearned funds, the Accused returned them to Deming.

The Accused caused actual injury to Cartwright, Vera, Valerie, and the court concerning the Moreland matters. His failure to provide competent representation, failure to prepare and maintain complete records, and failure to provide complete and accurate information delayed final disposition of Vera's Probate and Conservatorship Cases. Vera and her estate were injured because the Accused failed to adequately advise and review Valerie's handling of Vera's funds and the Accused charged and collected attorney fees that were not approved by the court. Cartwright was required to devote additional time and Vera Moreland's estate incurred expenses that would otherwise not have been incurred to determine and account for Vera's assets.

- d. **Aggravating factors.** Aggravating factors are considerations that may increase the degree of discipline to be imposed. *Standards*, § 9.22. The Accused has a prior record of discipline. *Standards*, § 9.22(a). He was admonished in 1996 for violation of DR 1-102(A)(3); admonished in 1999 for violation of DR 9-101(A); and reprimanded in 2002 for

violation of DR 6-101(B). *In re Sunderland*, 16 DB Rptr 230 (2002). The Accused was suspended for one (1) year in October 2007, for violations of multiple disciplinary rules concerning conduct involving several clients' matters. *In re Sunderland*, 21 DB Rptr 257 (2007). In October 2008, the Accused was suspended for nine (9) months, for violation of multiple disciplinary rules involving multiple clients. *In re Sunderland*, 22 DB Rptr 140 (2008). The timing of the current offenses in relation to the conduct in the previous suspension cases overlaps, although some of the conduct occurred while he was being investigated in the earlier cases. *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 was admitted to practice in 1992 and has substantial experience in the practice of law. *Standards*, § 9.22(i). Also, there is some evidence of selfish 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). He has paid \$700 to Deming for the unearned retainer. He also reimbursed \$22,000 to Vera Moreland's estate for attorney fees and other disbursements by Valerie to or for Valerie's benefit that were not approved by the court, and the additional \$5,000 referenced in paragraph 24. *Standards*, § 9.32(d). The Accused is remorseful. *Standards*, § 9.32(l).

37.

The *Standards* suggest that a period of suspension is the appropriate sanction. *Standards*, §§ 4.12, 4.42, 4.52, 6.22, 6.32, 7.2, and 8.2. Oregon case law is in accord. *In re Eadie*, 333 Or 42, 36 P3d 468 (2001); *In re Knappenberger*, 340 Or 573, 135 P3d 297 (2006); *In re Chandler*, 306 Or 422, 760 P2d 243 (1988); *In re Chambers*, 292 Or 670, 642 P2d 286 (1982).

38.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for three (3) years for violations of DR 6-101(A)/RPC 1.1 (failure to provide competent representation), DR 2-106(A)/RPC 1.5(a) (charging and collecting illegal and excessive fees), DR 5-105(E)/RPC 1.7(a) (current client conflict of interest), DR 9-101(C)(3)/RPC 1.15-1(a), (d) (failing to prepare and maintain complete records concerning client's funds and failing to account for client's funds), RPC 8.4(a)(3) (misrepresentation), DR 102(A)(4)/RPC 8.4(a)(4) (conduct prejudicial to the administration of justice), RPC 1.3 (neglect), RPC 1.4(a) (failure to communicate), and RPC 1.16(d) (failure to perform duties on termination of employment). The suspension shall be effective and run consecutively to the 9-month

suspension that commenced on October 7, 2008, in *In re Sunderland*, 22 DB Rptr 140 (2008).

39.

In addition, the Accused shall pay \$1,023.63 to the Bar as its reasonable and necessary costs incurred in connection with the Accused's statement under oath in the investigation of Case No. 07-01. The amount shall be due immediately and 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 this Stipulation for Discipline is approved, until paid in full.

40.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with 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 to anyone until such time as he is notified by an authorized representative of the Bar that his license to practice has been reinstated.

41.

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 25th day of February 2009.

/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

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 07-31, 07-32, 07-33, 07-34,  
) 07-35, and 07-101  
)  
THOMAS K. OKAI, ) SC S057271  
)  
Accused. )

Counsel for the Bar: Richard E. Forcum, Stacy J. Hankin  
Counsel for the Accused: Wayne Mackeson  
Disciplinary Board: None  
Disposition: Violation of RPC 1.2(c), RPC 1.3, RPC 1.4(b),  
RPC 1.5(a), RPC 1.7(a)(2), RPC 1.15-1(c), RPC  
1.15-1(d), RPC 1.16(d), RPC 8.1(a)(2), RPC  
8.4(a)(2), RPC 8.4(a)(4), and ORS 9.527(2).  
Stipulation for Discipline. Four-year suspension.  
Effective Date of Order: April 22, 2009

**ORDER ACCEPTING STIUPLATION 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 four years, effective the date of this order.

April 22, 2009

/s/ Paul J. De Muniz

Paul J. De Muniz  
Chief Justice

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1985. The Accused has been suspended from the practice of law since July 3, 2007, for failing to pay membership dues, and since August 13, 2007, pursuant to BR 3.1, but has otherwise been a member of the Oregon State Bar continuously since 1985, having his office and place of business in Malheur County, Oregon.

3.

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

4.

On July 27, 2007, a Second Amended 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 8.4(a)(4), and RPC 8.1(a)(2) in the Okief matter; RPC 1.2(c), RPC 1.7(a)(2), RPC 8.4(a)(2), and ORS 9.527(2) in the Sullivan matter; RPC 1.3, RPC 1.4(b), and RPC 1.15-1(d) in the McGowan matter; RPC 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d) in the Delepierre/OSB matters; and RPC 8.4(a)(2) (two counts) and ORS 9.527(2) (two counts) in the Norris matter. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Case No. 07-31 (Okief matter)

#### Facts

5.

The Accused represented defendant in the Malheur County Circuit Court case *State v. Allen*. On February 22, 2005, the court set a plea hearing for March 28, 2005, at 10:15 a.m. The Accused’s client and the opposing lawyer appeared at the time scheduled for the plea hearing. The Accused failed to appear. The court called the

Accused's office regarding his failure to appear. The Accused then called the court 15 minutes later and reported that he was ill. The plea hearing was rescheduled for April 4, 2005, at 10:15 a.m.

6.

On April 4, 2005, at 10:15 a.m. the Accused's client and the opposing lawyer appeared for the scheduled plea hearing. The Accused failed to appear until almost 11:00 a.m. The court found the Accused in contempt of court and fined him \$250.00.

7.

The Accused represented plaintiff in the Malheur County Circuit Court case *Craft v. Lzicar*. On October 27, 2005, the court set a settlement conference for January 10, 2006, at 9:00 a.m. The Accused's client, opposing lawyers, and their clients appeared at the date and time of the scheduled conference. The Accused failed to appear. The Accused called the court 45 minutes later and reported that he was ill. The court assessed costs and attorney fees incurred by the opposing lawyers and their clients against the Accused for his failure to appear or notify the court in advance that he was ill and would not appear.

8.

In May 2006, the Bar received a complaint regarding the Accused's conduct as described in paragraphs 5 through 7 herein. On numerous occasions between December 15, 2006, and February 22, 2007, Disciplinary Counsel's Office requested responses to a number of questions from the Accused directly and from the Accused through his subsequent lawyer. The Accused requested and was granted a number of extensions in which to provide his responses. The Accused knowingly failed to respond to those requests.

### **Violations**

9.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 8, he violated RPC 1.3, RPC 8.4(a)(4), and RPC 8.1(a)(2).

### **Case No. 07-32 (Sullivan matter)**

### **Facts**

10.

In September 2004, Larry Bond (hereinafter "Bond") was cited for DUII and a number of traffic infractions (hereinafter "citation matter"). Thereafter, Bond retained the Accused to represent him in the citation matter. After being arraigned, Bond left the state. A warrant for Bond's arrest was later issued because he failed to appear at a scheduled hearing. In late September 2006, Bond moved back to Oregon and was arrested on the outstanding warrant.

11.

On September 28, 2006, Bond was released on bail. On October 2, 2006, Bond met with the Accused to discuss the citation matter. The Accused knew that Bond had no funds with which to pay him. In connection with discussing the Accused's representation of Bond in the citation matter, the Accused disclosed to Bond that the Accused illegally used prescription drugs. The Accused asked Bond about his access to prescription drugs, including Oxycodone, as result of medical treatment Bond was receiving. The Accused knew that it would be unlawful for Bond to obtain Oxycodone and deliver it to the Accused.

12.

Bond reported the discussion described in paragraph 11 herein to law enforcement officials who conducted a sting operation. Law enforcement officials obtained a prescription for Oxycodone in Bond's name, put a body wire on Bond, and sent him to meet with and deliver the Oxycodone to the Accused. On October 3, 2006, consistent with the conversation between Bond and the Accused on October 2, 2006, Bond delivered a bottle of Oxycodone pills to the Accused who accepted it.

13.

At all relevant times herein, ORS 475.843(3)(b) prohibited any person from knowingly possessing a controlled substance except under circumstances not applicable here. On May 5, 2007, the Accused pled guilty to violating ORS 475.843(3)(b), a Class C Felony, as described in paragraph 12 herein.

14.

In October 2006, the Accused failed to obtain informed consent, confirmed in writing, from Bond before undertaking to represent him in the citation matter where there was a significant risk that the Accused's representation of Bond in that matter would be materially limited by the Accused's personal interest in obtaining prescription drugs.

### **Violations**

15.

The Accused admits that by engaging in the conduct described in paragraphs 10 through 14, he violated RPC 1.2(c), RPC 1.7(a)(2), RPC 8.4(a)(2), and ORS 9.527(2).



**Case No. 07-33 (McGowen matter)**

**Facts**

16.

On September 26, 2003, Darleane McGowen (hereinafter “McGowen”) retained the Accused to represent her in connection with injuries she sustained on December 30, 2002, when she was hit by a car (hereinafter “personal injury matter”).

17.

At a December 20, 2005, settlement conference, the parties entered into a tentative settlement of the personal injury matter. In relevant part, the settlement required the Accused to submit McGowen’s then-outstanding medical bills to her health insurance carrier for payment. The opposing party agreed to assist the Accused to persuade the health insurance carrier that the outstanding medical bills were unrelated to the personal injury matter. Once the Accused confirmed that the health insurance carrier had paid the outstanding medical bills and would not be seeking reimbursement from the opposing party in the personal injury matter, the opposing party would pay McGowen \$10,000.00.

18.

After December 20, 2005, the Accused failed to pursue McGowen’s outstanding medical bills and failed to respond to opposing counsel’s multiple inquiries about the matter.

19.

In connection with the December 20, 2005, settlement the Accused failed to adequately explain to McGowen the terms of the tentative settlement regarding her outstanding medical bills. The Accused failed to adequately explain to McGowen that those medical bills were to be submitted to and paid by her health insurance carrier, that the opposing party agreed to assist the Accused to persuade the health insurance carrier that the outstanding medical bills were unrelated to the personal injury matter, and that once the Accused confirmed that the health insurance carrier had paid the outstanding medical bills and would not be seeking reimbursement from the opposing party in the personal injury matter, then opposing party would pay McGowen \$10,000.00. The Accused also failed to adequately explain to McGowen the consequences to her if the health insurance carrier failed or refused to pay the outstanding medical bills. In the absence of adequate explanations, McGowen could not make informed decisions regarding the personal injury matter.

20.

On September 12, 2006, opposing counsel in the personal injury matter sent a \$10,000.00 settlement check to the Accused. The Accused failed to deliver those funds to McGowen until January 2007.

21.

In April 2004, the Accused undertook to represent McGowen in a claim under the Americans with Disabilities Act (hereinafter “ADA matter”). The ADA matter concerned difficulties McGowen experienced at work as an aggravation of the injuries she sustained in the personal injury matter. After 2004, the Accused failed to pursue the ADA matter.

### **Violations**

22.

The Accused admits that by engaging in the conduct described in paragraphs 16 through 21, he violated RPC 1.3, RPC 1.4(b), and RPC 1.15-1(d).

### **Case Nos. 07-34 and 07-35 (Delepierre/OSB matters)**

#### **Facts**

23.

In September 2005, the Accused was retained to represent Duane Delepierre (hereinafter “Delepierre”) in a postconviction proceeding. Pursuant to an oral agreement, Delepierre’s parents agreed to pay the Accused a maximum of \$20,000.00 in attorney fees, which he would earn at the rate of \$160.00 per hour.

24.

Between September 2005 and August 2006, Delepierre’s parents paid \$22,500.00 to the Accused. The Accused failed to deposit \$1,751.34 of those funds into a lawyer trust account.

25.

In November 2006, Delepierre’s parents requested an accounting of the \$22,500.00. The Accused failed to render an accounting.

26.

In November 2006, the Accused’s representation of Delepierre was terminated. At the time he was terminated, the Accused had not yet earned all of the \$22,500.00 previously paid to him. The Accused failed to refund the unearned portion of the fees he had received.

### **Violations**

27.

The Accused admits that by engaging in the conduct described in paragraphs 23 through 26, he violated RPC 1.5(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d).

**Case No. 07-101 (Norris matter)**

**Facts**

28.

Between January 25, 2007, and February 12, 2007, the Accused wrote ten personal checks, totaling \$1,840.00, to Sunset Lanes at times when the Accused knew he did not have sufficient funds in his checking account to cover the checks.

29.

On April 26, 2007, the Accused was indicted for a variety of crimes associated with the ten checks alleged in paragraph 28 herein. On April 27, 2007, the Accused was taken into custody in connection with those charges. During the intake process the Accused was searched and found to be in possession of methamphetamines.

30.

At all relevant times herein, ORS 164.055(a) provided that a person commits theft in the first degree when, with intent to deprive another of property or to appropriate property to the person or to a third person, the person takes, appropriates, obtains, or withholds such property from owner thereof and the total value of the property in a single or aggregate transaction is \$200.00 or more in a case of theft by receiving and \$750.00 or more in any other case. On May 5, 2007, the Accused pled guilty to violating ORS 164.055(a), a Class C Felony, as described in paragraph 28 herein.

31.

At all relevant times herein, ORS 475.894(1) made it unlawful for any person to knowingly or intentionally possess methamphetamine unless the substance was obtained directly from or pursuant to a valid prescription or order of a practitioner while acting in the course of professional practice. On May 5, 2007, the Accused pled guilty to violating ORS 475.894(1), a Class C Felony, as described in paragraph 29 herein.

**Violations**

32.

The Accused admits that by engaging in the conduct described in paragraphs 28 through 31, he violated RPC 8.4(a)(2) and ORS 9.527(2).

**Sanction**

33.

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 duties he owed to clients when he improperly handled client funds, neglected client matters, and engaged in an improper conflict of interest. *Standards*, §§ 4.1, 4.4, and 4.3. The Accused violated duties he owed to the public when he engaged in criminal conduct. *Standards*, § 5.1. The Accused violated duties he owed to the legal system when he engaged in conduct prejudicial to the administration of justice, and assisted Bond in engaging in conduct he knew was illegal. *Standards*, §§ 6.1 and 6.2. The Accused also violated duties he owed to the profession when he knowingly failed to cooperate in the Bar's investigation, and collected a clearly excessive fee. *Standards*, § 7.0.
- b. **Mental state.** The Accused's mental state was intentional (criminal conduct and assisting a client to engage in illegal conduct), knowing (self-interest conflict, neglect, and conduct prejudicial to the administration of justice), and negligent (failing to deposit client funds in trust and failing to refund unearned fees).
- c. **Injury.** The Accused's clients, the court, Sunset Lanes, and the Bar all sustained actual injury. The Delepierres eventually received reimbursement from the Bar's Client Security Fund. As part of a plea agreement in the criminal matter, the Accused reimbursed Sunset Lanes.
- d. **Aggravating circumstances.** The following aggravating circumstances exist:
  1. Dishonest and selfish motive. *Standards*, § 9.22(b).
  2. A pattern of misconduct. *Standards*, § 9.22(c).
  3. Multiple offenses. *Standards*, § 9.22(d).
  4. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1985. *Standards*, § 9.22(i).
  5. 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. Character or reputation. Members of the legal community will attest to the Accused's good character and reputation. *Standards*, § 9.32(g).

3. Imposition of other penalties or sanctions. In the criminal matters, the Accused, as part of his probation, underwent treatment for substance abuse. *Standards*, § 9.32(l).
4. Remorse. *Standards*, § 9.32(m).

34.

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 also 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*, § 7.2.

Disbarment is generally appropriate when a lawyer, without the informed consent of client(s), engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client. *Standards*, § 4.31. Disbarment is also generally appropriate when a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution, or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses. *Standards*, § 5.11.

35.

Lengthy suspensions have been imposed on lawyers who have engaged in conduct somewhat similar to the conduct at issue in the present proceeding. *See In re McDonough*, 336 Or 36, 77 P2d 306 (2003) (18-month suspension imposed on lawyer for repeated violations of driving while intoxicated and driving while suspended laws); *In re Safley*, 13 DB Rptr 22 (1999) (stipulation for 5-year suspension by lawyer who was impaired by undiagnosed mental health problems as well as alcohol and drug addiction and who engaged in a variety of violations, including criminal conduct, in a number of matters); *In re Kimmell*, 332 Or 480, 490, 31 P3d 414 (2001) (six-month suspension imposed on lawyer who engaged in a single incident of shoplifting). Because some of the Accused's misconduct involved client matters entrusted to him, it is more egregious than the misconduct in *McDonough* and *Kimmell*.

The court has disbarred lawyers who have engaged in serious criminal misconduct. *In re Sundkvist*, 328 Or 289, 974 P2d 206 (1999) (disbarment of lawyer who committed forgery and theft when he signed his partner's name on firm checks made payable to the lawyer for funds he was not entitled to receive); *In re Garvey*, 325 Or 34, 932 P2d 549 (1997) (disbarment of lawyer who engaged in perjury, false

swearing, aiding escape, and supplying contraband in the course of representing a client); *In re Leonhardt*, 324 Or 498, 930 P2d 844 (1997) (disbarment of lawyer who engaged in forgery, tampering with public records, and official misconduct). The Accused's criminal conduct in these matters is less egregious than the conduct at issue in those matters.

36.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for four years for violation of RPC 1.2(c), RPC 1.3 (two counts), RPC 1.4(b), RPC 1.5(a), RPC 1.7(a)(2), RPC 1.15-1(c), RPC 1.15-1(d) (two counts), RPC 1.16(d), RPC 8.1(a)(2), RPC 8.4(a)(2), (three counts), RPC 8.4(a)(4), and ORS 9.527(2) (three counts), the sanction to be effective the date this Stipulation for Discipline is approved by the court.

37.

In addition, on or before December 31, 2009, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$791.20, incurred for a deposition taken on December 13, 2007, and transcript; and \$333.70 incurred for a deposition on February 12, 2009, for a total of \$1,124.90. Should the Accused fail to pay \$1,124.90 in full by December 31, 2009, 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.

38.

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's practice was closed in the fall of 2006, and he has not been an active member of the bar since July 3, 2007.

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.

39.

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 26th day of February 2009.

/s/ Thomas K. Okai

Thomas K. Okai  
OSB No. 852966

EXECUTED this 9th day of March 2009.

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. 08-75 and 08-76  
)  
JOHN P. ECKREM, )  
)  
Accused. )

Counsel for the Bar: Kelly L. Andersen, Stacy J. Hankin  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.5(a),  
RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d).  
Stipulation for Discipline. 60-day suspension.  
Effective Date of Order: June 21, 2009

**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 sixty (60) days, effective sixty (60) days from the date of this order, for violation of RPC 1.3 (two counts), RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(c) (two counts), RPC 1.15-1(d), and RPC 1.16(d) (two counts).

DATED this 22nd day of April 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman, Esq.  
State Disciplinary Board Chairperson

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



## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 20, 1996, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Jackson County, Oregon.

3.

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

4.

On February 18, 2009, a Second Amended 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 1.5(a), RPC 1.15-1(c), and RPC 1.16(d) in the Simpson matter; and RPC 1.3, RPC 1.4(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d) in the Hilkey matter. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Case No. 08-75 (Simpson matter)**

#### **Facts**

5.

On July 12, 2006, Joseph and Michelle Simpson (hereinafter “the Simpsons”) retained the Accused to represent them in an adoption matter. Pursuant to an oral agreement, the Simpsons agreed to pay the Accused a flat fee of \$5,000.00 to complete the adoption matter. On that same day the Simpsons deposited \$3,000.00 with the Accused. The Accused failed to deposit some of those funds into his lawyer trust account.

6.

On November 7, 2006, the Simpsons paid the remaining \$2,000.00 to the Accused. The Accused failed to deposit those funds into his lawyer trust account.

7.

Between July 12, 2006, and November 1, 2006, the Simpsons worked with Linda Campo (hereinafter “Campo”), an independent paralegal the Accused had hired. On November 2, 2006, Campo sent the petition for adoption and related materials to the Accused for filing with the court. On December 18, 2006, Campo sent to the Accused additional materials that he was required to file with the Department of Human Services (hereinafter “DHS”).

8.

