

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case Nos. 20-12 and 20-13  
)  
LANCE R. CLARK, )  
)  
Respondent. )

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and  
RPC 8.4(a)(3). Stipulation for Discipline. 180-day  
suspension, 90-days stayed, 2-year probation.

Effective Date of Order: July 18, 2021

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Lance R. Clark (Respondent) and the Oregon State Bar, and good cause appearing,

IT IS HEREBY ORDERED that the stipulation between the parties is approved and Respondent is suspended for 180 days, with 90 days of the suspension stayed, pending Respondent's successful completion of a two-year probation, effective 30 days after the stipulation is approved, or as otherwise directed by the Disciplinary Board for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(3).

DATED this 18th day of June, 2021.

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

## **STIPULATION FOR DISCIPLINE**

Lance R. Clark, attorney at law (Respondent), 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.

Respondent was admitted by the Oregon Supreme Court to the practice of law in Oregon on September 26, 2003, and has been a member of the Bar continuously since that time, having his office and place of business in Clackamas County, Oregon.

3.

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

4.

On August 4, 2020, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(3) 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**

#### **Nguye Kaladokubo Matter – Case No. 20-13.**

5.

In or around March 2016, Respondent began representing Nguye Walter Kaladokubo (Kaladokubo) in a legal malpractice case against Kaladokubo's former lawyer, Todd Peterson (Peterson). The suit arose from a trial that occurred in March 2016, in which Peterson represented Kaladokubo. At all relevant times, Respondent knew that the statute of limitations on Kaladokubo's malpractice claim was two years from when Peterson's alleged negligence occurred or when Kaladokubo discovered the negligence.

6.

Respondent performed some initial research and case review on Kaladokubo's legal matter, but believed the statute of limitations did not begin to run until he discovered additional

evidence. Respondent began neglecting it in early 2017. Apart from reviewing Kaladokubo's file more thoroughly in December 2017, Respondent did not perform substantial legal work again until after Kaladokubo contacted the Oregon State Bar in May 2018. The Bar notified Respondent, which prompted him to draft a civil complaint and file it on June 11, 2018, in *Kaladokubo vs. Peterson Law Offices PC*, Multnomah County Circuit Court Case No. 18-CV-23809.

7.

On September 19, 2018, the court notified Respondent that it intended to dismiss Kaladokubo's lawsuit in 28 days for want of prosecution, but Respondent took no action and did not inform Kaladokubo of the pending dismissal. On October 25, 2018, the court dismissed the lawsuit. Respondent took no substantial action to reinstate Kaladokubo's lawsuit until April 19, 2019, when Respondent filed a new civil complaint in *Kaladokubo vs. Peterson Law Offices PC*, Multnomah County Circuit Court Case No. 19-CV-18020. Peterson moved for summary judgment on the grounds that both of Kaladokubo's suits were filed after the statute of limitations had expired. In December 2020, the court granted summary judgment for Peterson and entered a general judgment of dismissal with prejudice.

8.

For multiple periods during the representation, Respondent did not communicate with Kaladokubo. In April 2017 and December 2017, Kaladokubo contacted Respondent seeking information on the status of his case but received no response. In September 2018, Respondent did not inform his client that he had received a notice from the court that his case would be dismissed for want of prosecution, and did not inform him that on October 25, 2018, it had in fact been dismissed. Respondent knew the dismissal was material but did not inform his client partially because Respondent was embarrassed and intended to delay communication until he had a positive update to report.

### **Violations**

9.

Respondent admits that, by the conduct aforementioned in paragraphs 5, 6, 7, and 8, he neglected a legal matter entrusted to him in violation of RPC 1.3; failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, in violation of RPC 1.4(a); failed to explain a matter to his client reasonably necessary to permit the client to make informed decisions regarding the representation in violation of RPC 1.4(b); and made material misrepresentations by omission to his client in violation of RPC 8.4(a)(3).

## **Elisha Carswell Matter – Case No. 20-12**

10.

In October 2013, Respondent began representing Elisha Carswell (Carswell) to legally adopt Carswell's niece, the child of her brother. Respondent had not represented any parties in an adoption matter, but Respondent agreed in part because he believed the adoption would be uncontested. However, Carswell's brother soon became uncooperative with Respondent and Carswell, beginning in or around January of 2014.

11.

