IN THE SUPREME COURT
OF THE STATE OF OREGON

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| In re: | ) | |
| | ) | |
| Complaint as to the Conduct of | ) | Case No. 18-194 |
| | ) | |
| THEODORE C. CORAN, | ) | |
| | ) | |
| Respondent. | ) | |

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| Counsel for the Bar: | Amber Bevacqua-Lynott |
| Counsel for the Respondent: | None |
| Disciplinary Board: | None |
| Disposition: | Violation of RPC 1.4(b), RPC 1.5(a), RPC 1.7(a)(2), and RPC 1.8(a). Stipulation for Discipline. 30-day suspension. |
| Effective Date of Order: | January 3, 2020 |

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

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

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Theodore C. Coran is suspended for 30 days, effective January 3, 2020, for violation of RPC 1.4(b), RPC 1.5(a), RPC 1.7(a)(2), and RPC 1.8(a).

DATED this 23rd day of December, 2019.

/s/ Mark A. Turner
Mark A. Turner
Adjudicator, Disciplinary Board

APPROVED AS TO FORM AND CONTENT:

/s/ Theodore C. Coran
Theodore C. Coran, OSB No. 822260

/s/ Amber Bevacqua-Lynott
Amber Bevacqua-Lynott, OSB No. 990280

## STIPULATION FOR DISCIPLINE

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

1.

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

2.

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

3.

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

4.

On December 28, 2018, a Formal Complaint was filed against Coran pursuant to the authorization of the State Professional Responsibility Board ("SPRB"), alleging violation of RPC 1.4(b) (a failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation); RPC 1.5(a) (charging or collecting a clearly excessive fee); RPC 1.7(a)(2) (engaging in a personal-interest conflict of interest); RPC 1.8(a) (entering into a business transaction with a client without the appropriate disclosures and informed consent); and RPC 8.4(a)(3) (conduct involving dishonesty) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding.

### Facts

5.

During 2015, Coran was employed by Marion County Association of Defenders ("MCAD"), a public defender association. On or about February 4, 2015, through MCAD, Coran was court-appointed to represent Gustavo Vega-Flores ("Vega-Flores") in Marion County Circuit Court Case No. 15CR04660, *State of Oregon vs. Gustavo Vega-Flores* ("Vega-Flores case"). Coran was present in court when the court determined that Vega-Flores qualified for court-appointed counsel and when Vega-Flores entered his not guilty plea.

6.

Shortly after his appointment, Coran met with Vega-Flores in jail. Vega-Flores expressed a strong desire to retain a private attorney and asked Coran what his time would be worth. Coran estimated that trial in the matter would require two days, so told him he would likely charge approximately $10,000, if Vega-Floras were to seek to retain him. Thereafter, Vega-Flores communicated with his mother, Lisa Sylvester ("Sylvester") about putting together $10,000 to pay Coran.

7.

Several months thereafter, several checks from relatives of Vega-Flores, totaling $10,000, were delivered to Coran. Notwithstanding that Coran had already agreed to represent Vega-Flores via a court appointment through MCAD, Coran accepted the $10,000 from Vega-Flores's relatives, and prepared a flat fee agreement between Coran and Vega-Flores for that amount. In accepting the $10,000 and entering into a private agreement with Vega-Flores, Coran did not provide adequate information and explanation about the material risks of and reasonably available alternatives to privately retaining him or explain his present obligation to represent Vega-Flores as his court-appointed counsel. Specifically, the flat fee agreement did not notify Vega-Flores of the effect, if any, the $10,000 payment would have on his obligation to reimburse the state for Coran's court-appointed fee, nor did it advise Vega-Flores of the desirability of seeking (and give him a reasonable opportunity to seek) the advice of independent legal counsel regarding the transaction before entering into the new fee arrangement.

8.

Believing it was unnecessary to do so prior to sentencing, Coran took no steps to notify the court or MCAD that he was now the privately retained counsel of Vega-Flores.

9.

When a prosecutor learned through recorded calls between Vega-Flores and Sylvester of the fee arrangement Coran had made with his court-appointed client, the prosecutor confronted Coran about it.

10.

Soon thereafter, Coran and his investigator visited Vega-Flores in jail and confirmed Vega-Flores' consent to the fee arrangement. The investigator prepared a summary of the meeting. Using this summary and his own notes, Coran prepared and presented Vega-Flores with a "Memorandum of Understanding Gustavo Isabel Vega-Flores – November 17, 2015," ("Memorandum"), which Coran reviewed with Vega-Flores. The Memorandum stated that it had been Vega-Flores' idea to retain Coran and that Coran satisfactorily performed all legal services on his behalf. Vega-Flores signed the Memorandum. Coran thereafter completed his representation of Vega-Flores, including representing him at sentencing in the case.