Beginning on or around November 2, 2006, and continuing until July 19, 2007, the Accused failed to pursue the Simpsons’ legal matter in the following respects:

1. He failed to timely file the petition for adoption and related materials with the court.
2. He failed to send materials to DHS by registered or certified mail or by personal service within 30 days after the materials had been filed with the court, as required by ORS 109.309(7)(a).
3. He failed to forward to DHS some of the materials Campo had sent to him on December 18, 2006.
4. He failed to contact DHS about the status of the Simpson matter.
5. He failed to timely contact DHS when he learned, in early June 2007, that DHS had not received any documents regarding the adoption matter.

9.

On or about July 19, 2007, the Simpsons terminated the Accused’s representation of them. After July 19, 2007, the Accused failed to notify the court that his representation of the Simpsons had been terminated and failed to promptly refund all unearned fees and unincurred costs to the Simpsons.

### **Violations**

10.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 9, he violated RPC 1.3, RPC 1.5(a), RPC 1.15-1(c), and RPC 1.16(d).

**Case No. 08-76 (Hilkey matter)**

**Facts**

11.

On or about June 10, 2005, Douglas Hilkey (hereinafter “Hilkey”) retained the Accused to pursue a claim against an investment company. Hilkey deposited a \$600.00 retainer with the Accused. The Accused failed to deposit it into his lawyer trust account.

12.

In August 2006, Hilkey deposited \$206.00 with the Accused for filing fees. The Accused failed to deposit those funds into his lawyer trust account.

13.

On August 30, 2006, the Accused expressed concern to Hilkey about pursuing his legal matter. The Accused informed Hilkey that he would consult with another lawyer and if the consulting lawyer concluded that there was no merit to Hilkey’s legal matter, the Accused would not pursue it and would refund the \$206.00 in filing fees.

14.

Between September 2006 and late February 2007, the Accused failed to pursue Hilkey’s legal matter. Between September 2006 and the end of March 2007, the Accused also failed to communicate with Hilkey, despite periodic inquiries from Hilkey and his wife about the status of the matter.

15.

At the end of March 2007, the Accused informed Hilkey that he would not pursue Hilkey’s legal matter. The Accused provided some file materials to Hilkey and promised to refund the \$206.00 in filing fees within 30 days. On June 22, 2007, Hilkey reminded the Accused about the promised refund and requested an accounting of his retainer.

16.

The Accused failed to timely provide an accounting, timely return all file materials, and timely refund the filing fees to Hilkey.

**Violations**

17.

The Accused admits that by engaging in the conduct described in paragraphs 11 through 16, he violated RPC 1.3, RPC 1.4(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d).

## 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.** In both matters, the Accused violated duties he owed to clients when he improperly handled client funds, neglected client matters, and failed to adequately communicate. *Standards*, §§ 4.1 and 4.4. The Accused also violated duties he owed to the profession when he failed to properly withdraw in both matters. *Standards*, § 7.0.
- b. **Mental state.** The Accused acted negligently when he failed to deposit client funds into his lawyer trust account and when he failed to pursue the Simpson legal matter. He acted knowingly when he failed to notify the court that his representation of the Simpsons had been terminated and when he failed to timely make a refund to the Simpsons. The Accused acted negligently when he failed to deposit client funds into his lawyer trust account in the Hilkey matter. Initially, the Accused acted negligently when he failed to pursue Hilkey’s legal matter and failed to communicate with Hilkey. The Accused’s mental state became knowing after he received and failed to respond to telephone messages from Hilkey and his wife inquiring about the status of Hilkey’s legal matter. The Accused acted knowingly when he failed to timely provide an accounting and a refund to Hilkey.
- c. **Injury.** The Simpsons and Hilkey all sustained actual injury as a result of the Accused’s misconduct in handling their funds. The Accused eventually made refunds to both of them and eventually provided an accounting to Hilkey. The substantive rights or claims by the Simpsons or Hilkey were not impacted or prejudiced by the Accused’s misconduct.
- d. **Aggravating circumstances.** The following aggravating circumstances exist:
  1. A pattern of misconduct. The Accused engaged in similar misconduct in two separate 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 1996. *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. Remorse. *Standards*, § 9.32(m).

19.

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 knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2.

20.

Generally, lawyers who knowingly neglect a legal matter have been suspended for 60 days. *In re Redden*, 342 Or 393, 153 P3d 113 (2007); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003); *In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996).

Lawyers who have improperly handled client funds under similar circumstances have also been suspended. *In re Balocca*, 342 Or 279, 151 P3d 154 (2007) (90-day suspension of lawyer who, in one matter, failed to deposit client funds into a lawyer trust account, failed to account for client funds, and failed to make a refund of unearned fees, and in another matter engaged in an improper conflict of interest); *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007) (30 day suspension of lawyer who failed to deposit client funds into trust and then failed to make a refund of unearned fees when the representation terminated); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002) (60-day suspension of lawyer who mistakenly removed client funds from trust, failed to maintain adequate records of client funds, and failed to refund unearned fees).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for sixty (60) days for violation of RPC 1.3 (two counts), RPC 1.4(a), RPC 1.5(a), RPC 1.15-1(c) (two counts), RPC 1.15-1(d), and RPC 1.16(d) (two counts), the sanction to be effective 60 days from when this Stipulation for Discipline is approved by the Disciplinary Board.

22.

In addition, on or before the 60th day after this Stipulation for Discipline has been approved, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$891.10, incurred for the taking of his deposition and the cost of transcript. Should the Accused fail to pay \$891.10 in full by the 60th

day after this Stipulation for Discipline is approved, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

23.

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.

24.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

25.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the Oregon State Bar and to approval by the 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 13th day of April 2009.

/s/ John P. Eckrem

John P. Eckrem  
OSB No. 962708

EXECUTED this 20th day of April 2009.

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. 07-14  
)  
CHARLES N. ISAAK, )  
)  
Accused. )

Counsel for the Bar: Gregory J. Miner, Stacy J. Hankin  
Counsel for the Accused: Charles N. Isaak  
Disciplinary Board: Arnold S. Polk, Chair  
Colin D. Lamb  
Loni J. Bramson, Public Member  
Disposition: Violation of DR 2-106(A), RPC 1.5(a), and RPC  
1.7(a)(2). Trial Panel Opinion. Six-month  
suspension.  
Effective Date of Opinion: June 2, 2009

**TRIAL PANEL OPINION  
PROCEEDINGS**

On January 12, 2009, a trial panel convened to hear the charges against the Accused. The hearing was conducted at the offices of the Oregon State Bar, 16037 SW Upper Boones Ferry Road, Tigard, Oregon, concluding on January 16, 2009. Four charges were brought against the accused:

1. Charging a clearly excessive fee, in violation of DR 2-106(A) and RPC 1.5(a);
2. Representing a client involving a current conflict of interest, in violation of RPC 1.7(a)(2);
3. Charging a clearly excessive fee, in violation of DR 2-106(A) and RPC 1.5(a);
4. Representing a client involving a current conflict of interest, in violation of RPC 1.7(a)(2).

Charles N. Isaak (hereinafter “the Accused”), is an attorney, admitted by the Supreme Court of the State of Oregon to practice law in 1957, having his office in the County of Washington, State of Oregon.

On April 5, 2007, the Oregon State Bar filed a formal complaint against the Accused.

On November 2, 2007, the Accused filed an answer.

On March 4, 2008, the Oregon State Bar filed an amended complaint against the Accused. No new answer was filed.

On October 31, 2008, a hearing was held and discovery sanctions were imposed.

At the close of testimony, the hearing was recessed with directions that the parties were to file written closing arguments.

### **GENERAL NATURE AND BACKGROUND**

In January 2001, the Accused undertook to represent Mollie Brooks as a potential heir in a probate matter pending in Florida. Shortly after undertaking the representation, the Accused learned that the Florida estate was worth approximately \$100,000 and that it would be split with other heirs. Between January 2001 and December 2004, the Accused expended 213 hours in the Florida probate matter. In January 2005, he charged Brooks \$42,600 for his work. In February 2006, he charged Brooks \$31,736.25 for his work.

In December 2004, the Accused undertook to represent Brooks regarding a recent hospitalization and other related issues. He had Brooks sign a trust deed to her home to secure his past and future legal expenses.

In July 2005, the Department of Human Services (hereinafter “DHS”) initiated a proceeding to have a conservator appointed for Brooks on the basis that she may be a victim of financial abuse by the Accused. The Accused undertook to represent her in this matter. A conservator was appointed.

In November 2005, Mollie Brooks died. The Accused made a claim in her estate for \$31,736.25 in the Florida probate matter, and \$91,435.99 for representation on matters relating to Medicaid, sale of the house, contesting the conservatorship, and personal care, with a total claimed of \$122,172.20. After a hearing, the probate court awarded the Accused \$2,000 for legal services and \$7,000 for nonlegal services.

### **FINDINGS OF FACT**

#### **First Complaint—Florida Probate Matter**

In January 2001, Mollie Brooks received a letter from a Florida attorney informing her that her cousin had died and a probate was being instituted. The Florida attorney estimated the estate was worth less than \$100,000. Mollie Brooks retained the Accused to represent her. The Accused was not familiar with Florida law and attempted to retain a lawyer in Florida. After considerable correspondence with the Accused, the firm declined to represent Brooks (Ex. 9A). The Accused researched and concluded that Brooks would share in the estate, after the probate costs. One issue in that estate was a chair owned by Tom Thumb. Eventually, it was sold for



\$10,000. Although the Accused brought the identity of the chair to the Florida attorney, and therefore increased the probate estate, James McCollom, the Florida attorney, ended up having such a high charge to the estate that he reduced his fee by \$20,000. His conclusion was that the Accused was obstreperous and had the Accused not been involved in the matter, it would have been resolved sooner and with more money for each heir (Ex. 135). Because of the delay, mainly caused by the Accused, final distribution of the probated estate did not occur until 2006, after Brooks died.

The Accused had no written fee agreement. Between January 2001 and December 27, 2004, Accused stated he would “hold off on my time until we see what happens” (Ex. 14, 32, 35, 71). He also stated that he might donate his time (Ex. 23, 27, 32). In December 2004, Mollie Brooks broke her clavicle. On December 27, Brooks left the hospital against the advice of her physician. On December 28, 2004, the Accused submitted a bill of \$42,600 to Brooks, for representation of the Florida probate matter. On December 30, 2004, Brooks executed a note, prepared by the Accused, payable to the Accused in the amount of \$42,600 upon the sale of her house or her death, whichever came first (Ex. 77C). The Accused also prepared a trust deed to secure the note and any future attorney fees (Ex. 78).

The house was sold in June 2005 and the Accused deposited the funds in his trust account and retained a lien (Ex. 104). Mollie Brooks died in November 2005. The Accused made a claim for his attorney fee in the Brooks probate matter. His claim was in the amount of \$31,736.25 for the Florida probate. His billing was based on the hours expended. The probate court awarded attorney fees on a quantum meruit basis in the amount of \$1,000.

### **Second Complaint—Conflict of Interest in Executing Trust Deed**

On December 28, 2004, at a time when it was apparent that Mollie Brooks was unable to care for herself, the Accused hand-delivered a letter to her, together with two retainer fee agreements. One was for the Florida probate and the other was for her hospitalization. Mollie Brooks signed the letter and the retainer fee agreements (Ex. 74, 76, 77). The Accused also prepared a letter dated December 31, 2004 (Ex. 77B) detailing that he was anxious to have the note, the trust deed, and the retainer agreements, to put himself into a position ahead of Medicaid. There was a place at the end of the letter for Mollie Brooks to sign the document as “read and approved.” It was not signed.

On January 7, 2005, the trust deed was signed by Brooks in front of a notary public and later recorded.

### **Third Complaint—Excessive Fee in the Hospitalization of Mollie Brooks**

The Accused represented Brooks in regard to a Medicaid hearing. In addition, he represented her in her objection to the conservatorship. He also assisted in selling her house, arranging to take care of her house prior to sale, and represented her in changing her diet at the care center. He claims that he spent 410 hours representing

her in these matters. He filed a claim in the Brooks probate estate for \$71,823.50 for his legal services and \$18,612.45 for his “nonlegal” matters. The personal representative disallowed The Accused’s claim and after the hearing, the Accused was allowed \$4,350 for his legal work and \$3,500 for his personal care.

#### Fourth Complaint—Conflict of Interest Representing Mollie Brooks in the Conservatorship

On July 15, 2005, the State of Oregon filed a petition for the appointment of a conservator for Brooks. The petition alleged that Brooks was unable to make financial decisions and was a suspected victim of financial abuse by the Accused (Ex. 116). The Accused had Brooks sign a letter of authorization to represent her, but he did not disclose to her that he had a conflict and self-interest in representing her. The Accused did not obtain written informed consent from Brooks.

### DISCUSSION AND CONCLUSIONS OF LAW

The first cause of complaint charges the Accused with a violation of DR 2-106(A) and RPC 1.5(a), which prohibits a lawyer from charging a clearly excessive fee.

The Accused expended a substantial amount of time representing Brooks, but it was a matter of making mountains out of molehills. In one case, he spent hours arguing about a long-distance charge that was ultimately paid in the full amount of the original bill, resulting in attorney fees significantly higher than the original charges. Although the Accused pointed out the value of the Tom Thumb chair, he cost the Florida estate thousands of dollars in additional legal fees by his lack of cooperation and refusal to provide information to the probating attorney. The probate was in Florida and there were no assets in Oregon, yet the Accused charged a fee greater than the attorney fee allowed in Florida for probating the estate.

Fee dispute matters often originate from the client. In this case, although Brooks is now deceased, she “consented” to the fee. However, when the Accused presented a billing to her in August 2004 for \$39,643, she was shocked (Ex. 71). In December 2004, her condition changed dramatically, and it was at that time that the Accused chose to justify his claim. He represented to Brooks on December 28, 2004, that any claims he made would be approved by the Personal Representative and the Court, at which time Brooks signed a promissory note in the amount of \$42,600 for the Florida matter. Although the Accused had previously told Brooks that he might represent her for free, he made a conscious decision that her estate should go to him rather than the beneficiary in the will. “I drafted her will, so I knew where the residual of her estate was going to go, to the Humane Society. And I made it clear to her that I was not in the position to donate a hundred or two hundred dollars worth of time and have it go to the Humane Society” (Tr. Vol. 1, p. 85, 11:37:37). He later stated, “I think it’s a tragedy that they wound up with anything in this case” (Tr. Vol. 5, p. 189, 1:48:13).

The Accused submitted an application to Medicaid, and the two promissory notes and trust deed were revealed. Jeanie Butler, who was employed by DHS, observed the notes and trust deed. On the surface, this was a case of excessive fee being charged by the Accused. Friction developed between the Accused and DHS while the Accused ran up additional charges. It should be noted that often a family attorney continues to represent his client long after other family members are gone, and in many cases, the attorney continues to represent that client until he or she dies, all without a conservatorship. The result is a substantial savings to the estate. In this case, after it was clear that Brooks could not return home, the Accused assisted in the sale of the house, then deposited the proceeds into his trust account. Under the terms of the trust deed, he was entitled to be paid when the house was sold. This event triggered a conservatorship to protect Mollie Brooks from the Accused and stop the dispersal of funds from the Accused's trust account. That conservatorship cost the estate approximately \$25,000 in additional fees for the conservator and attorney fees.

The Accused argues that because Brooks consented to the fee agreement it was not excessive. Heather Gilmore, an attorney familiar with probated estates, testified that a reasonable attorney fee for someone representing Brooks in this probated matter was \$1,000. The Accused billed Brooks \$42,600 for the Florida estate, evidenced by the note and trust deed. When the home was sold, he claimed a lien on \$42,600 of the proceeds for attorney fees in the Florida probate matter. Yet when he later filed a claim for the Florida attorney fees, the Accused filed the claim for \$31,736.25, which may be a recognition that he had overcharged Brooks. The probate court allowed \$1,000.

With regard to the Florida probate matter, we find that the Bar has proved that the Florida probate fee was excessive, in violation of DR 2-106(A) and RPC 1.5(a).

The second cause of complaint charges the Accused with a violation of RPC 1.7(a)(2), which states that there is a current conflict of interest if the lawyer has a personal interest. Notwithstanding the conflict, the lawyer can represent the client if the client gives informed consent in writing.

The Oregon Rules of Professional Conduct took effect on January 1, 2005, and the Accused was not charged with violating the Code of Professional Responsibility, which was in effect prior to January 1, 2005. The trust deed was prepared prior to January 1, 2005, and a disclosure was given by the Accused prior to January 1, 2005. The trust deed was signed and notarized by Brooks in 2005. There was no evidence that the Accused was present at the signing of that deed. We find that the Bar has not proved a violation of RPC 1.7(a)(2).

The third cause of complaint charges the Accused with charging a clearly excessive fee in violation of DR 2-106(A) and RPC 1.5(a) with regard to his representation on matters relating to her hospitalization.

The retainer agreement, executed on December 28, 2004 (Ex. 77), was regarding the "hospitalization on or about December 24, 2004[,] and any and all related associated activities and problems, including but not limited to insurance

coverage and getting me home again if possible.” Over the next six months, the Accused claims to have spent hundreds of hours assisting Brooks, which included preparing the Medicaid application, representing her at two Medicaid hearings, and visiting her almost daily at her place of assisted living. He personally cleaned out the house in preparation for sale and arranged for the sale. The Accused represented Brooks in the first Medicaid hearing. That hearing was for the purpose of determining whether Brooks could return to her home in six months. In order to prevail, an agency-approved medical authority must believe the recipient can be cared for in his or her home within six months. In March, Medicaid notified Brooks that the shelter exception was being removed April 1, 2005. The Accused appealed that decision, which went to hearing in June 2005. At the hearing, the Accused did not present any evidence from an agency-approved medical authority that Brooks could be cared for in her home. The hearing was continued. Prior to the second hearing, the Brooks home sold, making the second hearing moot. Despite that, the Accused attended the second hearing and continued on matters that were not relevant.

The Accused spent a substantial amount of time with Brooks, personally feeding her, sitting at her bedside for hours, and attending to her finances. On April 29, 2005, the Accused represented that he had spent 337 hours on the Brooks hospitalization matter. On June 13, 2005, the Accused prepared a letter, then signed by Brooks, that the Accused should receive \$100,000 for work done through June 10, 2005, by the Accused. On June 23, 2005, Brooks signed a statement, prepared by the Accused, in which she stated that \$138,406.71 was a fair, reasonable, and ethical fee for his time. The Accused filed a claim in the Brooks probated estate and was allowed \$1,000 for legal work related to the hospitalization and \$6,850 for nonlegal work. We find the guidelines of *In re Potts*, 301 Or 57, 718 P2d 1363 (1986), controlling and that the Bar has proved that the fee charged was excessive.

The fourth cause of complaint charges the Accused with a violation of RPC 1.7(a)(2), which states that there is a current conflict of interest if the lawyer has a personal interest. Notwithstanding the conflict, the lawyer can represent the client if the client gives informed consent in writing.

In the Brooks conservatorship petition, it was alleged that Brooks was suspected to be the victim of financial abuse by the Accused. The Accused represented Brooks despite the fact that he did not have his client’s informed consent in writing. Although the Accused attempted to obtain another lawyer to represent Brooks, two other lawyers declined to represent Brooks. As a practical matter, when it was alleged that Brooks was a victim of financial abuse by the very attorney who had already billed her more than \$100,000 and was representing her in objecting to the need for a conservatorship, there was no chance of prevailing. We need not discuss the matter further—the Accused did not have his client’s informed consent in writing. This was a clear violation of RPC 1.7(a)(2).

## SANCTIONS

Finding that the Accused did violate the Code of Professional Responsibility and the Rules of Professional Conduct, we must impose a sanction following the *ABA Standards for Imposing Lawyer Sanctions* (hereinafter “*Standards*”). From *Standards*, § 3.0, the following factors are considered: (a) the duty violated, (b) the lawyer’s mental state, (c) the potential or actual injury caused by the lawyer’s misconduct, and (d) the existence of aggravating or mitigating factors.

As to our finding that the Accused charged an excessive fee, *Standards*, § 7.2, says that suspension is appropriate “when the lawyer does not mislead a client but engages in a pattern of charging excessive or improper fees.” *Standards*, § 7.3, states that “[c]ourts typically impose reprimands when lawyers engage in a single instance of charging an excessive or improper fee.”

As to our finding that the Accused had a conflict of interest and did not obtain an informed consent in writing, *Standards*, § 4.32, says that “suspension is appropriate when the lawyer knows that his or her interests may be or are likely to be adverse to that of the client, but does not fully disclose the conflict, and causes injury or potential injury to a client.”

### Mitigating and Aggravating Circumstances

We have determined that suspension of the Accused is appropriate. *Standards*, § 9.0, sets forth aggravating and mitigating circumstances, which are to be considered when determining the period of suspension. We set forth those aggravating factors which we deem applicable:

1. Selfish motive. Although the Accused in many respects cared for Brooks and improved her quality of life, the totality of his actions speak for themselves. We find this an aggravating factor.
2. Multiple offenses. Although we consider both charges of excessive fees as one offense, the conflict of interest is a different offense, thus we consider the total as multiple offenses.
3. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or order of the disciplinary agency. Although we understand that an accused may not willingly want to be cooperative with the Bar or the trial panel, we find that the Accused went beyond reasonable bounds and caused the Bar and the trial panel to devote a substantial amount of time to matters that were not in issue. For example, the Accused would never admit his signature to many documents that were clearly signed by him.
4. Refusal to acknowledge wrongful nature of conduct. The Accused appears to believe that at no time did he do anything wrong. In fact, his position is that the Bar is wrong for pursuing this matter. We consider this an aggravating circumstance.