Although Respondent performed some work on Carwell's behalf, Respondent conducted little to no work for substantial periods of time when he was unsure how to proceed. This included: from approximately January 2014 to December 2014; from approximately August 2015 until April 2018, when the Bar notified Respondent that Carswell contacted the Bar, which prompted him to file a petition and accompanying pleadings for adoption on May 4, 2018; and from approximately May 2018 to August 2019, when Carswell again contacted the Bar which prompted him to act. During that time, in November 2018, the court sent notice to Respondent that it intended to dismiss Carswell's case for lack of service. In January 2019, the court dismissed Carswell's case, and Respondent took no action to reinstate the case or inform Carswell. In August 2019, Carswell learned on her own that her adoption case had been dismissed and she filed a complaint with the Bar's Client Assistance Office, which prompted Respondent to seek and obtain an order to reinstate the case and move for a contested adoption. Carswell terminated Respondent's representation; Respondent refunded Carswell the legal fees that he had previously charged her, and he provided the client file and information about the case to Carswell's new counsel. Carswell hired new counsel in the adoption matter, who promptly filed a new petition for adoption and had the adoption finalized for Carswell within several months.

12.

For multiple periods of time during the representation, Respondent failed to respond to Carswell and, at times, actively avoided responding to her requests for information. In 2016, Respondent began purposely avoiding Carswell out of embarrassment, and from approximately August 2016 to August 2018, did not respond to Carswell's repeated requests for status updates. During that time period, Respondent spoke to Carswell approximately only one or two times. On more than one occasion, Respondent made no substantial progress in the adoption matter because he did not know how to proceed, but Respondent did not communicate his lack of knowledge to Carswell so that she could make an informed decision about continuing the representation.

13.

Respondent did not inform his client that in November 2018, he had received a notice from the court that his case would be dismissed for lack of service, or that in January 2019, it had in fact been dismissed. Respondent knew that these facts were material to Carswell but did not

inform her partially because Respondent was embarrassed and intended to delay communication until he had a positive update to report to his client. Carswell discovered this information on her own roughly eight months later, in August 2019.

### Violations

14.

Respondent admits that, by the conduct aforementioned in paragraphs 10, 11, 12, and 13, he neglected a legal matter entrusted to him in violation of RPC 1.3; failed to keep his client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, in violation of RPC 1.4(a); failed to explain a matter to his client reasonably necessary to permit the client to make informed decisions regarding the representation in violation of RPC 1.4(b); and made material misrepresentations by omission to his client in violation of RPC 8.4(a)(3).

### Sanction

15.

Respondent 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* (ABA Standards). The ABA Standards require that Respondent'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 a lawyer owes are to his clients. ABA Standards at 5. Respondent violated the most important duties that he owed to his clients to act with reasonable diligence and promptness, to communicate, and to act with candor. ABA Standards 4.4, 4.6. *See, e.g., In re Mark G. Obert*, 336 Or 640, 651, 89 P3d 1173 (2004) (where a lawyer procrastinated on client matters then chose not to update clients out of shame and embarrassment, the lawyer "violated his duty of candor, ABA Standard 4.6, by waiting five months to inform [his client] that his case had ended").
- b. **Mental State.** "Intent" is the conscious objective or purpose to accomplish a particular result. ABA Standards at 9. "Knowledge" is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. *Id.* "Negligence" is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation. *Id.* Here, Respondent negligently failed to pursue client matters or communicate with his clients. He

knowingly omitted facts from his clients by failing to inform them of the adverse case events.

- c. **Injury.** Injury can be actual or potential. Potential injury is the harm “that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.” ABA Standards at 9.

Here, both clients suffered worse legal outcomes from Respondent’s representation. In Kaladokubo’s case, Respondent missed the statute of limitations, causing the case to be dismissed with prejudice on December 23, 2020. In Carswell’s case, the adoption was not finalized until his client fired him and obtained substitute counsel. Meanwhile, in the seven years that Respondent represented Carswell, she lacked the full rights and securities of being deemed her child’s legal parent. Both clients – and particularly Carswell – suffered anxiety and emotional distress over the delays. Respondent caused his clients, the courts, and the Bar to devote additional resources in attempting to get him to respond to clients and work on their cases.

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

1. A pattern of misconduct. ABA Standard 9.22(c).
2. Multiple offenses. ABA Standard 9.22(d).
3. Substantial experience in the practice of law. ABA Standard 9.22(i).

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

1. Absence of a prior disciplinary record. ABA Standard 9.32(a).
2. Personal or emotional problems. ABA Standard 9.32(c).
3. Restitution. ABA Standard 9.32(d) – Respondent refunded Carswell’s full retainer; he did not receive funds from Kaladokubo.
4. Cooperative attitude toward disciplinary proceedings. ABA Standard 9.32(e).
6. Remorse. ABA Standard 9.32(l).

Under ABA Standard 4.42, suspension is generally appropriate when: “(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.”

Similarly, suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. ABA Standard 4.62.

17.