11.

Prior to when Vega-Flores signed the Memorandum, Coran did not explain to him the conflict that had developed between his personal interests and those of Vega-Flores once Coran was questioned about the propriety of their fee agreement. Moreover, to the extent that consent following full disclosure was available to address this conflict, Coran did not provide Vega-Flores with adequate information and explanation about the material risks of and reasonably available alterations to the proposed course of conduct, or recommend that Vega-Flores seek independent legal advice to determine if consent should be given.

**Violations**

12.

Coran admits that, by entering into a new fee arrangement with a client under these circumstances, he entered into a business transaction with a client without the proper disclosures, in violation of both RPC 1.4(b) and RPC 1.8(a). Coran further admits that to the extent that the new fee arrangement also enabled Coran to collect a fee in excess of what he had previously agreed for the same services, he charged and collected an excessive fee, in violation of RPC 1.5(a).

13.

Coran acknowledges that once the fact of Coran's acceptance of a $10,000 fee for representing a client he was already court-appointed to represent became known to the prosecutor (as a result of Vega-Flores's conversation with his mother), Coran had a personal interest conflict as between his interests and his client's in defending his actions and the retainer agreement. To the extent that informed consent following full disclosure may have been available to address this conflict of interest, Coran did not obtain Vega-Flores' informed consent, and therefore violated RPC 1.7(a)(2).

14.

Upon further factual inquiry, the parties agree that the charge of alleged violation of RPC 8.4(a)(3) is not supported by objective evidence. Accordingly, it should be and, upon the approval of this stipulation, is dismissed.

**Sanction**

15.

Coran and the Bar agree that in fashioning an appropriate sanction in this case, the Disciplinary Board should consider the ABA *Standards for Imposing Lawyer Sanctions* ("*Standards*"). The *Standards* require that Coran'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.** Coran violated his duties to his client to avoid conflicts of interest, and to diligently pursue his client's matter (including the duty to fully communicate with him). *Standards* §§ 4.3; 4.4. The *Standards* presume that the most important ethical duties are those which lawyers owe to their clients. *Standards* at 5. Coran also violated his duty as a professional to refrain from charging excessive fees. *Standards* § 7.0.

b. **Mental State.** Coran's conduct was a combination of negligent and knowing. "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, while "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. Coran did not appreciate the potential conflict with his client, but knew that he was accepting a fee for services that he had already agreed to complete under a different compensation contract.

c. **Injury.** Injury can either be actual or potential under the *Standards*. *In re Williams*, 314 Or 530, 840 P2d 1280 (1992). "Potential injury" is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Standards* at 9. Although Vega-Flores expressed to Coran that it was his desire to pay for retained counsel, he was potentially injured to the extent that he did not have an opportunity to consult with independent counsel about whether it was in his objective best interests to do so. Similarly, Vega-Flores was potentially injured by signing the Memorandum without being advised or having the opportunity to consult with independent counsel about whether he should do so.

d. **Aggravating Circumstances.** Aggravating circumstances include:

1. Prior disciplinary offenses. *Standards* § 9.22(a). Coran was reprimanded in 2000 when, after he was separately court-appointed to represent a criminal defendant and that individual's common-law wife as co-defendants in a robbery, he met and discussed the details of the alleged robbery with both of them. Coran then represented both co-defendants for a time, including at arraignment, without consent after full disclosure from either husband or wife, a current-client conflict of interest in violation of *former* DR 5-105(E) (*current* RPC 1.7(a)). Coran subsequently withdrew from representing husband but did not obtain consent following full disclosure for his continued representation of wife, a former-client conflict

of interest in violation of *former* DR 5-105(C) (*current* RPC 1.9(a)). *In re Coran,* 14 DB Rptr 136 (2000) ("*Coran I*").

In 2002, Coran was reprimanded when, in three separate criminal matters, he failed to timely file briefs or petitions on behalf of his clients, resulting in the rejection of subsequent filings and/or the dismissal of their claims. Aware of these clients' potential legal malpractice claims, Coran continued to represent them in conjunction with their criminal matters without obtaining their informed consent, in violation of *former* DR 6-101(B) and *former* DR 5-105(A) (*current* RPC 1.3 and RPC 1.7(a)). *In re Coran*, 16 DB Rptr 234 (2002) ("*Coran II*").