5. Vulnerability of victim. Although Mollie Brooks was competent, she was vulnerable, and the Accused took advantage of that.
6. Substantial experience in the practice of law. The Accused has been practicing law since 1957. We find that the Accused has substantial experience and this is therefore an aggravating circumstance.
7. Absence of a prior disciplinary record. The Accused has been practicing law for more than 50 years, without a prior disciplinary record, and we give this a great deal of weight in offsetting the multiple aggravating factors.

### **DISPOSITION**

It is the decision of the trial panel that the Accused be suspended for a period of six months.

**IT IS SO ORDERED.**

Dated this 26th day of March 2009.

/s/ Colin Lamb

Colin Lamb  
Trial Panel Member

/s/ Arnold D. Polk

Arnie Polk  
Trial Panel Chair

/s/ Loni Bramson

Loni Bramson  
Trial Panel Member

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 08-18
	)	
RICHARD T. PERRY,	)	
	)	
Accused.	)	

Counsel for the Bar:	Linn D. Davis
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 1.15-1(d) and RPC 1.16(d). Stipulation for Discipline. Six-month suspension.
Effective Date of Order:	June 8, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended for six months, effective upon signing of this order, for violation of RPC 1.15-1(d) and RPC 1.16(d).

DATED this 8th day of June 2009.

/s/ Gregory E. Skillman  
 Gregory E. Skillman  
 State Disciplinary Board Chairperson

/s/ William G. Blair  
 William G. Blair, Region 4  
 Disciplinary Board Chairperson

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 22, 1982, and has been a member of the 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 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 1.4(a), RPC 1.4(b), RPC 1.15-1(d), and RPC 1.16(d) of the Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

The Accused undertook to represent John Skourtes (hereinafter “Skourtes”) in *Board of Trustees of the Police and Firemen Retirement System of Detroit v. Skourtes, et al.*, Clackamas County Circuit Court Case No. CV0205638 (hereinafter the “first action”). On or about April 15, 2004, Skourtes and other parties in the litigation entered into a settlement agreement that imposed environmental cleanup responsibilities on Skourtes.

6.

In January 2005, a second action was filed against Skourtes in Clackamas County Circuit Court (Case No. CV05010848) alleging, inter alia, that Skourtes failed to perform his cleanup responsibilities under the settlement agreement in the first



action. The Accused undertook to represent Skourtes in the second action. In February 2006, the Accused informed Skourtes that he was giving up the practice of law for health-related reasons and would withdraw from further representing Skourtes in the second action.

7.

In March 2006, Skourtes contacted attorney Brian Chenoweth (hereinafter “Chenoweth”) to take over as his counsel in the matter. Chenoweth asked the Accused to file a notice of withdrawal but the Accused never did so. From March 2006 through December 2006, Skourtes and Chenoweth repeatedly contacted the Accused to demand that the Accused forward Skourtes’ file. The Accused failed to forward Skourtes’ file to Chenoweth or Skourtes until December 2006, when William Stockton, a lawyer acting on behalf of the Accused, obtained the file from the Accused and provided it to Chenoweth.

### Violations

8.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 7, he violated RPC 1.15-1(d) and RPC 1.16(d). Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 1.4(a) and RPC 1.4(b) should be and, upon the approval of this stipulation, are dismissed.

### Sanction

9.

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

- a. **Duty violated.** The Accused violated his duty to properly handle client property when he failed to provide file materials to his client or the client’s new attorney as requested. *Standards*, § 4.1. When he failed to file a notice of his withdrawal or provide the file to successor counsel, the Accused violated his duties owed as a professional. *Standards*, § 7.0.
- b. **Mental state.** The Accused negligently failed to formally withdraw from the representation of Skourtes. The Accused knew that he was not providing the Skourtes file to his client or successor counsel.
- c. **Injury.** The Accused’s failure to withdraw delayed successor counsel’s appearance on behalf of Skourtes in the second action. In addition to causing anxiety and frustration to Skourtes, the Accused’s failure to

forward Skourtes' file until December 2006 required successor counsel to represent Skourtes in the second action without complete file materials for several months.

- d. **Aggravating circumstances.** Aggravating circumstances include:
1. Prior disciplinary offenses. The Accused was suspended for a 97-day period on January 17, 2007, for violations of DR 6-101(B)/RPC 1.3 and DR 7-101(A)(2)/RPC 1.4. *In re Perry*, 21 DB Rptr 24 (2007). The Accused was suspended for a six-month period on April 25, 2007, for violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(d), and RPC 8.1(a)(2). *In re Perry*, 21 DB Rptr 60 (2007). *Standards*, § 9.22(a).
  2. Multiple offenses. The Accused's misconduct involved two different offenses. *Standards*, § 9.22(d).
  3. Substantial experience in the practice of law. The Accused was admitted to practice in Oregon in 1982 and had substantial experience in the practice of law at the time of the offenses. *Standards*, § 9.22(i).
- e. **Mitigating circumstances.** Mitigating circumstances include:
1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
  2. Personal or emotional problems. The Accused was suffering personal and emotional problems as the result of a reoccurring cancer. *Standards*, § 9.32(c).
  3. Cooperative attitude toward disciplinary proceedings. *Standards*, § 9.32(e).

10.

Under the *Standards*, suspension is generally appropriate, prior to considering aggravating and mitigating circumstances, when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.3.

11.

Oregon case law confirms that suspension is appropriate. In a prior matter involving the neglect of three clients and the failure to safeguard the property of one of those clients, where the Accused suffered from some personal problems that impaired his ability to do the work, the Supreme Court imposed a 90-day suspension. *In re Worth*, 336 Or 256, 82 P3d 605 (2003). In a matter involving the neglect of a client matter and the subsequent failure to forward the client's file to successor

counsel by a lawyer who had previously been sanctioned for similar misconduct, the Supreme Court imposed a two-year suspension. *In re Chandler*, 306 Or 422, 760 P2d 243 (1988). A substantial aggravating factor in the *Chandler* case was the lawyer's nearly complete failure to cooperate with Bar, Local Professional Responsibility Committee, and State Lawyer Assistance Committee investigators, misconduct for which he had been previously formally charged at the time of his noncooperation. In the present matter, the Accused has cooperated fully. Furthermore, although the Accused has previously been sanctioned for violation of RPC 1.15-1(d), the present violation occurred prior to the imposition of a sanction in the previous matter, diminishing the significance of the earlier misconduct as an aggravating factor. *In re Jones*, 326 Or 195, 200, 951 P2d 149 (1997).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for six months for violation of RPC 1.15-1(d) and RPC 1.16(d), the sanction to be effective upon approval of this stipulation.

13.

In addition, on or before the 60th day after this Stipulation for Discipline is approved, the Accused shall pay to the Bar its reasonable and necessary costs in the amount of \$437.90, incurred for the taking of his deposition and the cost of transcript. Should the Accused fail to pay \$437.90 in full by the 60th day after this Stipulation for Discipline is approved, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

14.

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. The Accused is currently suspended and has no clients.

15.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

16.

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

EXECUTED this 18th day of May 2009.

/s/ Richard T. Perry

Richard T. Perry

OSB No. 82103

EXECUTED this 3rd day of June 2009.

OREGON STATE BAR

By: /s/ Linn D. Davis

Linn D. Davis

OSB No. 03222

Assistant Disciplinary Counsel

I, Richard T. Perry, being first duly sworn, say that I am the Accused in the above-entitled proceeding and that I attest that the statements contained in the stipulation are true and correct as I verily believe.

/s/ Richard T. Perry

Richard T. Perry

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 08-153  
)  
ROBERT D. DAMES, )  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: Bradley F. Tellam  
Disciplinary Board: None  
Disposition: Violation of RPC 1.2(a), RPC 1.3, RPC 1.4(a),  
and RPC 1.4(b). Stipulation for Discipline. Public  
reprimand.  
Effective Date of Order: June 29, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded, effective upon the signing of this order, for violations of RPC 1.2(a), RPC 1.3, RPC 1.4(a), and RPC 1.4(b).

DATED this 29th day of June 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 19, 1975, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On November 22, 2008, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violation of RPC 1.2(a) (failure to abide client’s decision regarding objectives of representation), RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to keep a client reasonably informed of the status of a case), and RPC 1.4(b) (failure to communicate with client sufficient to allow client to make informed decisions regarding the representation) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### Facts

5.

In December 2002, Domingues Lewis (hereinafter “Lewis”) hired the Accused to pursue a medical malpractice claim against Kaiser. The Accused filed a lawsuit in early February 2003. Kaiser was represented by defense attorneys including Kelly Giampa (hereinafter “Giampa”).

6.

Discovery proceeded and during the second of two depositions of Lewis, conducted in mid-March 2006, it became apparent that a secondary condition was

affecting Lewis that might have ramifications on his malpractice claim against Kaiser. The Accused discussed his concerns with Lewis, who instructed that he still wanted to go forward with the malpractice case notwithstanding that the Accused's belief that the secondary condition had the potential to expose Lewis's claim to a defense verdict.

7.

Shortly thereafter, the Accused obtained an order abating the case and staying the proceedings until September 2006.

8.

In mid-April 2006, the Accused sent a letter notifying Lewis that he would no longer represent him, and instructing Lewis that he had approximately five months to find another attorney. The Accused told Lewis that in the absence of another attorney assuming his representation by that time, the Accused would reactivate the matter and request permission from the court to resign.

9.

Lewis consulted with other attorneys, some of whom contacted the Accused and discussed the merits of the case with him. Ultimately, Lewis was unable to locate replacement counsel.

10.

In September 2006, the Accused filed documents to reactivate the case following abatement. In correspondence to Giampa's office following reinstatement of the case, the Accused stated that he would be seeking to resign "in the next two weeks."

11.

Thereafter, however, the Accused did not move to withdraw or resign. Accordingly, the court continued to send notices regarding the case to the Accused, and Giampa continued to attempt to communicate with the Accused regarding his intended withdrawal and preparations for trial. The Accused did not respond to these inquiries from Giampa or notify the court that he was no longer representing Lewis. Trial was set for April 2007.

12.

In early February 2007, Giampa filed a motion for summary judgment out of frustration at the lack of communication from the Accused. The Accused did not notify Lewis of the motion or the ramifications that the motion might have on the prosecution of his claim against Kaiser.

13.

In mid-March 2007, without notice to or permission from Lewis, the Accused spoke with Giampa and conceded the summary judgment because the Accused did not see that there was any factual or legal basis to contest the motion.

14.

On April 2, 2007, an Order for Summary Judgment was filed, and on April 6, 2007, a Dismissal Judgment was signed by the court and Notice of Entry of Judgment was sent to the Accused and Giampa. The Accused did not provide this document to Lewis or otherwise communicate to him that the case had been dismissed.

### Violations

15.

The Accused admits that by failing to withdraw as he indicated he would and despite a number of reminders from opposing counsel, he neglected a legal matter, in violation of RPC 1.3.

The Accused further admits that by failing to notify Lewis and obtain his authorization prior to conceding the dismissal of Lewis's case, he violated both RPC 1.4(a) and (b). In addition, the Accused admits that his concession of the summary judgment when he was aware that it was contrary to his client's stated desire to proceed with his case violated RPC 1.2(a).

### Sanction

16.

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

- a. **Duty violated.** The most important ethical duties are those obligations that a lawyer owes to clients. *Standards*, at 5. In this case, the Accused violated his duty to act with reasonable diligence and promptness in representing his client. *Standards*, § 4.4.
- b. **Mental state.** "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, 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 acted negligently in failing to



withdraw from the case. However, the Accused knowingly failed to notify Lewis of the motion for summary judgment or thereafter consult with him prior to conceding it.

- c. **Injury.** Injury can be either actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). Although it is questionable how viable Lewis's claim was at the time of the dismissal, there was potential injury to the extent that the claim had any merit. There was actual injury insofar as Lewis was not able to have his day in court to be heard on his claim. While the Accused provided Lewis with ample time to locate replacement counsel, he thereafter failed to withdraw, making it difficult for potential substitute counsel to assume the representation. The Accused's failure to communicate with Lewis also 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 attorney neglect can constitute actual injury under the *Standards*); *In re Schaffner*, 325 Or 421, 426–427, 939 P2d 39 (1997); *In re Arbuckle*, 308 Or 135, 140, 775 P2d 832 (1989).
- d. **Aggravating circumstances.** Aggravating circumstances include:
  1. Multiple offenses. *Standards*, § 9.22(d). There are multiple charges that arose from the Accused's separate conduct of failing to act (or acting contrary to the stated wishes of his client) and failing to communicate with his client.
  2. Vulnerability of victim. *Standards*, § 9.22(h). Lewis was suffering from a condition and injuries that hampered him physically and cognitively.
  3. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused has been a lawyer in Oregon since 1975.
- 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. Character or reputation. *Standards*, § 9.32(g). The Accused has provided character testimony to show that he is a well-respected medical malpractice lawyer.
  4. Physical disability. *Standards*, § 9.32(h). There is evidence that the Accused underwent and was recovering from shoulder surgery during at least a portion of the time period when he neglected to withdraw from Lewis's representation. This injury caused the Accused to be intermittently absent from his practice and hampered his ability to attend to (i.e., withdraw from) Lewis's matter.

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

17.

Under the *Standards*, a reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, § 4.43. The *Standards* provide that a suspension is appropriate where a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client. *Standards*, § 4.42. In that the Accused's mitigating factors outweigh those in aggravation, and especially because the Accused has no prior record of discipline, a reprimand appears to be the appropriate sanction.

18.

Oregon case law is in accord for similar misconduct. *See, e.g., In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for neglect where lawyer had prior admonitions for neglect, but significant mitigating factors present); *In re Young*, 295 Or 461, 666 P2d 1339 (1983) (lawyer who was not competent to handle case and therefore neglected and failed to complete it as requested by the client was reprimanded rather than suspended where no prior discipline and significant other mitigating factors); *In re Heath*, 292 Or 562, 640 P2d 617 (1982) (lawyer reprimanded for conduct including neglect and failing to carry out a contract of employment); *see also In re Karlin*, 21 DB Rptr 75 (2007) (reprimand for similar charges as well as similar aggravating and mitigating circumstances); *In re Lebenbaum*, 19 DB Rptr 154 (2005) (lawyer reprimanded for neglect, including failing to communicate with his client).

19.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 1.2(a), RPC 1.3, RPC 1.4(a), and RPC 1.4(b), the sanction to be effective upon approval by the Disciplinary Board.

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 17th day of June 2009.

/s/ Robert D. Dames

Robert D. Dames Jr.

OSB No. 750865

EXECUTED this 22nd day of June 2009.

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. 08-101  
)  
SARAH BRUDI CREEM, )  
)  
Accused. )

Counsel for the Bar: Thomas P. Busch, Stacy J. Hankin  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of RPC 8.4(a)(3), RPC 8.4(a)(4), and  
RPC 1.16(a)(1). Stipulation for Discipline. 30-day  
suspension.  
Effective Date of Order: July 14, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 30 days, effective July 1, 2009, or the date this stipulation is approved, if it is approved after July 1, 2009, for violation of RPC 8.4(a)(3), RPC 8.4(a)(4), and RPC 1.16(a)(1).

DATED this 14th day of July 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 2003, and has been a member of the Oregon State Bar continuously since that time, having her office and place of business in Multnomah County, Oregon.

3.

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

4.

On April 29, 2009, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 8.4(a)(3), RPC 8.4(a)(4), and RPC 1.16(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.

In May 2006, the Accused filed a petition for dissolution of marriage in Multnomah County Circuit Court on behalf of Shelby Quillen (hereinafter “Quillen”). The matter was tried to the court in November and December 2006. Custody of and support for the parties’ three minor children were issues at trial.

6.

In March 2007, the court signed a general judgment, prepared by the Accused. The general judgment awarded custody of all three children to Quillen, required respondent to pay child support to Quillen for all three children, provided for respondent to have parenting time with all three children, and set a hearing for May 3, 2007, at which time the court would review the parenting plan.

7.

The Accused appeared at the May 3, 2007, hearing. By then, the Accused knew that one of Quillen's children had been arrested and incarcerated since January 20, 2007. The Accused also knew that neither respondent nor the court were aware of the arrest and incarceration. The child's incarceration was a material fact and the Accused knowingly failed to disclose it to the court. On May 3, 2007, the parties placed a stipulated settlement regarding all issues, including the parenting plan, on the record.

8.

On a number of occasions before May 3, 2007, the Accused counseled Quillen to disclose the child's arrest and incarceration to the respondent. Quillen refused to do so and refused to permit the Accused to disclose the child's arrest and incarceration to the respondent or to the court. The Accused failed to withdraw from representing Quillen.

### **Violations**

9.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 8, she violated RPC 8.4(a)(3), RPC 8.4(a)(4), and RPC 1.16(a)(1).

### **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 a duty she owed to the public to maintain personal integrity, and duties she owed to the legal system to refrain from making false or misleading statements in a court proceeding and from engaging in conduct prejudicial to the administration of justice. *Standards*, §§ 5.1 and 6.1. The Accused also violated a duty she owed to the profession to withdraw when she was required to do so. *Standards*, § 7.0
- b. **Mental state.** The Accused acted knowingly when she failed to disclose the child's arrest and incarceration to the court. She acted negligently in failing to withdraw when her continued representation of Quillen would result in a violation of RPC 8.4(a)(3) and RPC 8.4(a)(4).

- c. **Injury.** The court sustained actual injury because at the May 3, 2007, hearing it was deprived of information that was relevant and material to a decision about whether to change the parenting and custody plan it had ordered earlier in the year. The court ultimately conducted an additional hearing to consider the change of circumstances resulting from the child's incarceration.
- d. **Aggravating circumstances.** The following aggravating circumstance is present:
  - 1. Multiple offenses. *Standards*, § 9.22(d).
- e. **Mitigating circumstances.** The following mitigating circumstances are present:
  - 1. Absence of prior disciplinary record. *Standards*, § 9.32(a).
  - 2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
  - 3. Cooperative attitude toward the proceeding. *Standards*, § 9.32(e).
  - 4. Inexperience in the practice of law. The Quillen matter was very contentious and at the time, the Accused had been a lawyer for less than four years. *Standards*, § 9.32(f).
  - 5. Character and reputation. The Accused has provided letters from members of the legal community attesting to her good character. *Standards*, § 9.32(g).

11.

Under the *Standards*, suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. *Standards*, § 6.12. Suspension is also 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*, §7.3.

12.

The Supreme Court has suspended lawyers who have made misrepresentations, expressly or by omission, to a trial court. *In re Wilson*, 342 Or 243, 149 P3d 1200 (2006) (lawyer suspended for 180 days for making misrepresentations to the court and opposing counsel in connection with postponement of a trial); *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998) (lawyer suspended for 180 days when she knew the court was relying on a false impression she had created, but failed to correct that impression); *In re Morris*, 326 Or 493, 953 P2d 387 (1998) (120-day suspension of lawyer who altered and then filed with the court a final account for services rendered as counsel for a personal representative after the statement had already been signed

and notarized); *In re Jones II*, 326 Or 195, 951 P2d 149 (1997) (45-day suspension of lawyer who had client sign bankruptcy documents in blank notwithstanding the existence of a perjury clause).

In this matter, because the mitigating circumstances far outweigh the sole aggravating circumstance, a 30-day suspension is the most appropriate sanction.

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 30 days for violation of RPC 8.4(a)(3), RPC 8.4(a)(4), and RPC 1.16(a)(1), the sanction to be effective July 1, 2009, or the date this stipulation is approved, if it is approved after July 1, 2009.

14.

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. In this regard, the Accused has arranged for Sharnel Mesirow, 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 Sharnel Mesirow has agreed to accept this responsibility.

15.

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.

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 29 day of June 2009.

/s/ Sarah Brudi Creem

Sarah Brudi Creem

OSB No. 030896

EXECUTED this 1st day of July 2009.

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. 08-86  
)  
KURT CARSTENS, )  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: Susan D. Isaacs  
Disciplinary Board: None  
Disposition: Violation of DR 5-105(E) and RPC 1.7(a).  
Stipulation for Discipline. 90-day suspension.  
Effective Date of Order: September 1, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 90 days, effective 60 days from the date of this order, for violation of DR 5-105(E) and RPC 1.7(a).

DATED this 15th day of July 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in 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.

On November 26, 2008, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of DR 5-105(E) and RPC 1.7(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 1999, the Accused represented Robert Robertson (hereinafter “Robertson”) in an estate planning matter. Robertson was born on April 14, 1914. Part of Robertson’s estate plan provided for the appointment of a conservator and guardian if Robertson became incapacitated.

6.

In the fall of 2004, Robertson asked the Accused for help because he believed strangers were using his credit cards and checking account without his authority. The Accused undertook to represent Robertson in connection with these difficulties. The Accused believed that a substantial amount had been stolen from Robertson by strangers.

7.

In November 2004, the Accused undertook to represent Michael Permin (hereinafter “Permin”), Robertson’s stepson, in a petition to become Robertson’s conservator. With regard to the conservatorship, the objective interests of Robertson and Permin were directly adverse.

8.

To the extent it was permissible for him to do so, the Accused failed to obtain consent after full disclosure from Robertson and Permin to his representation of both.

9.

