

IN THE SUPREME COURT  
OF THE STATE OF OREGON

In re: )  
)  
Complaint as to the Conduct of ) Case No. 19-64  
)  
MELISSA BLYTHE JAFFE, )  
)  
Respondent. )

Counsel for the Bar: Rebecca Salwin

Counsel for the Respondent: None

Disciplinary Board: None

Disposition: Violation of RPC 1.5(a), RPC 1.5(c)(3), RPC 1.8(a),  
RPC 1.15-1(a), RPC 1.15-1(c). Stipulation for Discipline.  
120-day suspension.

Effective Date of Order: March 31, 2021

**ORDER APPROVING STIPULATION FOR DISCIPLINE**

This matter having been heard upon the Stipulation for Discipline entered into by Melissa Blythe Jaffe (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 120 days, effective 30 days after the stipulation is approved, for violation of RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.5(a), RPC 1.5(c)(3), and RPC 1.8(a).

DATED this 1st day of March, 2021.

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

**STIPULATION FOR DISCIPLINE**

Melissa Blythe Jaffe, 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 25, 2008, and has been a member of the Bar continuously since that time, having her office and place of business in Washington 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 December 19, 2019, a formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violations of RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.5(a), RPC 1.5(c)(3), RPC 1.8(a), and RPC 8.1(a) of the Oregon Rules of Professional Conduct. The parties intend that this Stipulation for Discipline set forth all relevant facts, violations and the agreed-upon sanction as a final disposition of the proceeding. On February 4, 2021, an amended formal complaint was filed against Respondent pursuant to the authorization of the State Professional Responsibility Board (SPRB), alleging violation of RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.5(a), RPC 1.5(c)(3), and RPC 1.8(a) of the Oregon Rules of Professional Conduct.

#### **Facts**

5.

In September 2015, Respondent entered into a fee agreement with Complainant that charged a monthly flat fee deemed "earned upon receipt," but which did not state that the funds will not be deposited into the lawyer trust account, that the client could discharge the lawyer at any time, or that the client may be entitled to a refund of unearned fees.

6.

The fee agreement referenced in paragraph 5 charged 10% interest for every 10 days a payment was late. Respondent did not maintain the fees she received under this agreement in a lawyer trust account prior to earning them. In November 2015, Respondent replaced the fee agreement to increase her fee, but kept the same language regarding flat fees and late fees.

7.

In February 2016, Respondent amended the fee agreement referenced in paragraph 7 to add a termination penalty defined as two months' worth of flat fees. Respondent included missing language that the funds will not be deposited into the lawyer trust account, that the client could discharge the lawyer at any time, or that the client may be entitled to a refund of unearned fees. Respondent also corrected other errors, such as a mis-named party.

8.

In April 2016, Respondent and Complainant entered an additional, concurrent monthly flat fee agreement. Per the agreement between the parties, Respondent charged 10% interest for every 20 days a payment was late. In July 2016, Respondent amended it to add a termination penalty defined as two months' worth of flat fees.

9.

In December 2016, Complainant terminated Respondent's services. At the time Respondent was terminated, her monthly flat fee was \$7,500 per fee agreement, such that Complainant's total termination fee equaled \$30,000.

10.

In March 2017, Respondent invoiced Complainant for \$30,000 in legal fees, as well as other costs. Respondent invoiced Complainant again in April 2017, noting that late fees were accruing by 10% every 20 days. Complainant did not pay the invoices.

11.

Through counsel, Respondent sued Complainant for outstanding legal fees and late fees, as well as other damages. Complainant filed a counterclaim for a partial refund of fees, plus recovery of attorney's fees for the litigation. On March 5, 2018, the parties settled all claims.

12.

Amid Respondent's representation of Complainant, in February 2016, Respondent had agreed to sublease a portion of her office to Complainant in exchange for rent. Complainant also paid Respondent \$10,000, which was not for legal services, to attend a week-long retreat on Maui, Hawaii, in October 2016. Neither agreement included the written disclosures required by RPC 1.8(a) when entering into a business transaction with a client.

## Violations

13.

Respondent admits that by her conduct aforementioned in paragraphs 5 through 11, she entered into fee agreements for and charged clearly excessive fees in violation of RPC 1.5(a); entered into fee agreements that denominated fees as “earned on receipt,” without the written explanations required by RPC 1.5(c)(3). Because the funds received by Respondent were pursuant to fee agreements that did not comply with RPC 1.5(c)(3), they were client funds and were required to be deposited into Respondent’s lawyer trust account. Because Respondent failed to deposit such funds into her trust account, she failed to maintain unearned client funds in a lawyer trust account, in violation of RPC 1.15-1(a) and (c).