Similar cases involving significant periods of neglect result in moderate length suspensions. *See, e.g., In re Butler*, 324 Or 69, 76, 921 P2d 401 (1996) (one-year suspension when the attorney neglected a client's law suit until it was dismissed, and intentionally did not inform his client while he attempted to have the suit reinstated); *In re Aman*, 29 DB Rptr 334 (2015) (one-year suspension, with all but six months stayed pending a two-year probation, when attorney neglected a patent infringement matter for five years); *In re Merrill*, 29 DB Rptr 306 (2015) (120-day suspension with all but 30 days stayed pending a two-year probation, when attorney neglected matters for three clients); *In re McVea*, 29 DB Rptr 163 (2015) (6-month suspension when attorney failed to fulfill discovery obligations and the case was dismissed as a sanction, but the attorney told his client it was dismissed on the merits).

18.

BR 6.2 recognizes that probation can be appropriate and permits a suspension to be stayed pending the successful completion of a probation. *See also* ABA Standard 2.7 (probation can be imposed alone or with a suspension and is an appropriate sanction for conduct which may be corrected). In addition to a period of suspension, a period of probation designed to ensure the adoption and continuation of better practices will best serve the purpose of protecting clients, the public, and the legal system.

19.

Consistent with the ABA Standards and Oregon case law, the parties agree that Respondent shall be suspended for 180 days for violations of RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.4(a)(3), with 90 days of the suspension stayed, pending Respondent's successful completion of a two-year term of probation. The sanction shall be effective 30 days after the stipulation is approved, or as otherwise directed by the Disciplinary Board (effective date).

20.

Respondent's license to practice law shall be suspended for a period of 90 days beginning on the effective date, or as otherwise directed by the Disciplinary Board (actual suspension), assuming all conditions have been met. Respondent understands that reinstatement is not automatic and that he cannot resume the practice of law until he has taken all steps necessary to re-attain active membership status with the Bar and he is notified that his license to practice has been reinstated. During the period of actual suspension, and continuing through the date upon which Respondent re-attains his active membership status with the Bar, Respondent shall not practice law or represent that he is qualified to practice law; shall not hold himself out as a lawyer; and shall not charge or collect fees for the delivery of legal services other than for work performed and completed prior to the period of actual suspension.

21.

Probation shall commence upon the date Respondent is reinstated to active membership status and shall continue for a period of two (2) years, ending on the day prior to the second year anniversary of the effective date (the period of probation). During the period of probation, Respondent shall abide by the following conditions:

- (a) Respondent will communicate with Disciplinary Counsel's Office (DCO) and allow DCO access to information, as DCO deems necessary, to monitor compliance with his probationary terms.
- (b) Respondent shall comply with all provisions of this Stipulation for Discipline, the Rules of Professional Conduct applicable to Oregon lawyers, and ORS Chapter 9.
- (c) After Respondent is reinstated to active membership status, he shall maintain an active membership status for the duration of the period of probation. Any failure by Respondent to maintain active membership status for a period of longer than one month during the period of probation shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.
- (d) During the period of probation, Respondent shall attend not less than 8 MCLE accredited programs, for a total of 24 hours, which shall emphasize law practice management, client management, and time management. These credit hours shall be in addition to those MCLE credit hours required of Respondent for his normal MCLE reporting period. (The Ethics School requirement does not count towards the 24 hours needed to comply with this condition.) Upon completion of the CLE programs described in this paragraph, and prior to the end of his period of probation, Respondent shall submit an Affidavit of Compliance to DCO.
- (e) Throughout the period of probation, Respondent shall diligently attend to client matters and adequately communicate with clients regarding their cases.
- (f) Each month during the period of probation, Respondent shall review all client files to ensure that he is timely attending to the clients' matters and that he is maintaining adequate communication with clients, the court, and opposing counsel.
- (g) Ronald H. Elzinga, Bar No. 912606, shall serve as Respondent's probation supervisor (Supervisor). Respondent shall cooperate and comply with all reasonable requests made by his Supervisor that Supervisor, in his sole discretion, determines are designed to achieve the purpose of the probation and the protection of Respondent's clients, the profession, the legal system, and the public. Respondent agrees that, if Supervisor ceases to be his Supervisor for any

reason, Respondent will immediately notify DCO and engage a new Supervisor, approved by DCO, within one month.