The Accused, on Permin’s behalf, served Robertson with a copy of the petition and notice of time for filing objections to the petition. Robertson did not file an objection. On February 24, 2005, Permin was appointed Robertson’s conservator and the Accused continued to represent Permin in that matter.

10.

In October 2005, Permin reported to the Accused that Robertson had recently been involved in an accident after driving his car onto railroad tracks and that a stranger had entered Robertson’s home and stolen his tools and wallet. As a result of his information, the Accused undertook to represent Permin in becoming Robertson’s guardian. With regard to the guardianship, there was a significant risk that the Accused’s representation of Permin would be materially limited by his responsibilities to Robertson.

11.

To the extent it was permissible for him to do so, the Accused failed to obtain informed consent, confirmed in writing, from Robertson and Permin to his representation of both.

12.

In December 2005, Permin decided not to pursue the appointment as Robertson’s guardian because Robertson’s niece, Susan Hauptmann (hereinafter “Hauptmann”), wanted to serve in that capacity.

13.

In January 2006, the Accused undertook to represent Hauptmann in a petition to become Robertson’s guardian. With regard to the guardianship, there was a significant risk that the Accused’s representation of Hauptmann would be materially limited by his responsibilities to Permin and Robertson.

14.

To the extent it was permissible for him to do so, the Accused failed to obtain informed consent, confirmed in writing, from Hauptmann, Permin, and Robertson to his representation of them.

15.

In March 2006, Robertson objected to the guardianship. The Accused terminated his representation of Robertson and referred him to another lawyer. The Accused also terminated his representation of Hauptmann, who retained another lawyer to represent her in the guardianship matter.

### **Violations**

16.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 15, he violated DR 5-105(E) and RPC 1.7(a).

### **Sanction**

17.

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

- a. **Duty violated.** The Accused violated duties he owed to Robertson, Permin, and Hauptmann not to engage in improper conflicts of interest. *Standards*, § 4.3.
- b. **Mental state.** Due to prior conflict-of-interest rule violations (see paragraph 17(d)(1)), the Accused should have known that he could not undertake to represent Permin and Robertson under these circumstances. The Accused acted knowingly when he undertook to represent Hauptmann in the guardianship matter. In both instances, the Accused improperly focused on his clients’ subjective, not objective, interests.
- c. **Injury.** There was potential for injury to Robertson, Permin, and Hauptmann. Because of the undisclosed conflict of interest, they did not understand or consent to the Accused’s divided loyalty. The Accused did not intend to cause injury. Instead, he sought to assist Robertson and was able to ameliorate Robertson’s financial, physical, and cognitive problems.

- d. **Aggravating circumstances.** The following aggravating circumstances are present:
1. Prior disciplinary offenses. In 1984, the Accused was reprimanded for violating DR 1-102(A)(2), DR 1-102(A)(3), and ORS 9.480(2). *In re Carstens*, 297 Or 155, 683 P2d 992 (1984). In 2003, the Accused was suspended for 30 days for violating DR 5-101(A), DR 5-103(B), and DR 5-105(C). *In re Carstens II*, 17 DB Rptr 46 (2003). In 2006, the Accused was suspended for 30 days for violating DR 1-102(A)(4). *In re Carstens III*, 20 DB Rptr 10 (2006). In 2008, the Accused was reprimanded for violating RPC 5.5(b)(2) and ORS 9.160. *In re Carstens IV*, 22 DB Rptr 97 (2008). *Standards*, § 9.22(a).
  2. Multiple offenses. *Standards*, § 9.22(d).
  3. Vulnerability of victim. Robertson was elderly and, based on their prior relationship, relied upon the Accused to protect his interests. *Standards*, § 9.22(h).
  4. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1972. *Standards*, § 9.22(i).
- e. **Mitigating circumstances.** The following mitigating circumstances are present:
1. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
  2. Cooperative attitude toward the proceeding. *Standards*, § 9.32(e).
  3. Remoteness of the 1984 offenses. *Standards*, § 9.32(m).

18.

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.

19.

The court has imposed a 30-day suspension on lawyers who engage in a single conflict-of-interest violation. *In re Knappenberger II*, 338 Or 341, 108 P3d 1161 (2005); *In re Hockett*, 303 Or 150, 734 P2d 877 (1987). A greater sanction is warranted in this case because the aggravating circumstances outweigh the mitigating circumstances, and the Accused has numerous prior violations, including violations of conflict-of-interest rules. Those prior violations carry significant weight in aggravation. *In re Knappenberger IV*, 340 Or 573, 586, 135 P3d 297 (2006) (a more significant sanction than a reprimand or short suspension was appropriate because accused lawyer had an extensive prior record, including prior violations of one of the same rules at issue in the current proceeding).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for 90 days for violation of DR 5-105(E) and RPC 1.7(a), the sanction to be effective 60 days after this stipulation is approved.

21.

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 Stephen A. Lovejoy, 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 Stephen A. Lovejoy has agreed to accept this responsibility.

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 7 day of July 2009.

/s/ Kurt Carstens

Kurt Carstens  
OSB No. 720484

EXECUTED this 9th day of July 2009.

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. 09-13  
)  
MATTHEW P. ZANOTELLI, )  
)  
Accused. )

Counsel for the Bar: Linn D. Davis  
Counsel for the Accused: David J. Elkanich  
Disciplinary Board: None  
Disposition: Violation of RPC 1.1 and RPC 1.7(a). Stipulation  
for Discipline. Public reprimand.  
Effective Date of Order: August 20, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of RPC 1.1 and RPC 1.7(a).

DATED this 20th day of August 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ Carl W. Hopp  
Carl W. Hopp, Region 1  
Disciplinary Board Chairperson



## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on May 1, 2006, and has been a member of the Oregon State Bar continuously since that time. At all times mentioned below, the Accused’s office and place of business was in the County of Marion, State of 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 5, 2009, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 1.1 and RPC 1.7(a). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Facts**

5.

On or about January 4, 2008, the Accused undertook to assist 74-year-old Vernon Greene (hereinafter “Greene”) and 88-year-old Ludmila Schooley (hereinafter “Schooley”) with legal matters pertaining to Schooley’s finances. Greene informed the Accused that Schooley wished to revoke powers of attorney she had earlier granted to her nephew and to a longtime neighbor, redirect her bank statements to a post office box, and modify her estate planning because of concerns that the nephew and neighbor were attempting to place her in a nursing home against her will and would not provide her an accounting for her assets.

6.

The Accused had no prior relationship with Greene or Schooley. At the time he first undertook the representation, the Accused was not aware that Schooley

suffered from dementia with severe deficits in orientation, memory, processing, and comprehension. The Accused was not aware that Greene was a recently convicted felon. The Accused was not aware that Greene had married Schooley only three weeks before and that the marriage took place in Washington because Schooley was unable to recall her mother's maiden name, which information was required by Oregon marriage license applications.

7.

The Accused failed to utilize the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation, including but not limited to the following:

- a. the Accused failed to make sufficient inquiry of Schooley to accurately determine her interests and her mental capacity;
- b. the Accused failed to adequately consult with each of his clients separately regarding the objectives of the representation;
- c. the Accused failed to recognize that Schooley was not providing information she would be expected to provide such as the date of the death of her prior husband and basic information regarding her assets; and
- d. the Accused failed to sufficiently investigate the facts and circumstances surrounding the representation such as the nature and extent of Schooley's relationship with Greene or the persons holding the earlier executed powers of attorney.

8.

At the time the Accused undertook the representation, and in the course of subsequent events, there was a significant risk that his representation of Schooley would be materially limited by his responsibilities to Greene, and that his representation of Greene would be materially limited by his responsibilities to Schooley. To the extent RPC 1.7(b) might have permitted the concurrent representation of Greene and Schooley, the Accused did not obtain the informed consent of each client to the dual representation, confirmed in writing.

9.

When informed by the nephew that Schooley was impaired and suffered from dementia, the Accused took steps to ascertain whether Schooley was impaired, including ordering medical records for Schooley. After receiving medical evidence of Schooley's severe dementia from another party, the Accused promptly and voluntarily withdrew from any further representation of Schooley or Greene.

## Violations

10.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 8, he violated RPC 1.1 and RPC 1.7(a).

## Sanction

11.

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

- a. **Duty violated.** The Accused violated his duties to provide competent representation to his clients and to avoid conflicts of interest. *Standards*, §§ 4.3 and 4.5.
- b. **Mental state.** The Accused was negligent in determining whether he provided the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. The Accused was also negligent in determining whether the representation of each his clients could have been materially affected by the representation of the other client.
- c. **Injury.** Although there was a potential for injury to Schooley, the Accused promptly withdrew upon fully recognizing the extent of Schooley’s impairment and no actual harm occurred.
- d. **Aggravating circumstances.** There are no aggravating circumstances.
- e. **Mitigating circumstances.** Mitigating circumstances include:
  1. The Accused has no prior disciplinary history. *Standards*, § 9.32(a).
  2. The Accused intended to help Schooley. He did not act from a dishonest or selfish motive. *Standards*, § 9.32(b).
  3. The Accused made a timely good faith effort to rectify the consequences of his misconduct by withdrawing from the representation upon recognizing the level of Schooley’s impairment.
  4. The Accused displayed a cooperative attitude toward disciplinary proceedings. *Standards*, § 9.32(e).

5. At the time the misconduct occurred, the Accused had less than two years of experience in the practice of law. *Standards*, § 9.32(f).

12.

Under the *Standards*, reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests or whether the representation will adversely affect another client, and causes injury or potential injury to a client. *Standards*, § 4.33. Reprimand is also appropriate when a lawyer 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.

13.

Oregon case law is in accord. The Supreme Court has stated that a knowing conflict of interest generally warrants a 30-day suspension, but it has repeatedly reprimanded lawyers where the conflict was negligent or where the mitigating factors outweighed the aggravating factors. *See In re Knappenberger*, 337 Or 15, 32–33, 90 P3d 614 (2004) (discussing sanction in conflict-of-interest matters). The Court has also imposed reprimand in cases involving a lack of competence. *See, e.g., In re Magar*, 296 Or 799, 681 P2d 93 (1984) (reprimand was appropriate sanction where lawyer failed to obtain sufficient information from client to competently represent client in a bankruptcy matter, in violation of *former* DR 6-101(A)(2)).

14.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.1 and RPC 1.7(a), the sanction to be effective upon the approval of this stipulation.

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 28th day of July 2009.

/s/ Matthew P. Zanotelli

Matthew P. Zanotelli

OSB No. 061563

EXECUTED this 7th day of August 2009.

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. 08-144  
)  
GREGORY W. OLSON, )  
)  
Accused. )

Counsel for the Bar: Jon P. Stride, Stacy J. Hankin  
Counsel for the Accused: Lawrence Matasar  
Disciplinary Board: None  
Disposition: Violation of RPC 4.1, RPC 8.1(a)(1), RPC  
8.3(a)(3), and RPC 8.4(a)(4). Stipulation for  
Discipline. 180-day suspension.  
Effective Date of Order: August 24, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is suspended from the practice of law for 180 days, effective upon approval of this order, for violation of RPC 4.1, RPC 8.1(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4).

DATED this 24th day of August 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ William G. Blair  
William G. Blair, Region 4  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 23, 1993, and has been a member of the Oregon State Bar continuously since that time.

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 February 17, 2009, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 4.1, RPC 8.1(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4). The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Facts**

5.

At all relevant times, Norman Ebenal (hereinafter “Ebenal”) and Marlia Thomson were the parents of a minor child born in 2003. Gaylynn Thomson (hereinafter “Grandmother”) was Marlia Thomson’s mother and the minor child’s grandmother. For a time in 2003 and 2004, the minor child was placed in the custody of Grandmother by the Department of Human Services (hereinafter “DHS”).

6.

In 2006, the Accused was a Deputy District Attorney for Washington County and represented the State of Oregon in a criminal matter in which it was alleged that Ebenal engaged in inappropriate sexual contact with the minor child (hereinafter “criminal matter”). The criminal matter went to trial in July 2006.

7.

In the criminal matter, Grandmother testified on behalf of Ebenal. The jury in the criminal matter acquitted Ebenal of all charges.

8.

On August 25, 2006, Marlia Thomson was arrested on drugs charges. At that time, Marlia Thomson had custody of the minor child. DHS learned about the arrest from the Accused, removed the minor child from Marlia Thomson's custody, and placed the child into protective custody.

9.

Within days after the minor child was taken into protective custody, DHS began evaluating whether to place the minor child with Grandmother.

10.

On August 28, 2006, in response to a telephone call from DHS concerning placement of the minor child with Grandmother, the Accused represented to DHS that during Ebenal's trial Grandmother lied several times while on the stand and was warned by the judge several times about her behavior while on the stand. At the time, the Accused believed that DHS should not place the minor child with Grandmother. At the time, or within a few days of making that representation to DHS, the Accused knew that at least part of it was false and material. The Accused failed to correct the misrepresentation he had made to DHS.

11.

In November 2006, DHS, after considering the misrepresentations made by the Accused and other information, decided not to place the minor child with Grandmother, but instead placed her in a foster home. Grandmother appealed DHS's decision and in June 2007, an administrative law judge issued a proposed order that DHS's decision be set aside. In relevant part, the administrative law judge found that, contrary to the Accused's representation to DHS, the judge in the criminal matter had not made any comment or remonstrations during Grandmother's testimony. DHS refused to accept the proposed order. However, in October 2007, DHS returned the minor child to Marlia Thomson.

12.

In July 2008, the Bar began investigating a complaint filed by Grandmother regarding the Accused's conduct.

13.

When asked to explain the discrepancy between what he told DHS on August 28, 2006, and the transcript of the Ebenal trial, which reflected that Grandmother was never warned by the judge, the Accused represented to the Bar that, on August 28,



2006, he told DHS that Grandmother was admonished after the trial, not while on the stand. The Accused further told the Bar that when Ebenal's criminal matter was completed and, as the jurors were leaving the courtroom, Grandmother and Marlia Thomson were yelling and that the judge or bailiff admonished them to stop. At the time, or shortly after making those representations to Bar, the Accused knew that they were false and material. The Accused failed to correct the misrepresentation he had made to the Bar.

### Violations

14.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 13, he violated RPC 4.1, RPC 8.1(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4).

### Sanction

15.

The Accused and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). The *Standards* require that the Accused's conduct be analyzed by considering the following factors: (1) the ethical duty violated, (2) the 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 to maintain personal integrity, a duty he owed to the legal system to refrain from engaging in conduct prejudicial to the administration of justice, and a duty he owed to the profession to respond truthfully in a bar investigation. *Standards*, §§ 5.1, 6.1, and 7.0.
- b. **Mental state.** The Accused acted intentionally when he failed to correct the false representations he had made to DHS. The Accused was convinced that Ebenal had had inappropriate sexual contact with the minor child and was concerned that Grandmother, because she testified on Ebenal's behalf in the criminal matter, could not and would not protect the minor child from her parents. The Accused also acted intentionally when he made misrepresentations to the Bar.
- c. **Injury.** Grandmother sustained actual injury to the extent the Accused's misrepresentation to DHS contributed to its decision not to place the minor child with Grandmother, and Grandmother was required to appeal DHS's placement decision of the minor child. The Bar also sustained actual injury because of the Accused's misconduct. In response to the Accused's misrepresentations, the Bar spent a considerable amount of time interviewing numerous witnesses and gathering documents to verify or refute the Accused's account of events.

- d. **Aggravating circumstances.** The following aggravating circumstances exist:
  1. Dishonest motive with regard to misrepresentations made to the Bar. *Standards*, § 9.22(b).
  2. Multiple offenses. *Standards*, § 9.22(d).
  3. Submission of false statements during the disciplinary process. *Standards*, § 9.22(f).
  4. Substantial experience in the practice of law. The Accused has been a lawyer in Oregon since 1993. *Standards*, § 9.22(i).
- e. **Mitigating circumstances.** The following mitigating circumstance exists:
  1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).

16.

Under the *Standards*, disbarment is generally appropriate when a lawyer engages in noncriminal intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law, while reprimand is generally appropriate when a lawyer knowingly engages in conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law. *Standards*, §§ 5.11(b) and 5.13. 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*, § 7.2.

17.

Generally, the Oregon Supreme Court has suspended lawyers who, while engaging in the practice of law, have made misrepresentations. *In re Wilson*, 342 Or 243, 149 P3d 1200 (2006) (lawyer suspended for 180 days for making misrepresentations in connection with postponement of a trial); *In re Worth*, 337 Or 167, 92 P3d 721 (2004) (120-day suspension imposed on lawyer who, among other things, made misrepresentations regarding why he had not pursued the client's legal matter or complied with a court order); *In re Obert*, 336 Or 640, 89 P3d 1173 (2004) (30-day suspension imposed on lawyer who, among other things, knowingly failed to inform his client for five months that the client's appeal had been dismissed because the lawyer failed to timely file the appeal); *In re Davenport*, 334 Or 298, 49 P3d 91, *recons.*, 335 Or 67 (2002) (two-year suspension imposed on lawyer who knowingly gave false answers in a deposition in order to conceal the identity of his clients); *In re Gustafson*, 327 Or 636, 968 P2d 367 (1998) (lawyer suspended for 180 days when she knew the court was relying on a false impression she had created, but failed to correct that impression); *In re Morris*, 326 Or 493, 953 P2d 387 (1998) (120-day suspension of lawyer who altered and then filed with the court a final

account for services rendered as counsel for a personal representative after the statement had already been signed and notarized).

The court has also suspended lawyers who have made misrepresentations to the Bar. *In re Worth*, 336 Or 256, 82 P3d 605 (2003) (90-day suspension imposed on lawyer who, among other things, made a misrepresentation to the Bar); *In re Gallagher*, 332 Or 173, 26 P3d 131 (2001) (two-year suspension imposed on lawyer who acted dishonestly in an underlying legal matter and then made misrepresentations in the bar's investigation into his conduct); *In re Wyllie*, 327 Or 175, 957 P2d 1222 (1998) (two-year suspension imposed on lawyer who made misrepresentations in his CLE compliance report and then subsequently made misrepresentations in the Bar's investigation into his conduct).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 180 days for violation of RPC 4.1, RPC 8.1(a)(1), RPC 8.4(a)(3), and RPC 8.4(a)(4), the sanction to be effective immediately upon the approval of this Stipulation for Discipline.

19.

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. Currently, the Accused is not engaged in the practice of law and has no client files.

20.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

21.

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

Cite as *In re Olson*, 23 DB Rptr 130 (2009)

EXECUTED this 18th day of August 2009.

/s/ Gregory W. Olson

Gregory W. Olson

OSB No. 933856

EXECUTED this 19th day of August 2009.

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. 08-33
	)	
L. ROSS BROWN,	)	
	)	
Accused.	)	

Counsel for the Bar:	Michael W. Peterkin, Linn D. Davis
Counsel for the Accused:	Andrew Balyeat
Disciplinary Board:	Paul Heatherman, Chair Carl W. Hopp Jr. John McBee, Public Member
Disposition:	Violation of RPC 1.15-1(c). Trial Panel Opinion. 90-day suspension.
Effective Date of Opinion:	September 1, 2009

**TRIAL PANEL DECISION**

This matter came before a Region 1 Trial Panel of the Oregon State Bar Disciplinary board on March 12, 2009, and on April 13, 2009, to consider the Complaint brought by the Bar against the Accused.

**FACTS**

On January 4, 2007, the Accused began representing Vance Weige. In late 2006, Vance Weige was charged with several felony counts relating to possession and distribution of methamphetamine, and early in the prosecution process, his case had been transferred from Deschutes County Circuit Court to Federal Court. Initially, the parties did not memorialize or sign a fee agreement. Mr. Weige testified that the agreement was for a flat fee of \$10,000. The Accused testified that the \$10,000 amount was the initial fee and the total fee would be more in amount and would be decided later, after further assessing the case. However, a written agreement was not presented to Mr. Weige until March 26, 2007. Mr. Weige signed the agreement without objection. The Accused did not utilize time-billing records.

The Accused made several trips to the Deschutes County Jail, and once the case was transferred to Federal Court, to the Lane County Jail, to confer with and advise Mr. Weige. The Accused also had meetings with the Central Oregon Drug

Enforcement Team and with prosecutors, in an attempt to obtain a relatively favorable plea bargain. According to testimony from Special Assistant U.S. Attorney Steven Gunnels, Mr. Weige was faced with about 20 years in prison. Ultimately, the Accused reached an agreement in principle with the Government for Mr. Weige to accept a plea of guilty with a 7.5-year sentence. After Mr. Weige terminated the Accused on or about April 30, 2009, Mr. Weige's substitute counsel, Mr. Roloff, secured a plea with a sentence of five years.

At the time Mr. Weige retained the Accused, Mr. Weige also asked the Accused to prepare a power of attorney in the Accused's name, so that the Accused could remove approximately \$50,000 of Mr. Weige's funds in a checking account, and place the funds in the Accused's client trust account. The Accused did this because he wanted certain obligations paid to third parties, and generally believed the funds would be more secure in the Accused's account as Mr. Weige was worried the government would seize the money. The Accused prepared the power of attorney, Mr. Weige signed it, and the Accused withdrew \$50,000 from Mr. Weige's account and placed it in his trust account. Shortly thereafter, the Accused made a series of withdrawals from the trust account for his own use. The Accused also paid from the trust account, at Mr. Weige's request, \$10,960 to third parties.