In 2010, Coran was again reprimanded when, in undertaking to represent a client on his direct appeal of criminal convictions, Coran agreed to accept a bonus fee for each month that the client's sentence was reduced on appeal, which was an improper contingent fee in a criminal case, in violation of RPC 1.5(c)(2). In addition, the written fee agreement for the representation failed to provide that funds would not be deposited in trust when Coran subsequently received and deposited funds into an account other than his lawyer trust account, in violation of RPC 1.15-1(a) & (c). *In re Coran,* 24 DB Rptr 269 (2010) ("*Coran III*").

In 2013, Coran was suspended for 30 days, all stayed, subject to a two-year probation, when he accepted advance fees which he did not deposit or maintain in trust notwithstanding that his flat-fee agreement failed to explain that the client could discharge him at any time and in that event might be entitled to a refund of all or part of the fee if the services for which the fee was paid were not complete, in violation of RPC 1.5(c), RPC 1.15-1(a), and RPC 1.15-1 (c). In a separate matter, Coran failed to promptly deliver a copy of his client's post-conviction file for several months, and only after the client complained to the bar, in violation of RPC 1.15-1(d). *In re Coran,* 27 DB Rptr 170 (2013) ("*Coran IV*").

In 2016, Coran was suspended for 120 days, all but 30 days stayed, subject to a three-year probation where Coran assisted two incarcerated clients in a loan transaction, meeting separately with each client to discuss the proposed loan, and making assurances to the lender client regarding the borrower's ability to repay the loan. Relying in part on Coran's assurances, the lender agreed to the proposal, which Coran drafted and presented to the clients, without obtaining informed consent from either client, in violation of RPC 1.7(a)(2). In addition, Coran deposited money into an incarcerated client's jail account on multiple occasions without requiring or ensuring that the funds be used only for court costs or litigation

expenses. The client did not use the funds for either purpose, in violation of RPC 1.8(e). *In re Coran*, 30 DB Rptr 350 (2016) ("*Coran V*").

2. A selfish motive. *Standards* § 9.22(b). Coran justified to himself that he was entitled to the $10,000 fee he received, notwithstanding his court appointment through MCAD.

3. A pattern of misconduct. *Standards* § 9.22(c). In conjunction with this matter, Coran's prior discipline (particularly *Coran I*, *Coran II*, and *Coran V*) demonstrates a pattern of failing to recognize or appreciate conflicts of interest with or among his clients.

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

5. Substantial experience in the practice of law. *Standards* § 9.22(i). Coran has been a lawyer in Oregon since 1982.

e. **Mitigating Circumstances.** Mitigating circumstances include:

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

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

3. Character or reputation. *Standards* § 9.32(g). On behalf of Coran, attorneys and judges in the community provided support of his good character and reputation as an attorney.

4. Imposition of other penalties or sanctions. *Standards* § 9.32(k). As a result of Vega-Flores' complaint, Coran was removed from the MCAD referral list, and no longer receives court appointments in Marion County.

5. Remorse. *Standards* § 9.32(l).

16.

Under the ABA *Standards*, a reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. A reprimand is also generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client (including fully communicating necessary information), and causes injury or potential injury to a client. A suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. A 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* §§ 4.33; 4.43; 7.2; 7.3. A suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. *Standards* § 8.2. Overall, Coran's aggravation and mitigation are in equipoise in number and slightly aggravating, in terms of weight, particularly in light of his similar prior discipline. Accordingly, the application of the aggravating and mitigating factors seems to favor a short suspension.

17.