- (h) Respondent and Supervisor agree and understand that Supervisor is providing their services voluntarily and cannot accept payment for providing supervision pursuant to this Stipulation for Discipline.
- (i) Beginning with the first month of the period of probation, Respondent shall meet with Supervisor in person at least once a month for the purpose of allowing his Supervisor to review the status of Respondent's law practice and his performance of legal services on the behalf of clients. Each month during the period of probation, Supervisor shall conduct a random audit of ten (10) client files or ten percent (10%) of Respondent's active caseload, whichever is greater, to determine whether Respondent is timely, competently, diligently, and ethically attending to matters.
- (j) Respondent authorizes his Supervisor to communicate with DCO regarding his compliance or non-compliance with the terms of this agreement, and to release to DCO any information necessary to permit DCO to assess Respondent's compliance.
- (k) Within seven (7) days of his reinstatement date, Respondent shall contact the Professional Liability Fund (PLF) and schedule an appointment on the soonest date available to consult with PLF's Practice Management Attorneys in order to obtain practice management advice. Respondent shall notify DCO of the time and date of the appointment.
- (l) Respondent shall attend the appointment with the PLF's Practice Management Attorneys and seek advice and assistance regarding procedures for diligently pursuing client matters, communicating with clients, effectively managing a client caseload and taking reasonable steps to protect clients upon the termination of his employment. No later than thirty (30) days after recommendations are made by the PLF's Practice Management Attorneys, Respondent shall adopt and implement those recommendations.
- (m) No later than sixty (60) days after recommendations are made by the PLF's Practice Management Attorneys, Respondent shall provide a copy of the Office Practice Assessment from the PLF's Practice Management Attorneys and file a report with DCO stating the date of his consultation(s) with the PLF's Practice Management Attorneys; identifying the recommendations that he has adopted and implemented; and identifying the specific recommendations he has not implemented and explaining why he has not adopted and implemented those recommendations.

- (n) Respondent shall implement all recommended changes, to the extent reasonably possible, and participate in at least two follow-up reviews with the PLF Practice Management Attorneys. The first follow-up review shall occur six months after the initial appointment, and the second follow-up review shall occur six months after the first follow-up review.
- (o) On a quarterly basis, on dates to be established by DCO beginning no later than 90 days after his reinstatement to active membership status, Respondent shall submit to DCO a written Compliance Report, approved as to substance by his Supervisor, advising whether Respondent is in compliance with the terms of this Stipulation for Discipline, including:
  - (1) The dates and purpose of Respondent's meetings with his Supervisor.
  - (2) The number of Respondent's active cases and percentage reviewed in the monthly audit with Supervisor and the results thereof.
  - (3) Whether Respondent has completed the other provisions recommended by his Supervisor, if applicable.
  - (4) In the event that Respondent has not complied with any term of this Stipulation for Discipline, the Compliance Report shall describe the non-compliance and the reason for it.
- (p) Respondent is responsible for any costs required under the terms of this stipulation and the terms of probation.
- (q) Respondent's failure to comply with any term of this agreement, including conditions of timely and truthfully reporting to DCO, or with any reasonable request of his Supervisor shall constitute a basis for the revocation of probation and imposition of the stayed portion of the suspension.
- (r) A Compliance Report is timely if it is emailed, mailed, faxed, or delivered to DCO on or before its due date.
- (s) The SPRB's decision to bring a formal complaint against Respondent for unethical conduct that occurred or continued during the period of his probation shall also constitute a basis for revocation of the probation and imposition of the stayed portion of the suspension.
- (t) In the event of Respondent's noncompliance with any provision of the Stipulation for Discipline, DCO may seek to revoke probation and impose the stayed portion of suspension.
- (u) Upon the filing of a petition to revoke Respondent's probation pursuant to BR 6.2(d), Respondent's remaining probationary term shall be automatically tolled

and shall remain tolled, until the BR 6.2(d) petition is adjudicated by the Adjudicator or, if appointed, the Disciplinary Board.

22.

In addition, on or before July 1, 2021, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$1,301.90, incurred for Respondent's deposition. Should Respondent fail to pay \$1,301.90 in full by July 1, 2021, the Bar may thereafter, without further notice to him, obtain a judgment against Respondent 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.

Respondent 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 Respondent has arranged for Amanda M. Quatier, Quatier Law, 1935 SE Washington St., Ste 6, Milwaukie, OR 97222, Bar No. 144090, an active member of the Bar, to either take possession of or have ongoing access to Respondent's client files and serve as the contact person for clients in need of the files during the term of his suspension. Respondent represents that Amanda M. Quatier has agreed to accept this responsibility.

24.

Respondent 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. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

25.

Respondent 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 Respondent is admitted: Siletz Tribal Court (inactive); and Grande Ronde Tribal Court (inactive).

26.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on April 24, 2021. 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 17th day of June, 2021.

/s/ Lance R. Clark

Lance R. Clark

OSB No. 032894

EXECUTED this 17th day of June, 2021.

OREGON STATE BAR

By: /s/ Rebecca Salwin

Rebecca Salwin

OSB No. 201650

Assistant Disciplinary Counsel