At trial there was evidence from a variety of sources as to what a reasonable fee should be for the services provided by the Accused. The amounts varied from \$10,000 to \$100,000.

At trial, three circuit court judges testified to the Accused's reputation for honesty. The Accused has been a member of the Oregon State Bar since 1970 and has no prior record of discipline.

## OPINION

**I. Claims.** The Bar has filed claims for dishonesty/conversion, RPC 8.4(a)(3), trust account violations, RPC 1.15-1(e), and charging/collecting an excessive fee, RPC 1.5(a). We will first examine the claim for conversion.

### **A. Conversion.**

Neither party disputes that the initial sum to be paid was \$10,000. This was corroborated by the \$10,000 withdrawal on January 9, 2007, by the Accused from the trust account. Mr. Weige maintained that the \$10,000 sum was to be the entire sum for the legal services.<sup>1</sup> The Accused produced a retainer agreement on March 26, 2007, and Mr. Weige signed it without objection. An attorney may accept a nonrefundable retainer from a client if there is a written retainer agreement that states, in part, "nonrefundable and deemed earned upon receipt." *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007). That is what occurred in this case.

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<sup>1</sup> Mr. Weige appeared uncomfortable, nervous, hesitant, and unsure of his recollection on this point.

However, the issue is whether, once a verbal agreement for a nonrefundable retainer is entered into, a written equivalent may be presented to the client more than two months after the funds are collected from the client and removed from the attorney's trust account.<sup>2</sup> We hold that in cases involving a nonrefundable retainer earned upon receipt, the appropriate agreement must be executed between the parties at or near the time of collecting the client's retainer and removing funds from trust. Executing the retainer agreement two months after the retainer is collected and transferred out of the trust account amounts to conversion.

The next question examines the nature and scope of the conversion. In *In re Martin*, 328 Or 177, 185, 970 P2d 638 (1998), a "technical" conversion occurs when client funds are improperly transferred but absent a dishonest motive. If, however, the attorney knowingly misappropriates client funds to his own use, then the conversion is "conduct involving dishonesty" under former DR 1-102(A)(3). *In re Martin*, 328 Or at 185. In this case, we find that the Bar has been unable to show by clear and convincing evidence that the Accused transferred funds with a dishonest motive pursuant to RPC 8.4(a)(3). Although mistaken because it was verbal in nature, the Accused believed he had entered into a nonrefundable retainer agreement with Mr. Weige. Unlike the Accused in *In re Whipple*, 320 Or 476, 481, 886 P2d 7 (1994), the Accused in this case persuasively argued that he lacked the requisite dishonest motive to convert the money to his own use.<sup>3</sup> This case also differs from *In re Biggs*, 318 Or 281, 293, 864 P2d 1310 (1994), where the Accused "admitted, however, that he did not tell his clients that the retainers were non-refundable." The Accused testified that he would not have continued to represent Mr. Weige without an agreement on his fee. Mr. Weige was convicted of felony drug trafficking. Three local circuit court judges testified to the Accused's reputation for honesty and truthfulness.<sup>4</sup>

## **B. Trust account violation.**

The Bar asserts that, at the time the Accused presented Mr. Weige with a written fee agreement, the Accused reported to Mr. Weige that he had withdrawn \$30,700 of the funds remitted to the Accused when the Accused was aware that he had removed almost \$7,000 more. That assertion fails. The \$30,700 amount was accurate on March 2, 2007. On cross-examination, Mr. Weige testified that the

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<sup>2</sup> The Bar has suggested that the Accused obtained Mr. Weige's consent under duress. The Accused testified that he would continue representing Mr. Weige even if Mr. Weige chose not to sign the Agreement, and would write off \$9,000. When cross-examined, Mr. Weige admitted that there was no duress or coercion.

<sup>3</sup> The Accused testified on all issues of the retainer agreement in an open, relaxed, cooperative, and engaging manner. He did not appear to be nervous, contemplative, reluctant, or hesitant with his information.

<sup>4</sup> The Presiding Judge testified that he has professionally known the Accused for 35 years.

Accused may have updated him that the \$30,700 amount was not current. The panel was concerned that the Accused paid monies to third parties out of what he claimed was an earned fee and also took fees at various times as opposed to transferring the alleged earned fee at one time. However, the panel does not believe the evidence rises to a clear and convincing standard.

**C. Excessive fee.**

The Bar contends that the Accused entered into, charged, or collected an illegal or clearly excessive fee. RPC 1.5(b) provides guidance regarding excessive fees as follows:

- (b) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.

Here, the Bar acknowledged that the Accused has substantial experience as a criminal law practitioner. The Accused testified that he had consulted with another experienced criminal attorney, Jacques DeKalb. Mr. DeKalb testified that he told the Accused that a reasonable fee in this case would be “upwards of \$30,000, or what the market will bear.” He further testified that \$70,000 would not be unreasonable on a sex-abuse case where a lengthy prison sentence was at stake.

It is undisputed that Mr. Weige was facing a 20 year prison sentence, and that the Accused negotiated it to 7.5 years.

**II. Sanction.** Having found that the Accused violated provisions of the Rules of Professional Conduct, we next determine the appropriate sanction to impose for those



violations. In Oregon, we are guided by the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter “Standards”) and case law from the Oregon Supreme Court. 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.

**Duties violated.** The Accused violated duties he owed to the legal system by entering into a retainer agreement with a nonrefundable fee but not setting it to writing until two months later. RPC 1.15.

**Mental state.** The Accused acted negligently, albeit without a dishonest motive. Evidence provided indicates that the Accused failed to fully appreciate the importance to the client and to the public that nonrefundable fixed fee agreements be set forth in writing and executed promptly, to avoid misunderstandings and unnecessary conflicts that arise therefrom. The Accused needs to review these attorney-client documentary issues.

**Injury.** As a result of the Accused’s improper fee agreement, the Accused invited the potential for misunderstandings. In particular, a fixed fee of this amount must be documented promptly, to fully ensure that the client understands and assents to all terms. Absent this prompt documentation, memory lapses or other opportunities for misunderstanding could injure the profession and public. If the agreement were as Mr. Weige states, then the Accused overcharged and damaged Mr. Weige by \$31,200.

**Aggravating and mitigating circumstances.**

- (A) Aggravating factors. The Accused was admitted to the Bar in 1970 and has substantial experience in the practice of law. *Standards*, § 9.22(i).
- (B) Mitigating factors.
  - (i) No prior record of discipline. *Standards*, § 9.32(a); *see also In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (absence of a prior disciplinary record for 25 years is a strong mitigating circumstance).
  - (ii) Character or reputation. Three judges and one highly regarded attorney testified to the Accused’s reputation for trustworthiness and honesty. *Standards*, § 9.32(g).

### **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 ninety (90) days.

DATED this 25 day of June 2009.

/s/ Paul Heatherman

Paul Heatherman  
Trial Panel Chair

/s/ Carl W. Hopp Jr.

Carl W. Hopp Jr.  
Trial Panel Member

/s/ John McBee

John McBee  
Trial Panel Public Member

**Cite as 346 Or 676 (2009), *adhered to on recons.*, 347 Or 529 (2010)**

IN THE SUPREME COURT  
OF THE STATE OF OREGON

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

(OSB 05-187, 06-05, 07-19, 07-20, 07-21, 07-22; SC S055610)

En Banc

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

Argued and submitted December 9, 2008. Decided September 3, 2009; adhered to on reconsideration, January 22, 2010.

Lauren J. Paulson, Aloha, argued the cause and filed the briefs in propria persona.

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

PER CURIAM

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

**SUMMARY OF THE SUPREME COURT OPINION**

In this lawyer disciplinary proceeding, the Oregon State Bar, alleging 13 causes of complaint, charged the Accused with violating provisions of the Oregon Code of Professional Responsibility Disciplinary Rules (DRs) (applicable to conduct before January 1, 2005) and the Oregon Rules of Professional Conduct (RPCs) (applicable to conduct on and after January 1, 2005). Specifically, the Bar alleged that the Accused violated DR 1-102(A)(4) and RPC 8.4(a)(4) (conduct prejudicial to administration of justice), DR 2-106(A) (charging a clearly excessive fee), RPC 1.16(a)(1) (failure to withdraw from representation when representation will result in violation of RPC or other law), RPC 1.16(d) (failure to take steps to protect client's interest after termination of representation), RPC 3.3(a)(1) (knowingly making false statement of law or fact to tribunal), RPC 5.5 (unauthorized practice of law), RPC 8.1(a)(2) (failure to respond to lawful requests of disciplinary authority), RPC 8.4(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on lawyer's fitness to practice law). A trial panel of the

Disciplinary Board concluded that the Accused had violated the rules as alleged. As a sanction, the trial panel disbarred the Accused.

In his brief to this court, the Accused does not challenge the trial panel's factual findings, its conclusions that he violated the disciplinary rules, or the disbarment sanction that the trial panel imposed for those violations. The Accused's questions presented and substantive arguments address only procedural issues and issues that he has styled as "affirmative defenses" to the alleged violations that he asserts require dismissal of the complaint against him. At most, through certain assertions made in his summary of facts, the Accused indirectly takes issue with limited aspects of the trial panel's findings and conclusions.

We conclude that the Accused has committed all the violations alleged by the Bar and found by the trial panel. We also conclude that the appropriate sanction is disbarment.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 08-112  
)  
KEVIN J. RANK, )  
)  
Accused. )

Counsel for the Bar: Linn D. Davis  
Counsel for the Accused: Peter R. Jarvis  
Disciplinary Board: None  
Disposition: Violation of RPC 1.3 Stipulation for Discipline.  
Public reprimand.  
Effective Date of Order: September 28, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and the Accused is publicly reprimanded for violation of RPC 1.3.

DATED this 28th day of September 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 27, 1991, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Marion County, Oregon.

3.

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

4.

On October 24, 2008, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), for an alleged violation of RPC 1.3. 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 August 2004, Wendy Graves (hereinafter “Graves”) hired the Accused to represent her in a Chapter 7 bankruptcy. One of the assets reported by Graves in the bankruptcy proceeding was her share of a class action claim maintained by the estate of her deceased father (hereinafter “the class action lawsuit”).

6.

In December 2004, an order was entered discharging Graves’ debts, but, as the Accused was aware and informed Graves, the bankruptcy estate remained open for further administration for the purpose of addressing the class action lawsuit. In or around January 2005 and February 2005, Graves received disbursements of settlement funds from the class action lawsuit. Graves did not inform the Accused or the bankruptcy trustee of her receipt of the settlement funds.

7.

On or about July 27, 2005, the trustee of Graves's bankruptcy estate sent a letter to the Accused requesting, by August 20, 2005, a status report on the class action lawsuit. The Accused mailed a copy of the letter to Graves.

8.

In or around August 2005, the Accused experienced an unexpected increase in his caseload as a result of the departure of the other lawyer in his office. During this period, the Accused also experienced an influx of bankruptcy cases in response to the pending Bankruptcy Reform Act of 2005, effective October 2005.

9.

On or about September 20, 2005, the Accused spoke with Graves about the trustee's request for information. At that time the Accused learned that Graves had received settlement funds from the class action lawsuit in January 2005 and February 2005 and that she spent the funds. The Accused also learned that Graves expected to receive additional settlement funds. The Accused discussed a course of action with Graves that involved the Accused potentially pursuing a settlement with the trustee when Graves received additional settlement funds. The Accused took no further action at that time.

10.

Graves sent a letter dated December 25, 2005, to the Accused in which Graves notified the Accused that she had received additional settlement funds from the class action lawsuit and she requested documentation from the Accused that evidenced the trustee's claimed interest in the class action lawsuit funds. The Accused's office received the letter, but the Accused did not see the letter and he took no action in response.

11.

On or around February 14, 2006, Graves notified the Accused by mail that she had received a final payment of funds from the class action lawsuit. In response, the Accused scheduled a conference with Graves on March 15, 2006.

12.

On March 15, 2006, the Accused discussed a course of action with Graves that involved the Accused potentially pursuing a settlement with the trustee. The Accused agreed to draft a letter to the trustee offering to settle the matter and to provide Graves with the information she previously requested concerning the trustee's interest in the class action lawsuit settlement funds. The Accused asked Graves to forward the settlement check to the Accused. The Accused took no further action at that time: he did not provide the requested information to Graves, he did not contact Graves to

ensure that he received the settlement check, and he did not draft a letter to the trustee or contact the trustee concerning the class action lawsuit settlement funds.

13.

For approximately a year and a half, the Accused did not hear or receive an update on the matter from Graves. Nor did the Accused make any attempt to contact Graves to determine the cause of any delay or to clarify what Graves was expecting of the Accused regarding further communication with the trustee.

14.

On or about August 31, 2007, the trustee filed a Motion for Turnover, thereby moving for an order requiring Graves to produce a full accounting of the funds received from the class action lawsuit. The Accused took no action in response. On or about September 7, 2007, the U.S. Bankruptcy Court ordered Graves to produce the documents. The Accused took no action at that time.

15.

On or about November 10, 2007, Graves contacted the Accused to request production of the documents demanded in the Motion for Turnover. On or about November 16, 2007, the Accused promised Graves he would forward the documents to the trustee. On November 27, 2007, the Accused forwarded the documents to the trustee.

### **Violations**

16.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 15, he violated RPC 1.3.

### **Sanction**

17.

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

- a. **Duty violated.** The Accused violated his duty to act diligently in the representation of his client. *Standards*, § 4.4.
- b. **Mental state.** The Accused acted negligently in that he failed to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, at 13.



- c. **Injury.** The Accused's delay in providing information to Graves and to the trustee caused potential injury in that it may have resulted in a further loss of assets in the bankruptcy estate, may have further exposed Graves to liability for her failure to promptly inform the trustee of the settlement funds she had received, and may have delayed the administration of the bankruptcy estate. The Accused's delay caused actual injury in that Graves suffered some anxiety and frustration.
- d. **Aggravating circumstances.** Aggravating circumstances include:
  - 1. The Accused has substantial experience in the practice of law, having been admitted to the Oregon State Bar in 1991. *Standards*, § 9.22(i).
- e. **Mitigating circumstances.** Mitigating circumstances include:
  - 1. The Accused has no prior disciplinary history. *Standards*, § 9.32(a).
  - 2. The Accused did not have a dishonest or selfish motive. Rather the violation resulted from negligence caused, in part, by the increase in the Accused's caseload caused by the departure of the other lawyer in his office and an onslaught of bankruptcy filings to be accomplished prior to the enactment of the Bankruptcy Reform Act of 2005. *Standards*, § 9.32(b).
  - 3. The Accused was forthcoming about the events and showed a cooperative attitude toward the proceedings. *Standards*, § 9.32(e).
  - 4. The Accused has shown remorse and a recognition of the need to avoid similar situations in the future. *Standards*, § 9.32(l).

18.

The *Standards* generally recommend, prior to the consideration of aggravating or mitigating factors, that reprimand is appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client. *Standards*, § 4.43. Given that the mitigating factors outweigh the single aggravating factor, a public reprimand is an appropriate sanction under the *Standards*.

19.

Oregon case law also supports a sanction of public reprimand in these circumstances. See *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (lawyer reprimanded for neglect of a legal matter where a substantial portion of the violation was negligent and mitigating circumstances significantly outweighed aggravating circumstances); *In re Lebenbaum*, 19 DB Rptr 154 (2005) (lawyer reprimanded for negligent violation of disciplinary rule prohibiting the neglect of a legal matter where aggravating factors did not outweigh mitigating factors).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be reprimanded for violation of RPC 1.3.

21.

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

EXECUTED this 24th day of August 2009.

/s/ Kevin J. Rank

Kevin J. Rank  
OSB No. 914034

EXECUTED this 9th day of September 2009.

OREGON STATE BAR

By: /s/ Jeffrey D. Sapiro

Jeffrey D. Sapiro  
OSB No. 783627  
Disciplinary Counsel

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re:	)	
	)	
Complaint as to the Conduct of	)	Case No. 09-20
	)	
LAWRENCE L. TAYLOR,	)	
	)	
Accused.	)	

Counsel for the Bar:	Kathryn M. Pratt, Amber Bevacqua-Lynott
Counsel for the Accused:	None
Disciplinary Board:	None
Disposition:	Violation of RPC 5.3(a), RPC 5.3(b), and RPC 8.4(a)(4). Stipulation for Discipline. Public reprimand.
Effective Date of Order:	September 28, 2009

**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 5.3(a), RPC 5.3(b), and RPC 8.4(a)(4).

DATED this 28th day of September 2009.

/s/ Gregory E. Skillman  
 Gregory E. Skillman  
 State Disciplinary Board Chairperson

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

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

The Accused enters into this Stipulation for Discipline freely, 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 7, 2009, a Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 4.4(a) (knowing use of methods of obtaining evidence that violated the rights of a third person), RPC 4.4(b) (a failure to notify the sender of inadvertently sent documents), RPC 5.3(a) (a failure to make reasonable efforts to ensure that the conduct of a nonlawyer over whom he had direct supervisory authority was compatible with the Accused’s professional obligations), RPC 5.3(b) (ratification of misconduct by a nonlawyer employee), 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.

On January 7, 2008, the Accused was appointed by the Washington County Circuit Court to advise Benjale Cushon (hereinafter “Cushon”) in his pro se criminal defense of rape charges involving an alleged victim of high school age (Case No. C072450CR). Trial was scheduled for March 18, 2008.

6.

On March 4, 2008, the Accused presented a motion to the court to obtain the victim's Department of Human Services (hereinafter "DHS") records. Judge Nachtigal denied the motion because the Accused was unable to identify any exculpatory evidence that would likely come from the DHS records. However, Judge Nachtigal agreed to reconsider the motion if the Accused could provide facts indicating that the DHS records were likely to contain information that could be used as exculpatory evidence.

7.

The Accused then instructed his investigator, Patti Campbell (hereinafter "Campbell") to serve trial subpoenas on several witnesses. The Accused also signed and provided to Campbell one or more blank subpoenas for potential additional trial witnesses. Campbell thereafter took it upon herself to issue a subpoena duces tecum to obtain all of the victim's high school records. Neither Campbell nor the Accused had any reason to believe that the victim's school records would contain any exculpatory evidence. Neither Campbell nor the Accused obtained permission from the victim or the court to acquire the victim's school records.

8.

On March 12, 2008, following communications with school personnel, Campbell copied and completed one of the blank subpoenas provided by the Accused and faxed it to the victim's school. The accompanying letter instructed the school registrar to send the responsive documents directly to the Accused. The school complied by sending a copy of the victim's school records directly to the Accused.

9.

At all times relevant herein, ORS 336.187(1) limited disclosure that a public school or school district could make of personally identifiable information or other information allowed to be disclosed by the federal Family Educational Rights and Privacy Act from an education record of a student to:

- (a) Law enforcement, child protective services and health care professionals in connection with a health or safety emergency if knowledge of the information was necessary to protect the health and safety of the student or other individuals; and
- (b) Courts and state and local juvenile justice agencies including, but not limited to, law enforcement agencies, juvenile departments and child protective service agencies, so long as the disclosure related to the court's or juvenile justice agency's ability to serve the needs of a student prior to the student's adjudication under ORS chapter 419C. A person to whom personally identifiable information was disclosed under this paragraph had to certify, in writing, that the person would not

disclose the information to a third party other than another court or juvenile justice agency or a person or organization providing direct services to the student on behalf of a juvenile justice agency.

The disclosure of the victim's school records to the Accused was not in compliance with this statute.

10.

At all times relevant herein, ORS 136.580(2) provided that upon the motion of the state or the defendant, the court had authority to direct that the books, papers, or documents described in a subpoena duces tecum in a criminal case be produced before the court prior to the trial or prior to the time when the books, papers, or documents were to be offered in evidence, and upon production, permit the books, papers, or documents to be inspected and copied by the state or the defendant and the state's or the defendant's attorneys. The Accused did not attempt to utilize this statute to obtain or review the victim's school records prior to trial.

11.

When the Accused received the victim's school records, he did not return them to the school or notify the school that they should not have been disclosed to the Accused. Rather, he reviewed the victim's school records and forwarded a portion of them to Cushon for his use in preparing cross-examination of the victim. The Accused also drafted and submitted a second motion to the court to obtain the victim's DHS records, using information obtained solely from the victim's school records to justify disclosure of the victim's DHS records.

12.

Judge Nachtigal was not available to hear the Accused's second motion for disclosure of the victim's DHS records. The Accused appeared before Judge Price and explained his motion. He did not, however, explain to Judge Price how he had come into possession of the victim's school records. Judge Price granted the Accused's motion, conducted an in camera inspection of the victim's DHS records, and delivered redacted DHS documents to the parties.

13.

When the District Attorney's Office (hereinafter "DA") notified the victim's attorney, Erin Olson (hereinafter "Olson"), that the Accused had obtained the victim's school records, Olson moved to suppress both the school records and the DHS records on the grounds that they had been improperly disclosed. The DA also filed a motion to suppress. These motions to suppress necessitated a hearing before Judge Nachtigal, wherein the Accused, Campbell, and the school registrar testified.

14.

Following the hearing, Judge Nachtigal suppressed the victim's school records. She also suppressed the victim's DHS records, finding that the Accused's only basis for obtaining them was information he had gleaned from the improperly obtained school records.

15.