Oregon case law reaches a similar result for inadequate communication and conflicts of interest, particularly where there is prior similar discipline. *See, e.g., In re Yunker,* 31 DB Rptr 133 (2017) (attorney was suspended for 60 days, stayed subjected to a two-year probation, when he told a client with a civil rights claim that he would file a tort-claim notice after receiving the police report, but failed to do so after his investigation revealed that the claim was questionable; however, attorney did not sufficiently communicate to the client that he was not interested in pursuing the claim and that he had not filed and was not going to file the tort-claim notice; and attorney had previously been reprimanded for similar violations); *In re Hudson*, 30 DB Rptr 40 (2016) (attorney was suspended for 120 days, 60 days of which were stayed, subject to a one-year probation where, a week before the date his suspension was to start in another disciplinary matter, attorney appeared in court to argue his client's appeal in a child support mater, without informing his client of his suspension, recommending that she consult with another lawyer, assisting her in finding another lawyer, or providing her with her client file. Attorney also failed to withdraw from the client's case or inform the court that he could not represent her due to his suspension. When the court issued a judgment mostly favorable to the opposing party, the opposing party sought reconsideration and attorney fees. The client was unable to make an informed decision as to whether to challenge the court's decision or the petition for attorney fees because respondent was unable to counsel her due to his suspension. Attorney had previously been suspended for some of the same communication and neglect issues); *In re Erm*, 30 DB Rptr 1 (2016) (respondent, who represented a wife who lived in Utah with her children in a dissolution and custody determination filed by husband in Oregon, was suspended for 30 days when, after he made an initial court appearance and moved to sever the custody matter from the dissolution proceeding, did not file a response to the husband's petition for dissolution, or contest Oregon's jurisdiction; after the court held that Oregon had jurisdiction on all issues except custody, respondent did not notify the court of his intent to withdraw, respond or object to husband's motion for default, or forward the motion or subsequent order of default and proposed general judgment to wife or to her Utah attorney. When wife learned about the default order, respondent agreed to assist, but then failed to follow through or respond to the wife's request regarding the status. Respondent had been previously admonished for the same behavior); *In re Snell,* 29 DB Rptr 5 (2015) (respondent who had previously been reprimanded for a multiple-client conflict, was suspended for 60 days, all but 30 days stayed subject to a two-year probation, where she filed liens against a hotel on behalf of Clients 1 and 2, filed a lawsuit seeking to foreclose Client 1's lien, and also filed an answer on behalf of Client 2 which cross-claimed against the other lien-holder defendants, including Client 1. Respondent failed to disclose to

Client 1 or 2 that she could not ethically represent Client 2 until after she had completed her representation of Client 1; and she failed to disclose to Client 2 that, on Client 1's behalf, she would immediately foreclose Client 2's lien. Respondent did not tell Client 2 that she had entered negotiations with hotel on behalf of Client 1. Instead, she asserted various reasons why efforts to recover on Client 2's claim were delayed); *In re Klahn,* 26 DB Rptr 246 (2012) (attorney was suspended for 90 days after he was removed from a court-appointed criminal case because he did not maintain contact with his incarcerated client and the court was concerned that the defense was not ready for trial. Attorney had previously been suspended for 60 days for similar misconduct); *In re Hilborn,* 24 DB Rptr 233 (2010) (attorney was suspended for 30 days where he filed litigation on behalf of several persons without informing some of them that they were included as plaintiffs, that the case had gone to arbitration, and that a judgment for costs and attorney fees had been entered against them. Respondent had previously been suspended for similar violations).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that Coran shall be suspended for 30 days for his violations of RPC 1.4(b); RPC 1.5(a); RPC 1.7(a)(2); and RPC 1.8(a). The sanction is to be effective January 3, 2020.

19.

In addition, on or before December 31, 2019, Coran shall pay to the Bar its reasonable and necessary costs in the amount of $243, incurred for deposition appearance costs. Should Coran fail to pay $243 in full by December 31, 2019, the Bar may thereafter, without further notice to him, obtain a judgment against Coran for the unpaid balance, plus interest thereon at the legal rate to accrue from the date the judgment is signed until paid in full.

20.

Coran 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, Coran has arranged for John Peter A. Druckenmiller, OSB No. 170958, an active member of the Bar, to either take possession of or have ongoing access to Coran's client files and serve as the contact person for clients in need of the files during the term of his suspension. Coran represents that Mr. Druckenmiller has agreed to accept this responsibility.

21.

Coran 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. Coran 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.

22.

Coran acknowledges that he is subject to the Ethics School requirement set forth in BR 6.4 and that a failure to complete the requirement timely under that rule may result in his suspension or the denial of his reinstatement.

Coran represents that, in addition to Oregon, he also is admitted to practice law in the jurisdictions listed in this paragraph, whether his current status is active, inactive, or suspended, and he acknowledges that the Bar will be informing these jurisdictions of the final disposition of this proceeding. Other jurisdictions in which Coran is admitted: none.

24.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on October 19, 2019. Approval as to form by Disciplinary Counsel is evidenced below. The parties agree the stipulation is to be submitted to the Adjudicator on behalf of the Disciplinary Board for consideration pursuant to the terms of BR 3.6.

EXECUTED this 22nd day of November, 2019.

/s/ Theodore C. Coran
Theodore C. Coran, OSB No. 822260

EXECUTED this 22nd day of November, 2019.

OREGON STATE BAR

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