14.

Respondent also admits that by her conduct aforementioned in paragraph 12, she entered into two business transactions with a client, without the written, signed disclosures required by RPC 1.8(a).

## 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.** Respondent’s excessive fees violated the duty she owed as a professional to charge reasonable fees. ABA Standard 7.0. Respondent’s sublease agreement and business retreat violated the duty she owed to her client to avoid conflicts of interest. ABA Standard 4.3.
- 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 knowingly charged the termination penalties and late fee, even if she did not know that such fees were improper. She negligently failed to provide

Complainant the writings required when entering business transactions with her client.

- c. **Injury.** Injury can be actual or potential. ABA Standard 3.0. Respondent injured and potentially injured her client when she invoiced \$30,000 in attorney's fees, plus interest at a rate of approximately 180% per annum, then filed suit against her. This caused Complainant to incur legal expenses to defend herself, as well as significant time and anxiety. *See In re Obert*, 352 Or 231, 260, 282 P3d 825 (2012) (client anguish, uncertainty, anxiety and aggravation are actual injury).
- d. **Aggravating Circumstances.** Aggravating circumstances include:
  - 1. Selfish motive. ABA Standard 9.22(b).
  - 2. Multiple offenses. ABA Standard 9.22(d).
- e. **Mitigating Circumstances.** Mitigating circumstances include:
  - 1. Absence of a prior disciplinary record. ABA Standard 9.32(a).

16.

Under the ABA 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. ABA Standard 7.2. 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, and causes injury or potential injury to a client. ABA Standard 4.33.

17.

Oregon case law confirms that a suspension is the appropriate sanction. *See, e.g., In re Balocca*, 342 Or 279, 298, 151 P3d 154, 164 (2007) (90 day suspension for collecting an excessive fee combined with other rule violations and aggravating factors); *In re Kathleen Moore*, 21 DB Rptr 281 (2007) (attorney who charged and collected a \$10,000 "initial compensation" that bore no relationship to legal services, and \$58,080 for five months of overhead, but where the attorney also agreed to refund \$53,192.12 to the client, the attorney stipulated to a 60-day suspension); *In re Wyllie III*, 331 Or 606, 625, 19 P3d 338 (2001) (120-day suspension of a lawyer with prior discipline who negligently charged \$1,850, and collected \$750, but was only entitled to charge \$425 per his fee agreement). *In re Adams*, 293 Or 727, 652 P2d 787 (1982) (60-day suspension of a lawyer, who among other things, charged his client an amount in excess of what the applicable workers' compensation administrative rules allowed).

18.

Consistent with the *Standards* and Oregon case law, the parties agree that Respondent shall be suspended for 120 days for violation of RPC 1.15-1(a), RPC 1.15-1(c), RPC 1.5(a), RPC 1.5(c)(3), and RPC 1.8(a), the sanction to be effective 30 days after the stipulation is approved.

19.

In addition, on or before October 31, 2021, Respondent shall pay to the Bar its reasonable and necessary costs in the amount of \$2,246.80, incurred for personal service of the formal complaint upon Respondent and Respondent's deposition. Should Respondent fail to pay \$2,246.80 in full by October 31, 2021, the Bar may thereafter, without further notice to her, 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.

20.

Respondent 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, Respondent has represented to the Bar that she has no current clients.

21.

Respondent 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. Respondent 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.

22.

Respondent acknowledges that she 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 her suspension or the denial of her reinstatement. This requirement is in addition to any other provision of this agreement that requires Respondent to attend continuing legal education (CLE) courses.

23.

Respondent represents that, in addition to Oregon, she also is admitted to practice law in the jurisdictions listed in this paragraph, whether her current status is active, inactive, or suspended, and she acknowledges that the Bar will be informing these jurisdictions of the final

disposition of this proceeding. Other jurisdictions in which Respondent is admitted: California, Washington.

24.

Approval of this Stipulation for Discipline as to substance was given by the SPRB on January 23, 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 26th day of February, 2021.

/s/ Melissa Blythe Jaffe

Melissa Blythe Jaffe, OSB No. 083702

EXECUTED this 1st day of March 2021.

OREGON STATE BAR

By: /s/ Rebecca Salwin

Rebecca Salwin, OSB No. 201650

Assistant Disciplinary Counsel