By accepting, reviewing, and using the victim's school records for his client's purposes, and thereafter defending having done so before Judge Nachtigal, the Accused ratified Campbell's actions in obtaining the school records in a manner not authorized by law.

### Violations

16.

The Accused admits that by engaging in the conduct described above, he violated RPC 5.3(a) (a failure to make reasonable efforts to ensure that the conduct of a nonlawyer over whom he had direct supervisory authority was compatible with the Accused's professional obligations), RPC 5.3(b) (ratification of misconduct by a nonlawyer employee), and RPC 8.4(a)(4) (conduct prejudicial to the administration of justice).

Upon further factual inquiry, the parties agree that the charges of alleged violations of RPC 4.4(a) (knowing use of methods of obtaining evidence that violated the rights of a third person) and RPC 4.4(b) (failure to notify the sender of inadvertently sent documents) should be and, upon the approval of this stipulation, are dismissed.

### Sanction

17.

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

- a. **Duty violated.** The Accused violated his duty to the legal system to avoid abuse of the legal process and his duty to others to comply with his duties as a professional. *Standards*, §§ 6.2 and 7.0.
- b. **Mental state.** The Accused acted negligently. 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 was initially unaware of the subpoena issued by his investigator for the school records. When he thereafter received the records as a result of the subpoena, he was unfamiliar with the relevant statutes regarding their use and disclosure, prior to bringing the subsequent motion for the DHS records.
- c. **Injury.** The Accused's conduct caused both actual and potential injury to the victim in the case, by improperly subjecting her school records to scrutiny by the Accused and his investigator, as well as the defendant in the case—albeit for only a short period of time. The Accused also caused actual injury to the administration of justice insofar as his conduct necessitated a hearing to correct the situation.
- d. **Aggravating circumstances.** Aggravating circumstances include:
1. A vulnerable victim. *Standards*, § 9.22(h). The victim had no knowledge or warning regarding the Accused's access to her school records and was a minor.
  2. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused was admitted in Washington in 1991 and Oregon in 1992.
- 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. Full and free disclosure and a cooperative attitude in the disciplinary proceedings. *Standards*, § 9.32(e).
  4. Character and reputation. *Standards*, § 9.32(g).
  5. Remorse. *Standards*, § 9.32(l).

18.

Under the *Standards*, a reprimand is generally appropriate when a lawyer is negligent in complying 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. Similarly, a reprimand is also generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system. *Standards*, §§ 6.23 and 7.3.

The fact that the Accused's mitigating factors outweigh those in aggravation further justifies the imposition of a reprimand.

19.

Prior stipulations likewise support a reprimand in this case. *See In re Nishioka*, 23 DB Rptr 44 (2009) (reprimand for violation of RPC 5.3 where a lawyer failed to



supervise his nonlawyer assistant in a probate matter and allowed him access to his letterhead and pleadings); *In re Bisaccio*, 21 DB Rptr 35 (2007) (reprimand for repeated failure to respond to notices from the probate court regarding delinquent filings in conservatorship); *In re Carusone*, 20 DB Rptr 231 (2006) (reprimand where attorney obtained an ex parte order to disqualify a judge, knowing that the motion for the order was untimely and that the proper parties had not been served); *In re Putman*, 20 DB Rptr 162 (2006) (reprimand where over a period of years, attorney failed to timely file probate accountings, keep the court apprised of the status of the probate, and close the estate in a timely fashion); *In re Bean*, 20 DB Rptr 157 (2006) (reprimand where attorney failed to disclose to the court while presenting an ex parte order that the pro se opposing party was in the hallway waiting to be heard); *In re Camacho*, 19 DB Rptr 337 (2005) (Reprimand where attorney appeared ex parte, without notice to opposing party, and obtained an order setting aside a default judgment previously entered against his clients. Attorney relied on clients' assertion that they had never been served with the complaint, and representing the same to the court, without sufficiently investigating to determine whether it was true.).

20.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of RPC 5.3(a), RPC 5.3(b), and RPC 8.4(a)(4), the sanction to be effective upon approval by the Disciplinary Board.

21.

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

EXECUTED this 15th day of September 2009.

/s/ Lawrence L. Taylor

Lawrence L. Taylor

OSB No. 921410

EXECUTED this 18th day of September 2009.

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. 08-15 and 08-114  
)  
JACOB S. JOHNSTON, )  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: Larry B. Workman  
Disciplinary Board: None  
Disposition: Violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), and RPC 1.16(d). Stipulation for Discipline. 90-day suspension.  
Effective Date of Order: September 29, 2009

**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 ninety (90) days, effective immediately, for violations of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), and RPC 1.16(d).

DATED this 29th day of September 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 2005, 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 October 16, 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), RPC 1.5(a), and RPC 1.16(d) in the Montague matter, and RPC 1.1, RPC 1.4(b), RPC 1.16(d), and RPC 8.4(a)(3) in the Garvey matter. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of the proceeding.

### **Montague Matter (Case No. 08-114)**

#### **Facts**

5.

On February 8, 2006, LoLeatha Montague (hereinafter “Montague”) retained the Accused to represent her in connection with probating her father’s estate. In a written agreement, Montague agreed to pay the Accused \$165.00 per hour. Montague deposited a \$2,000.00 retainer with the Accused.

6.

On or about August 24, 2007, the Accused informed Montague that he would be closing his law practice. The Accused advised Montague to retain a new lawyer and that he could deliver the file to her directly or to her new lawyer.

7.

Between February 8, 2006, and August 24, 2007, the Accused failed to pursue Montague's legal matter and failed to respond to Montague's reasonable requests for information about her legal matter.

8.

In late September 2007, the Accused agreed to assist Montague in completing a small estate affidavit. Thereafter, the Accused failed to pursue Montague's legal matter.

9.

When the Accused withdrew from representing Montague, he failed to return file materials to Montague until the summer of 2008, and failed to make a refund of unearned fees.

10.

Montague was eventually made whole financially.

### **Violations**

11.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 10, he violated RPC 1.3, RPC 1.4(a), RPC 1.5(a), and RPC 1.16(d).

### **Garvey Matter (Case No. 08-15)**

#### **Facts**

12.

In 2006, the Accused undertook to represent Henry Garvey (hereinafter "Garvey") in a pending legal malpractice lawsuit. In the lawsuit Garvey alleged, among other things, that his prior lawyer had failed to timely file a lawsuit for personal injuries Garvey had sustained when an airplane in which he was traveling descended quickly. On September 19, 2006, the court set a trial date for May 30, 2007.

13.

In March 2007, the Accused received information suggesting that one of Garvey's claims was without merit. The Accused, without discussing the matter with Garvey, agreed to dismiss the claim and subsequently signed a stipulation dismissing the claim.

14.

The Accused appeared for trial on May 30, 2007. In preparing for trial, the Accused did not exercise the legal knowledge, skill, thoroughness, and preparation

reasonably necessary to represent Garvey, in that the Accused did not secure expert medical testimony, did not secure the testimony of other witnesses to support Garvey's claims, and did not adequately prepare Garvey to testify at trial.

15.

On May 30, 2007, the court granted the Accused's oral motion to postpone the May 30, 2007, trial.

16.

On June 15, 2007, the Accused filed a motion to withdraw as Garvey's lawyer. Within a few days, the court granted that motion. The Accused failed to return the file materials to Garvey until mid-September 2007.

### **Violations**

17.

The Accused admits that by engaging in the conduct described in paragraphs 12 through 16, he violated RPC 1.1, RPC 1.4(b), and RPC 1.16(d).

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) should be and, upon the approval of this stipulation, is dismissed.

### **Sanction**

18.

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

- a. **Duties violated.** In the Montague matter, the Accused violated duties he owed to Montague to act with reasonable diligence and promptness in pursuing her legal matter and to adequately communicate with her, and violated duties he owed to the profession to not charge a clearly excessive fee and to properly withdraw from representing a client. *Standards*, §§ 4.4 and 7.0. In the Garvey matter, the Accused violated duties he owed to Garvey to provide him with competent representation and to adequately communicate with him, and violated a duty he owed to the profession to properly withdraw from representing a client. *Standards*, §§ 4.4, 4.5, and 7.0.
- b. **Mental state.** The Accused acted knowingly when he failed to pursue Montague's legal matter and failed to adequately communicate with her.

The Accused also acted knowingly when he failed to provide Garvey with competent representation and failed to adequately communicate with him. The Accused acted negligently when he failed to make a refund to Montague and failed to properly withdraw from representing Montague and Garvey.

- c. **Injury.** Montague and Garvey both experienced frustration because of the Accused's failure to act or communicate. *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). Montague sustained injury when the Accused failed to return unearned fees to her. Garvey sustained injury when the trial had to be postponed because the Accused was not adequately prepared. Both Montague and Garvey sustained some injury when the Accused delayed providing them with their file materials.
- d. **Aggravating circumstances.** The following aggravating circumstances are present:
  1. A pattern of misconduct. In two matters, the Accused failed to communicate with his clients and failed to properly withdraw. *Standards*, § 9.22(c)
  2. Multiple offenses. *Standards*, § 9.22(d)
- e. **Mitigating circumstances.** The following mitigating circumstances are present:
  1. Absence of a prior disciplinary record. *Standards*, § 9.31(a).
  2. Inexperience in the practice of law. At the time the Accused engaged in the misconduct, he had been a lawyer for less than two years. *Standards*, § 9.31(f).

19.

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. *Standards*, § 4.42. Suspension is also generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client. *Standards*, § 4.52.

20.

Generally, lawyers who have knowingly neglected a legal matter have been suspended for 60 days. See *In re Redden*, 342 Or 393, 153 P3d 113 (2007); *In re LaBahn*, 335 Or 357, 67 P3d 381 (2003).

Lawyers who have failed to provide competent representation for a client have also been suspended. *In re Bettis*, 342 Or 232, 149 P3d 1194 (2006) (30-day suspension imposed on experienced lawyer who failed to provide competent representation to a client); *In re Roberts*, 335 Or 476, 71 P3d 71 (2003) (60-day

suspension imposed on experienced lawyer who failed to provide competent representation to a client); *In re Gresham*, 318 Or 162, 864 P2d 360 (1993) (91-day suspension imposed on inexperienced lawyer who failed to provide competent representation to a client over the course of three years).

21.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 90 days for violation of RPC 1.1, RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), and RPC 1.16(d), the sanction to be effective on the date this stipulation is approved.

22.

In addition, on or before December 31, 2009, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$792.65, incurred for the Accused's deposition. Should the Accused fail to pay \$792.65 in full by December 31, 2009, 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.

23.

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 not had any clients since 2008.

24.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure, including payment of any claims paid by the Client Security Fund, as provided in BR 8.6(b). The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

25.

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

Cite as *In re Johnston*, 23 DB Rptr 158 (2009)

EXECUTED this 23rd day of September 2009.

/s/ Jacob S. Johnston

Jacob S. Johnston

OSB No. 042343

EXECUTED this 23rd day of September 2009.

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. 08-145  
)  
TIMOTHY J. VANAGAS, )  
)  
Accused. )

Counsel for the Bar: Richard A. Weill, Jane E. Angus  
Counsel for the Accused: James H. Gidley  
Disciplinary Board: None  
Disposition: Violations of RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d).  
Stipulation for Discipline. 60-day suspension.  
Effective Date of Order: October 20, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties and the sanction to be imposed for the Accused’s misconduct is approved. The Accused shall be suspended from the practice of law for sixty (60) days for violations of RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d) of the Rules of Professional Conduct, and shall comply with other requirements of the stipulation. The suspension shall be effective October 17, 2009, or three days after the date of this order, whichever is later.

DATED this 17th day of October 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state on September 24, 1976, and a member of the Oregon State Bar, having his office and place of business in the County of Multnomah, State of Oregon.

3.

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

4.

On November 22, 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(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 AND VIOLATION**

### **Criminal Matter**

5.

About August 21, 2007, Mendie Sue Moranville (hereinafter “Moranville”) was arrested for the alleged assault of Donald Moranville. About August 22, 2007, Moranville retained the Accused to represent her concerning the criminal case. Pursuant to a written fee agreement (hereinafter “Fee Agreement”), Moranville paid the Accused a \$5,500 fee in advance (hereinafter “Moranville’s Funds”) for legal services to be performed through trial. The Fee Agreement did not provide that the fee was earned on receipt and nonrefundable. The Accused did not deposit and maintain Moranville’s Funds in a lawyer trust account.

6.

On August 31, 2007, the Washington County District Attorney's Office (hereinafter "DA") filed a Complainant's Information charging Moranville with three felony counts of assault IV (ORS 163.160(3)), *State of Oregon v. Mendie Sue Moranville*, Washington County Circuit Court Case No. C072234CR (hereinafter "Criminal Case I") concerning the August 21, 2007, conduct. About November 2, 2007, the DA filed a complaint charging Moranville with three misdemeanor counts of assault IV (ORS 163.160) concerning the August 21, 2007, conduct, *State of Oregon v. Mendie Sue Moranville*, Washington County Circuit Court Case No. DO 77113M (hereinafter "Criminal Case II"). About November 5, 2007, the DA reported to the court in Criminal Case I that new charges had been filed in Criminal Case II, and Criminal Case I was dismissed. About November 26, 2007, a Washington County grand jury indicted Moranville for two (2) felony counts of assault IV (ORS 163.160) and two misdemeanor counts of harassment (ORS 166.065) concerning the August 21, 2007, conduct, *State of Oregon v. Mendie Sue Moranville*, Washington County Circuit Court Case No. C073012CR (hereinafter "Criminal Case III"). On November 30, 2007, the court dismissed Criminal Case II.

7.

About December 21, 2007, the Accused terminated his representation of Moranville. The Accused did not earn all of Moranville's Funds. On termination of the lawyer-client relationship, the Accused failed to promptly refund the unearned portion of Moranville's Funds. About January 23, 2008, Moranville requested an accounting. The Accused did not account for and did not return the unearned portion of Moranville's Funds.

8.

The Accused admits that the aforesaid conduct constituted violation of RPC 1.5(a), collecting an excessive fee; RPC 1.15-1(a) and (c), failure to deposit and maintain client funds in trust; RPC 1.15-1(d), failure to account for and failure to deliver funds the client was entitled to receive; and RPC 1.16(d), failure to deliver the unearned portion of the fee on termination of employment.

### **Dissolution Matter**

9.

About August 22, 2007, Moranville retained the Accused to pursue a dissolution of her marriage to Bill Edward Fry. Pursuant to a written fee agreement (hereinafter "Fee Agreement"), Moranville paid the Accused a \$7,500 fee in advance (hereinafter "Moranville's Funds") for legal services to be performed concerning the dissolution case. The Fee Agreement did not provide that the fee was earned on receipt and nonrefundable. The Accused did not deposit and maintain Moranville's Funds in a lawyer trust account.

10.

The Accused admits that the aforesaid conduct constituted failure to deposit and maintain client funds in a lawyer trust account, in violation of RPC 1.15-1(a) and (c) of the Rules of Professional Conduct.

### 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.** In violating RPC 1.5(a), RPC 1.15-1(a), (c), (d), and RPC 1.16(d), the Accused violated duties to his client and the profession. *Standards*, §§ 4.1 and 7.0.
- b. **Mental state.** “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, p. 7. The Accused acted knowingly when he failed to deposit and maintain Moranville’s Funds in his lawyer trust account and when he failed to account for and return the unearned funds on termination of the lawyer-client relationship. The Accused was negligent in failing to understand that the terms of his fee agreements did not permit him to avoid depositing and maintaining Moranville’s funds in his trust account, and that he was not permitted to withdraw the funds except as they were earned.
- c. **Injury.** The *Standards* define “injury” as harm to the client, the public, the legal system, or the profession that results from a lawyer’s conduct. “Potential injury” is harm to the client, the public, the legal system, or the profession that is reasonably foreseeable at the time of the lawyer’s conduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Standards*, p. 7.

The Accused caused actual and potential injury to his client and the profession. The client was denied an accounting of funds paid for the criminal matters and the return of funds she was entitled to receive. There was potential injury to the profession because it is judged by the conduct of its members.

- d. **Aggravating factors.** Aggravating factors are considerations that increase the degree of discipline to be imposed. *Standards*, § 9.22. There are multiple offenses. *Standards*, § 9.22(d). The Accused was

admitted to practice law in 1976 and has substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused acted with a selfish motive and, until recently, indifference to making restitution. *Standards*, § 9.22(b), (j). Also, the Accused has a prior record of discipline. *Standards*, § 9.22(a). In 1994, the Accused was reprimanded for violations of DR 2-108(B), DR 5-101(A), and DR 9-101(A). *In re Vanagas*, 8 DB Rptr 185 (1994). In 2000, the Accused was suspended for 120 days for violations of DR 1-102(A)(4), DR 1-103(C), DR 2-110(A)(2), DR 6-101(B), and DR 7-101(A)(2). *In re Vanagas*, 14 DB Rptr 16 (2000).

- e. **Mitigating factors.** Mitigating factors are considerations that may decrease the degree of discipline to be imposed. *Standards*, § 9.32. The Accused is remorseful and has acknowledged his misconduct; he has cooperated in the resolution of this proceeding; and some of the prior offenses are remote in time. *Standards*, § 9.32(e), (l), (m).

12.

The *Standards* provide that suspension is generally appropriate when a lawyer knows or should know that he or she is dealing improperly with client property and causes injury or potential injury to a client. *Standards*, § 4.12. Suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. *Standards*, § 7.2. Suspension is also generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. *Standards*, § 8.2. Case law is in accord. *See, e.g., In re Balocca*, 342 Or 279, 151 P3d 154 (2007); *In re Fadeley*, 342 Or 403, 153 P3d 682 (2007); *In re Eakin*, 334 Or 238, 48 P3d 147 (2002).

13.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for sixty (60) days for violations of RPC 1.5(a), RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.15-1(d), and RPC 1.16(d) of the Rules of Professional Conduct. The effective date of the suspension shall be October 17, 2009, or three (3) days after the stipulation is approved by the Disciplinary Board, whichever is later.

14.

In addition to the suspension, the Accused shall make restitution to Moranville in the amount of \$4,500, which must be paid before, and is a condition of, his reinstatement of his license to practice law. BR 6.1(a).

15.

The Accused shall also read the Professional Liability Fund's publication *A Guide to Setting Up and Using Your Lawyer Trust Account*, and arrange for and personally participate in a law office management audit conducted by a Professional Liability Fund practice management advisor. The audit shall include, without limitation, a review of the Accused's practices, procedures, and recordkeeping regarding funds received from clients and other persons for the benefit of clients. The Accused shall adopt and implement recommendations from the practice management advisor, and shall notify Disciplinary Counsel's Office in writing of the recommendations made and adopted by the Accused.

The Accused authorizes the Professional Liability Fund Practice Management Group and each of its representatives to communicate with and provide information to the Oregon State Bar Disciplinary Counsel's Office concerning its recommendations and the Accused's participation, compliance, and noncompliance with law office management audit recommendations required in this paragraph. The Accused waives any privilege or right of confidentiality necessary to permit any such persons or program to disclose information concerning its recommendations and the Accused's participation, compliance, and noncompliance with the law office management audit and compliance with recommendations. The Accused shall not be eligible for reinstatement of his license to practice law until he has satisfied all conditions set forth in this paragraph 15.

16.

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 Michael Buroker, an active member of the Oregon State Bar, whose address is 21902 SE Foster Road, Damascus, Oregon, to either take possession of or have ongoing access to the Accused's client files and to serve as the contact person for clients in need of the files and services during the term of the Accused's suspension. The Accused represents that Michael Buroker has agreed to accept this responsibility.

17.

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 during the term of his suspension and until such time as he is notified by an authorized representative of Regulatory Services of the Bar that his 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 stipulation shall be submitted to the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

DATED this 30th day of September 2009.

/s/ Timothy J. Vanagas

Timothy J. Vanagas

OSB No. 763669

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. 09-98  
)  
DALE L. SMITH, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c). Stipulation for Discipline. Public reprimand.  
Effective Date of Order: November 3, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c) of the Rules of Professional Conduct.

DATED this 3rd day of November 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ Carl W. Hopp  
Carl W. Hopp, Region 1  
Disciplinary Board Chairperson



## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 18, 1979, 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 September 18, 2009, the State Professional Responsibility Board authorized a formal disciplinary proceeding against the Accused for alleged violations of RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c) of the Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

## **FACTS AND VIOLATIONS**

5.

In late 2007, Fred Huling, on behalf of his daughter, paid the Accused a \$700 flat fee in advance to file a petition and obtain a change of names for Huling’s daughter’s two children. The Accused failed to deposit the funds in his lawyer trust account. He did not have a written fee agreement that provided that the funds paid in advance were earned on receipt and nonrefundable. The Accused initially failed to file all required documents and thereafter failed to complete the process in a timely manner. During the representation, the Accused failed to keep his client reasonably informed and failed to respond promptly to inquiries concerning the matter. About one and a half years after the Accused was retained, the Accused completed the name-change process.

6.

The Accused admits that the aforesaid conduct constituted neglect of a legal matter entrusted to a lawyer, failing to communicate with a client, and failing to deposit and maintain client funds in trust, in violation of RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c) of the Rules of Professional Conduct.

### SANCTION

7.

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

- a. **Duties violated.** In violating RPC 1.3, RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c), the Accused violated duties to his client. *Standards*, §§ 4.1 and 4.4.
- b. **Mental state.** The Accused’s conduct demonstrates knowledge and negligence. “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective to accomplish a particular result. *Standards*, p. 7. The Accused knew he had agreed to prepare and file documents required to obtain the change of names for Huling’s grandchildren. He was negligent in failing to ensure that documents he prepared satisfied requirements to accomplish the task, in failing to adequately monitor and take prompt action to correct deficiencies to conclude the matter, and in failing to respond promptly to inquiries about the status of the case. The Accused was also negligent in his handling of the funds paid in advance for the legal services.
- c. **Injury.** The Accused caused actual and potential injury to his client. Injury does not need to be actual, but only potential to support the imposition of sanctions. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). There was delay in completing the legal matter. Also, Huling was frustrated by the delay and the difficulties encountered in communicating with the Accused. The Accused caused potential injury to the profession because it is judged by the conduct of its members.
- d. **Aggravating factors.** Aggravating factors are any considerations that justify an increase in the degree of discipline to be imposed. *Standards*, § 9.22. Several aggravating factors are present in this case. The Accused has substantial experience in the practice of law. He was admitted to practice in 1979. *Standards*, § 9.22(i). The Accused has

previously been admonished for violation of *former* DR 9-101(A) (current RPC 1.15-1(a)) for failing to maintain client funds in trust. *In re Smith*, Case No. 99-14. Although a letter of admonition is not formal discipline, where it involves the same or similar conduct, it is considered evidence of past misconduct and an aggravating factor. *In re Cohen*, 330 Or 489, 500–501, 8 P3d 953 (2000). *Standards*, § 9.22(a).

- e. **Mitigating factors.** The *Standards* also recognize mitigating factors. *Standards*, § 9.32. The Accused did not act with dishonest or selfish motives. *Standards*, § 9.32(b). He has acknowledged and fully disclosed his misconduct to Disciplinary Counsel’s Office during the investigation and in resolving this matter. *Standards*, § 9.22(e). The Accused is remorseful *Standards*, § 9.32(l). He voluntarily refunded the entire fee, even though he eventually completed the matter. In addition, the Accused has taken steps to address practice management deficiencies to avoid a recurrence of problems encountered in this case. *Standards*, § 9.32(d).

8.

The *Standards* provide that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Reprimand is also appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. *Standards*, § 4.43. Case law is in accord. *See, e.g., In re Angel*, 22 DB Rptr 351 (2008) (reprimand for violation of RPC 1.15-1(a), (c), and (d), and RPC 1.16(d)); *In re Burns*, 22 DB Rptr 325 (2008) (reprimand for violation of RPC 1.3, RPC 1.4(a), and RPC 1.16(d)); *In re Cohen*, 330 Or 489, 8 P3d 953 (2000) (reprimand for violation of DR 6-101(B) when lawyer had prior record of neglect, and significant mitigating factors present).

9.

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 1.3, RPC 1.4(a), RPC 1.15-1(a), and RPC 1.15-1(c) of the Rules of Professional Conduct.

10.

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

DATED this 30th day of September 2009.

/s/ Dale L. Smith

Dale L. Smith

OSB No. 793985

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. 08-73  
)  
R. SANDE TOMLINSON, )  
)  
Accused. )

Counsel for the Bar: Jane E. Angus  
Counsel for the Accused: George A. Burgott  
Disciplinary Board: None  
Disposition: Violation of DR 5-101(A). Stipulation for  
Discipline. Public reprimand.  
Effective Date of Order: November 19, 2009

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved. The Accused is publicly reprimanded for violation of DR 5-101(A) of the Code of Professional Responsibility.

DATED this 19th day of November 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ Jack A. Gardner  
Jack A. Gardner, Region 2  
Disciplinary Board Chairperson

### **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 22, 1972, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Lane County, Oregon.

3.

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

4.

On May 17, 2008, the State Professional Responsibility Board (hereinafter “SPRB”) authorized a formal disciplinary proceeding against the Accused for alleged violations of DR 5-101(A)(1) (conflict of interest—lawyer self-interest), DR 5-104(A) (conflict of interest—business transaction with client), and RPC 1.9(c)(1) (using information to detriment of client) 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 Emile Mortier (hereinafter “Mortier”) and certain of his business entities on a variety of legal issues for several years. In 2002, the Accused entered into an agreement to purchase a townhouse Mortier was constructing. In about November 2002, disputes arose about the amount the Accused was required to pay for extras the Accused ordered for the townhouse project. During this time, the Accused continued to represent Mortier concerning matters unrelated to the Accused’s purchase of the townhouse when the Accused’s own personal, business, property, or financial interests reasonably could have affected his professional judgment on Mortier’s behalf. The Accused did not make full written

disclosures within the meaning of DR 10-101(B) in connection with the transactions and disputes and thereby violated DR 5-101(A)(1) of the Code of Professional Responsibility.

6.

In January 2003, the Accused withdrew from representing Mortier and his business entities. Thereafter, Mortier and the Accused resolved the dispute over the payment amount for the extras for the townhouse construction project, and at Mortier's request the Accused agreed to complete certain estate-planning work for Mortier. During this time, disputes arose between Mortier and the Accused and other purchasers of townhouses concerning certain alleged construction defects. Even though the Accused knew of the disputes and was increasingly dissatisfied with the quality of the construction and related problems, he continued to represent Mortier when his own personal, business, property, or financial interests reasonably could have affected his professional judgment on Mortier's behalf. The Accused did not make full written disclosures within the meaning of DR 10-101(B) in connection with the transactions and disputes and thereby violated DR 5-101(A)(1) of the Code of Professional Responsibility.

## 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) as alleged in the Bar's Second and Third Causes of Complaint.

8.

On further factual inquiry, the parties agree that the alleged violations of DR 5-101(A)(1) and DR 5-104(A) alleged in the Bar's First Cause of Complaint, and RPC 1.9(c)(1) alleged in the Bar's Fourth Cause of Complaint, shall be dismissed upon approval of this stipulation.

## SANCTION

9.

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

- a. **Duty violated.** By continuing to represent a client during times of dispute concerning the townhouse project without making full written

disclosures and obtaining the client's consent, the Accused violated the duty the duty 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. *Standards*, p. 7.
- c. **Injury.** There is no evidence that Mortier suffered actual injury as a result of the violations. There was, however, 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);
  3. Cooperative attitude toward disciplinary proceedings. *Standards*, § 9.32(e); and
  4. Remorse. *Standards*, § 9.32(l).

10.

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.

11.

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, e.g., In re Boivin*, 271 Or 419, 533 P2d 171 (1975); *In re Dickerson*, 19 DB Rptr 363 (2005); *In re Harrington*, 301 Or 18, 718 P2d 725 (1986). *See also In re Bailey*, 21 DB Rptr 64 (2007).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violation of DR 5-101(A)(1) of the Code of Professional Responsibility.



13.

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

DATED this 10th day of November 2009.

/s/ R. Sande Tomlinson

R. Sande Tomlinson

OSB No. 722680

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. 08-117 and 09-01  
)  
LAWRENCE P. CULLEN, ) SC S057995  
)  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violation of RPC 1.3, RPC 1.4(a), RPC 1.4(b),  
RPC 1.15-1(d), RPC 8.1(a)(2), and RPC  
8.4(a)(3). Stipulation for Discipline. Nine-month  
suspension.  
Effective Date of Order: December 1, 2009

**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, effective December 1, 2009.

November 24, 2009

/s/ Paul J. De Muniz

Paul J. De Muniz  
Chief Justice

**STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on April 23, 1992, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Multnomah County, Oregon.

3.

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

4.

On September 18, 2009, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violations of RPC 1.3 (neglect of a legal matter), RPC 1.4(a) (failure to keep a client reasonably informed or respond to requests for information), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions regarding the representation), RPC 1.15-1(d) (failure to promptly provide client property), RPC 8.1(a)(2) (failures to respond to lawful demands for information from disciplinary authorities in connection with a disciplinary matter), and RPC 8.4(a)(3) (conduct involving misrepresentation reflecting adversely on fitness to practice law). 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.

## **Wolf & Shaer Matter**

### **Case No. 08-117**

#### **Facts**

5.

Prior to November 2004, the Accused undertook to represent Salman Shaer (hereinafter “Shaer”) in a potential injury claim. From November 2004 through March 2005, the Accused periodically forwarded documentation to Shaer’s insurer to facilitate payment of some of Shaer’s medical expenses and to enable Shaer to receive payments for lost wages.

6.

Between March 2005 and late April 2006, when the Accused requested a copy of the payment ledger from Shaer's insurer, the Accused did not make a demand on any potentially responsible party or take any other substantive action on Shaer's claim for reasons known only to the Accused.

7.

On May 25, 2006, the Accused filed a lawsuit on behalf of Shaer against the personal injury defendant.

8.

From May 25, 2006, through April 2, 2007, the Accused took no substantive action on Shaer's case. In particular, the Accused failed to ensure that a proof of service was filed with the court. Shaer's case was dismissed by the court on December 11, 2006, for lack of prosecution. The Accused did not advise Shaer or defense counsel of the dismissal or otherwise take any action to verify or address the dismissal.

9.

On April 2, 2007, opposing counsel took Shaer's deposition. At or shortly after the deposition, opposing counsel requested that the Accused check into the status of the trial date in the case. The Accused did not verify the status of the case and did not notify opposing counsel that the case had been dismissed.

10.

Following Shaer's deposition, the Accused did not communicate with Shaer or respond to Shaer's attempts to communicate with him. Shaer contacted another lawyer (hereinafter "successor counsel") for assistance.

11.

Successor counsel made multiple requests that the Accused provide him with Shaer's complete file for review. The Accused initially provided some documents, but thereafter failed to respond to successor counsel or provide the remaining requested file materials until two months after successor counsel complained to the Bar.

### **Violations**

12.

The Accused admits that although he initially attended to Shaer's claim, he subsequently neglected Shaer's case, failed to keep Shaer reasonably informed about his legal matter, and failed to respond to Shaer's reasonable requests for information, in violation of RPC 1.3 and RPC 1.4(a). The Accused further admits that his failure

to promptly provide successor counsel with all of the property to which his client was entitled violated RPC 1.15-1(d).

**Velazquez Matter**

**Case No. 09-01**

**Facts**

13.

On June 1, 2004, the Accused undertook to represent Abidan Velazquez (hereinafter “Velazquez”) to pursue a claim for injuries that Velazquez and other members of his family had received in an automobile accident in May 2004.

14.

Between June 1, 2004, and May 15, 2006, the Accused did not take any substantive action on Velazquez’s claim.

15.

On May 16, 2006, the Accused filed a lawsuit on behalf of Velazquez and one or more of his family members. The Accused did not provide Velazquez a copy of the complaint or notify him that the complaint had been filed.

The defendant was served with the complaint on July 13, 2006. On September 11, 2006, the court notified the Accused of its intent to dismiss the case for lack of prosecution. The Accused did not notify Velazquez of the court’s intent to dismiss his case, explain its significance, or take any action in response to the notice from the court.

16.

On October 31, 2006, Velazquez’s case was dismissed by the court for lack of prosecution. On or about November 14, 2006, the court sent the Accused a Notice of Entry of Judgment of dismissal. The Accused did not notify Velazquez of the dismissal, explain its significance, or take any action in response to it.

17.

Between July 13, 2006, and April 2007, the Accused took no substantive action on Velazquez’s case. During this same time, the Accused failed to respond to numerous attempts by Velazquez and his wife to communicate with him. When Velazquez did speak to the Accused, the Accused never informed him about the status of his case.

18.

On April 17, 2007, defense counsel in the case notified the Accused that the complaint had been dismissed. The Accused did not then notify Velazquez of the dismissal, explain its significance, or take any action in response to it.

19.

Between November 1, 2007, and May 1, 2008, the Accused was suspended from the practice of law as the result of an earlier disciplinary proceeding. The Accused did not notify Velazquez of his suspension or explain its significance. The Accused did not ensure that Velazquez had other counsel or take any other action to protect Velazquez's rights or claim during the period of the Accused's suspension.

20.

In July 2008, the Accused spoke with Velazquez by telephone, but did not inform him that his case had been dismissed. Instead, the Accused told Velazquez that he was trying to determine the status of the case. This statement by the Accused was both false and misleading, and the Accused knew that it was false and misleading when he made it.

21.

Between April 17, 2007, and August 2008, the Accused did not take any substantive action on Velazquez's claim.

22.

On August 6, 2008, Velazquez complained to the Oregon State Bar regarding the Accused's handling of his claim. On September 19, 2008, Disciplinary Counsel's Office (hereinafter "DCO") requested that the Accused respond to Velazquez's allegations on or before October 10, 2008. After he obtained an additional two weeks to respond, the Accused transmitted to DCO a copy of a letter which he had previously provided to the Bar's Client Assistance Office. This letter did not fully address Velazquez's concerns.

23.

On November 6, 2008, DCO requested that the Accused respond to specific inquiries by November 20, 2008. The Accused did not respond. On December 11, 2008, DCO reminded the Accused that he had not responded to its November 6, 2008, request and further requested that the Accused acknowledge receipt of its correspondence and suggest a reasonable time in which he would respond to DCO's requests for information. The Accused did not respond. Accordingly, on January 7, 2009, the matter was referred to the Multnomah County Local Professional Responsibility Committee (hereinafter "LPRC") for additional investigation.

24.

On February 10, 2009, the LPRC investigators issued a subpoena duces tecum requiring the Accused to produce documents related to the Velazquez matter on or before February 24, 2009. The Accused did not respond.

25.

On April 9, 2009, the Accused first spoke with an LPRC investigator and agreed to provide the subpoenaed documents. The Accused failed to provide all of the subpoenaed documents, despite an additional request from the LPRC on April 23, 2009, that he do so.

### **Violations**

26.

The Accused admits that he neglected Velazquez's claim, failed to keep Velazquez reasonably informed about his legal matter, failed to respond to Velazquez's reasonable requests for information, and failed to explain a matter to the extent reasonably necessary to permit Velazquez to make informed decisions regarding the representation, in violation of RPC 1.3 and RPC 1.4(a) and RPC 1.4(b). The Accused also admits that his failure to notify Velazquez of the dismissal of his case, and his subsequent failures to disclose the dismissal to Velazquez, constituted conduct involving misrepresentation reflecting adversely on his fitness to practice law, in violation of RPC 8.4(a)(3).

Finally, the Accused admits that his failures to respond to lawful demands for information from both DCO and the LPRC in connection with his disciplinary investigation violated RPC 8.1(a)(2).

### **Sanction**

27.

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

- a. **Duty violated.** The Accused violated his duties of diligence and candor to his clients, as well as his duty to safeguard and properly handle client property. *Standards*, §§ 4.1, 4.4, and 4.6. The *Standards* assume that the most important ethical duties are those obligations which a lawyer owes to clients. *Standards*, at 5. The Accused also violated his duty as a professional to cooperate in disciplinary investigations. *Standards*, § 7.0.

- b. **Mental state.** *Knowledge* is defined as the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Standards*, at 9. The Accused knowingly failed to attend to Shaer's and Velazquez's matters and knowingly failed to respond to their requests for information. Although for only a relatively short period of time, the Accused knowingly failed to provide Shaer's remaining file materials to successor counsel. The Accused knowingly misrepresented the status of Velazquez's case, and knowingly failed to fully comply with the LPRC's requests.
- c. **Injury.** "Because the purpose of professional discipline is to protect the public, an injury need not be actual, but only potential, in order to support the imposition of a sanction." *In re Williams*, 314 Or 530, 547, 840 P2d 1280 (1992). In this case, the Accused caused actual injury to both Shaer and Velazquez. There is actual injury to a 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 III*, 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 also caused actual harm to both the legal profession and to the public because he delayed the Bar's investigation and, consequently, the resolution of the complaints against him. *In re Schaffner II*, 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 circumstances.** Aggravating circumstances include:
  - 1. A prior record of discipline. *Standards*, § 9.22(a). This aggravating factor refers to offenses that have been adjudicated prior to imposition of the sanction in the current case. *In re Jones II*, 326 Or 195, 200, 951 P2d 149 (1997). The Accused has been previously suspended for six months for similar misconduct regarding four client matters. *In re Cullen*, 21 DB Rptr 272 (2007). However, some of the conduct that led to the Accused's prior discipline occurred within the same time period as the two cases at issue here. To the extent that the conduct in these cases predates the imposition of the prior discipline, the prior discipline is given little weight as an aggravating factor. *Jones*, 326 Or at 200. However, the Accused's misrepresentation



to Velazquez and his continued neglect of Velazquez's matter, as well as his failure to cooperate with the LPRC, occurred after the Accused had served his suspension in the first matter, so those violations are substantially aggravated by the Accused's prior discipline. *Jones*, 326 Or at 200.

2. A dishonest or selfish motive. *Standards*, § 9.22(b).
  3. A pattern of misconduct. *Standards*, § 9.22(c). The Accused's transgressions have occurred over a substantial period of time. *See In re Schaffner*, 323 Or 472, 480, 918 P2d 803 (1996).
  4. Multiple offenses. *Standards*, § 9.22(d).
  5. Substantial experience in the practice of law. *Standards*, § 9.22(i). The Accused was admitted to practice in Oregon in 1992 and in Texas in 1984.
- e. **Mitigating circumstances.** Mitigating circumstances include:
1. Personal or emotional problems. *Standards*, § 9.32(c). The Accused was suffering from personal and emotional problems during a portion of the relevant time period due to ongoing disputes stemming from his dissolution of marriage in December 2002 and due to the loss of his mother in October 2004.
  2. Remorse. *Standards*, § 9.32(l). The Accused has expressed remorse to the Bar for his misconduct.

28.

Under the *Standards*, a suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect causing injury, and where a lawyer knows or should know that he or she is dealing improperly with client property. *Standards*, §§ 4.12 and 4.42. A suspension is also generally appropriate when a lawyer knowingly deceives a client and causes potential or actual injury. *Standards*, § 4.62. Finally, a suspension is appropriate when a lawyer knowingly engages in conduct that is a violation of a duty to the profession (such as cooperation) and causes actual or potential injury to the legal system. Given that those factors in aggravation outweigh those in mitigation both in number and severity, a substantial suspension is appropriate for the Accused's misconduct.

29.

Oregon case law similarly supports the imposition of a substantial suspension for the Accused's repeat misconduct. *See, e.g., In re Schaffner II*, 325 Or 421, 939 P2d 39 (1997) (attorney suspended for two years for neglect and failure to respond to the bar, having been previously suspended for 120 days for the same type of misconduct); *In re Bourcier*, 322 Or 561, 570, 909 P2d 1234 (1996) (attorney

suspended for three years after previously stipulating to a 60-day suspension for “strikingly similar” misconduct).

The Accused’s collective conduct is perhaps most akin to that in *In re Butler*, 324 Or 69, 921 P2d 401 (1996). In *Butler*, the accused attorney stipulated that he failed to act diligently on his client’s behalf because he did not comply with the applicable statute of limitations, a violation of DR 6-101(B) (neglect, current RPC 1.3), and that he violated his duty to be truthful by assuring his client that he was working on the client’s case when, in fact, it had been dismissed, a violation of DR 1-102(A)(3) (misrepresentation, current RPC 8.4(a)(3)). On review for a sanction determination, the court imposed a one-year suspension, citing two aggravating factors. First, like the Accused, Butler had substantial experience in the practice of law when he committed the acts of professional misconduct. Second, the misconduct occurred when the accused knew that he was under investigation in an unrelated matter for violating the same disciplinary rules. This is also true for a least a portion of the Accused’s misconduct. Unlike Butler, however, the Accused has some applicable mitigating factors which justify a sanction of less than the year imposed in *Butler*.

30.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended for nine months for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15-1(d), RPC 8.1(a)(2), and RPC 8.4(a)(3), the sanction to be effective December 1, 2009, or seven days after the stipulation is approved by the court, whichever is later.

31.

In addition, on or before June 30, 2010, the Accused shall pay to the Oregon State Bar its reasonable and necessary costs in the amount of \$303.20, incurred for conducting his deposition in Case No. 08-117. Should the Accused fail to pay \$303.20 in full by June 30, 2010, 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.

32.

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 represents that he has arranged for all active clients to either take possession of or have ongoing access to their client files during the term of the Accused’s suspension.

33.

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.

34.

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 9th day of October 2009.

/s/ Lawrence P. Cullen

Lawrence P. Cullen

OSB No. 920468

EXECUTED this 9th day of October 2009.

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. 09-32  
)  
PHILIP R. BENNETT, )  
)  
Accused. )

Counsel for the Bar: Stacy J. Hankin  
Counsel for the Accused: Eric Lindauer  
Disciplinary Board: None  
Disposition: Violation of RPC 8.1(a)(2) and RPC 8.1(c).  
Stipulation for Discipline. 120-day suspension.  
Effective Date of Order: December 14, 2009

**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 the day the stipulation is approved, and required to seek formal reinstatement pursuant to BR 8.1 at such time as he is eligible to seek reinstatement, for violation of RPC 8.1(a)(2) and RPC 8.1(c).

DATED this 14th day of December 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

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

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 14, 1984, 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 August 12, 2009, an Amended Formal Complaint was filed against the Accused pursuant to the authorization of the State Professional Responsibility Board (hereinafter “SPRB”), alleging violation of RPC 8.1(a)(2) and RPC 8.1(c). 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 June 26, 2008, the Accused signed a State Lawyer Assistance Committee (hereinafter “SLAC”) Monitoring and Cooperation Agreement (hereinafter “remedial program”). Under the remedial program, the Accused was required to, among other things:

- a. abstain from all alcohol, controlled substances, and mind-altering drugs, except when prescribed by a licensed health care provider;
- b. attend a number of 12-step recovery program meetings;
- c. work with an experienced 12-step sponsor;
- d. participate in and complete a treatment program at Beyond Addictions;
- e. continue regular appointments with a psychologist;

- f. attend at least one Oregon Attorney Assistance Program meeting a week for such period as was deemed necessary by his SLAC monitor;
- g. work with Dr. Walton Bird or his associate;
- h. document his attendance at all programs and meetings, and submit such documentation to his SLAC monitor;
- i. provide a review from his employer, including information about his work attendance and quality at least once a month;
- j. maintain contact with his SLAC monitor; and
- k. report any relapse to his SLAC monitor within eight hours until the Accused was notified in writing that he was no longer subject to the jurisdiction of SLAC.

6.

Beginning in August 2008, the Accused failed to comply with the terms of the remedial program described in paragraph 5 herein.

7.

On December 12, 2008, Disciplinary Counsel's Office (hereinafter "DCO") received information that the Accused was not complying with the remedial program. On December 16, 2008, DCO sent a letter requesting that the Accused explain his conduct on or before January 13, 2009. The Accused failed to respond to that inquiry, to a second inquiry sent on January 16, 2009, asking for his response by January 22, 2009, and to a third inquiry sent on March 11, 2009, asking for his response by March 25, 2009. By virtue of one or more of the letters, the Accused knew that the Bar was investigating his conduct and that he had a duty to respond. The Accused did not do so. However, his failure to respond was not intended to obstruct or interfere in the Bar's investigation.

### **Violations**

8.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 7, he violated RPC 8.1(a)(2) and RPC 8.1(c).

### **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 duties he owed to the profession when he failed to comply with the remedial program and failed to respond to the Bar's inquiries into his conduct. *Standards*, § 7.0.
- b. **Mental state.** The Accused acted knowingly, but not intentionally.
- c. **Injury.** The SLAC monitor and the Bar sustained actual injury because of the Accused's misconduct. Additional time and resources were spent trying to locate the Accused and determine whether he complied with the remedial program.
- d. **Aggravating circumstances.** The following aggravating circumstances exist:
  1. Multiple offenses. *Standards*, § 9.22(d).
  2. The Accused has been licensed to practice law in Oregon since 1984. *Standards*, § 9.22(i).
- e. **Mitigating circumstances.** The following mitigating circumstances exist:
  1. Absence of a prior disciplinary record. *Standards*, § 9.32(a).
  2. Absence of a dishonest or selfish motive. *Standards*, § 9.32(b).
  3. Good character and reputation. Members of the legal community would attest to the Accused's good character and reputation. *Standards*, § 9.32(g).
  4. Remorse. *Standards*, § 9.32(l).

10.

Under the *Standards*, 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*, § 7.2.

11.

Lawyers who have not cooperated with SLAC have been suspended. *In re Wyllie*, 326 Or 447, 952 P2d 550 (1998) (one-year suspension imposed on lawyer who appeared in court intoxicated on five separate occasions and who failed to cooperate with SLAC); *In re Andersen*, 18 DB Rptr 172 (2004) (four-month suspension imposed on lawyer who failed to cooperate with SLAC, among other things, with additional requirement that lawyer be required to seek formal reinstatement under BR 8.1.) The Accused's misconduct is not as egregious as the misconduct present in *Wyllie*, because there is no evidence that the Accused's misconduct affected any clients.

Lawyers who have failed to cooperate in a Bar investigation have received 60-day suspensions. *In re Miles*, 324 Or 218, 923 P2d 1219 (1996) (lawyer who failed to respond to the Bar and the local investigating committee was suspended 120 days, 60 for each violation); *In re Schaffner*, 323 Or 472, 918 P2d 803 (1996) (120-day suspension imposed on lawyer, 60 days of which resulted from his failure to respond to the Bar).

12.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be suspended from the practice of law for 120 days for violation of RPC 8.1(a)(2) and RPC 8.1(c), the sanction to be effective the day this stipulation is approved. The parties further agree that the Accused shall be required to seek formal reinstatement pursuant to BR 8.1, at such time as he is eligible to seek reinstatement.

13.

In addition, when the Accused applies for reinstatement, he shall pay to the Bar its reasonable and necessary costs in the amount of \$437.75, incurred in connection with the Accused's deposition. Should the Accused fail to pay \$437.75 within one year of the date this stipulation is approved, the Bar may thereafter, without further notice to the Accused, apply for entry of a judgment against the Accused for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

14.

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 not engaged in the practice of law since August 2008, and does not possess any client files.

15.

The Accused acknowledges that reinstatement is not automatic on expiration of the period of suspension. He is required to comply with the applicable provisions of Title 8 of the Bar Rules of Procedure. The Accused also acknowledges that he cannot hold himself out as an active member of the Bar or provide legal services or advice until he is notified that his license to practice has been reinstated.

16.

This Stipulation for Discipline is subject to review by Disciplinary Counsel of the 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 December 2009.

/s/ Philip R. Bennett

Philip R. Bennett

OSB No. 841687

EXECUTED this 7th day of December 2009.

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. 09-103  
 )  
ALLEN BARTELD, )  
 )  
Accused. )

Counsel for the Bar: Mary A. Cooper  
Counsel for the Accused: None  
Disciplinary Board: None  
Disposition: Violations of RPC 1.15-2(m) and RPC 8.1(a)(2).  
Stipulation for Discipline. Public reprimand.  
Effective Date of Order: December 16, 2009

**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 1.15-2(m) and RPC 8.1(a)(2).

DATED this 16th day of December 2009.

/s/ Gregory E. Skillman  
Gregory E. Skillman  
State Disciplinary Board Chairperson

/s/ Carl W. Hopp Jr.  
Carl W. Hopp Jr., Region 1  
Disciplinary Board Chairperson

## **STIPULATION FOR DISCIPLINE**

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

1.

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

2.

The Accused was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 15, 1997, and has been a member of the Oregon State Bar continuously since that time, having his office and place of business in Hood River 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 Accused enters into this Stipulation for Discipline freely and voluntarily. This Stipulation for Discipline is made under the restrictions of Bar Rule of Procedure 3.6(h).

5.

On September 18, 2009, the State Professional Responsibility Board (hereinafter “SPRB”) authorized formal disciplinary proceedings against the Accused for alleged violations of RPC 1.15-2(m) and RPC 8.1(a)(2) of the Oregon Rules of Professional Conduct. The parties intend that this stipulation set forth all relevant facts, violations, and the agreed-upon sanction as a final disposition of this proceeding.

### **Facts**

6.

Effective December 1, 2005, the Oregon Supreme Court adopted RPC 1.15-2(m), which provides:

Every lawyer shall certify annually on a form and by a due date prescribed by the Oregon State Bar that the lawyer is in compliance with Rule 1.15-1 and this rule.

In December 2008, the Bar mailed to Oregon State Bar members the 2009 OSB Membership Dues Invoice. Accompanying this invoice was a one-page IOLTA Certification of Compliance form. OSB members—including the Accused—were told that the form was due on January 31, 2009. The Accused did not complete or submit the form by that date.

7.

In February 2009, the Oregon Law Foundation sent e-mail reminders (or regular mail reminders to those members who did not have an e-mail address on file) to the lawyers—including the Accused—who had failed to file an IOLTA Certification. The Accused did not respond to this reminder.

8.

On April 24, 2009, Disciplinary Counsel’s Office (hereinafter “DCO”) sent a “last chance” notice to those lawyers—including the Accused—who were still not in compliance, giving them until May 22, 2009, to file their IOLTA Compliance Certification form before DCO opened an investigation file to determine whether to recommend disciplinary action. The Accused did not respond.

9.

On June 11, 2009, DCO sent the Accused a letter asking him to explain why he had not complied. He did not respond to this letter, and on July 8, 2009, DCO sent him a second letter asking him to explain his noncompliance. The Accused did not respond.

10.

On August 11, 2009, Disciplinary Counsel Office staff telephoned the Accused at the number listed for him in the Bar’s database. That number was no longer in service. As of September 18, 2009, the Accused had neither submitted the required IOLTA Certification nor responded to the Bar’s request to explain his noncompliance.

### **Violations**

11.

The Accused admits that by engaging in the conduct described in paragraphs 5 through 10, he violated RPC 1.15-2(m) and RPC 8.1(a)(2).

### **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 duties owed to the profession to comply with the rules attendant to practicing law in this jurisdiction and to respond to inquiry from the Bar. *Standards*, § 7.0.
- b. **Mental state.** The Accused explained that he did not use sufficient care in reading the Bar's communications (and in keeping his telephone number updated), and misunderstood what was being asked of him. The Accused's mental state was negligent, which the *Standards* define as a failure to heed a substantial risk that circumstances exist or that a result would follow, which failure deviates from the standard of care that a reasonable lawyer would exercise in the situation. *Standards*, at p. 7.
- c. **Injury.** The Accused's conduct caused some actual injury in that the Bar was forced to expend resources in repeated efforts to obtain his compliance. *Standards*, at p. 7.
- d. **Aggravating circumstances.** None.
- e. **Mitigating circumstances.** Mitigating circumstances include:
  1. An absence of a prior disciplinary record and a cooperative attitude once prosecution was authorized. *Standards*, §§ 9.32(a) and 9.32(e).

13.

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

14.

Oregon case law is in accord. *See In re Kay*, 19 DB Rptr 200 (2005) (Lawyer suspended for disciplinary reasons misread the letter from the Bar regarding reinstatement requirements and mistakenly believed that he needed to do nothing further before resuming the practice of law. He was publicly reprimanded for failing to timely file his compliance affidavit before resuming the practice of law.). *See also In re Dixon*, 17 DB Rptr 102 (2003); *In re Bassett*, 16 DB Rptr 190 (2002).

15.

Consistent with the *Standards* and Oregon case law, the parties agree that the Accused shall be publicly reprimanded for violations of RPC 1.15-2(m) and RPC 8.1(a)(2).

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 December 2009.

/s/ Allen Barteld

Allen Barteld

OSB No. 972124

OREGON STATE BAR

By: /s/ Mary A. Cooper

Mary A. Cooper

OSB No. 910013

Assistant Disciplinary Counsel

**Cite as 347 Or 426 (2009)**

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In re: )  
)  
Complaint as to the Conduct of )  
)  
JAY R. JACKSON, )  
)  
Accused. )

(OSB Case No. 07-54; SC S056461)

En Banc

Argued and submitted September 15, 2009. Decided December 24, 2009.

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

Jay R. Jackson, Lebanon, filed the brief and argued the cause in propria persona.

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

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**

In this lawyer discipline case, the Bar charged the Accused with neglect of a legal matter, conduct prejudicial to the administration of justice, knowingly making a false statement of fact to a tribunal, and conduct involving dishonesty that reflects adversely on the lawyer's fitness to practice law. The Accused's primary defense is factual; he contends that the Bar failed to prove that he neglected his client and made misrepresentations to the court. On de novo review, we find that the Bar proved the charged violations by clear and convincing evidence, and we suspend the accused for 120 days.

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
 )  
Complaint as to the Conduct of ) Case No. 08-133  
 )  
ARTHUR P. KLOSTERMAN, )  
 )  
Accused. )

Counsel for the Bar: Amber Bevacqua-Lynott  
Counsel for the Accused: None  
Disciplinary Board: Mary Kim Wood, Chair  
James Edmonds  
Joan LeBarron, Public Member  
Disposition: Violation of RPC 1.15-2(m), RPC 3.4(c), RPC  
8.4(a)(4), and RPC 8.1(a)(2). Trial Panel  
Opinion. Nine-month suspension.  
Effective Date of Opinion: December 28, 2009

**OPINION OF THE TRIAL PANEL**

This matter came before a Panel of the Disciplinary Board consisting of Mary Kim Wood, Chair, James C. Edmonds, Member, and Joan J. LeBarron, Public Member, on August 20, 2009. The Oregon State Bar was represented by Jeffrey D. Sapiro, Disciplinary Counsel, and Amber Bevacqua-Lynott, Assistant Disciplinary Counsel. The Accused did not appear and had previously had a default taken against him. The Panel has met and considered the pleadings, exhibits and sanctions memorandum.

Based on the findings and conclusions made below, the Panel finds that the Accused has violated RPC 1.15-2(m), RPC 3.4(c), RPC 8.1(a)(2), and RPC 8.4(a)(4). We further determine that the Accused should be suspended from the practice of law for a period of nine (9) months.

**INTRODUCTION**

This proceeding arises from the Accused's failure to comply with the Oregon Rules of Professional Conduct, specifically, that the Accused failed to file an IOLTA Compliance report as required under RPC 1.15-2(m). Despite given multiple opportunities to comply and avoid any disciplinary proceeding, the Accused failed



and refused to do so. A complaint was filed and a Panel selected. When no appearance was made, a default was entered. The Panel solicited written submissions as to the appropriate sanctions. Again the Accused failed to respond. The Panel met and concluded that suspension was appropriate.

### **BACKGROUND**

The Accused was admitted to the Bar in April of 1986. In December 2002 he stipulated to discipline, and received a public reprimand. In July 2007, the Accused stipulated to discipline and was suspended for thirty (30) days. The instant action was commenced in April 2009.

The Bar's complaint alleges that the annual IOLTA Compliance Report form and the 2008 Membership Dues statement were mailed to the Accused in or about December 2007. The dues were paid on or about April 9, 2008. Shortly thereafter, the Bar sent the Accused a reminder of the need to file his Certification. The Accused failed to respond.

On July 24, 2008, Disciplinary Counsel's Office (hereinafter "DCO") requested the Accused file his Certification by the 22nd of August 2008. The notice also advised the Accused that if he complied he could avoid further investigation. The Accused failed to respond.

On September 3, 2008, the DCO requested an explanation from the Accused as to why he had not filed his Certification. The Accused failed to respond.

On September 29, 2008, the DCO sent a follow-up request, setting a response deadline of October 6, 2008. The Accused failed to respond.

During the week of October 13–17, 2008, DCO staff left the Accused a voice mail asking him to provide his IOLTA Certification and avoid disciplinary action. The Accused failed to respond.

On October 27, 2008, the DCO referred the matter to the Marion County Local Professional Responsibility Committee (hereinafter "LPRC") for investigation. Three days later, the LPRC investigator sent an e-mail to the Accused, detailing his unsuccessful attempts to reach the Accused by telephone and by a personal visit to the Accused's office. The e-mail asked for a response by November 4, 2008. The Accused failed to respond.

On the 5th of November the LPRC investigator made another attempt to reach the Accused by telephone. He was told the Accused was in the office, but was "with a client." The investigator left a telephone number for a call back. The Accused failed to respond.

On November 12, 2008, the Accused was personally served with a subpoena requiring him to appear before the LPRC on December 1, 2008, to produce documents, and give testimony about his conduct. The Accused failed to appear.

On the 18th of December 2008, the Accused was personally served with an Order to Appear and Show Cause re: Remedial Contempt.<sup>5</sup> The Order was signed by Judge James Rhoades and was based on the Accused's failure to comply with the subpoena issued by the LPRC. The Accused failed to appear.

A General Judgment of Contempt was signed by Judge Rhoades and entered against the Accused on March 23, 2009. It imposed a sanction of \$100.00 per day for each day thereafter that the Accused remained in noncompliance.

The Bar alleged that the Accused's conduct constitutes a failure to certify compliance with IOLTA accounting rules, knowingly disobeying an obligation under the rules of court, failure to respond to a lawful demand for information in a disciplinary matter, and conduct prejudicial to the administration of justice.

### GENERAL FACTUAL FINDINGS

In the instant action, the Accused failed to make any appearance, argument, or defense of his actions or lack thereof. A default was taken against him on July 29, 2009. Pursuant to BR 5.8(a), the allegations of the Bar's Complaint are therefore deemed true. BR 5.8(a). The Panel adopts those allegations as its general factual findings.

### ALLEGATIONS

The Bar alleges that the Accused violated RPC 1.15-2(m), which states that:

(m) Every lawyer shall certify annually on a form and by a due date prescribed by the Oregon State Bar that the lawyer is in compliance with Rule 1.15-1 and this rule. Between annual certifications, a lawyer establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of establishing the account, on a form approved by the Oregon Law Foundation.

The Bar alleges that the Accused violated RPC 3.4(c), which states that:

A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

The Bar alleges that the Accused violated RPC 8.1(a)(2), which states that:

(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: . . .

(2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority,

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<sup>5</sup> *In re: Complaint as to the Conduct of ARTHUR P. KLOSTERMAN, Accused.* Marion County Circuit Court Case No. 08C 25972.

except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

The Bar alleges that the Accused violated RPC 8.4(a)(4), which states that:

- (a) It is professional misconduct for a lawyer to: . . .
- (4) engage in conduct that is prejudicial to the administration of justice.

### **DETERMINATION**

As noted above, a default was entered against the Accused. Accordingly, and as a matter of law, all the allegations in the Bar's complaint are deemed true. The sole issue before the Panel is the sanction to be imposed for that misconduct. *In re Staar*, 324 Or 283, 288, 924 P2d 308 (1996).

### **SANCTION**

In fashioning an appropriate sanction, one first looks to the ABA *Standards for Imposing Lawyer Sanctions* (hereinafter "*Standards*"). Those *Standards* require an analysis of the Accused's conduct that considers 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 or mitigating circumstances.

1. **Duty violated.** In the usual disciplinary action, the duty invoked is that owed by an attorney to a client. However, that is not the only ethical obligation imposed upon attorneys. There is also a duty to the public as a whole and to the profession.

The breach that set off this cascade of wrongful conduct was failing to file the annual compliance report for the Accused's IOLTA account. On first examination it would appear that filing a form is a mere administrative duty which would not invoke any ethical obligation. We disagree. The money in the IOLTA account does not belong to the lawyer. Those funds are entrusted to him or her for the benefit of someone else. The compliance form represents the minimal oversight the Bar maintains on an attorney's handling of those funds. All the Bar asks is confirmation that the attorney is maintaining the proper account and the bank and account number where it can be found. The refusal to provide this minimal information triggers the need for additional investigation. In this case, that investigation moved from the Bar to the LPRC to this proceeding.

At no point in the proceeding did the Accused respond to anyone. His blatant disregard of a subpoena, then a court's order, and finally this action is a breach of his duty to the profession.

2. **Mental state.** The recitation of dates, times, and methods used in attempting to obtain the IOLTA certification from the Accused clearly establishes that he was apprised of his duty, was given multiple opportunities to cure, was advised of the possibility of investigation and discipline, and was

given ample opportunity to appear and defend or explain his conduct. The facts also show that regardless of what notice was given, from what source, or how much time was allowed to respond, the Accused did nothing. We cannot affirmatively state that the Accused intended to create another disciplinary case against himself. However, given his prior disciplinary experience and the repeated efforts of the Bar and LPRC to reach him in this case, it is clear the Accused knew the consequences of failing to respond yet knowingly persisted in ignoring all efforts to communicate with him.

3. **Injury.** The Accused has failed and refused to file his IOLTA Compliance report. He has failed and refused to appear or produce documents when requested, subpoenaed, or ordered to do so. He has failed to respond or appear in this proceeding. Allowing a minor administrative task to mushroom into a significant disciplinary matter is prejudicial to the administration of justice and violates RPC 8.4(a)(4).

4. **Aggravating or mitigating circumstances.** Due to the Accused's failure to respond to the Bar, the LPRC, or the Panel, there are no mitigating factors to be considered. To the extent that Exhibit 13, a psychiatric evaluation, was intended as evidence in mitigation, it fails. The conclusion of generalized anxiety disorder does not explain, much less excuse, the Accused's conduct.

Aggravating factors include two prior disciplinary actions. In the 2002 matter, resolved by stipulation to a public reprimand, the Accused neglected a client matter entrusted to him. Additionally, he concealed the existence of a malpractice claim from his client. The 2007 matter, resolved by stipulation to a thirty (30)-day suspension, is more troubling. Not only is it close in time to the conduct that led to the instant action, but it also involved the Accused's failure to respond to lawful demands for information in a disciplinary matter.

An additional aggravating factor is the Accused's substantial experience in the practice of law. He was admitted to practice in 1986.

The Standards provide that suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceedings. *Standards*, § 6.22. The *Standards* also provide that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceedings. *Standards*, § 6.23.

The Accused previously received a public reprimand and was suspended for thirty (30) days. That last suspension appears to have little effect on his subsequent conduct. Although the initiating breach herein was minor, the Accused's total disregard for his professional duties and demonstrated contempt for the authority of the court requires a sanction comparable with his wrongful conduct. Following discussion, the Panel concludes a nine-month suspension is appropriate.

DATED this 28th day of October 2009.

/s/ Mary Kim Wood

Mary Kim Wood  
Trial Panel Chair

/s/ James C. Edmonds

James C. Edmonds  
Trial Panel Member

/s/ Joan J. LeBarron

Joan J. LeBarron  
Trial Panel Member



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